THE WALL STREET JOURNAL.

MONDAY, JANUARY 7, 2002 C1

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MONEY & INVESTING

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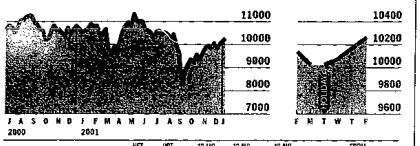
Fund Track: *Common sense rules at Buffalo Small Cap* **Page C19.**

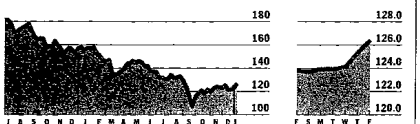
MARKETS DIARY 1/4/02

STOCKS Dow Jones Industrial Average **10259.74 +87.60**



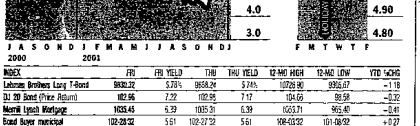
INDEX	CLOSE	NET CHG	PCT CHG	12-MO HIGH	12-MO LOW	12-MO CHG	%	FROM 12/31	%
DJIA	10259.74	+87.60	+0.86	11337.92	9235.81	−972.27	−9.37	+238.24	+2.38
DJ U.S. Total Market	272.35	+1.89	+0.70	319.68	222.35	−26.65	−9.08	+5.64	+2.11
S&P 500	1172.51	+7.24	+0.62	1373.73	965.80	−159.84	−9.69	+24.45	+2.13
Nasdaq Composite	2059.38	+15.11	+0.74	2859.15	1423.19	−348.77	−14.47	+108.98	+5.59
Russell 2000	499.30	+3.79	+0.76	517.23	378.90	+35.16	+7.57	+10.90	+2.21

INT'L STOCKS DJ World Stock Index (excl. U.S.) **126.38 +1.05**



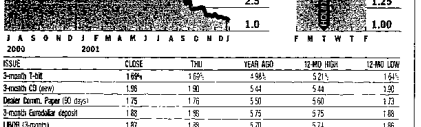
INDEX	CLOSE	NET CHG	PCT CHG	12-MO HIGH	12-MO LOW	12-MO CHG	%	FROM 12/31	%
DJ Wrld (ex. U.S.)	126.38	+1.05	+0.84	159.13	105.99	−31.34	−19.87	+2.48	+2.00
MSCI EAFE(Prelim.)	1172.67	+5.67	+0.43	1495.40	995.60	−322.60	−21.57	+17.67	+1.53
DJ Euro STOXX 50	3826.42	−12.67	−0.33	4767.45	2877.68	−914.06	−19.31	+14.29	+0.38
FTSE 100 (London)	5372.8	+5.0	+0.09	6334.5	4433.7	−874.3	−14.11	+106.4	+2.04
Nikkei 225 (Tokyo)	10011.49	+328.87	+3.12	14529.41	9504.91	−2996.12	−21.61	+328.87	+3.12
Xetra DAX (Frankfurt)	5319.23	+42.41	+0.82	6795.14	3787.23	−1063.58	−16.66	+158.43	+3.07
CAC-40 (Paris)	4862.79	+1.52	+0.03	5958.49	3832.87	−1075.23	−18.07	+58.21	+1.20

BONDS 10-Year Treasury Note Yield (4 p.m.) **5.128% +0.025**



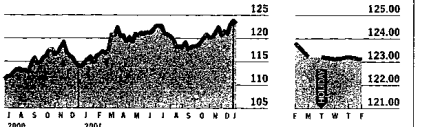
INDEX	FRI	FRI YIELD	THU	THU YIELD	12-MO HIGH	12-MO LOW	YTD %CHG
Lehman Brothers Long T-Bond	9630.32	5.78%	9658.24	5.74%	10726.80	9935.07	−1.18
DJ 20 Bond (Price Return)	102.66	7.22	102.95	7.17	104.66	96.58	−0.32
Merrill Lynch Mortgage	1033.45	6.39	1035.31	6.39	1053.71	993.40	−0.41
Bond Buyer municipal	102-28/32	5.61	102-27/32	5.61	108-03/32	101-08/32	+0.27
Merrill Lynch corporate	1281.83	6.71	1281.36	6.31	1290.20	1054.02	−0.32

INTEREST Federal Funds (N.Y. Fed, Prebon Yamane) **1.65% −0.14**



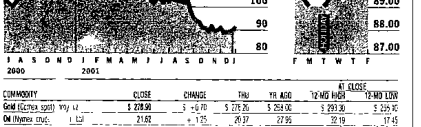
ISSUE	CLOSE	THU	YEAR AGO	12-MO HIGH	12-MO LOW
3-month T-bill	1.69%	1.69%	6.06%	5.21%	1.64%
3-month CD (new)	1.96	1.90	5.44	5.44	3.90
Dealer Comm. Paper (90 days)	1.75	1.76	5.50	5.60	3.73
3-month Eurodollar deposit	1.82	1.96	5.75	5.75	3.88
LIBOR (3-month)	1.87	1.88	5.70	5.74	3.86

U.S. DOLLAR J.P. Morgan Index vs. 19 Currencies **123.1 −0.1**



CURRENCY	LATE NY	LATE THU	DAY'S HIGH	DAY'S LOW	LATE NY 12-MO HIGH	LATE NY 12-MO LOW
British pound (in U.S. dollars)	1.4452	1.4384	1.4455	1.4300	1.5299	1.3727
German mark (per U.S. dollar)	2.1659	2.1745	2.1759	2.1670	2.3378	2.0421
Japanese yen (per U.S. dollar)	130.95	131.98	132.10	131.91	132.12	114.46
Canadian dollar (in U.S. dollars)	0.6369	0.6157	0.6370	0.6254	0.6495	0.6237
Euro (in U.S. dollars)	0.8848	0.8866	0.8901	0.8839	0.9579	0.8366

COMMODITIES DJ-AIG Commodity Index (1991=100) **91.446 +1.820**



COMMODITY	CLOSE	CHANGE	THU	YR AGO	AT CLOSE 12-MO HIGH	AT CLOSE 12-MO LOW
Gold (Comex spot) /oz.	$ 278.90	$ +0.70	$ 278.20	$ 264.00	$ 293.30	$ 255.90
Oil (Nymex crude) /bbl.	21.62	+1.25	20.37	27.95	32.19	17.45
Wheat (KC hard KS) /bu.	3.2550	+0.0550	3.2000	3.4600	3.5850	3.0200
Steers FS (Omaha choice) /cwt.	65.50	unch	65.50	77.70	81.00	64.25

MONEY & INVESTING INDEX

Journal Link: For 24-hour updated news, stock quotes, company background information and more, see the online Journal at **WSJ.com**

Sharp Stock Gains May Crimp Further Rises

ABREAST OF THE MARKET

By E.S. Browning
Staff Reporter of The Wall Street Journal

The stock market has started the year with a bang, making some investors wonder what could possibly stand in the way of further gains.

