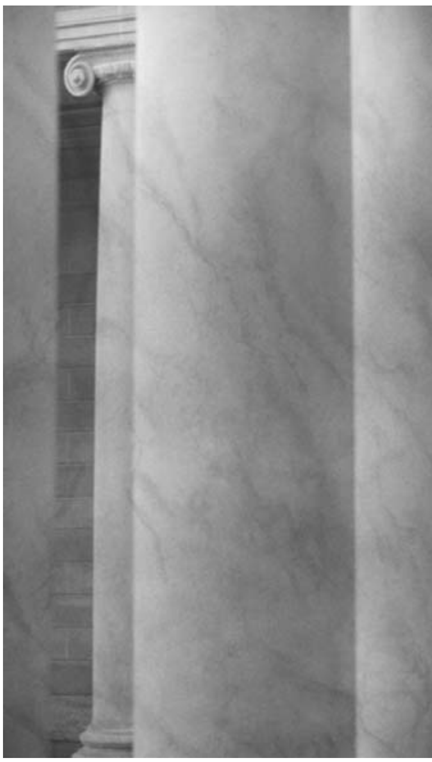
PRIVATE ENTITY WITH A PUBLIC PURPOSE:



Governance of the New York Stock Exchange

AN OVERVIEW

The Council of Institutional Investors

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BACKGROUND

The New York Stock Exchange (NYSE) is reviewing its own governance. Enron and other corporate fiascos started a chain of governance dominoes that have, perhaps inevitably, reached the Exchange. First reformers focused on changing companies themselves, then their professional service providers—accountants and lawyers, then companies' bankers, and then the various quasi-governmental or self-regulatory bodies that were supposed to be market safety nets.

The sheer number and size of the corporate frauds demonstrated that self-regulatory bodies failed to be good safety nets. Federal legislation attempted to improve some of these bodies. Lawyers were given new rules, one accounting body was given more independent funding, and a second was created. New rules for rating agencies are under consideration.

The New York Stock Exchange could hardly expect to escape re-evaluation in this climate. Analysts, who are employed by the major investment banks that sit on the Exchange's board, were shown to be conflicted. These same investment banks provided services that seemed to enable bad behavior at Enron and elsewhere. The frauds made the listing standards that the Exchange imposed on companies seem badly out of date. These facts alone probably would have provoked a review.

But other events, which the Exchange arguably helped bring on itself, seemingly made governance review a certainty. Another round of allegations of front-running-like behavior at the Exchange, including allegations of insufficient Exchange oversight, surfaced. Individuals who were on, or had been on, the NYSE board, such as Martha Stewart, Linda Wachner, and Vivendi's ousted CEO Jean-Marie Messier, suffered negative publicity in ways that threw their suitability as NYSE board members into question. To top it off, the Exchange announced its intention to select a board candidate, Citigroup's Sandy Weill, who was deemed by New York attorney general Eliot Spitzer and many investors to be extremely unsuitable. Thus, it was no surprise that Securities and Exchange Commission (SEC) chairman William Donaldson asked the Exchange to undertake a governance review. And it began.

The Council of Institutional Investors received a letter dated June 16, 2003, from the NYSE asking for comments as part of this review. The letter indicated that the Exchange has formed a special committee to review its governance. This monograph provides some background information on the Exchange and its governance. It also offers opinions. It is designed to assist members in formulating their comments to the Exchange.

The Council gave a draft of this monograph to the New York Stock Exchange for review. It, most helpfully, offered many pages of feedback, some of which is incorporated here. Since views legitimately differ, the Exchange's entire response to the Council is posted on the Council's web site. When the Council's board approves a letter to the Exchange on this subject, that letter will be similarly posted.

NYSE GOVERNANCE

CORPORATE STATUS

The New York Stock Exchange is incorporated as a New York not-for-profit company. The Exchange, in its governance White Paper, says that not-for-profit status is one of the five key components of its governance structure that is essential to its "public purpose" of serving its "ultimate constituency," "the investing public."

Council staff contacted the department in New York State that handles not-for-profit corporations since not-for-profit corporations typically must make certain information available to the public. The Council staff was told that no information was available on the NYSE, although information was available on the Exchange's foundation.

The Council then contacted the Internal Revenue Service (IRS) to ask whether it had available the tax filings tax-exempt not-for-profits make. The Council was told that the NYSE was a taxable corporation, not a tax-exempt one.

When the Council submitted a draft of this monograph to the Exchange to review for errors, the Exchange confirmed this information, stating, "The NYSE itself is not a tax-exempt organization. Rather . . . it is subject to federal, state, and local taxation like any other business entity."

The Exchange's position as a private taxable company appears to create a mindset where investors are an unimportant constituency rather than the ultimate one. In response to the draft monograph's statement that "the NYSE is not required to make the public filings that its listed companies do," the Exchange responded: "The NYSE is not a public company, so there are no public investors needing detailed information on the NYSE's financial results."

The NYSE is also a stock exchange regulated by the Securities and Exchange Commission. It is presumably due to this status that the Exchange acknowledges it is a "private entity with a public purpose." Given this regulated status and public purpose, the Exchange's special committee—and Council members—may wish to review whether or not it is appropriate that the Exchange invests in, shares executives with, and consolidates its financials with a for-profit corporation—the Securities Industry Automation Corporation or SIAC. It also invests in, and has a seat on the board of another private taxable for-profit company, the Depository Trust and Clearing Corporation (DTCC).

Clearly, taxable private corporations that do not have public purposes can appropriately invest in other corporations. However, whether it is appropriate for a regulated body with a public purpose to mingle its assets—and potentially its purposes—with such private taxable corporations is a question the committee may wish to review. An opinion could be formed that when a regulated entity has investments in for-profit corporations, it risks creating conflicts of interest which may adversely affect the pursuit of its public purpose.

THE MEMBERSHIP

The New York Stock Exchange has members. They are broker dealers. **These broker dealers* are the only entities allowed to vote. They alone elect the Exchange's board of directors and the nominating committee.** They also contribute half of the Exchange's operating revenue.

Not-for-profit corporations are expected to further their members' interests. They do so in slightly different ways than publicly traded companies do. For example, not-for-profit companies are not allowed to pay ordinary dividends, and they cannot return value in the form of stock appreciation.

The Exchange, in its response to the Council's first draft of this monograph, relies on these two limitations on not-for-profit companies to imply that the Exchange cannot or does not further the commercial interests of its members: "[The Exchange] does not exist to maximize its owners' return on their investment in membership through dividends and appreciation…." But there are many ways for the Exchange to further its members' commercial interests without paying dividends or issuing stock. So policymakers must not be misled into thinking that these limitations create a corporation without a commercial purpose. Indeed, the Exchange's members ought to be annoyed if the Exchange did not further their interests.

Thus, there is no reason to object to the Exchange serving the commercial needs of its members. The only question is: is this the right entity to exercise government-like powers over investors? Is it, in other words, unfair, unwise, or unrealistic to expect a commercial profession to run its private, taxable association in the interests of a different constituency?

THE BOARD OF DIRECTORS

Composition and terms of the board

The board of directors has 27 members. Three of them are executives of the Exchange. Twelve are broker dealers or "industry" directors. Twelve are "non-industry" directors. These "non-industry" directors used to be called "public" directors, but these seats are largely (but not entirely) filled by representatives of listed companies that trade on the Exchange. Listed companies provide a third of the Exchange's revenues.

Board members serve two-year terms which are staggered into two groups. Many details of the election process are not publicly available, such as:

- ♦ Whether or not there is routinely (or ever) more than one candidate for each board seat.
- ♦ Whether or not investors, not connected to listed companies or member firms, are routinely (or ever) canvassed for candidates.
- ♦ Whether or not the SEC reviews the suitability of candidates (it was not apparent that the SEC objected to Sandy Weill—at least publicly).

The NYSE web site provides only excerpts from the Exchange's constitution, and the NYSE's brief governance White Paper supplies few additional details.

* and related financial specialists, who will be included, for purposes of this monograph, in the term "broker dealer" as the Exchange does in its White Paper.

Connections between board members

The individual members of the board are profiled in a separate section of this monograph. Each profile includes a brief biography and a list of governance issues that are raised by that director's connections or actions.

In addition, there are many connections between directors and groups of directors. An individual's personal and professional connections can greatly influence how he or she acts. Thus, a summary of some of the more notable connections is provided here.

With a few exceptions, most of the connections listed below are not directly relevant to the Exchange. There is also no reason to believe there is anything objectionable about many of these connections. However, non-NYSE connections that directors share may influence their behavior on the NYSE board. For example, a director with a business interest in another director in a non-NYSE setting may be reluctant to oppose that director within the NYSE boardroom. In addition, when board members share a large number of connections, they may also share the same views and blind spots and, thus, may fail to be an independent check on the system. These connections may be of particular concern in the NYSE setting because average investors cannot elect directors and, thus, cannot pressure the board to be accountable to investors' needs.

Because the NYSE does not make director-related disclosures, the following data are limited to connections substantial enough to be covered in the press.

- **Until recent pressures forced an end to this overlap, director Langone was on the NYSE compensation committee while chairman Grasso sat on the Home Depot compensation committee—a company Langone co-founded and on whose board he serves.**
- **Directors Jung and Langone serve on the GE board.**
- **Directors Langone, Grasso, and Fink sit on the NYU board of overseers.**
- **Until recently, Merrill Lynch was represented on the NYSE board by David Komansky, who serves on director Fink's board at BlackRock. Merrill is now represented by director O'Neal, Komansky's successor, and TIAA-CREF is represented by former Merrill executive Allison.**
- **Chairman Grasso and director Allison both serve on the Yale School of Management advisory board.**
- **Chairman Grasso sits on the advisory board of governance committee co-chair Panetta's Institute in California.**
- **Chairman Grasso and director O'Neal serve on the board of the Lower Manhattan Development Corporation. (Both have missed two thirds of the corporation's meetings.)**
- **A partner of director Sonsini's sits on the board of director Bartz's company, Autodesk.**
- **Directors Karmazin and Levin serve together on the Lustgarten Foundation corporate advisory board.**
- **Director Cayne's chairman at Bear Stearns, Alan "Ace" Greenberg, sits on Viacom's board where director Karmazin is president.**
- **Directors Levin and Paulson serve together on the Council of International Advisers.**
- **Directors Levin and Purcell serve together on the Independent Committee for Education.**
- **Directors Mack and Paulson serve together on the board of the Indian School of Business.**

- **Director Harrison's company provides services to director Allison's company.**
- **Director Cayne's company handled the sale of a business to director Larson's company. Director O'Neal's company also did work for director Larson's company. (Mr. Larson is retired.)**
- **Directors Jung and Harrison serve together on the Catalyst board.**
- **Director Harrison and director Mack's companies provided financial services to director Schrempp's company.**
- **Director Sonsini's firm has done business with the companies of directors Cayne, Mack, and O'Neal.**
- **Director Sonsini's firm "regularly represented" director Paulson's firm.**
- **Director O'Neal's company provided tax advice to director Larson's company (advice that was subsequently successfully challenged by the IRS).**
- **Director Mack's company has provided banking services to director Karmazin's company.**
- **Director Purcell's company provided services to director Jung's company.**
- **Director Cayne's company and director Langone's served together as underwriters.**
- **Director Purcell's company and director Sonsini's firm have provided financial and legal advice to mutual clients on the same cases.**

Board performance

CEO compensation

From the outside, it is impossible to know who operates effectively in a boardroom. It is equally difficult to assess which initiatives come from a board and which from the staff. Some governance experts suggest boards can be judged by executive compensation decisions because they are one of the few public products of a board's work, and because they may reveal whether or not boards are independent and protecting shareholder/member value.

In the NYSE's case, what is most significant about the current board is that it has decided to make the chairman/CEOs pay package public for the first time. That, alone, is a significant step—one that no previous board had taken.

Grasso's pay package is still only estimated, and the details are not available. It is not yet clear what his perks are or whether or not he profits in any way from the for-profit affiliates of the NYSE. However, initial estimates of Grasso's pay, combined with research conducted by the Council's executive compensation consultant Bud Crystal, indicate that the chairman's pay would exceed industry standards even if the NYSE were a pure for-profit company.

For the Exchange, Grasso's pay disclosure came at a very inopportune time—members of Congress were grumbling about the pay packages of the newly created Public Company Accounting Oversight Board (PCAOB), another not-for-profit corporation with a government mandate. And yet, these pay packages were in the mid-six figures—tiny compared to what Grasso reportedly receives.

It is too early to tell whether or not public disclosure will assist the board in creating a pay package more in line with other large not-for-profit government-related corporations.

Other governance actions

Following the wave of corporate scandals, a special committee of the NYSE proposed a significant set of reforms to the Exchange's listing standards. The board approved these proposals, which were also endorsed by the Council of Institutional Investors. The board deserves credit for so doing—it cannot have been easy in the face of what was probably strong opposition from listed companies. These reforms are still pending at the SEC.

Perhaps the best indicator of board performance will be what it decides to do to reform the Exchange's governance. These decisions probably will not be made until the fall of this year at the earliest.