One possible answer: earnings.

The expectation that corporate earnings finally will turn up after a year of thudding declines has helped spark a furious three-month stock rally. The Standard & Poor's 500-stock index has jumped 21% since hitting a low on Sept. 21, and the Nasdaq Composite Index, whose resurgent tech stocks have been leading the way, has soared 45%.

On the face of it, earnings expectations seem to justify the optimism. Analysts are forecasting a jump of about 16% in earnings this year for the companies in the S&P 500, which looks impressive compared with the 17% earnings drop that the companies are expected to report for the year just ended, once fourth-quarter results are in.

The trouble is that the stock gains since Sept. 21 have been so sharp that much of the good news may already be built into stock prices – even if earnings expand. That could put a lid on any further run-ups this year, especially since significant earnings gains aren't even expected until the second half of the year.

"We aren't looking for a runaway market," says Dennis Ferro, chief investment officer at Evergreen Investments, First Union's mutual-fund unit who thinks the S&P 500 could go up 10% or less this year.

And that assumes that the analysts are right in their forecast for earnings gains this year. Charles Hill, director of research at Thomson Financial/First Call, which tracks analysts' forecasts, says he still expects analysts to trim their expectations as the year progresses. He himself is forecasting just a 7.5% earnings gain this year, which means some investors could be disappointed.

Some analysts worry about an even darker scenario. They are concerned that what Federal Reserve Chairman Alan Greenspan once called "irrational exuberance" could creep back into the market, with greed once again replacing fear on Wall Street. That could push stock prices, and particularly tech-stock prices, back to levels that can't be sustained by realistic earnings prospects.

Ned Davis Research, a market-research firm in Venice, Fla., has published a chart showing that the S&P 500's performance from late 1999 through the present looks eerily like market performance from 1968-1970, when stocks soared, plunged and recovered, only to fall to new lows later.

Investors certainly seemed exuberant last week. After a drop on Monday, the last day of the year, stocks rebounded strongly in the new year. Overall, for the holiday-shortened week, the Dow Jones Industrial Average rose 1.21%, or 122.75 points, to 10259.74, including a rise of 0.86%, or 87.60 points, on Friday. The Nasdaq composite was up 3.63% on the week, and the S&P 500 gained 0.99%. Many

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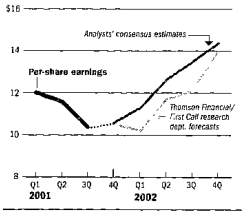
INSIDE MUTUAL FUNDS
QUARTERLY REVIEW
— Pages R1 through R38 —

Poised for an Earnings Upturn?

Analysts are expecting earnings per-share of the companies in the S&P 500 to turn up, although Thomson Financial/First Call, which tracks the earnings estimates, thinks the analysts will trim their forecasts as the year progresses. Here are per-share earnings of the S&P 500 for the first three quarters of 2001, updated for changes in the index's composition, followed by analysts' estimates and First Call's own internal forecasts.



Source: Thomson Financial/First Call

The Pretender

A Look at the Strange World of Martin Frankel

By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

On Labor Day weekend in 1999, Martin Frankel was captured in a lakeside hotel in Hamburg, Germany, after a four-month international manhunt. After discovering charred clues found smoldering in his mansion in Greenwich, Conn., investigators pieced together a bizarre saga of what authorities allege was a $215 million fraud that had gone undetected for the better part of a decade.

Masquerading as a stock trader, and using aliases, Mr. Frankel had acquired seven Southern insurance companies with embezzled money.

Investigators concluded that he had looted the insurers' assets, using the money to transform himself from an unemployed stockbroker living with his parents in Toledo, Ohio, to the master of an empire built on fraud and the keeper of a harem of female acolytes.

Mr. Frankel's tentacles spread to Vatican officials, whose support he solicited in an attempt to acquire additional companies, to Washington power broker Robert Strauss and to former Chrysler chairman Lee Iacocca, whom he courted for added cachet and credibility. It was Mr. Frankel's ambition to take control of the assets of even more insurance companies that led to his downfall after finally attracting scrutiny.

These days he sits in a Rhode Island jail awaiting trial on multiple charges. Four associates also have been indicted on federal charges. Another seven have entered guilty pleas, and an Italian monsignor was arrested in the U.S. last summer.

But back in 1998, Mr. Frankel's worries were of a very different sort. Though he boasted of his trading genius, he was plagued by a crippling anxiety that prevented him from actually investing his empire's assets. At the same time, he was spending gobs of money, mostly on the growing number of women – some lovers, some office assistants – who inhabited his household. They spent their days pretending to work, bickering among themselves and coming up with ways to wheedle ever more extravagances from their boss.

It was at this point that Mr. Frankel decided he had to get bigger to survive. Ensconced in his mansion, he crafted a plan to gain entrée into the highest echelons of business. And for a while it looked as if it was going to work. . .

Sitting in his trading room with his computers blinking at him, Marty forced himself to try a few trades. It was 1998, and he had just acquired First National Life Insurance Co. and was tapping its portfolio. Shaky, fearful and choked with anxiety, he managed to execute some 25 trades of government and corporate bonds through Prudential Securities. The trades were small for an insurance-company portfolio, worth about $25,000 each and not especially risky. But for

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The Frankel File

Some of the players in Martin Frankel's empire who face federal charges

▲ **Martin Frankel,** *alleged architect of scheme to defraud insurers*
Expected to go to trial in October on wire fraud, securities fraud, racketeering and other charges

● **Kaethe Schuchter,** *former lover and Frankel's liaison to New York society*
Indicted with Frankel, but believed to be living in Germany

● **Karen Timmins,** *office assistant who met Frankel through personal advertisement*
Pleaded guilty to helping to conceal money-laundering activities

▲ **Sonia Schulte Radencovici,** *former lover who allegedly helped Frankel bilk insurers*
Expected to go to trial in October on multiple charges

● **Gary Atnip,** *executive in Frankel's insurance empire*
Expected to go to trial in October

● **Mona Kim,** *office assistant who allegedly helped Frankel buy gold*
Expected to go to trial in October

● **Robert Guyer,** *figurehead of Frankel's brokerage firm*
Pleaded guilty to securities fraud charges

▲ **John Hackney,** *ran Frankel's insurers*
Pleaded guilty to conspiracy and money-laundering charges

● **David Rosse,** *Frankel's bodyguard*
Pleaded guilty to racketeering conspiracy

● **John Jordan,** *lawyer who helped Frankel*
Pleaded guilty to conspiracy and money laundering

● **Monsignor Emilio Colagiovanni**
Arrested on complaint accusing him of wire fraud and conspiracy to launder money

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Journal Link: Read about Martin Frankel's preparations to flee to Europe, in an additional excerpt from "The Pretender," in the online Journal at WSJ.com/JournalLinks.