THE NOMINATING COMMITTEE

Composition and independence

The NYSE's nominating committee, unlike that of many for-profit and not-for-profit companies, is not comprised of members of the board of directors. Instead, it is supposed to be independent from the board. Indeed, the NYSE's constitution specifies that there can be no "interlocks" between the committee and the board.

The nominating committee, like the board, is divided evenly between "industry" and "non-industry" members. The committee members select board members and their own successors—so the nominating committee is self-perpetuating. Selected candidates are elected by the membership, but the available information provides little detail on the actual process.

Links between the board and the nominating committee members

Despite the language about independence and an absence of interlocks, the nominating committee members have a surprising number of connections to board members. A number of these connections are of the type that could make a nominating committee member dependent in one way or another on board members.

For example, the committee has New York University's president on it. Three of that man's bosses—his trustees—are on the Exchange's board of directors, as are additional executives of companies that also have representatives on the NYU board. Two of the nominating committee members have their colleagues—people who work for the same company—on the board. One committee member has what was reported to be his third-largest customer on the board. Three other committee members have overlaps with board members via a board-service link of one kind or another. This leaves only one nominating committee member with no obvious connection to the board—at least none that can be found from public sources.

OTHER COMMITTEES

The Exchange has a large number of advisory committees—some with many members. The Exchange's web site has lists of these committees and their members. These committees appear to have the power to advise—an important function that responsible boards often create. Whether they have other roles as well is not publicly known, so it is hard to access the importance of these committtees to the Exchange's governance.

FOR-PROFIT AFFILIATES OF THE EXCHANGE

The New York Stock Exchange holds interests in and/or does business with at least three for-profit companies: the Securities Industry Automation Corporation (SIAC), Sector Inc., and the Depository Trust and Clearing Corporation (DTCC). The SIAC is a SIP or securities information processor, which means it receives SEC oversight.

According to the IRS, these three companies share the same addresses. And according to the Exchange, the SIAC's financials are consolidated with those of the Exchange.

In addition to sharing addresses, these private, for-profit companies share some executive and board positions with the Exchange. NYSE co-COO Britz is also chair and CEO of the SIAC. NYSE co-COO Kinney was a DTCC trustee. At least one NYSE board member has served on the board of an SIAC affiliate.

Enron's Andrew Fastow was heavily criticized for taking positions with entities related to Enron that put him on both sides of the negotiating table. Investors and regulators might ask whether the NYSE's co-COO faces this kind of potential conflict by being COO of a private company with a public purpose and CEO of a private for-profit company without a charitable purpose where these companies do a substantial amount of business together. The NYSE says the SIAC provides its services "at cost" to entities (which appear to include the NYSE) who are its customers. However, deciding what "at cost" is can itself raise conflicts. For example, if "costs" include CEO compensation, how is that determined?

In addition, it may be an appropriate question for the Exchange's special committee and regulators to address whether or not a regulated entity with a public purpose should be making investments in for-profit companies at all. Clearly an entity like the Exchange must enter into contractual arrangements with a wide variety of service providers; but the act of investing in for-profit companies seems to raise potential conflicts that mere service providing contracts do not.

The Exchange has indicated it will be disclosing compensation data on its senior executives. It would seem that this data ought to include any income or benefits received by these executives as part of their service on for-profit company staffs or boards as well. Finally, merely as a matter of time management, one might question the ability of a COO of an entity as large and complex as the Exchange to serve simultaneously as the CEO of another corporate entity—even with the Exchange being the majority shareholder of that entity.

THE EXCHANGE'S WHITE PAPER EXPLANATION AND JUSTIFICATION OF ITS GOVERNANCE

Self-regulation

The Exchange's White Paper explains that the Exchange's self-regulation works because of four factors: its professional staff, its political accountability, its market sensitivity, and its broker dealers' interdependence. This interdependence, it explains, means that all broker dealers are likely to be hurt if some of them behave badly—if brokers did not self-police, all reputations would suffer.

Governance experts are skeptical about these suggestions. The interdependence of broker dealers, like the interdependence of investment banks, has not provided much protection against bad behavior in the past. Indeed, one might argue that interdependence makes it easier for poor behavior to go undetected and for unhealthy group dynamics to result. It is certainly as easy to picture group collusion as group policing. And there have, indeed, been somewhat regular allegations of improper conduct about these very broker dealers. Commercial banks are fairly interdependent, and they do not argue that bank regulators are therefore unnecessary. Looking at Wall Street's recent record does not offer any reason to believe that interdependence among brokers removes the need for accountability or oversight from those whose money they handle and regulators whose job it is to protect the public.

Just as important, the possibility that broker dealers may have a self-interest in watching each other does not suggest that they have a self interest in protecting investors. Indeed, they have a collective interest in profiting from investots. The Exchange's public purpose is to protect investors—but it is owned and operated by a profession that has its own needs to tend to.

The argument that political oversight justifies self-regulation is puzzling—after all, political oversight *is* oversight by an external body. Saying that oversight is important, whether political or of some other type, makes the case *against,* rather than *for* self-regulation. One could debate the merits of political (congressional) oversight, since broker dealers are better able to protect their interests politically than individual investors are, but that is different than a debate over the need for oversight. It is reasonable to guess that the NYSE, like the Securities Industry Association (SIA), expends considerable energy lobbying in some form or other. It would be useful for the special committee to insist on full public disclosure of Exchange lobbying expenses and charitable contributions.

The argument that the existence of professional staff justifies self-regulation is equally puzzling. Presumably, most bodies believe they have professional staffs, but most people are wise enough to recognize that staffs are made up of human beings, and human beings tend to act in their self-interest and are therefore affected by pressures and conflicts of interest. A body that suggests it can self-regulate because *its* staff, unlike all others, is immune to conflicts and pressures, is a body that seems to be begging for wiser oversight.

Market sensitivity may have some moderating effect on Exchange governance—after all, if investors lose confidence in corporations due to scandals and frauds, they will stop investing. But that is a slow and drastic check on the system. More important, this safeguard creates incentives for minimal standards not optimal ones: Market sensitivity ultimately means the Exchange will do what it needs to protect *itself*, but not necessarily what it needs to optimally protect *investors*.

Thus, none of the four reasons the Exchange offers for why it should be self-regulating seems sufficient to reach that conclusion. The Exchange notes, quite rightly, that *"self-regulation is an integral part of the federal statutory scheme for regulation of U.S. financial markets."* The Exchange adds that self-regulation is just one layer of many for investors, and that the SEC plays an important oversight role. However, as this monograph notes elsewhere, self-regulation is falling from favor (for example, both at the NASD and in the accounting profession) as its apparent failures have seemingly been highlighted by recent frauds and other disasters. Thus, this may be the appropriate time for the Exchange's special committee to revisit this principle in light of the recent changes in analogous regulatory settings.

Finally, the White Paper offers an analogy to democracy as a justification for self-regulation. It quotes Churchill to the effect that democracies may not be perfect but they are better than anything else that has been tried. It implies that this is the same conclusion one must draw concerning self-regulation. But one could easily conclude precisely the opposite. While experiences with democracy generally do turn out better for citizens than other forms of government, almost every experience with self-regulation in the U.S. has been a big disappointment—protection occurs, but not for the intended constituency. (See the the Council's June 2003 editorial on how many self-regulatory, quasi-governmental bodies have failed.) Saying one is like Jack Kennedy doesn't make it so, to quote a famous debate.

The missing guest at dinner

The White Paper states that the Exchange has three key constituents: the members (broker dealers, etc.), companies that list on the Exchange, and the investing public. Of these, it calls the investing public its "ultimate constituency." The paper goes on to suggest that because it has to balance the interests of these three constituencies, it has the same kinds of checks and balances as the federal government.

Only one of these constituencies can vote. That same constituency, the broker dealers, picks the board and nominating committee, and thus, indirectly the other committees. Moreover, this constituency pays the majority of the operating expenses. Only one constituency, then, has direct power over the board and staff.

The fact that the NYSE has three constituencies to consider does not mean there are checks and balances in place—checks and balances only work if each constituency has power of its own that gets balanced with others' powers. A framework of committees, a well-paid staff, and "not-for-profit" status do not alter these facts. "Follow the money" is just as important in regulatory and corporate bodies as it is in political thrillers. And the money (and votes) leads to the broker dealers.

The critical point is this: the third constituency simply is not there. What the White Paper calls the ultimate constituency does not pick directors, does not pay dues, does not have director slots reserved for it to select, and, if the past experience of the Council is any indication, is virtually never consulted.

Few people would agree that the investment banks on the Exchange's board represent the interests of average shareholders—the banks make money from shareholders when capital shifts hands. That means banks' interests will often oppose those of long-term shareholders.

It is hard to identify anything in the NYSE's structure or governance that gives the investing public any real ability to impose accountability—it appears, instead, that they only have a promise that they matter from people who owe their income and jobs to others. There is a major difference between the Exchange saying it cares about the investing public and the investing public being able to make that a reality. If the president declared that, in the next election, only Republicans could vote but that he and the party would consider the Democrats their "ultimate constituency," no one would consider this an adequate substitute for the Democrats having power for themselves. The statement in the White Paper's concluding paragraph—**"The NYSE is a private entity with a public purpose"—sums up the problem, not the solution.**

Conflicts of interest

The White Paper emphasizes that its not-for-profit status somehow insulates it from conflicts or the need for accountability to each of its constituencies. It says, for example:

> "The board of a profit-maximizing company monitors the division between ownership and control. Therefore its governance structure must address the conflict of interests that can arise from that division. In contrast, those issues do not arise for the Exchange which is precluded from paying dividends and whose equity is tied to its trading rights."

The NYSE, while incorporated as a not-for-profit corporation, is *not* tax-exempt. More important, tax status does not alter human nature or the chance that conflicts of interest will arise in a multi-constituency setting. Tax status may alter which conflicts arise, and whether or not they have tax consequences, but it does not protect against them. Thus, while the NYSE does not have to worry about whether or not to pay dividends, it certainly needs to worry both about paying taxes and also how it can serve investors when it owes its income and jobs to broker dealers and listed companies. Indeed, this conflict would seem, at first glance, to be a *more* profound one than the conflict over the payment of dividends.

It ought to be repeated in this context that the NYSE is a shareholder in, and calls itself an affiliate of, for-profit companies that do a great deal of work for the Exchange. The combination of regulated not-for-profit status with regulated for-profit purposes might create an even greater likelihood of conflict than that in a plain for-profit company.

Initial Report of the Special Committee on Governance of the NYSE

Less than a month after the creation of the Exchange's special governance committee, it produced an "Initial Report" that contained a series of recommended governance changes. They include:

1. Revise the charter of the human resources and compensation committee to provide that only non-industry directors may serve as members.
2. Annually disclose the pay of the five most highly compensated Exchange officials.
3. Prohibit NYSE employees from serving on boards of business corporations.

4. Separate the finance and audit committee into two bodies and restrict the latter to non-industry directors.
5. Establish a standing governance committee. (This section notes "the [special] committee is not recommending specific changes to the nominating committee.")
6. There should be a majority of non-industry directors "for matters within the committee for review's authority to oversee the NYSE regulatory group."
7. CEOs of bank holding companies that have a broker dealer subsidiary cannot qualify as "non-industry" directors.
8. Post NYSE governance principles on the Exchange's web site.
9. Create an ethics code for directors and post it on the web site.
10. Disclose committee charters and memberships on the web site.

These reforms appear to address very well a number of the complaints raised about Exchange governance in recent years. The Exchange's board, special committee, and chairman should be commended for them. The Exchange indicates that these reforms are a starting point, not a conclusion of the special committee's work. Thus, investors may have reason to hope that the Exchange will also address the fundamental conflicts described in this document, which some view as mandating more fundamental changes than these procedural reforms.

What is left out of the White Paper

The White Paper is a short summary of the governance of the world's largest stock exchange that has obligations to very different and often-conflicting constituencies. Although the Exchange's web site has some additional details, the White Paper does not include the details of the Exchange's governance, criticisms that have been voiced concerning it, and examples of other governance models that may be relevant. This monograph cannot supply the first, but it can offer examples of the latter two.

CRITICISMS OF THE NYSE'S CURRENT GOVERNANCE

There have been recent complaints concerning the Exchange's governance. They include:

- **There is inadequate disclosure.** Companies that list on the Exchange are subject to extensive disclosure requirements about their governance and operations. The Exchange is not subject to these requirements; indeed, the Exchange's current disclosure requirements are minimal—the Council is still trying to figure out what, if anything, the Exchange is mandated to disclose to the public. Governmental bodies are also subject to disclosure requirements. The Exchange is not subject to these requirements either, despite having a public purpose. It is suggested that, particularly given the Exchange's obligation to protect investors and their inability to hold the Exchange accountable, disclosure is essential. Recently, disclosure complaints have focused on the compensation of senior Exchange executives, and the board has indicated that, at least in this area, disclosure will be increased voluntarily. Mandatory requirements, of course, create more protection. It is remarkable that an entity that calls the investing public its ultimate constituency, feels so little need to disclose basic information to them.