Knight Trading Faces Results Of NASD Probe Into Practices

By Kate Kelly
Staff Reporter of The Wall Street Journal

Less than a month ago, **Knight Trading Group** Inc.'s high-profile chief executive announced plans to leave. But troubles at the big stock-trading firm remain.

The National Association of Securities Dealers is set to announce the results of a regulatory probe that began in the late 1990s examining whether Knight engaged in a series of trading-rule violations that benefited the firm at the expense of investors during the Internet boom, say people familiar with the matter. Though a NASD announcement is expected as early as this week, it wasn't clear what form that action would take.

The NASD specifically is investigating whether Knight failed to execute stock transactions with fellow traders even after posting firm stock prices, a practice known as "backing away," the people familiar with the matter say. That means investors who thought they were getting a certain stock price in fact may not have been.

Knight, personified by high-profile CEO Kenneth Pasternak, became a Wall Street emblem of the bull market, and dominated the business of handling volatile tech stocks during the late 1990s. Since then, both its stock price and its profits have tumbled.

A spokeswoman for Knight didn't comment on the investigation, saying the company doesn't comment on legal matters.

The NASD declined to comment.

Word of the investigation comes at a particularly sensitive time for the company and its founder. Mr. Pasternak last month announced plans to leave the company – six months before his contract was due to expire in July. Knight's chief operating officer and president, Peter Rajas, will act as interim CEO after Mr. Pasternak leaves at the end of this month while the board searches for a permanent replacement.

In announcing his resignation last month, Mr. Pasternak said he was leaving Knight, in part, to prepare for a run for public office, eyeing possible U.S. congressional and Senate races in New Jersey.

Since 1995, when Knight was formed, the firm has been through a series of scrapes with market regulators.

Between late 1996 and early 2000, Knight was named in 10 NASD regulatory actions, according to filings. Knight has neither admitted nor denied the allegations.

The alleged infractions include attempting to trade a halted stock, short-selling a stock while it was on a down tick, failing to keep adequate trade records, and not being prompt in executing customer limit orders.

The fines accompanying the citations generally were between $1,000 and $5,000, according to the filings, they twice were as high as $10,000, and once were $50,000.

Edward Fleischman, a securities lawyer at Linklaters, a London law firm, who was a commissioner on the Securities and Exchange Commission in the early 1990s, said that, in general, such a large number of enforcement actions by regulators is unusual.

The NASD filings allege instances of Knight backing away from trades, as well as "locking" and "crossing" markets – common practices during the period Knight dominated Nasdaq Stock Market trading.

"Locking" a market refers to the practice of bidding for stock at its lowest offer price, while "crossing" is bidding to buy stock at prices higher than the lowest offer at the time. Both are against NASD rules and, if widely practiced, can obscure a stock's true price to investors.

Since peaking in the spring of 1999 at $78 per share (adjusted for a two-for-one stock split at the time), Knight shares have dropped by about 82%. In 4 p.m. Friday trading on Nasdaq, Knight rose $1.01 to $13.66.

Tyco Tumble Reflects Wariness About Bookkeeping

HEARD ON THE STREET

By Mark Maremont
Staff Reporter of The Wall Street Journal

A speculative report in an obscure newsletter usually doesn't help to erase 7% or $8.7 billion, from a big company's market value. That is what happened to Tyco International late last week, after the newsletter SEC Insight Inc. reported the Securities and Exchange Commission might be taking another look at Tyco's accounting practices.

As it turns out, there isn't a fresh SEC probe, according to a person familiar with the matter. Still, the sudden stock tumble highlights the market's continuing nervousness about Tyco's accounting. Put simply, investors adore the acquisitive conglomerate's steady earnings growth, but some are afraid the numbers might just be too good to be true.

"Everyone loves to hate Tyco," says Kevin McCloskey, a portfolio manager at Federated Investors in Pittsburgh whose fund holds Tyco shares. "That's one of the reasons we're attracted to it." Mr. McCloskey is bullish on Tyco, but says "fear of a smoking gun that's going to blow up the company" explains why its stock is trading at less than 15 times this fiscal year's expected per-share net of $3.70. Absent such concerns, he says, Tyco probably would trade at a price-to-earnings multiple above 20, or at least $75. At 4 p.m. Friday, the stock was down 13 cents at $54.55 in New York Stock Exchange composite trading.

Tyco executives hoped they had put such issues to rest in mid-2000, when a six-month probe by the SEC into the company's accounting ended with no action after Tyco made a few modest adjustments to its books. "We believe we have appropriate and conservative accounting," says L. Dennis Kozlowski, Tyco's chairman and chief executive, adding that the company's auditors "have a heightened sense of responsibility" following the prior review. As for the recurring doubts, Mr. Kozlowski blames short sellers, whom he says have used the company's complex nature to "make false accusations for their own benefit."

Indeed, Tyco continues to be hounded by short sellers – who try to profit by selling borrowed stock and replacing it with shares bought later at a lower price – and other skeptics whispering about new accounting issues. As of mid-December, Tyco's stock was the 10th most heavily shorted on the Big Board, with a short interest of 66.1 million shares, up 6% from the prior month. The short interest was the equivalent of about six trading days, close to the NYSE average.

The bears concede they can't point to

Please Turn to Page C2, Column 4

Sharp Stock Gains, Profit Outlook Could Put Lid on Further Rises

ABREAST OF THE MARKET

Continued From Page C1

money managers doubt that stocks could fall back to the lows that the major indexes hit on Sept. 21, after the Sept. 11 attacks. What they fear is simply that earnings growth, which most analysts think will prove weaker now than it was in the late 1990s, may not be strong enough to push stocks up a lot more this year, after the strong gains stocks put in late last year.

"Given a reasonable economic recovery, stock markets probably can deliver returns in the 8% to 10% range" this year, says Mr. Ferro of Evergreen Investments.

A 10% gain would disappoint those investors who came to consider 20% the norm during the booming 1990s. And Mr. Ferro worries that some individual stocks that don't meet inflated earnings expectations could have a difficult year.

"There are companies that have bounced off the bottom for which a revised business case hasn't yet been validated by increased orders and margins and profitability," Mr. Ferro says. He points to optical fiber and telecommunications equipment companies in particular.

Mr. Hill of First Call takes that idea one step further. He notes that since current earnings have been depressed by the recession, some analysts consider it unfair to use these earnings as a reference point to gauge stocks' fair value. It might be more appropriate, he suggests, to measure stock prices against forecast earnings for 2003, a time when earnings should be returning to normal. Even based on forecast 2003 earnings, Mr. Hill says, the current prices of tech stocks such as **Cisco Systems**, **Microsoft**, **Intel** and **Sun Microsystems** look high.

Mr. Hill says that analysts expect Cisco, for example, to earn 39 cents a share in its fiscal year through July 2003. With the stock trading Friday at $20.83, Cisco is trading at 53 times expected earnings for 2003. Even accepting analysts' forecasts that Cisco's earnings will grow at 25% a year over the next five years, Mr. Hill says, that means that Cisco's price-to-earnings ratio is more than twice its expected annual percentage earnings-growth rate. Many analysts would consider that a high valuation.

Or consider Intel, which traded at $35.79 on Friday. Analysts say it will earn $1.03 a share in calendar 2003. That puts the stock price at 35 times 2003 earnings, almost twice its expected five-year average earnings growth rate of 18%.

Microsoft is trading at 33 times its estimated per-share earnings of $2.09 for fiscal 2003, with a forecast earnings-growth rate of 15%. Sun is trading 61 times estimated 2003 earnings, triple its projected average earnings-growth rate of 20%.

Those P/E ratios aren't as high as the 100-plus levels that some tech stocks commanded during the bubble, but tech-company earnings aren't expected to grow as fast as they did in the late 1990s either. Current P/E ratios are high enough that Mr. Hill considers them hard to sustain.

And the calculations assume that companies deliver on the earnings that analysts currently project, which is hardly guaranteed.

As if that weren't enough to give an investor pause, J. Thomas Madden, chief investment officer at mutual-fund group Federated Investors in Pittsburgh, suggests another worry: earnings quality. Analysts' earnings estimates are based on what analysts call earnings from continuing operations, which tend to exclude some charges. Mr. Madden worries that the **Enron** debacle will cause investors to look harder at corporate earnings calculations, and could lead to more pain as some companies are forced to use more rigor in reporting earnings.

More companies' earnings could turn out to be partly, at least, built on sand.

"One of the questions I continue to pose to our money managers is: Who else is going to be found wanting?" Mr. Madden says. "Long experience tells me that when you have an event that was as financially destructive as the collapse of Enron, you are getting a sea-change of attitude toward the quality of earnings, which has been an area of shortfall all through the 1990s. I am not persuaded that many [Wall Street] analysts pay enough attention to the balance sheet, even with the experience of Enron. I don't believe that this stuff has been nearly enough attended to yet."

Friday's Market Activity

Corning climbed 1, or 10%, to 10.70. The optical-cable maker said it would resume production of its products at two plants in North Carolina that the company idled last year amid a steep downturn in the telecommunications sector.

Conseco dropped 69 cents, or 16%, to 3.56. Salomon Smith Barney cut its rating on the Carmel, Ind., insurer and financial-services company to a "sell," and set a price target on the stock of $1.

Several retailers rose, with **Sears Roebuck** up 2.11, or 4.4%, to 49.65, setting a fresh 52-week high. **Best Buy** gained 98 cents, or 1.3%, to 73.88. **Gap** advanced 1, or 6.9%, to 15.45.

Commodity products companies also marked progress, with **Alcoa** adding 1.16, or 3.2%, to 37.30, while **Arch Coal** went ahead 75 cents, or 3.3%, to 23.21.

Trucking concerns, a classic economy-sensitive sector, posted sharp gains. **Roadway** (Nasdaq) added 2.88, or 7.8%, to 39.84, while **CNF** improved 1.46, or 4.4%, to 34.76.

Adobe Systems (Nasdaq) jumped 2.82, or 8.5%, to 35.90 after **J.P. Morgan** boosted its rating on the San Jose software developer.

Online travel-services provider **Travelocity.com** (Nasdaq) lost 3.05, or 11%, to 24.39, after the Fort Worth, Texas, company lowered its revenue guidance for the fourth quarter.

— *Robert O'Brien*

VOLUME SUMMARY

Trading totals for the week ended January 4, 2002

	WEEK 2002	SINCE JANUARY 1 2002	2001
NYSE composite	4,989,225,500	4,989,225,500	7,599,868,270
NYSE	4,130,363,935	4,130,363,935	6,568,738,213
Warrants	46,600	46,600	991,600
Nasdaq	5,846,107,347	5,846,107,347	9,702,463,993
AMEX composite	416,275,970	416,275,970	559,241,020
AMEX	171,326,860	171,326,860	369,293,070

Tumble by Tyco International Shares Reflects Market Wariness About Bookkeeping Practices

HEARD ON THE STREET

Continued From Page C1

any smoking guns, but say a number of smaller items raise concerns. For starters, some cite a series of charges by finance company CIT Group just before the June 1, 2000, closing of Tyco's $10 billion deal to acquire it. The charges depressed CIT's earnings but didn't show up on Tyco's books. CIT's results surged in the first month after Tyco took control.

Tyco has been accused previously by critics of using such preclosure write-offs to boost future results, assertions it has strenuously denied. Mark Swartz, Tyco's chief financial officer, says CIT executives made the decision to take the extra charges to account for increasing bad debts and to reflect a plan to exit some businesses. He also says Tyco "specifically disclosed" to investors in a conference call that CIT's results from June 1 through June 30 were artificially high, due in part to large quarter-end revenue.

Even so, bears find the numbers curious. Partly due to a $148 million provision for credit losses, CIT posted a net loss of $78.8 million in its final two months of independence. In the remaining month of its June quarter, after being absorbed by Tyco, the unit posted net income of $71.2 million. CIT's one-month profit added about 1.5 cents a share to Tyco's June quarter, Mr. Swartz says. For that period, the company beat analysts' expectations of 69 cents a share by three cents, before such items as restructuring expenses.

Many investors cheer Tyco's record of always meeting or beating analysts' quarterly earnings expectations, even during the current recession, which has hurt two of its major units. Bulls cite good management and Tyco's diversification, which allows it to offset weakness in some areas with strong profits from booming operations such as its security business.