- **The Exchange is "designed to fail."** It is structured so that it depends on income and votes from a constituency whose interests may differ or conflict with many investor protections that the Exchange might otherwise be expected to adopt to fulfill its public responsibility. The investing public is without power to oversee the Exchange.

- **The Exchange cannot or does not properly oversee the broker dealers** who use the Exchange because these same broker dealers sit on the Exchange board and elect all its members. Indeed, this conflict was critical enough that a few years ago, the board of the Securities Industry Association, which represents the major investment banks and is thus clearly not an activist organization, was said to endorse removing authority over broker dealer discipline from the NYSE and giving it to the National Association of Securities Dealers (NASD) (presumably because of the repeated failures of the NYSE's own disciplinary procedures). It was said that Grasso was able to get this proposal "buried." This has not been confirmed, but the Exchange did not refute this in its review of this document.

  The problem of conflicted oversight was made more apparent when, in July 2003, LaBranche, a specialist firm whose CEO serves on the Exchange's board, refused the Exchange's request for copies of internal emails requested as part of an Exchange probe of specialists' practices. Grasso was told, by one of his own board members, that he could not have the documents for an investigation.

- **The Exchange's board is not sufficiently engaged.** Critics suggest that members are too senior and overcommitted (see board bios), that the board may not meet enough, and that it is dominated by the NYSE's chairman. In addition, board members have too many connections among themselves to be effective. (See included list of links.)

- **The Exchange should, at a minimum, meet the governance requirements it imposes on its listed companies** (or at least those relevant to its situation). In other words, the Exchange should eat its own cooking. When the Exchange imposes listing requirements on companies, it is understood that these are considered essential qualities every company must have before investors should risk investing. Since the Exchange has recently added significantly to these standards, the gap between these standards and those of the Exchange has only widened.

- **The Exchange's listing standards lag behind governance best practices,** including guidance from business organizations such as the Business Roundtable and the Conference Board. The Exchange is said to be a follower rather than the leader it should be in both its own governance and the governance standards it imposes on listed companies.

- **The Exchange's direct, indirect, or informal relationships with or interactions between various for-profit companies such as Automatic Data Processing (ADP) and the SIAC are troubling**, in part, because information about these relationships or interactions is hard to come by.

- **The Exchange is said to dominate SEC regulators.** It has been suggested that the division of the SEC that oversees the stock exchanges is a classic example of regulatory co-option. Of course it is impossible to know what kind of jaw-boning goes on behind the scenes, but it is hard to identify many major initiatives from the division that the NYSE opposed. And yet, it is easy to identify repeated requests from investors that have fallen on deaf ears at the division. In addition, some years ago, the Council was told that NYSE compensation information was kept from investors with the assistance of SEC staff, who handled it in ways to prevent it from becoming public. Concern over this closeness between the NYSE and the SEC staffs arose again when, in July 2003, the SEC's internal auditors reported that the Commission was not accurately tracking fees from the stock exchanges—fees, the press reports, that are the SEC's largest source of income. Finally, it has long upset investors that neither the NYSE nor the SEC respond to repeated requests that NYSE-related actions be given a more-than-21-day comment period—too short for most institutional investors to respond.

OTHER GOVERNANCE MODELS

There are governance models that provide relevant comparisons for the Exchange, even if certain adjustments must be made to suit the Exchange's special situation. These models include those of other not-for-profit companies, those of public companies, those of other stock exchanges or their equivalents, and those of other public/private regulatory corporations.

The not-for-profit model

The NYSE is a New York not-for-profit corporation although it does not have tax-exempt status with the IRS. It is also a national securities exchange as recognized by Section 19 of the federal 1934 Securities and Exchange Act, and as such, it enjoys "absolute immunity in the performance of regulatory functions delegated to them" under the Act.

In some ways, the NYSE fits the most common model of not-for-profit governance. It has members who elect representatives and who use their votes to keep representatives accountable. But the NYSE is an unusual not-for-profit corporation. Rare among such corporations, it must submit many of its actions to a government body, the SEC, for approval. As a consequence of serving this role, it is expected to protect the interests of the investing public—not just the interests of its members.

This addition of an unrepresented constituency to the Exchange's goals makes the standard not-for-profit model irrelevant, since that model relies on members' ability to elect and hold their representatives accountable as the main means to insure that the corporation serves its members properly. At the NYSE, the investing public has no membership rights, while broker dealers do. Governance issues at the Exchange are therefore much trickier.

There is a second not-for-profit governance model, one frequently seen in the foundation or charity world—the self-perpetuating model. In this model, there are no members, but there are beneficiaries whose interests are served by a body that selects its successors. This body is expected to meet a higher legal standard (a fiduciary obligation) as a way of protecting beneficiaries without their being able to vote. This corporate/trust form is more fragile (more easily diverted from its goals) than forms where members have ultimate control, but it is deemed desirable in settings (including in the pension fund world) where the main concern is that beneficiaries would make bad decisions if given control, such as spending rather than saving their money.

This second form does not fit the NYSE because it has voting members who elect the board.

The NYSE's nominating committee is semi-self-perpetuating, since committee members pick their successors, but these candidates are subject to a membership vote. It seems clear that a fiduciary obligation to a constituency that cannot vote (the investing public) becomes very weak where another constituency can and does vote.

Thus, neither standard not-for-profit model seems to fit the NYSE's situation completely.

Public company governance model

Governance best practices have evolved over the past fifteen years. Most leading companies have governance committees and principles or charters, and most share a number of common principles. Many of these governance provisions are found in the policies of bodies such as the Business Roundtable (BRT), the American Society of Corporate Secretaries (ASCS) and shareholder groups such as the Council. There is great overlap among these policies.

Reformers have suggested the Exchange adopt a governance structure based on public company governance principles.

The public company governance model is relevant to only some aspects of Exchange governance. In particular, policies designed to create excellent boards of directors seem to have direct relevance to the Exchange's board.

The public corporation governance model does not address, however, the NYSE's missing constituency's problem. Shareholders have a vote at public companies, but these same investors do not have a vote at the Exchange. And, though its governance significance is not huge, the Exchange has members rather than stockholders. Thus, adopting board governance reforms like those of public companies will not address governance problems unique to the Exchange—how to empower those with a stake in its "public purpose."

NASD governance model

Perhaps the most analogous governance models are those of other exchanges. Recent reforms at the NASD are particularly significant because they followed allegations of failings similar to those the NYSE is currently facing.

In 1995, under pressure from the SEC, the NASD radically restructured its governance, splitting itself into three separate entities:

- a parent company, the National Association of Securities Dealers. This body represents broker dealers.
- a for-profit exchange (technically not a stock market but an inter-dealer quotation system), the Nasdaq.
- a not-for-profit regulatory affiliate, the NASDR.

This restructuring followed the advice of a special committee headed by former senator Warren Rudman. One of the goals of the restructuring was to reduce the conflict between the needs of a taxable exchange with obligations to promote the commercial interests of its members and regulatory goals promoting the public interest.

To accomplish this, the NASD increased the representation of the public in each body. A majority of the board members of the NASD now have to be public representatives, not representatives of NASD members. In addition, both the Nasdaq (which the parent NASD is in the process of selling) and the NASDR have 50% of their board seats reserved for public members.

The public directors of the NASD organizations are a diverse group. They include (or have included) professors, heads of major public pension plans, association executives representing investors, public figures famous for reform efforts, and so forth. This contrasts with the NYSE's non-industry (formerly "public") board members, almost none of whom comes from such backgrounds.

NASDR officials have told the Council that, using this conflict-reducing structure, they are able to bring more enforcement actions than the NYSE, the SEC, and the other Exchanges put together.

These changes appear to go further than the current recommendations of the NYSE's special committee on governance.

The PCAOB model

The Sarbanes-Oxley Act created a new not-for-profit body to provide regulatory oversight to the accounting profession. This new body, the PCAOB, was expressly designed to avoid some of the conflicts that arise when an entity has responsibilities to a for-profit profession it is also expected to regulate.

The most prominent features of the PCAOB that distinguish it from its predecessors are that:

- ♦ it is beholden to no one for funding (it can levy assessments to collect whatever income it needs),
- ♦ it has no responsibilities to promote the commercial interests of a profession, and
- ♦ its board members are selected by the SEC and not by members of the (accounting) profession.

This model would seem to have particular relevance to what appear to be the largest conflicts of interest affecting the NYSE's governance:

- ♦ The Exchange board and executives owe their jobs and half the Exchange's income to one profession—the broker dealers. In most settings, one would then expect the board and staff to further these members' interests exclusively. As long as this basic structure is unchanged, the Exchange's ability to protect the investing public may be compromised.
- ♦ The Exchange's board and staff owe their jobs to a profession they are supposed to police. This problem, with predecessors of the PCAOB, was widely viewed as causing their failure to meaningfully police their professions.

A review of the NYSE directors reveals in detail the power that the financial/securities industry (or "broker dealers" as used here) holds over the Exchange's governance. The investing public may be the NYSE's most important constituency, but it is all but invisible in the Exchange's governance. This structure is strikingly out of step in a nation that believes strongly both in accountability and oversight.

THE NYSE DIRECTORS

Governance structure matters. But so do the individuals who people that structure. The NYSE's 27-person board is focusing on the Exchange's governance. Policymakers should also focus on the members of the board.

Unfortuately, the Exchange does not have to make the public disclosures about its directors that its listed companies do—information about financial and professional links between the NYSE and its directors. The Council asked the Exchange to provide this information when it submitted a draft of this monograph to the Exchange for review. The Exchange did not respond to that request. However, in a phone call to the Council, the Exchange's chairman asked that the Council include "all the details" about the chairman's accomplishments. The Council indicated that it would, and all of the information the Exchange provided for this purpose is included in the short summaries that follow.

What follows is a summary of each current NYSE director's career and governance information that investors and policymakers may find relevant. It includes information provided by the Council's compensation consultant, Bud Crystal, and information from publicly available sources. The Council is not in a position to assess its accuracy.

Richard A. Grasso
New York Stock Exchange
Chairman and CEO

Biography:

Richard Grasso, 56, was appointed chairman and CEO of the NYSE in 1995. After service in the U.S. Army from 1966 to 1968, he joined the NYSE and worked in marketing and customer service until 1988 when he was elected president and COO. Grasso does not hold an undergraduate degree.

Board Memberships:

Home Depot, Inc; the Centurion Foundation; the New York Police Foundation; trustee of New York University; Yale School of Management advisory board; Baruch College School of Business advisory council; Panetta Institute for Public Policy advisory board; Lower Manhattan Development Corporation.

Governance Information:

- As a former director for Computer Associates International, Grasso served on the compensation committee and, in 1998, approved a $1.1 billion stock grant to the company's top executives. The grant was contingent on getting the stock price up to a specified level for a two-week period. Four months following the grant's approval by the board and two months after the grant vested, the share price declined 50% in nine days. Shareholders sued and the executives disgorged a portion of their profits. SEC and U.S. Department of Justice probes are still underway. In 2002, the board voted to limit the terms of independent directors, and Grasso was forced to resign.

- As a director for Home Depot, Grasso was a member of the board that approved an unusually rich pay package for its CEO, thus angering a number of large shareholders. Under the new NYSE governance rules, Grasso will have to resign from the board of Home Depot.

- In May 2003, *The Wall Street Journal* disclosed Grasso's compensation for the first time: $12 million in 2002 and $20 million in 2001. Controversy swirled among floor traders and throughout the financial community. Prior to this disclosure, the NYSE always refused to release compensation data on its executives. Under the new NYSE governance rules, Grasso's annual compensation will have to be revealed. It is not clear yet how comprehensive this disclosure will be.

- In an article dated June 3, 2003, on Grasso's compensation, *The New York Post* reported:

  "**Much of the concern about Grasso's pay is that it is set by a committee of people he regulates** (emphasis added). The chairman of the Big Board's human resources policy & compensation committee is Kenneth Langone, co-founder of Home Depot and CEO of Invemed. Grasso also sits on the Home Depot board and on its compensation committee.

  "Other members (of the NYSE compensation committee) include Bear Stearns chairman and CEO James Cayne, whose investment bank owns a minority stake in Bear Wagner; Robert Murphy, the head of floor trading firm LaBranche; Hank Paulson, chairman and CEO of Goldman Sachs, which also owns the NYSE's largest specialist firm, Spear, Leeds & Kellogg; and outgoing Merrill Lynch CEO David Komansky, who recently stepped down from the committee.

  "All three specialists are under investigation by the NYSE for trading violations."

- Despite a specific provision in the NYSE constitution that prohibits any direct control over or interlock with the nominating committee, the current president of New York University is one of the members of the NYSE's 2003 nominating committee—the entity that selects the slate of new NYSE directors. Grasso is a trustee of NYU, as are NYSE directors Fink and Langone.

- According to Computer Associates' 2002 proxy filings, for 5 years, Grasso failed to file annual reports noting his stock awards from the company. Grasso has since sent the proper documents to the SEC.
- Earlier in 2003, Grasso pushed to have Sandy Weill of Citigroup appointed as a "public" or non-industry NYSE director. Following a storm of protest from New York attorney general Eliot Spitzer and others, Weill removed himself from consideration. Grasso continues to defend the fairness of the NYSE's board selection process.
- Both Grasso and NYSE director Stanley O'Neal sit on the board of the Lower Manhattan Development Corporation. Neither has attended even one-third of the board meetings in the last year.
- Executive compensation expert Bud Crystal on Grasso's pay and performance:

  "Is Dick Grasso overpaid? Rand Araskog, a former member of the NYSE board's compensation committee believes so. Assuming reports are correct, that Grasso's salary is approximately $10 million a year with a retirement of $80 to $100 million . . . yes, he is overpaid.

  "The pay of major Wall Street CEOs shouldn't determine Grasso's salary. For the six biggest publicly owned Wall Street companies, median total pay for 2000, 2001, and 2002 was $34.5 million, $18.9 million, and $15.2 million, respectively. Why the major Wall Street firms shouldn't be used as a good indicator: 1) they are much bigger than the NYSE – in 2002, the median company among the six had 15.3 times the revenue of the NYSE and 22.9 times the number of employees. Company size is the most important predictor of what a CEO earns. 2) they have to manage worldwide enterprises. The bulk of Grasso's enterprise is in New York. 3) they are for-profit companies whose CEOs make decisions fraught with risk.

  "Considering similar companies with respect to generated revenue, the median total pay for CEOs, including salary, bonus, free share awards, the present value of stock option grants, and other forms of compensation, was $3.2 million. Considering similar companies with respect to employee size, the median total pay drops a bit – to $2.9 million. Grasso's salary should be $3 million."
- Chairman Grasso has asked that we include information about him highlighting his and the Exchange's successes. The New York Stock Exchange has supplied us with the following quotations for this purpose:

Re: Corporate Governance:

"We've been one of the NYSE's biggest detractors for 18 years. But when they brought their first draft of proposals to us, we had to admit they were very good. And when they asked for suggestions, we said, what the heck. We gave them our wish list, and they included everything we asked for. I think the NYSE has a very good handle on the pulse of America, and they recognize that if they didn't do something, they'd lose their edge as the premier exchange in the world."—CII Executive Director Sarah Teslik, *St. Petersburg Times,* July 26, 2002.

"Ann Yerger, director of research for the Council of Institutional Investors, called the NYSE proposals, 'the most significant reforms we've seen coming out of the Enron meltdown.'"—*Newsday,* June 7, 2002.

"But the most reasoned and intelligent response to the governance crisis is coming from, of all places, the New York Stock Exchanges, that bedrock of free-market power. On June 6, the NYSE unveiled proposals that, if accepted, would force some of the most dramatic changes ever in corporate governance…. With Congress gridlocked and the SEC playing catch-up, the NYSE's proposed new rules could go a long way toward correcting more than a decade of excess and abuse by calling for stronger checks and balances—especially since the regulations would go far beyond the anemic reforms adopted by Nasdaq last month."—John Byrne, *Business Week,* June 17, 2002.*

**to date, the SEC has not acted on Nasdaq's or the NYSE's proposals.*

"For all the talk from business organizations, we haven't heard much from working CEOs themselves. But there are exceptions, like Henry Paulson, Jr. of Goldman Sachs and Dick Grasso of the New York Stock Exchange…. These guys deserve big credit for guts, because they're risking the wrath of their peers, alienating customers, and inviting scrutiny of their institutions, which, they readily admit, are far from perfect."—Allan Sloan, *Newsweek,* June 24, 2002.

"The NYSE appears to have taken an early lead in the sprint to the high ground with its proposals to give shareholders much more extensive rights to vote on stock options plans…[the SEC] should join the NYSE on the high ground."—*The Financial Times* (editorial), June 7, 2002.

"In the middle of Enron, WorldCom, and assorted other corporate scandals, it was Grasso who called for reasonable reforms, harsh penalties for the wrongdoers, and a measure of investor patience. Representing the [Exchange], he was at the center of the settlement Wall Street firms made with regulators of past trading irregularities."—Charles Jaffe, *The Boston Globe,* March 5, 2003.

"But I have nothing but admiration for the proposals [the NYSE] made. If you look at every entity that is involved right now—Congress, the administration, the SEC—the NYSE's proposals have been the most aggressive and most meaningful."—Nell Minow (editor of the Corporate Library), *The Wall Street Journal,* July 30, 2002.

"Led by chairman Richard Grasso, [the NYSE] has issued a reasoned call for new measures: more independence for corporate directors, greater resources for the Securities and Exchange Commission, and a congressional panel to study 401(k)s and the appropriate concentration of employee investment. The NYSE suggestions could easily be the basis for bi-partisan legislation."—Rep. Richard A. Gephardt, *USA Today,* July 8, 2002.

"'The measures have real weight and will provide a much-needed stimulus to boosting investor trust,' said Peter Clapman, chief counsel of corporate governance [TIAA-CREF]."—*USA Today,* June 7, 2002.

"In its long-awaited report yesterday, a committee of the New York Stock Exchange more or less anointed boards of directors, especially 'independent' directors, as the capitalist cavalry…both the big board and Mr. [Henry] Paulson are right to prod boards into more energetic supervision…. If nothing else, the demonstration that the generals of Wall Street are policing their own may lift confidence in American capital markets."—*The Wall Street Journal* (editorial), June 7, 2002.

"'These are very good, very substantial proposals dealing with real issues,' said Kenneth A. Bertsch, director of corporate governance at TIAA-CREF, which handles retirement accounts for teachers. 'We are obviously pleased with the proposal on stock option approval and impressed that there are many details addressed here that, if this were just a public relations ploy, we would not expect the Exchange to have dealt with.'"—*The Washington Post,* June 7, 2002.

Re: NYSE Governance:

"'What I think is most important right now…is to celebrate the wisdom of the consistency of practicing what they preach,' said Jeffrey Sonnenfeld, associate dean at the Yale School of Management and president of the Chief Executive Institute."—*Reuters,* June 5, 2003.

"'You've got to give them their due for acting quickly,' said Nell Minow, editor of the Corporate Library, which monitors corporate governance, and a vocal critic of the Exchange's governance. 'Everything that could be handled fast, they handled fast, and they have made a commitment to devoting some serious time to looking at the more complex problems…'"—*The New York Times,* June 6, 2003.

"Mr. Spitzer, whose complaints helped trigger the reappraisal of the big board's corporate governance, said through a spokesman that he applauded the committee's recommendations as 'good first steps that will help build the confidence of investors' moves.' He said they show 'the [E]xchange understands the need for aggressive action to address governance issues."—*The Wall Street Journal,* June 6, 2003.

Re: Aftermath of 9/11:

"In the wake of the September terrorist attacks near Wall Street, Mr. Grasso kept the public updated as his staff scrambled to prepare the Exchange to resume trading. After a four-day closure, the market's reopening following the World Trade Center's collapse was a triumph for Wall Street, and Mr. Grasso personified it."—*The Wall Street Journal,* July 30, 2002.

"Before the 9:30 bell, Grasso called SEC chairman Harvey Pitt to confer. 'Dick was definitely ahead of everybody,' says Pitt. 'We supported Dick Grasso's judgment.'… Bear Stearns chairman Jimmy Cayne says Grasso's attitude affirmed the resilience of the world's biggest financial market. 'If you had to point your finger at who was the captain of the ship, it was Grasso,' he says."—*Newsweek Special Issue,* "The Spirit of America."

"Richard Grasso, CEO of the New York Stock Exchange, made the re-opening of the U.S. stock market possible only six days after the terrorist bombings. And for this he deserves America's praise."—Lawrence Kudlow, *The New York Post,* March 14, 2002.

"After the Sept. 11, 2001 attacks, it was Grasso at the center of the action that maintained the integrity of the stock market, proclaiming that the efforts to hurt the world's financial markets would only strengthen the resolve of those institutions to move forward."—Charles Jaffe, *The Boston Globe,* March 5, 2003.

"That the market re-opened as rapidly as it did, many people say, is due to Mr. Grasso…. Mr. Grasso's highly public role in the rapid reopening of the NYSE reinforced his status as one of the central players in New York City's most important industry."—*Crain's New York Business,* June 23, 2002.

Robert G. Britz
New York Stock Exchange
President, Co-COO, and Executive Vice Chairman

Biography:

Robert G. Britz, 52, has been president, co-COO, and executive vice chairman of the board of directors of the NYSE since January 2002. He also chairs the NYSE's management committee. He is simultaneously the CEO of a for-profit company that does business with the NYSE (see the SIAC, below). Britz joined the NYSE in 1972 and has served in market operations, data processing, and international business. He received a B.S. in finance from Manhattan College.

Board Memberships:

Stanley Works; chairman of Sector, Inc.—a commercial provider of managed data processing services and telecommunications to the financial services industry, including the NYSE; chairman of the Securities Industry Automation Corp. (SIAC)—an affiliate of the NYSE and AMEX charged with administering the technological and networking data centers of both exchanges.

Governance Information:

- In 2002, the Stanley Works board voted to reincorporate the company in Bermuda. Following widespread condemnation by the national press, the board rescinded the action.
- Under the new governance changes affecting the NYSE, Britz will be precluded from serving on the board of any NYSE-listed company. He will have to resign from the Stanley Works board by the time the annual meeting is held in the spring of 2004.
- Governance experts question Britz's affiliation with Sector and the SIAC. Some say it is a conflict of interest for a senior executive of the NYSE to serve in a senior management position with an affiliate that provides services to the NYSE. A magazine called the SIAC "historically secretive" and has questioned how Britz and his boss, Grasso, will operate the company (*Institutional Investor,* September 2002).
- According to the IRS, the SIAC, Sector, Inc., and the DTCC all have the same address for their principal place of business and are operating as for-profit companies. In 2001, the SIAC had revenues of $493.9 million, $256.9 million of which was paid by the NYSE. Net profits were $10.3 million.
- No filings or other records seem to be available to assess the compensation paid to Britz for his NYSE job, his CEO position at the SIAC, or his Sector chairmanship, though the new governance standards recommended by the NYSE special governance committee will require disclosure of the compensation paid to the five top executives, at least with respect to the payments by the NYSE.

Catherine R. Kinney
New York Stock Exchange
President, Co-COO, and Executive Vice Chairman

Biography:

Catherine R. Kinney, 51, was appointed president, co-COO, and executive vice chairman of the board of directors of the NYSE in January 2002. Kinney joined the NYSE in 1974. She graduated *magna cum laude* from Iona College.

Board Memberships:

MetLife, Inc.; New York University Downtown Hospital; Board of Regents of Georgetown University; trustee of Iona College; from 1988-97 a director of the Securities Industry Automation Corp. (SIAC)—an affiliate and vendor of the NYSE that provides technological support; current director of the Depository Trust & Clearing Corp. (DTCC)—also an affiliate and vendor of the NYSE.

Governance Information

- Kinney sits on MetLife's board. John Phelan, a former chairman of the NYSE during a portion of Kinney's tenure, also sits on the MetLife board. Under the new governance changes affecting the NYSE, Kinney will be precluded from serving on the board of any NYSE-listed company. She will have to resign from MetLife's board by the time the annual meeting is held in the spring of 2004.

- Governance experts question Kinney's affiliation with the DTCC. It creates a conflict of interest for a senior executive of the NYSE, a private entity with a public purpose, to serve in a senior management position with a for-profit affiliate that provides services to the NYSE.

- No filings or other records are available to assess the compensation paid to Kinney, though the new governance standards recommended by the NYSE special governance committee will require disclosure of the compensation paid to the five top executives, including Kinney.

Madeleine K. Albright
The Albright Group LLC
Principal

Company Overview:

The Albright Group LLC is a global strategy firm dedicated to assisting its clients to develop relationships between governmental entities and businesses and to develop public-private partnerships. It is based in Washington, D.C.

Biography:

Madeleine K. Albright, 66, has been a principal in The Albright Group LLC since its founding in 2001. As secretary of state from 1997 to 2001, Albright was the highest ranking woman in the history of the U.S. government. From 1993 until 1997 she was the U.S. permanent representative to the United Nations. She was a professor of international affairs at Georgetown University and the University of Michigan and has served as an advisor to every Democratic presidential nominee since Jimmy Carter. Albright earned a B.A. from Wellesley College and an M.A. and Ph.D. in international affairs from Columbia University.

Board Memberships:

Chairman of the National Democratic Institute for International Affairs.

Governance Information:

No relevant governance information has been located.

Herbert M. Allison Jr.
TIAA-CREF
Chairman, President, and CEO

Company Overview:

TIAA-CREF (Teachers Insurance and Annuity Association-College Retirement Equities Fund) is a financial services organization and pension system for employees in education and research institutions.

Biography:

Herbert M. Allison Jr., 60, was named CEO of TIAA-CREF in November 2002. He joined Merrill Lynch in 1971 and spent most of his career with Merrill Lynch in investment banking, serving in Paris, Tehran, and London. Allison rose to president and COO before retiring in 1999. He then became CEO of AllLearn.org—a non-profit venture of Oxford, Stanford, and Yale universities to promote Internet-based learning programs in the arts and sciences. Allison received a B.A. from Yale College and an MBA from Stanford University. He served in the U.S. Navy for four years, including service in Vietnam.