Skeptics agree, to a point, but also say the company routinely seems able to find earnings from unexpected sources. Take the fiscal fourth quarter ended Sept. 30, 2001, when Tyco beat expectations by two cents a share, excluding restructuring expenses and acquisition-related charges. That figure was helped by a reported tax rate of about 19.2%, well below the 24.7% of the first nine months and 24.2% in the prior-year period. Mr. Swartz says accounting rules require Tyco to estimate a tax rate at the start of the year, then adjust as the year goes on to reflect actual rates, which turned out to be lower than expected largely because of the impact of CIT. Had Tyco used last year's tax rate in the quarter, its earnings before items would have been five cents lower, though still well above the prior year.

Bears also point to a sudden fourth-quarter surge in profit margins at Tyco's TyCom fiber-optic communications unit. Amid a glut of telecom capacity, the unit's revenue tumbled more than 70% in the quarter, to $173.2 million. But operating profit dropped only 35%, to $94 million, and reported margins more than doubled, to 54%.

Mr. Swartz says the improved margins were partly a result of cost reductions and a swing to a more profitable business mix. Another factor: Tyco had been putting aside money for anticipated large bonuses for TyCom managers prior to the fourth quarter, dragging down earnings, he says. But, he adds, the company reversed those accruals in the fourth quarter because bonuses were "minimal." The top five TyCom executives' bonuses totaled more than $20 million the prior year, he says.

Some critics also point to a $1 billion pretax charge taken in the fiscal year ended Sept. 30, to comply with a general SEC accounting change. It primarily related to how Tyco accounts for installations of security alarms, mostly through its ADT unit. In the past, Tyco, like many other companies, had booked the whole installation fee up front. But under the new rule, adopted by the SEC in late 1999, Tyco had to spread the fee over the life of the alarm-system contract, typically years. Many companies adopted the new rule in 2000, but Tyco had nine extra months to do so because of its Sept. 30 fiscal year end.

Lynn Turner, an accounting professor at Colorado State University and a former chief accountant at the SEC, says companies are required to tell investors about a big charge like that as soon as they can reasonably estimate it. Tyco had told investors about the accounting change, but didn't reveal the $1 billion charge until the fiscal year-end news release in October 2001.Mr. Turner says the resource-strapped SEC isn't likely to go after Tyco for any rules violation, but adds, "In my experience, when you're not forthcoming about something like this, people get nervous about your financial reporting and your credibility."

A Tyco spokeswoman says the figures were "not estimable" until the fiscal fourth quarter because they involved analyzing five million customer accounts world-wide.

Tyco bulls say the company's accounting practices are no more aggressive than those of many peers, and less aggressive than some. David Giroux, an analyst with mutual-fund firm T. Rowe Price Associates in Baltimore, picked up coverage of Tyco last year and says "I wanted to believe it was a house of cards." But he was persuaded otherwise by the size and growth of Tyco's multibillion-dollar cash generation. Many analysts believe cash is much harder to manipulate than earnings figures.

"When the cash flow starts looking bad, then I'll become worried," Mr. Giroux says. Tyco, he adds, has a good story, "it's just that some people don't want to believe the story."

STOCK MARKET DATA BANK 1/4/02

MAJOR INDEXES

†12-MO HIGH	†12-MO LOW		DAILY HIGH	DAILY LOW	CLOSE	NET CHG	% CHG	†12-MO CHG	% CHG	FROM 12/31	% CHG
DOW JONES AVERAGES											
11337.92	8235.81	**30 Industrials**	10283.67	10174.84	10259.74	+ 87.60	+ 0.86	– 402.27	– 3.77	+ 238.24	+ 2.38
3142.03	2033.86	**20 Transportation**	2837.89	2725.21	2830.20	+ 102.70	+ 3.77	– 283.79	– 9.11	+ 190.21	+ 7.20
398.44	275.10	**15 Utilities**	296.27	292.06	294.17	– 2.05	– 0.69	– 58.56	– 16.60	+ 0.23	+ 0.08
3392.23	2489.27	**65 Composite**	2978.96	2942.10	2977.82	+ 35.01	+ 1.19	– 241.80	– 7.51	+ 85.60	+ 2.96
319.88	222.35	**DJ US Total Mkt**	273.09	270.12	272.35	+ 1.89	+ 0.70	– 26.86	– 8.98	+ 5.64	+ 2.11
STANDARD & POOR'S INDEXES											
1373.73	965.80	**500 Index**	1176.55	1163.42	1172.51	+ 7.24	+ 0.62	– 125.84	– 9.69	+ 24.43	+ 2.13
547.06	404.34	**400 MidCap**	518.85	511.59	518.05	+ 6.46	+ 1.26	+ 28.68	+ 5.86	+ 9.74	+ 1.92
237.42	181.09	**600 SmallCap**	237.78	235.08	237.42	+ 2.33	+ 0.99	+ 26.83	+ 12.74	+ 5.24	+ 2.26
295.32	209.52	**1500 Index**	256.69	253.91	255.96	+ 1.73	+ 0.68	– 22.53	– 8.09	+ 5.31	+ 2.12
NASDAQ STOCK MARKET											
2859.15	1423.19	**Composite**	2077.89	2033.56	2059.38	+ 15.11	+ 0.74	– 348.27	– 14.47	+ 108.98	+ 5.59
2730.05	1126.95	**Nasdaq 100**	1698.46	1645.32	1675.03	+ 8.37	+ 0.50	– 592.82	– 26.14	+ 97.98	+ 6.21
1683.04	1027.69	**Industrials**	1456.52	1427.71	1446.49	+ 8.77	+ 0.61	+ 23.20	+ 1.63	+ 57.30	+ 4.12
2367.59	1973.74	**Insurance**	2350.97	2330.38	2350.50	+ 15.48	+ 0.66	+ 237.44	+ 11.24	+ 1.46	+ 0.06
2240.86	1746.73	**Banks**	2156.94	2138.18	2156.25	+ 15.56	+ 0.73	+ 250.43	+ 13.14	+ 21.36	+ 1.00
1559.26	653.13	**Computer**	1082.99	1058.05	1068.22	+ 8.88	+ 0.84	– 207.97	– 16.30	+ 87.74	+ 8.95
568.19	192.87	**Telecommunications**	249.33	242.57	245.54	– 1.19	– 0.48	– 221.61	– 47.44	+ 8.91	+ 3.77
NEW YORK STOCK EXCHANGE											
666.57	504.21	**Composite**	597.36	592.53	596.57	+ 3.94	+ 0.66	– 44.08	– 6.88	+ 6.77	+ 1.15
826.70	620.11	**Industrials**	742.81	736.51	741.77	+ 4.04	+ 0.55	– 39.49	– 5.05	+ 6.06	+ 0.82
446.30	319.10	**Utilities**	340.26	335.85	337.45	– 0.60	– 0.18	– 93.86	– 21.76	+ 7.61	+ 2.31
494.71	332.91	**Transportation**	462.36	449.10	461.28	+ 11.52	+ 2.56	– 19.52	– 4.06	+ 22.47	+ 5.12
648.06	494.41	**Finance**	602.43	594.66	602.25	+ 7.59	+ 1.28	– 30.59	– 4.83	+ 8.56	+ 1.44
OTHERS											
958.75	780.46	**Amex Composite**	844.01	838.81	841.44	– 0.81	– 0.10	– 22.93	– 2.65	– 6.17	– 0.73
727.35	507.98	**Russell 1000**	620.16	613.36	618.38	+ 4.31	+ 0.70	– 65.45	– 9.57	+ 13.44	+ 2.22
517.23	378.90	**Russell 2000**	500.67	494.85	499.30	+ 3.79	+ 0.76	+ 36.16	+ 7.81	+ 10.80	+ 2.21
754.96	529.66	**Russell 3000**	649.97	642.96	648.24	+ 4.54	+ 0.71	– 59.71	– 8.43	+ 14.08	+ 2.22
422.43	294.60	**Value-Line**	378.78	374.55	378.37	+ 3.82	+ 1.02	– 10.82	– 2.78	+ 8.82	+ 2.39
12719.22	8900.45	**Wilshire 5000**	10959.61	10845.30	10932.32	+ 75.64	+ 0.70	– 940.34	– 7.92	+ 224.64	+ 2.10

†-Based on comparable trading day in preceding year.

MOST ACTIVE ISSUES

NYSE	VOLUME	CLOSE	CHANGE
Hallibrtn	52,397,600	10.22	– 0.69
AOL Time	41,531,200	31.95	+ 0.37
Kmart	39,653,400	4.71	+ 0.62
EMC Cp	32,299,400	16.85	+ 0.26
LucentTch	32,248,600	7.10	+ 0.17
Corning	28,735,700	10.70	+ 1.00
Compaq	21,443,000	11.39	+ 0.43
GenElec	19,768,100	40.95	+ 0.34
Nokia	17,618,400	26.15	– 0.75
TycoInt	17,572,800	54.55	– 0.43
EnronCp	17,267,300	0.66	+ 0.02
NortelNtwks	17,257,400	8.58	+ 0.30
GlblCross	14,700,900	0.73	+ 0.05
AT&T Wrls	14,583,000	13.65	– 0.81
AdvMicro	14,412,000	20.00	+ 0.63
NASDAQ			
SunMicrsys	78,926,200	13.93	+ 0.51
CiscoSys	74,740,600	20.83	+ 0.07
Intel	64,292,400	35.79	+ 0.27
JDS Uniphs	49,433,900	10.02	+ 0.50
OracleCp	42,345,000	15.45	+ 0.16
DellCptr	29,640,000	29.59	+ 0.56
BEA Sys	29,203,400	18.85	+ 1.85
PeregSys	28,100,900	9.41	+ 0.14
SiebelSys	27,304,100	32.70	+ 1.15
Ciena	25,848,400	16.47	+ 0.79
Microsoft	25,502,800	68.90	– 0.33
CMGI	24,458,800	2.10	+ 0.49
WorldCom	20,774,900	14.61	– 0.11
AMEX			
NASDAQ100	86,536,100	41.67	+ 0.17
SPDR	19,943,400	117.62	+ 0.78
SPDR Tch	4,518,800	25.84	+ 0.16
Semi HOLDRs	4,431,600	47.13	– 0.03
Bioth HLDRs	3,569,200	129.77	+ 2.67

DIARIES

NYSE	FRI	THU	WK 1/4
Issues traded	3,345	3,347	3,471
Advances	2,002	2,112	2,321
Declines	1,162	1,057	1,070
Unchanged	181	178	30
New highs	150	102	272
New lows	8	13	39
zAdv vol (000)	1,021,164	793,410	2,728,740
zDecl vol (000)	483,597	599,744	2,258,239
zTotal vol (000)	1,509,944	1,411,633	5,047,867
Closing tick[1]	+831	+1111	....
Closing Arms[2] (trin)	.82	1.51	....
zBlock trades	30,140	27,831	y94,876
NASDAQ			
Issues traded	3,901	3,875	4,269
Advances	2,143	2,254	2,721
Declines	1,444	1,322	1,383
Unchanged	314	299	165
New highs	134	94	322
New lows	10	8	47
Adv vol (000)	1,462,687	1,667,317	4,600,273
Decl vol (000)	684,025	504,041	2,489,785
Total vol (000)	2,184,664	2,182,497	7,184,748
Block trades	n.a.	28,009	w60,542
AMEX			
Issues traded	829	817	963
Advances	465	464	669
Declines	269	250	237
Unchanged	95	103	57
New highs	27	23	62
New lows	1	3	22
zAdv vol (000)	50,184	47,801	147,290
zDecl vol (000)	9,712	10,860	72,855
zTotal vol (000)	61,588	59,858	226,279
Comp vol (000)	154,926	139,211	531,371
zBlock trades	n.a.	1,224	w3,253

PRICE PERCENTAGE GAINERS...