Board Memberships:

NASD board of governors; chairman of the Investment Committee of The College Fund/UNCF; Stanford University Graduate School of Business advisory council; Yale University investment committee; Yale School of Management advisory board; Vietnam Veterans Memorial Fund; Financial Engines, Inc.

Governance Information:

- *The Financial Times* reported a story on the intervention by Allison, chairman of Merrill Lynch, to reverse a decision by Enron to back out of an underwriting agreement in 1998 because of an unfavorable rating by a Merrill Lynch analyst. It was reported that Allison contacted senior Enron officials, including Kenneth Lay, and the deal was saved. The Merrill Lynch analyst, John Olson, subsequently left the company.
- TIAA-CREF announced June 8, 2003, that it was expanding its relationship with J.P. Morgan Investor Services. William B. Harrison, J.P. Morgan's chairman and CEO, is an NYSE director.

Carol Bartz
Autodesk, Inc.
Chairman, President, and CEO

Company Overview:

Autodesk, Inc. is a design software and digital content company serving customers involved in building design, civil engineering, manufacturing, utilities, telecommunications, media, and entertainment.

Biography:

Carol Bartz, 56, has been chairman, president, and CEO of Autodesk, Inc. since 1992. Bartz worked for Sun Microsystems from 1982 until 1992 and rose to manage worldwide field operations. She holds an honors degree in computer science from the University of Wisconsin.

Board Memberships:

BEA Systems; Cisco Systems; Network Appliance; TechNet; National Science and Technology Medals Foundation; President's Council of Advisors on Science and Technology.

Governance Information:

- Cisco Systems has long-standing ties to Sequoia Capital—a venture capital firm. Bartz has personal investments in Sequoia and sits on Cisco's acquisition committee that must approve Sequoia-related acquisitions. Four of the five committee members have personal investments in Sequoia. The link between Bartz's Sequoia investments and those undertaken by Cisco, with Bartz's approval, concerns governance experts.
- Bartz sits on the compensation committee of Cisco Systems. In this role, she helps set the pay for CEO John Chambers. Chambers has recently been singled out as one of the most over-compensated CEOs in the U.S. ("High Pay, Rotten Returns," *Fortune,* April 28, 2003). Generally, securities and tax rules prohibit board members with substantial business ties to the company or who have recently worked for the company from determining the executives' pay. Questions have arisen regarding the extent of the business ties between Autodesk and Cisco.

- Cost-cutting moves in 2001 led to the cancellation of weekly pizza and beer parties for Autodesk employees—a tradition that dated back to the company's founding in 1984. Company engineers reacted by mounting a web site campaign comparing the $500 per week cost of the parties to Bartz's $1.5 million salary and bonus in 2000.
- Mark A. Bertelsen, a senior partner at Wilson, Sonsini, sits on Autodesk's board. Larry W. Sonsini, one of Bertelsen's partners, is an NYSE director along with Bartz.
- Autodesk's board has taken a number of actions that some consider inconsistent with good corporate governance, including: a poison pill shareholder rights plan, executive severance agreements and compensation plans with change-in-control provisions, and no cumulative or confidential voting.
- Executive compensation expert Bud Crystal considers Bartz to be overpaid:

  "Bartz became CEO in April 1992. Between March 31, 1992, and June 10, 2003, the total return on company stock was 7.3% a year—a level that was 3.1 percentage points behind the 10.4% a year return on the Standard & Poors Exchange (SPX). Her cash compensation is not remarkable, and there is no evidence that she has received any option repricings.

  "However, she did take out $34.3 million of option gains in the years 1997 through 2002, and at year-end 2002, she was sitting on further option paper profits of $13.9 million. That's a lot of money for lackluster performance."

James E. Cayne
The Bear Stearns Companies, Inc.
Chairman and CEO

Company Overview:

The Bear Stearns Companies, Inc., is a major investment banking and securities trading firm. With $32 billion in capital, the firm has 10,500 employees worldwide.

Biography:

James E. Cayne has been CEO of Bear Stearns since 1993 and chairman since June 2001. He joined Bear Stearns in 1969. In 1977, he gained national attention by heading Bear Stearns' efforts to stave off New York City's financial crisis by making a market in its municipal bonds. Cayne attended Purdue University.

Board Memberships:

Director of Children's Village.

Governance Information:

- In launching the IPO for iPayment in the spring of 2003, Bear Stearns distributed a promotional Webcast in which a senior computer-services analyst, James Kissane, touted the offering. Regulators immediately objected to the strategy as something analysts should not do. New York attorney general Eliot Spitzer called Cayne to protest, and Cayne expressed contrition saying that Bear Stearns would carefully follow the terms of the analysts' settlement.
- With the June 26, 2003, announcement of a partial settlement in the class action suits relating to improper distribution of IPO shares, a number of issues arose for the investment banking firms named as defendants in the action. Bear Stearns is a named defendant.
- Not surprisingly, given the nature of securities underwriting, a number of links exist between Cayne, Bear Stearns, and other NYSE directors. InterWorld's offering in February 2000 involved Credit Suisse First Boston, Invemed Associates, and Bear Stearns—all of which have representatives on the NYSE board. Align Technology's offering in 2001 involved Bear Stearns,

J.P. Morgan, and the Wilson, Sonsini law firm—all of which have representatives on the NYSE board. Bear Stearns and Viacom are limited partners in Constellation Ventures. The December 2002 offering by Seagate involved Bear Stearns, Morgan Stanley, Goldman Sachs, CSFB, and Wilson, Sonsini.

- In a report on June 3, 2003, *The New York Post* discussed the NYSE's compensation committee. It wrote:

  "Other members (of the committee) include Bear Stearns chairman and CEO James Cayne, whose investment bank owns a minority stake in Bear Wagner; Robert Murphy, the head of floor trading firm LaBranche; Hank Paulson, chairman and CEO of Goldman Sachs, which also owns the NYSE's largest specialist firm, Spear, Leeds & Kellogg; and outgoing Merrill Lynch CEO, David Komansky, who recently stepped down from the committee. All three specialist firms are under investigation by the NYSE for trading violations."

- Executive compensation expert Bud Crystal on Cayne:

  "Cayne became CEO in 1993, and his performance record has been impressive. Between December 31, 1992, and June 10, 2003, total return was 21.7% a year—a level that was 11.5 percentage points a year higher than the 10.2% a year return on the SPX.

  "The company has always had a policy of paying low base salaries. No executive receives a base salary of more than $200,000 a year. But bonuses and other forms of pay have been even more impressive than performance. Looking at all elements of total pay, for the years 2000 through 2002, Cayne earned $33.7 million, $15.8 million, and $29.8 million, respectively.

  "Bear Stearns 'believes that Mr. Cayne's fiscal 2002 compensation was fair given the company's absolute performance and also its performance compared to its key competitors during very difficult market conditions,' the filing said. All other senior executives also received a flat $200,000 salary in 2002."

James M. Duryea
J.M. Duryea, Inc.
President

Company Overview:

J. M. Duryea, Inc. is a listed firm with the NYSE.

Biography:

James M. Duryea is the president of J. M. Duryea, Inc. He has been a member of the NYSE since 1973. Duryea served as an NYSE floor official from 1986 to 1992 and was floor governor in 1995. He attended Boston University.

Board Memberships:

Member of the Exchange Market Information Program Steering Committee; SuperDOT executive committee—an affiliate of the NYSE.

Governance Information:

- As a member of SuperDOT's executive committee, Duryea is involved in the for-profit affiliates of the NYSE. SuperDOT is an order entry trading system that works with the SIAC which, in turn, is controlled by the NYSE and AMEX. There are no public records that indicate the compensation paid to Duryea for his work for SuperDOT. See Robert Britz's included biography for specific governance concerns related to the SIAC.

Robert B. Fagenson
Van der Moolen Specialists USA, LLC
Vice Chairman

Company Overview:

Van der Moolen Specialists, LLC, is an international trading firm active in equities, bonds, and related instruments such as warrants, options, and futures. It is a "specialist" or proprietary trader on the important equity and options exchanges in the United States and Europe. The firm's parent, Van der Moolen N.V., based in the Netherlands, was listed on the NYSE in 2001.

Biography:

Robert B. Fagenson was appointed vice chair of Van der Moolen Specialists USA when his firm, Fagenson Frankel & Streicher, merged with the global trading firm Van der Moolen N.V. He has been a member of the NYSE since 1973 and served as a floor governor from 1987 to 1993. Fagenson received a B.S. degree in finance and transportation sciences from Syracuse University.

Board Memberships:

Rent-Way, Inc.; Cash Technologies Corp.; Intrenet, Inc.; NYPD Centurion Foundation; vice chairman of the Specialist Association at the NYSE.

Governance Information:

All three of the for-profit companies that Fagenson boards are in trouble:

- Fagenson serves on the board of Rent-Way, Inc. Three of Rent-Way's executives pleaded guilty in July 2003 to charges of falsifying Rent-Way's accounting records.

- Fagenson was on the board of Intrenet, Inc. In 2000, the company announced it was investigating accounting irregularities of a subsidiary that it said might require Intrenet to restate financials for 1998 and 1999. In January 2001, the company announced it was ceasing operations. A lawsuit, filed in 2001, charged the company with filing false and misleading financial statements.

- The third company, Cash Technologies, is struggling. The company was unable to file its 2002 annual report on a timely basis "without unreasonable expense and effort due to the inability of management and its independent auditors to finish the required financial statements and to prepare the management discussion and analysis." Since then, it has filed notices of inability to file timely quarterly statements. It has also been in default of debt agreements.

  In its 2002 annual report, Cash Technologies admits that,

  > "We have a history of incurring losses, which have resulted in our independent accountants' issuing opinions containing doubts about our ability to continue as a going concern."

- Van der Moolen now trades 395 stocks or 15% of the total number of NYSE stocks. It is one of the eight specialists left trading on the NYSE, down from 54 in 1986. The top five control over 90% of the NYSE volume. Van der Moolen is in the top five.

- On March 1, 2002, in response to a question about the adequacy of NYSE listing standards following the collapse of Enron, Fagenson said: "The NYSE has reasonable standards in place."

Laurence D. Fink
BlackRock, Inc.
Chairman and CEO

Company Overview:

BlackRock, Inc. provides global investment and risk management products. It offers fixed income, liquidity, equity, alternative investment, and risk management products to clients worldwide. BlackRock also provides risk management and advisory services.

Biography:

Laurence D. Fink, 50, founded BlackRock in 1988. Prior to BlackRock, Fink was managing director of First Boston Corp. He joined First Boston in 1976. Fink earned both his B.A. in political science and his MBA in business and real estate from UCLA.

Board Memberships:

Asset liability committee of PNC Bank; trustee of Mount Sinai-New York University Medical Center and Health System; New York University.

Governance Information:

- BlackRock has been majority-owned by PNC Financial Services Group since 1995. In July 2002, PNC reached agreements with the SEC, the Federal Reserve of Cleveland, and the Office of the Comptroller of the Currency stemming from its use of three off-balance sheet vehicles to house loans and venture capital investments. It was placed under regulatory supervision. Analysts have questioned why Fink did not distance himself and BlackRock from PNC sooner than he did.
- Executive compensation expert Bud Crystal on Fink:

  "Fink's performance has been outstanding since the IPO on September 30, 1999. Between that date and June 10, 2003, total return was 39.3% a year—a level that was 44.9 percentage points a year higher than the negative 5.6% a year return on the SPX. His pay has also been excellent, consisting of \$8.6 million in 2002, exclusive of an option covering \$22 million of shares."

William B. Harrison, Jr.
J.P. Morgan Chase & Co.
Chairman and CEO

Company Overview:

J.P. Morgan Chase & Co. is a global financial services firm with operations in 50 countries. In 2000, J.P. Morgan merged with The Chase Manhattan Corporation. The company's activities are organized into five major business segments: investment banking, treasury and securities services, investment management and private banking, J.P. Morgan Partners, and Chase Financial Services.

Biography:

William B. Harrison was appointed chairman and CEO of J.P. Morgan Chase in 2001. He was chairman and CEO of The Chase Manhattan Corporation from 1999 through the merger with J.P. Morgan in 2000. He joined Chemical Bank in 1967 and served as vice chairman prior to its merger with Chase. Harrison received an A.B. degree in economics from the University of North Carolina.

Board Memberships:

Merck & Co.; The Business Council; The Financial Services Forum; The Business Roundtable; The Financial Services Roundtable; Board of Visitors of UNC; Catalyst; United Negro College Find, Inc.; trustee of Carnegie Hall; trustee of the Central Park Conservancy.

Governance Information:

- J.P. Morgan Chase has been ranked among the companies with the worst corporate governance, according to the Corporate Library, a governance research firm. Hefty paychecks and perks to current or former chief executives are commonplace. In its 2003 rankings, The Corporate Library gave the company an "F."
- The company has been widely criticized for incurring huge fines in the recent regulatory settlement over tainted stock research, and neither Harrison nor the board have demonstrated appropriate accountability.