NYSE	VOL	CLOSE	CHANGE	% CHG
SiliconGrph	3,750,200	2.99	+ 0.55	+ 22.5
CapSrLvng	127,000	3.55	+ 0.60	+ 20.3
Kmart pfT	519,400	23.34	+ 3.54	+ 17.9
CollnsAikman	73,200	8.95	+ 1.35	+ 17.8
Loral Space	3,294,000	3.12	+ 0.43	+ 16.0
Kmart	39,653,400	4.71	+ 0.62	+ 15.2
CrdntComm	14,900	8.40	+ 1.05	+ 14.3
CptrTask	47,400	4.86	+ 0.56	+ 13.0
FedAgrMtg A	3,900	32.20	+ 3.60	+ 12.6
Solutia	4,391,400	10.10	+ 1.10	+ 12.2
Advantest ADS	4,300	16.59	+ 1.79	+ 12.1
ParkerDrl	790,600	4.05	+ 0.43	+ 11.9
BritAir	112,200	34.90	+ 3.50	+ 11.2
BMC Sftwr	7,688,400	20.10	+ 2.00	+ 11.1
ToysRUs	6,803,300	22.00	+ 2.17	+ 10.9
E Trade	8,073,900	12.29	+ 1.19	+ 10.7
Raytech	7,000	2.93	+ 0.28	+ 10.6
Corning	28,735,700	10.70	+ 1.00	+ 10.3
CIBER	594,500	10.85	+ 0.99	+ 10.0
FedAgri C	103,800	43.11	+ 3.90	+ 9.9
NASDAQ				
Vixel	997,200	3.10	+ 0.90	+ 40.9
OPNET Tech	464,500	18.20	+ 3.54	+ 24.2
EvrgrnSolar	305,700	3.75	+ 0.69	+ 22.6
ID Biomed	171,600	5.35	+ 0.97	+ 22.1
DscvryPtnrs	1,061,900	9.16	+ 1.61	+ 21.3
CutterBuck	193,900	4.60	+ 0.80	+ 21.1
HlthcrRec	50,200	5.91	+ 1.01	+ 20.6
SoundViewTch	2,605,200	2.81	+ 0.47	+ 20.1
MIPS Tch A	3,154,600	11.78	+ 1.93	+ 19.6
DataTRAK	3,500	2.87	+ 0.47	+ 19.6
TtlEntRestr	25,300	5.00	+ 0.80	+ 19.1
ValenceTch	616,900	4.04	+ 0.62	+ 18.1
AramexInt	43,900	11.91	+ 1.81	+ 17.9
GuitarCtr	936,900	14.91	+ 2.24	+ 17.7
AMEX				
RamprtCap	10,300	2.45	+ 0.40	+ 19.5
CompTch	17,200	3.36	+ 0.36	+ 12.0
ImplntSci wt	27,800	3.77	+ 0.32	+ 9.3
Alteon	244,300	5.59	+ 0.47	+ 9.2
PacGE pfZ	9,200	21.00	+ 1.75	+ 9.1

AND LOSERS

NYSE	VOL	CLOSE	CHANGE	% CHG
Conseco pfG	75,400	8.50	– 2.20	– 20.6
Conseco pfV	237,200	8.11	– 1.89	– 18.9
Conseco	12,365,100	3.56	– 0.69	– 16.2
Conseco pfT	107,800	8.80	– 1.65	– 15.8
Conseco pfH	97,500	9.10	– 1.60	– 15.0
PerezCpnc ADS	303,500	10.98	– 1.47	– 11.8
EncmpssSvcs	360,200	2.69	– 0.31	– 10.3
ACLN Ltd	725,600	10.30	– 1.05	– 9.3
Footstar	748,800	28.51	– 2.78	– 8.9
Willamet	10,349,500	45.75	– 4.21	– 8.4
SprintPCS	13,805,100	22.45	– 1.89	– 7.8
WillmsComm	7,897,700	2.16	– 0.18	– 7.7
Osmonic	19,700	13.90	– 1.15	– 7.6
PPL Cp	4,026,500	32.34	– 2.56	– 7.3
Sprint Un	458,800	23.56	– 1.82	– 7.2
PPL PEPS un	295,900	18.40	– 1.41	– 7.1
TrGasSur ADR	13,100	4.88	– 0.37	– 7.1
CircCtyCrmx	773,300	20.55	– 1.51	– 6.8
QuilmesInd	5,300	11.15	– 0.80	– 6.7
Meritage	66,700	47.10	– 3.20	– 6.4
NASDAQ				
MovieGalry	480,700	14.76	– 7.75	– 34.4
NetSolve	126,200	8.55	– 1.85	– 17.8
MapInfo	558,400	13.84	– 1.96	– 12.4
MercryCptr	4,180,400	35.15	– 4.95	– 12.3
HainCelest	2,154,500	22.63	– 2.92	– 11.4
ON Semi	874,000	3.10	– 0.40	– 11.4
LtPathTch A	450,300	3.53	– 0.45	– 11.3
Travelocity	2,286,700	24.39	– 3.05	– 11.1
SysCptrTch	1,245,500	9.30	– 1.13	– 10.8
UtdGlbl A	863,900	4.15	– 0.50	– 10.8
Omnicell	17,400	7.90	– 0.95	– 10.7
AeroGen	26,000	2.95	– 0.35	– 10.6
FMS Fnl	2,000	8.00	– 0.93	– 10.4
SeabulkIntl	3,800	3.27	– 0.38	– 10.4
AMEX				
NewDrag A	79,100	2.65	– 0.25	– 8.6
JAlexndrs	8,800	1.90	– 0.15	– 7.3
SherwdBrd A	28,500	7.25	– 0.50	– 6.5
TBA Entn	6,800	3.69	– 0.25	– 6.4
IvaxCp	3,509,700	18.29	– 1.19	– 6.1

VOLUME PERCENTAGE LEADERS

NYSE	VOL	% DIF*	CLOSE	CHANGE
AffilMangrIncm	1,390,500	a2574.8	25.44	+ 0.34
Greenbrier	102,500	1777.3	7.35	+ 0.10
BlkrkStrTrm	1,283,600	1177.5	9.65	....
NtlGolfProp	1,204,700	1037.1	10.00	+ 0.85
AgreeRlty	89,700	910.6	15.45	– 0.69
Solutia	4,391,400	833.1	10.10	+ 1.10
TelSaoPlo ADS	259,500	828.6	13.90	+ 0.03
PhilAuthInd	130,600	792.4	25.45	+ 0.29
Willamet	10,349,500	754.9	45.75	– 4.21
EquitRes	1,860,400	753.6	31.90	– 0.57
Elscint	91,600	662.9	6.08	+ 0.41
ComrcBcpNJ	2,180,800	649.8	40.26	+ 1.36
NtlGrd ADS	94,100	616.5	32.09	+ 0.51
Triton A	2,085,500	603.7	24.70	– 1.30
ZarlinkSemi	642,900	593.8	12.60	+ 0.75
MarthaStew	633,500	586.3	14.95	– 0.60
RoylAppl	144,200	576.7	5.00	....
FairIsaac	1,607,300	559.0	50.03	+ 2.32
RogrsWrlss B	51,200	550.7	15.24	– 0.01
GrnptFnl	3,217,900	506.7	43.50	+ 2.85

*Common stocks of $5 a share or more with average volume over 65 trading days of at least 5,000 shares.
a-has traded fewer than 65 days. b-10,000% or greater.