- J.P. Morgan's directors are particularly active on other boards. "It is virtually impossible to study any of the 15 most prominent U.S. firms without running into at least one direct board connection with either J.P. Morgan Chase or Citigroup," the Corporate Library said.

- At J.P. Morgan's 2003 annual meeting, Harrison said: "It is a time of renewal and getting back to delivering better earnings and stock performance for you, our shareholders. Our financial results in 2002 were unsatisfactory, $1.7 billion in net income was on par with 2001 but far below our potential." For unsatisfactory results, Harrison was paid a total of $6.4 million in salary, bonus and shares, along with options covering 317,000 shares of stock.

- Regarding the company's Enron involvement, Harrison said a policy review committee has been created to oversee the types of transactions it engaged in with Enron. When a shareholder asked who was responsible for the bank's troubled dealings with Enron, Harrison replied, "Accountability would start with me. I accept that."

- With the June 26, 2003, announcement of a partial settlement between plaintiffs and issuers in the class action suits relating to improper distribution of IPO shares by investment banks, a number of questions arose for the firms named as defendants in the action. J.P. Morgan Chase is a named defendant.

- Executive compensation expert Bud Crystal on Harrison:

  "Harrison became CEO on June 1, 1999. Between May 28, 1999, and June 10, 2003, performance has been only so-so. Total return was negative 5.0% a year—almost identical to the negative 5.4% a year return on the SPX.

  "In 2001, for the Chase Manhattan merger, Harrison was given a bonus of $20 million. Given his performance, this was a case of premature congratulation.

  "Harrison is another person I would not like to see sitting on a board compensation committee."

Andrea Jung
Avon Products, Inc.
Chairman and CEO

Company Overview:

Avon Products is the world's leading direct seller of beauty products. Product lines include brand names such as Avon Color, Anew, Skin-So-Soft, Advance Techniques Hair Care, beComing, and Avon Wellness. Avon also markets an extensive line of fashion jewelry and apparel.

Biography:

Andrea Jung, 45, became CEO of Avon Products in 1999. She joined the company in 1994 and was promoted to executive vice president in 1997. Prior to Avon, she worked at Neiman Marcus, where she was responsible for women's apparel, accessories, cosmetics, intimate apparel, and children's apparel. Jung is a *magna cum laude* graduate of Princeton University.

Board Memberships:

General Electric; Catalyst; board of trustees of Princeton University.

Governance Information:

- In 2002, Avon was forced by the SEC to restate earnings due to a special charge from a canceled project in 1999 that was booked at $15 million instead of the full $42 million. In order to settle an SEC complaint, PricewaterhouseCoopers, Avon's auditors, agreed to pay a $5 million fine. The SEC was satisfied that Avon cooperated fully in the investigation.
- W. Don Cornwell, a former COO at Goldman Sachs, sits on Avon's board, as does Maria Elena Lagomasino, chairman and CEO of J.P. Morgan Private Bank, and Ann S. Moore, chairman and CEO of Time, both of which have representatives of affiliates on the NYSE board.
- Avon's board has approved a number of actions that some believe are inconsistent with good corporate governance, including a poison pill shareholder rights plan, a classified board, a prohibition against shareholders calling a special meeting, and severance agreements with change-in-control provisions.
- Executive compensation expert Bud Crystal on Jung: "Jung became CEO in November 1999. Between October 29, 1999, and June 10, 2003, the total return was 21.5% a year—a level that was 28.8% higher than the negative 7.3% return on the SPX. For such a high level of performance, I would not consider her overpaid at all. Her total compensation for 2002 was $2.7 million, exclusive of an option covering $13.3 million of stock. She would make a perfect board compensation committee member because she knows good performance and how to make it happen, and she is not overpaid."

Mel Karmazin
Viacom, Inc.
President, COO, and Director

Company Overview:

Viacom is a diversified worldwide entertainment company with operations in various segments, including cable, television, advertising, entertainment, and video. The cable networks segment operates MTV, Showtime, Nickelodeon, VH1, TV Land, TNN, CMT, and BET. The television segment consists of CBS, UPN, King World Productions, and Paramount Television.

Biography:

Mel Karmazin was appointed president and COO of Viacom in May 2000 following the merger of Viacom and CBS. He was president and CEO of CBS from January 1999 until the merger. He joined CBS in January 1997 through a merger of Westinghouse/CBS and Infinity Broadcasting. Karmazin is a graduate of Pace University.

Board Memberships:

Westwood One; Blockbuster; Museum of Television and Radio.

Governance Information:

- Viacom's board is being reduced from 18 to 17, and the number of independent directors increased from 10 to 11. Sumner Redstone, Viacom's CEO, says that the changes reflect the company's "deep commitment to good corporate governance," though the changes are not as sweeping as Redstone had promised.
- One of the new independent directors is Alan "Ace" Greenberg, former CEO and chairman of Bear Stearns. Bear Stearns' current chairman and CEO, James Cayne, is an NYSE director. Bear Stearns provides investment banking services for Viacom.
- Viacom's board has approved a number of actions that some believe are inconsistent with good corporate governance, including dual class common stock (class B shareholders may not vote except in certain circumstances), limited ability of shareholders to call a special meeting (50.1%), severance agreements with change-in-control provisions, change-in-control provisions in various incentive plans, and no cumulative or confidential voting.
- Although compensation expert Bud Crystal has not analyzed Karmazin's performance (Karmazin is not a CEO), Crystal believes he is extremely highly paid and would not be a good candidate for any board compensation committee.

Kenneth G. Langone
Invemed Associates LLC
Chairman, President, and CEO

Company Overview:

Invemed Associates LLC is a member of the NYSE and is engaged in investment banking and brokerage. It was founded in 1974 to finance start-ups in the medical products and devices area.

Biography:

Kenneth Langone, 67, founded Invemed in 1974 and is its chairman, president, and CEO. He is also a co-founder of Home Depot, formed in 1978. Langone received a B.A. from Bucknell University and an MBA from New York University.

Board Memberships:

Home Depot; ChoicePoint, Inc.; General Electric; TRICON Global Restaurants; Unifi, Inc.; NYU's Stern School board of overseers; chairman of the board of trustees, NYU Medical School; board of trustees, NYU.

Governance Information:

- Invemed has been charged in an NASD disciplinary proceeding with improperly sharing customer profits on hot IPOs during the bubble in the late-1990s. "I welcome the fight," Langone said in response to inquiries about the complaint. "Our practice with our customers was that our customers set commissions unilaterally." NASD alleges that Invemed improperly shared customers' profits, failed to observe just and equitable principles of trade, failed to disclose excessive clients' commissions and profit-sharing arrangements, failed to keep accurate books and records, failed to supervise employees, and failed to follow supervisory procedures.
- Langone is a director of General Electric as well as Home Depot. In late 2000, when Home Depot's growth slowed, Langone recruited Robert Nardelli as Home Depot's first outside CEO. Nardelli had just lost the succession race at General Electric when Langone began touting him as a "very charismatic leader in a very charismatic culture." In doing so, Langone strained his bonds with Home Depot co-founder Arthur M. Blank by asking Blank to relinquish his position as CEO sooner than he had planned.
- General Electric uses Invemed brokerage services, and its subsidiaries have participated in investments with Invemed. According to GE's web site: "in order to satisfy NYSE independence rules, Mr. Langone's company has ceased providing brokerage services to GE."
- At Home Depot's 2003 annual meeting, Langone's independence was questioned by many institutional investors in assessing the candidates for board seats. Of concern was the fact that he co-founded Home Depot, and Invemed had done about $19.9 million in business for Home Depot since 1982—this according to the company's proxy filings. Nardelli said he saw no conflict since Invemed had not done any Home Depot business since 2001, adding that because Langone owns so many Home Depot shares—about 18 million—he is positioned to make the right decisions. Langone was re-elected and remains on the Home Depot board.
- In 2000, Ross Stores' secondary offering was underwritten by Invemed and CSFB. Both companies have directors on the NYSE board.
- In 2000, Invemed, CSFB, and Bear Stearns underwrote a follow-on offering by InterWorld. All three underwriters have representatives on the NYSE board.
- In 2000, Invemed and Goldman Sachs underwrote the IPO for Maxygen, Inc. Both underwriters have representatives on the NYSE board.
- NYSE chairman Grasso sits on Home Depot's board, and is a member of its compensation committee. Langone is the chairman of NYSE's human resources policy and compensation committee. Therefore, Grasso and Langone have the ability to set each other's compensation.

- In an April 17, 2003, article on the regulatory action against NYSE's specialist firms, *The New York Times* reported:

  "The case against Invemed grew out of the NASD investigation into new stock allocations at Credit Suisse First Boston, NASD said. According to the complaint, Invemed had a close relationship with Credit Suisse that dates to the 1980s, when the two jointly managed an offering of shares for a company that Langone helped to found. During the technology-stock boom, the firms had an arrangement under which Invemed would introduce companies hoping to issue stock to Credit Suisse, which would give Invemed a percentage of shares in deals that the larger firm was managing."

- Langone sits on the board of ChoicePoint—a company that sells personal and business information to customers such as the FBI and the Department of Homeland Security. Authorities are currently investigating whether or not ChoicePoint obtained illegal information on potential Latin American immigrants and sold it to U.S. immigration agencies. The information reportedly included blood type, "physical descriptions," passport numbers, and so forth.

  In addition, a subsidiary of ChoicePoint was, according to the UK's *Manchester Guardian Weekly,* "responsible for bungling an overhaul of Florida's voter registration records, so that thousands of people, disproportionately black, were disenfranchised in the 2000 election." The London *Guardian* reported that this subsidiary removed thousands of people from the lists of eligible voters by indicating "they had committed felonies [when] in fact, the firm had identified as 'felons' thousands of people who were guilty of misdemeanors, such as, in at least one case, sleeping on a park bench." The *Guardian Weekly* added that, "[these disenfranchised voters] might have swung the state, and thus the presidency, for Al Gore…."

- In a report on June 3, 2003, *The New York Post* discussed the NYSE's compensation committee. It wrote:

  "Other members (of the committee, in addition to Langone) include Bear Stearns chairman and CEO James Cayne, whose investment bank owns a minority stake in Bear Wagner; Robert Murphy, the head of floor trading firm LaBranche; Hank Paulson, chairman and CEO of Goldman Sachs, which also owns the NYSE's largest specialist firm, Spear, Leeds & Kellogg; and outgoing Merrill Lynch CEO David Komansky, who recently stepped down from the committee. All three specialist firms are under investigation by the NYSE for trading violations.

  "These relationships cause governance experts to ask how any investigation can fairly represent the interests of the investing public, given that the self-regulating entity (the NYSE) is controlled by the very members it is investigating."

Peter N. Larson
Brunswick Corporation
Retired Chairman and CEO

Company Overview:

Brunswick Corporation is an international producer of recreational consumer products. Its brands include Mercury outboard and inboard engines, Northstar marine electronics, Sea Ray, Bayliner, Maxum, Hatteras and Sealine pleasure boats, Boston Whaler offshore fishing boats, Hammer Strength fitness equipment, and Brunswick bowling and billiard equipment.

Biography:

Peter N. Larson, 64, was chairman and CEO of Brunswick from 1995 to 2000. Prior to joining Brunswick, Larson was employed by Johnson & Johnson, rising to board director and executive committee member. He is a graduate of Oregon State University and holds a J.D. from Seton Hall University. He served in nuclear submarines in the U.S. Navy from 1960 to 1967.

Board Memberships:

CIGNA Corp.; Click Commerce.

Governance Information:

- In 1997, Brunswick employed Merrill Lynch to underwrite $200 million in debt financing.
- In 2000, in the face of an IRS investigation, Brunswick was forced to rescind a tax shelter scheme devised by Merrill Lynch.
- During Larson's tenure as chairman and CEO of Brunswick, the board either adopted or ratified a number of provisions that some consider inconsistent with good corporate governance, including a poison pill shareholder rights plan, a classified board, supermajority (66.7%) to approve a merger, prohibition on shareholders calling a special meeting or acting by written consent, advance notice for director nominations and certain shareholder proposals, severance agreements with change-in-control provisions, pension parachute, and no cumulative or confidential voting.
- Executive compensation expert Bud Crystal on Larson:

  "Larson was CEO from April 1995 to June 2000. Between March 31, 1995, and June 30, 2000, total return was negative 1.5% a year—a return that was 26.2% a year lower than the 24.7% a year positive return on the SPX.

  "For 1998, Larson received a bonus of $2.4 million, notwithstanding that diluted EPS was $1.88—the same level as was reported two years earlier.

  "For 1999, his last full year on the job, diluted EPS sank to $0.41. To his credit, he received no bonus that year. But as a consolation prize, he was given a free share award worth $1.2 million.

  "He also participated in three different long-term incentive plans, including option grants, free share awards and a special long-term incentive plan.

  "He would not be an ideal candidate to sit on a board compensation committee. He was not a good performer, and he seemed not to understand that in the bad years, your pay is supposed to plummet."

Gerald M. Levin
AOL Time Warner Inc.
Retired CEO

Company Overview:

AOL Time Warner Inc. is a media and entertainment company. Its interests include divisions in interactive Internet services, cable, film entertainment, network broadcasting, music and publishing.

Biography:

Gerald Levin, 65, was CEO of AOL Time Warner from the merger of Time Warner and AOL in 2001 until his resignation in 2002. He was rumored to have been pushed out by Ted Turner. He was CEO of Time Warner from 1992 until the merger. Levin joined Time in 1972. He is a *Phi Beta Kappa* graduate of Haverford College and received a law degree from the University of Pennsylvania.

Board Memberships:

The Aspen Institute; the Council on Foreign Relations; the Trilateral Commission.

Governance Information:

- Levin is a named defendant in an action filed by the University of California. The action seeks $500 million in damages from losses on AOL Time Warner shares following the 2001 merger. Plaintiffs allege that the company's senior management lied about its financial condition and engaged in insider trading before mammoth restatements were made public.
- When AOL agreed to buy Time Warner in January 2000, it was reported to be the biggest merger in history, valued at $156.14 billion. By the time the merger was completed in January 2001, the Internet bubble had burst and the valuation had been reduced to $103.5 billion. In the first year of operations, with Levin as CEO, the company failed to meet its aggressive financial targets. By the end of 2001, Levin had announced his intention to resign.
- During Levin's tenure with AOL, the board either adopted or ratified a number of provisions that some view as inconsistent with good corporate governance, including the requirement for a supermajority (80%) for shareholders to amend bylaws, a prohibition against shareholders calling a special meeting or acting by written consent, severance agreements, change-in-control provisions in various incentive plans, and no cumulative or confidential voting.
- Executive compensation expert Bud Crystal on Levin:

"Levin became CEO of Time Warner on December 20, 1992, following the death of Steve Ross. Looking at his performance at Time Warner until the AOL merger and then at AOL Time Warner after the merger, I found that, between December 18, 1992, and May 15, 2002, when he stepped down as CEO, total return was 8.1% a year—a level that was 4.2 percentage points a year lower than the 12.2% a year return on the SPX. During the same period, both Walt Disney and Viacom's total returns were 1.2 times those of the SPX.

"During his tenure, Levin was wildly overpaid. From the almost 10 years of his tenure: 1) aggregate salary of $10.25 million, 2) aggregate bonuses of $49.3 million, 3) option gains totaling $164 million. That works out to a pay, including option gains, of $22.3 million a year.

"Speaking for myself, I would not want to see him on a board compensation committee or on a board, period. He epitomizes all that is wrong with executive pay in the U.S."

John J. Mack
Credit Suisse First Boston
CEO

Company Overview:

Credit Suisse First Boston (CSFB), a business unit of Zurich-based Credit Suisse Group, is a global investment bank that serves institutional, corporate, government, and high net worth clients. It engages in securities underwriting, sales and trading, investment banking, private equity, financial advisory services, investment research, venture capital, and asset management. CSFB operates in more than 34 countries on five continents.

Biography:

John J. Mack was appointed CEO of Credit Suisse First Boston in 2001 after leaving his COO post at Morgan Stanley—reportedly the result of a battle with Philip Purcell, current Morgan Stanley CEO and member of the NYSE's board (*Financial Times,* September 20, 2002). Mack began his career with Morgan Stanley in 1971, worked his way up from the trading floor, and become head of fixed income operations. He became COO in 1992 and was instrumental in the merger with Dean Witter in 1997. Mack received his undergraduate degree from Duke University.

Board Memberships:

Celiant Corp.; trustee, Duke University; Cousins Properties, Inc.; trustee, Doris Duke Charitable Foundation.

Governance Information:

- Mack inherited a company in 2001 that was wracked by scandals and losses. He has vowed to trim expenses, and he has settled a number of cases with regulators in addition to putting aside provisions for likely litigation costs.
- One of the most visible cases involves Frank Quattrone, one of CSFB's star investment bankers and a leading financier in the late-1990s boom. Mack and Quattrone had tangled before when Quattrone reported to Mack at Morgan Stanley. Both ended up at CSFB. Mack was slow to fire Quattrone despite pending regulatory actions.
- CSFB reported a loss of $1.2 billion in 2002 and was one of the most heavily penalized of a dozen big investment banks that recently agreed to a $1.4 billion settlement regarding conflicts of interest that riddled stock research and IPO practices.
- CSFB participated in an underwriting for Seagate, along with Morgan Stanley, Goldman Sachs, J.P. Morgan, and Bear Stearns—all of which have representatives on the NYSE board.
- CSFB vice chair Ken Miller is on the Viacom board.
- CSFB and J.P. Morgan led the underwriting team that launched DaimlerChrysler's $2 billion retail auto loan offering in 2002.
- The NASD investigation of Invemed grew out of an earlier investigation by the NASD of new stock allocations at CSFB. At issue were shares allegedly given by CSFB to Invemed for introductions to company's seeking underwriting services. The relationship between Invemed's Langone and Credit Suisse dates back to the 1980s (*The New York Times,* April 17, 2003).
- With the June 26, 2003, announcement of a partial settlement with the issuers in the class action suits relating to improper distribution of IPO shares, a number of questions arose for the investment banking firms named as defendants in the action. CSFB is a named defendant.

H. Carl McCall
HealthPoint LLC
Vice Chairman

Company Overview:

HealthPoint LLC is an orthopedic research, private equity investor and advisory firm. It is unique in that it focuses exclusively on the orthopedic device industry, one of the most profitable segments in the health care field.

Biography:

H. Carl McCall was appointed vice chairman of HealthPoint in 2002. He served as comptroller of the State of New York from 1993 through December 2002 and was the unsuccessful Democratic Party candidate for governor of New York in 2002. From 1991 to 1993 McCall was president of the New York City Board of Education. McCall was a vice president of Citibank from 1985 to 1993. He holds an undergraduate degree from Dartmouth College.

Board Memberships:

Tyco International; Council on Foreign Relations.

Governance Information:

- As New York's comptroller, McCall organized a coalition of institutional investors to develop a landmark initiative to eliminate Wall Street conflicts of interest.
- He supported a move to disclose the compensation paid to senior management at the NYSE.
- McCall is co-chair of the NYSE's special governance committee. However, he does not believe Grasso's compensation is excessive. "The board supported it, I supported it. The NYSE is a major financial institution and to attract and retain high-level people like Dick Grasso you have to pay them, and it's appropriate." He said that he did not recall Grasso's exact pay figures for the past two years.
- As a new Tyco director, McCall will play a key role in determining whether the earlier board decision to transfer the corporation's place of incorporation to Bermuda will be affirmed or rescinded. As New York's comptroller, McCall joined activist pension and labor funds in fighting companies moving to offshore tax havens. Calling it a "complex" issue, McCall offered no indication of where the board would end up on the matter or an exact timetable for completion of the review.

George C. McNamee
First Albany Companies, Inc.
Chairman

Company Overview:

First Albany Companies, Inc. is a research-driven investment banking and capital markets firm.

Biography:

George C. McNamee, 57, is the chairman and, until 2002, was the co-CEO of the holding company First Albany Companies, Inc. He served as a director of Mechanical Technology Inc. since 1996 and as CEO since 1998. He joined First Albany in 1969 and was a floor member of the NYSE from 1969 until 1971. McNamee received a B.A. from Yale University.

Board Memberships:

Plug Power Inc.; MapInfo Corporation; META Group, Inc.; the New York Conservation Education Fund.

Governance Information:

- In 2000, First Albany announced the formation of the region's largest venture capital fund, FA Technology Ventures. The New York State Common Retirement Fund, under the guidance of then-state comptroller H. Carl McCall, contributed $50 million to the venture's $100 million fund. Both McNamee and McCall are NYSE directors.
- Executive compensation expert Bud Crystal on McNamee:

  "McNamee became co-CEO in 1989. Between December 31, 1988, and June 10, 2003, total return was 15.8% a year—a level that was 4.1 percentage points a year above the SPX return of 11.7% a year. Thus, his performance has been good, but by no means great.

  "He is extremely low paid. His salary for the three years ending with 2002 was just $300,000 a year, while his bonuses for 2000 through 2002 were, respectively, $900,000, $200,000 and $300,000.

  "During the years 2000 through 2002, he received no free share grants and no option grants. His option gains in the aforementioned three years were just $1.3 million.

  "Now there is someone I'd like to see sitting on a board compensation committee."

Robert M. Murphy
LaBranche & Co. LLC
Director and CEO

Company Overview:

LaBranche & Co. LLC is a holding company that is the sole member of LaBranche & Co. LLC and LaBranche Structured Products LLC—a registered broker dealer. LaBranche provides securities clearing, securities execution, and other related services to its own retail customers, customers of introducing brokers, and institutional customers, including traders, professional investors, and broker dealers. LaBranche also provides direct-access floor-brokerage services to institutional customers.

Biography:

Robert M. Murphy has been a director and the CEO of LaBranche & Co. LLC since 2001, when LaBranche acquired Robb Peck McCooey Financial Services, Inc. Murphy was executive vice president of Robb Peck from 1985 to 2001. Previously he was an NYSE governor and floor official.

Board Memberships:

NYSE Foundation.

Governance Information:

- The press reported that Robb Peck came under intense regulatory scrutiny following the November 10, 1999, blowout IPO of UPS—the biggest in U.S. history. Controversy continued to plague the specialist firm for months. Not only did it suffer millions of dollars in losses, but the specialist who handled the offering also left Robb Peck's trading floor shortly thereafter. A planned merger with another specialist firm simultaneously fell through. So many rumors spread regarding the firm that it sent a letter to the NYSE setting the record straight. Murphy was Robb Peck's CEO at the time, and the trader who left was his brother.
- According to a July 25, 2003, *Wall Street Journal* article, LaBranche has refused to provide authorities with various emails that might help the Exchange in its probe into whether or not "employees of specialist firms had violated their 'negative obligation,' or the responsibility to hang back and not participate in trading at times when enough public buy and sell orders already exist to trade stock."
- Executive compensation expert Bud Crystal on Murphy: "Murphy is not the CEO of the parent company, so I could not evaluate his performance. He is also low-paid, with a 2002 salary of $250,000 and a bonus of $200,000. In 2002, he did not receive any option grant. He's another person who would make a fine board compensation committee member."

E. Stanley O'Neal
Merrill, Lynch & Co.
Chairman, President, and CEO

Company Overview:

Merrill Lynch is a holding company that, through its subsidiaries and affiliates, provides goods and services related to broker dealer transactions, financing, asset management, insurance, lending, and related matters.

Biography:

E. Stanley O'Neal became CEO of Merrill Lynch in December 2002 and chairman in April 2003. He has been a member of the board since July 2001 when he was named president and CEO. O'Neal joined Merrill Lynch in 1986 after eight years with General Motors. He received a B.S. from Kettering University (formerly the General Motors Institute) and an MBA with distinction in finance from Harvard University.

Board Memberships:

Trustee of the National Urban League; The Buckley School; Lower Manhattan Development Corporation.

Governance Information:

- During 2002, Merrill Lynch laid off or terminated 6,500 workers, bringing the total job cuts since its employment peaked in 2000 to 21,700. In the face of the bonuses and salary increases awarded senior management, this drastic cut in jobs has angered some employees.
- In January 2003, a federal appeals court overturned a $226 million tax refund to pharmaceutical giant Wyeth, saying the company relied on an unlawful tax shelter. The decision was the latest in a string of cases invalidating tax-avoidance plans that Merrill Lynch created for several of its Fortune 500 clients.
- O'Neal has missed two-thirds of the meetings of the Lower Manhattan Development Corporation.
- In an April 2003 op-ed article in *The Wall Street Journal,* O'Neal claimed that "some oracles in Washington and elsewhere" were trying to "legislate" market risk out of existence. The result, he stated, would be a stagnant economy. While he alluded to occasional failures in the markets, he said it would be wrong to "teach investors that they should be insulated" from risk. New York attorney general Eliot Spitzer immediately rebuked O'Neal for his comments, saying he was trying to reduce fraud to market risk. Spitzer pointed out that under the terms of the (stock research) settlement, Merrill does not have to admit the charges made against it, but it is forbidden from denying them. "I expect to see a different tenor from Merrill Lynch in the future," Spitzer warned. "If there is not, there will be a problem and a very serious one."
- With the June 26, 2003, announcement of a partial settlement with the issuer defendants in the class action suits relating to improper distribution of IPO shares, a number of questions arose for the investment banking firms named as defendants in the action. Merrill Lynch is a named defendant.
- Executive compensation expert Bud Crystal on O'Neal: "O'Neal has been CEO since December 2002, so it is too early to evaluate his performance. For 2002, he received a salary of $500,000 and a bonus of $7.15 million. He also received a free share award worth $4.7 million, as well as options covering 171,000 shares."

Henry M. Paulson, Jr.
The Goldman Sachs Group, Inc.
Chairman and CEO

Company Overview:

The Goldman Sachs Group, Inc. is a global investment banking, securities and investment management firm that provides a range of services to a substantial and diversified client base that includes corporations, financial institutions, governments and high net worth individuals.

Biography:

Henry Paulson has been chairman and CEO of The Goldman Sachs Group since August 1999. He joined the firm in 1974 after four years working at the Pentagon and in the White House on the staff of the Domestic Council. He earned a B.A. from Dartmouth and an MBA from Harvard Business School.

Board Memberships:

Peregrine Fund, Inc.; the New York City Investment Fund; the Asia/Pacific Council of The Nature Conservancy; the Indian School of Business.

Governance Information:

- Commenting on Goldman's responsibility in the global settlement, Paulson stated in the firm's 2002 annual report: "Notwithstanding some of the rhetoric, much of the criticism has been warranted, as are many of the regulations recently enacted or proposed. With the benefit of hindsight it is clear we could have done better." Goldman agreed to pay $110 million to regulators, a $50 million fine, $50 million for independent stock research and $10 million for investor education.
- Paulson has stated that executives should receive the largest portion of their compensation in equity that vests over a long period of time—a move that ties pay to the performance of the firm.
- Federal regulators in the biased stock research investigation gave the 12 top Wall Street firms a June 20, 2003, deadline to produce e-mail messages and other documents from managers. Paulson was among the CEOs receiving subpoenas.
- Spear, Leeds & Kellogg, a broker dealer subsidiary of Goldman Sachs, "agreed to be fined $450,000 by the SEC July 21, 2003, resolving charges it failed to supervise its employees adequately 'with a view to preventing the employees from aiding and abetting' violations of federal securities laws."
- During Paulson's tenure, the board has either adopted or ratified a number of provisions that some believe are inconsistent with good corporate governance, including a poison pill shareholder rights plan, a classified board, dual class common stock, a supermajority (80%) for shareholders to amend bylaws, prohibitions against shareholders calling a special meeting or acting by written consent, and no cumulative or confidential voting.
- With the June 26, 2003, announcement of a partial settlement with the issuer defendants in the class action suits relating to improper distribution of IPO shares, a number of questions arose for the investment banking firms named as defendants in the action. Goldman Sachs is named as a defendant.
- Executive compensation expert Bud Crystal on Paulson:

  "Paulson became CEO in June 1998, but the company did not go public until May 3, 1999. Between that date and June 10, 2003, total return was 14% a year—a level of performance that was 20.2 percentage points a year better than the negative 6.2% a year return on the SPX.

  "Although his performance has been better than that of Bear Stearns' Cayne, his pay has been lower. For the years 2000 through 2002, total pay was $23.6 million, $20.6 million, and $12.5 million respectively."

Philip J. Purcell
Morgan Stanley
Chairman and CEO

Company Overview:

Morgan Stanley is a global financial services firm that operates in four business segments: institutional securities, individual investor group, investment management, and credit services.

Biography:

Philip J. Purcell, 60, became CEO of Morgan Stanley in 1999 following the 1997 merger of Dean Witter, Discover & Co., and Morgan Stanley Group—a transaction that he instigated. Purcell began his career at McKinsey, then moved to Sears & Roebuck and became the retailer's vice president of corporate planning. Sears purchased Wall Street broker Dean Witter in 1981, and Purcell became chairman and CEO of Dean Witter, Discover & Co. in 1986. Purcell earned a B.A. from Notre Dame, an MBA from the University of Chicago, and an M.S. from the London School of Economics.

Board Memberships:

AMR.

Governance Information:

- Earlier this year, a month after agreeing to pay $125 million to settle U.S. regulators' charges relating to the conflict between investment banking and stock research, Purcell denied any such conflicts of interest in a French lawsuit brought by LVMH. LVMH alleged that Morgan Stanley intentionally downgraded LVMH shares to curry favor with its investment banking client Gucci Group NV.
- Even before the final settlement in the stock research scandal was announced, Morgan Stanley began spinning its role. Purcell boasted that his firm came through the regulatory dust up with Spitzer and the SEC "relatively unscathed," claiming its $50 million fine was the "lowest such payment among any of the ten major firms that were a party to the initial settlement." Seven other major firms paid identical fines, but Purcell, in his tabulation, lumped the money paid by its rivals for investor education into the fine category. Thus, in Purcell's view, Morgan Stanley had bragging rights for the lowest fine since it was one of just two firms not forced to pay for investor education.
- SEC chairman Donaldson lashed out at Purcell, claiming that his comments "reflect a disturbing and misguided perspective" on Morgan Stanley's misconduct and "a troubling lack of contrition" (*Chicago Tribune,* May 3, 2003). The NASD also admonished Purcell for his comments. Purcell backed away from his earlier statement, telling Donaldson: "I deeply regret any public impression that the Commission's complaint was not a matter of concern to retail investors . . . The allegations are a matter of concern . . . I appreciate your reminder."
- Only two of Morgan Stanley's eleven directors were present at the 2003 annual meeting, raising eyebrows at a time when corporate governance and board inattention at public companies have commanded public and regulatory scrutiny. None of the company's nine independent directors attended.
- Bad blood is widely reported to exist between Purcell and CSFB's John Mack. *The Financial Times* reported on September 20, 2002, that "Mr. Mack in particular is haunted by his experience at Morgan Stanley where, as second in command to Philip Purcell, he lost out in a power struggle and was forced to leave two years ago."
- Morgan Stanley serves as a financial advisor to AMR, and Purcell sits on AMR's board.
- Morgan Stanley acted as book-running manager for the 2002 offering by Seagate, and Goldman Sachs. Bear Stearns and CSFB were co-lead managers.
- According to CBS MarketWatch, New York attorney general Eliot Spitzer and Massachusetts secretary of the commonwealth William Gavin announced July 14, 2003, they were leading a probe into whether or not "Morgan Stanley improperly pressured brokers and branch managers to sell proprietary mutual funds to

investors, who were unaware that their brokers received incentives for pitching in-house products."

- With the June 26, 2003, announcement of a partial settlement with the issuer defendants in the class action suits relating to improper distribution of IPO shares, a number of questions arose for the investment banking firms named as defendants in the action. Morgan Stanley is a named defendant.

- During Purcell's tenure, the board has either adopted or ratified a number of provisions that some think are inconsistent with good corporate governance, including a poison pill shareholder rights plan, a classified board, a supermajority (80%) shareholder vote to amend bylaws (the board may amend bylaws with a majority vote), prohibitions barring shareholders from calling a special meeting or acting by written consent, severance agreements with change-in-control provisions, and no cumulative or confidential voting.

- Executive compensation expert Bud Crystal on Purcell:

  "Purcell has been CEO since September 1986, but the company did not go public until February 23, 1993. Between that date and June 10, 2003, total return was 21.1 % a year—a level of performance that was 10.8 percentage points a year higher than the 10.3% a year return on the SPX.

  "For the years 2000 through 2002, Purcell earned total pay of $38.4 million, $17.3 million and $12.1 million respectively."

Christopher C. Quick
Fleet Specialist, Inc.
CEO

Company Overview:

Fleet Specialist, Inc. is one of the largest specialist firms on the NYSE. It represents 432 listed companies whose trading comprises 18% of the total NYSE volume. It is a subsidiary of FleetBoston.

Biography:

Christopher Quick was appointed president of Fleet Specialist in 1986. He has held executive positions in the specialist business for more than 20 years. Quick arranged the acquisition of Colin Hochstein by Quick & Reilly, which later became Fleet Meehan Specialist. He received a B.S. in finance from Fairfield University.

Board Memberships:

Trustee of Fairfield University advisory board; St. Vincent's Medical Center; a Knight of Malta; New York Foundling Hospital.

Governance Information:

Quick is one of four brothers. Leslie is chairman and CEO of Fleet Securities, on the board of governors of the Chicago Stock Exchange and the hearing board of the NYSE; Peter serves as president of the American Stock Exchange; Thomas is vice chairman of Quick & Reilly Securities.

Quick and Fleet are principal targets in the investigation by the NYSE into allegations of front-running by specialist firms. eFinancialNews.com reported on April 22, 2003, that the NYSE had already fined Fleet Specialist's parent, FleetBoston, $150,000 for trading irregularities on April 10, 2003—seven days before the NYSE confirmed that it was investigating "trading practices at several specialist firms."

Juergen E. Schrempp
DaimlerChrysler AG
Chairman of the Board of Management

Company Overview:

DaimlerChrysler AG is one of the world's leading automotive companies. Its passenger car brands include Mercedes Benz, Chrysler, Jeep and Dodge. It offers financial and other automotive services through DaimlerChrysler Services.

Biography:

Juergen Schrempp has been affiliated with Daimler-Benz for 40 years. Prior to the merger with Chrysler in 1998—a transaction that he initiated and guided, Schrempp was president of Mercedes-Benz South Africa, head of the Aerospace Division, head of global sales and, finally, chairman of Mercedes-Benz.

Board Memberships:

Allianz AG; Sasol Ltd., South Africa; Vodafone AirTouch; International Council of J.P. Morgan Chase; Deutsche Bank AG.

Governance Information:

- A class action suit is pending in Delaware, pitting Chrysler shareholders against DaimlerChrysler and Schrempp. At issue is alleged damages suffered by Chrysler shareholders as a result of the takeover by Daimler-Benz. Although the transaction was a buyout of Chrysler, it was touted by Schrempp as a "merger of equals." The suit began after a story in the *Financial Times* quoted Schrempp as saying that he had always planned a takeover but that Chrysler would only agree to a merger.
- The company's marketing and financial troubles are steadily mounting. Chrysler announced in June 2003 that it would lose $1.2 billion in the second quarter, far worse that predicted by the company earlier. Chrysler's share of the U.S. market has dropped from 16.2% at the time of the merger to 13.6% as of June 2003. Each percentage point represents $1 billion in sales. The only fully performing unit is Mercedes, and its prospects have dimmed as the dollar continues to slide against the euro.
- A $2 billion retail auto loan offering from DaimlerChrysler in October 2002 was underwritten by CSFB and J.P. Morgan Chase.

Larry W. Sonsini
Wilson, Sonsini, Goodrich & Rosati
Chairman and CEO

Company Overview:

Wilson Sonsini, formed in 1966, is a law firm based in Silicon Valley. It specializes in the fields of corporate and securities law and mergers and acquisitions.

Biography:

Larry Sonsini is the chairman of the executive committee of Wilson, Sonsini. He is considered one of the nation's foremost experts in the area of venture capital and public offerings for technology-related firms. He formed Wilson Sonsini shortly after graduating from law school. Sonsini received an A.B. degree from the University of California, Berkeley, and a J.D. from Boalt Hall, Berkeley's law school.

Board Memberships:

Brocade Communications Systems, Inc.; Echelon Corporation; Lattice Semiconductor Corporation; LSI Logic Corporation; PIXAR, Inc.; trustee of the University of California, Berkeley; Haas School of Business, Berkeley, board of advisors.

Governance Information:

- According to the July 22, 2003, *Wall Street Journal,* Larry Sonsini has business relationships with companies on whose boards he sits—a practice frowned on by investor advocates as one leading to an absence of independence. The article stated that, "Mr. Sonsini, 62, also serves on the boards of five high-tech companies that pay his law firm millions of dollars a year in total for legal services. The ... firm acts as the primary outside counsel for four of these companies and provides legal services for a fifth one."
- Wilson Sonsini has numerous ties to NYSE directors running public companies listed on the NYSE, as well as relationships with most of the large brokerage firms. These ties are typically the result of legal representation during public offerings and mergers, either on behalf of the companies involved or the underwriters.
- The firm represented: Veritas in the 2002 purchase of Precise, underwritten by CSFB; the underwriters in Seagate's 2002 offering underwritten by Goldman Sachs and J.P. Morgan; Rational in its 2002 acquisition by IBM, underwritten by Goldman Sachs; underwriters Bear Stearns and J.P. Morgan in Align Technology's 2001 offering.

William B. Summers, Jr.
McDonald Investments, Inc.
Chairman

Company Overview:

McDonald Investments, Inc. is an investment banking and securities firm and a subsidiary of KeyCorp. It is based in Cleveland. McDonald offers financial planning services to corporations and wealthy individuals.

Biography:

William B. Summers, 49, has been non-executive chairman of McDonald Investments, Inc. since October 2000. He was chairman and CEO of McDonald from 1995 to 2000. Summers was executive vice president of KeyCorp from November 1998 to December 2000.

Board Memberships:

Chairman of the Rock and Roll Hall of Fame Museum; Penton Media; Wilson Greatbatch Technologies, Inc.; Advanced Ceramics; Actron Manufacturing Company; Molded Fiberglass Companies.

Governance Information:

- In May 2003, Brunswick announced a dedicated financing option to consumers to purchase Brunswick marine products. The financing will be provided by KeyBank USA, a division of KeyCorp. Peter Larson, former chairman and CEO of Brunswick, sits on the NYSE board.

- During Summers' tenure, the board of KeyCorp either adopted or ratified a number of provisions that some believe are inconsistent with good corporate governance, including a poison pill shareholder rights plan, a classified board, advance notice for director nominations and certain shareholder proposals, severance agreements with change-in-control provisions, and no cumulative or confidential voting.