NASDAQ	VOL	% DIF*	CLOSE	CHANGE
MutualFst	315,900	2627.7	15.25	+ 0.16
MIPS Tch B	1,713,600	1354.4	10.55	+ 1.57
ParkvlFnl	75,400	1285.3	21.70	– 0.15
MrcntlBk	93,900	1147.5	18.30	+ 0.05
PainThera	1,300,100	1058.9	9.90	+ 0.60
WillisLease	146,600	1050.9	5.70	....
MIPS Tch A	3,154,600	1025.0	11.78	+ 1.93
HainCelest	2,154,500	911.7	22.63	– 2.92
MercryCptr	4,180,400	896.0	35.15	– 4.95
SysCptrTch	1,245,500	861.6	9.30	– 1.13
Umpqua	197,500	741.3	12.70	– 0.50
PromstrFnl	148,000	739.8	24.72	+ 0.18
OPNET Tech	464,500	695.6	18.20	+ 3.54
PegasusSol	853,000	678.8	15.90	+ 1.45
FstBusey	39,000	639.3	21.32	– 0.13
GuitarCtr	936,900	627.3	14.91	+ 2.24
AMEX				
SPDR Indu	1,325,400	647.3	27.70	+ 0.01
FiveStrQlty	260,300	588.1	7.30	– 0.20
iShrMSCan	53,200	532.7	11.35	+ 0.50
AmBkCT	74,500	512.9	30.30	– 0.20
iShrsNasBioTch	1,059,300	432.3	88.55	+ 0.75

BREAKDOWN OF TRADING IN NYSE STOCKS (9:30 a.m. to 4 p.m. Eastern time)

BY MARKET	FRI	THU	WK AGO
New York	1,509,943,730	1,411,633,100	905,059,310
Chicago	88,632,800	79,805,720	63,454,140
CBOE	....	....	0
Pacific	1,475,700	2,541,400	1,561,900
Nasdaq InterMkt	178,276,260	164,416,510	115,381,210
Phila	9,161,100	11,379,900	9,301,400
Boston	44,116,000	39,925,400	34,393,900
Cincinnati	10,536,300	10,819,800	8,748,500
Composite	1,842,141,890	1,720,521,830	1,137,900,360

NYSE first crossing 3,066,100 shares, value n.a.
Second (basket) 11,794,813 shares, value $346,284,970

[1] The net difference of the number of stocks closing higher than their previous trade from those closing lower; NYSE trading only.

[2] A comparison of the number of advancing and declining issues with the volume of shares rising and falling. Generally, an Arms of less than 1.00 indicates buying demand; above 1.00 indicates selling pressure.

w-Three-day total. y-Four-day total. z-NYSE or AMEX only.

½-HOURLY	FRI	THU	WK AGO
9:30-10	199,490,000	165,450,000	98,970,000
10-10:30	167,793,890	136,749,770	88,208,670
10:30-11	132,556,110	112,120,230	68,261,330
11-11:30	102,770,600	101,404,880	65,116,780
11:30-12	86,719,400	84,455,120	71,553,220
12-12:30	89,343,120	77,745,510	56,075,360
12:30-1	76,136,880	77,424,490	59,464,640
1-1:30	67,451,240	71,815,640	51,370,790
1:30-2	74,128,760	77,714,360	46,519,210
2-2:30	98,422,710	84,841,050	52,686,960
2:30-3	96,217,290	93,148,950	60,553,040
3-3:30	115,077,460	118,717,300	62,111,770
3:30-4	203,836,270	210,045,800	124,167,540

WSJ.com **Journal Link:** Market data information is available in the online Journal at **WSJ.com/JournalLinks**

Global Crossing Seeks Bankruptcy Protection

Telecom-Industry Casualty Hinges Recovery Plan On Lifeline From Asia

Telecommunications company **Global Crossing** Ltd. filed for protection under Chapter 11 of the U.S. Bankruptcy Code, making it the biggest flameout of the telecom bust so far and the fourth-largest bankruptcy in U.S. history.

The Bermuda company said in a news release it hopes to reorganize behind a $750 million investment from two Asian technology companies, **Hutchison Whampoa** Pte. Ltd. and **Singapore Technologies Telemedia** Ltd. The two have signed a preliminary letter of intent to take a 60% interest in the reorganized company, according to people close to the deal. The deal would put the equity value of Global at just $1.25 billion, a

By Wall Street Journal staff reporters Dennis K. Berman in New York, Phillip Day in Singapore and Henny Sender in Hong Kong.

sharp contrast with Global Crossing's peak market capitalization of approximately $48 billion in 2000. During the spring of 1999, Global Crossing was flying so high that it tried to buy Baby Bell U.S. West, but lost out to **Qwest Communications International** Inc.

Global Crossing once was considered the strongest of the challengers taking on established telecom operators who were too slow to cater to New Economy demands for more bandwidth. The company took on billions in debt to build an undersea fiber-optic cable system that, according to research firm TeleGeography Inc., now represents 20% of all undersea capacity leaving the U.S.

Winnick's Dreams

Gary Winnick's dream of a global telecom company has fizzled, though he did well financially. Article on page B1.

Under the proposed deal, the stakes of its shareholders are expected to be wiped out, and its bankers stand to lose billions of dollars collectively. Its bankruptcy filing could put pressure on other telecommunications companies with loads of debt, and suggests that more losses await banks, bondholders and shareholders who had embraced the sector so enthusiastically 18 months ago.

Rohit Chopra, an analyst at Deutsche Banc Alex. Brown Inc., said that should Global survive, it will only depress the sector further. Freed from its debt service, it will be able to cut its prices, which will keep margins across the sector low. "Unless a nuclear explosion removes assets from the planet," the telecom business remains oversaturated, Mr. Chopra says. "In telecom, nothing is better when a company goes into bankruptcy and comes out again."

The filing, made in U.S. Bankruptcy Court for the Southern District of New York is an embarrassing dénouement for Global Chairman Gary Winnick, the former Drexel Burnham Lambert financier who quickly assembled seed financing for the company in 1997. At the time, investors reasoned that Internet-driven telecom demand would grow exponentially, and companies such as Global Crossing would do the lucrative work of laying the "pipes" over which data were sent. Mr. Winnick took the firm public in 1998 and since then has sold $600 million in personal stock holdings. He holds 8% of the company's total shares outstanding. Mr. Winnick declined to comment, but his spokesman said that "it takes the markets time to catch up to visionary ideas," and that he was confident Global's value would eventually be recognized.

If the proposed investment plan goes through, the company's current management, including Chief Executive John Legere and Mr. Winnick likely would be replaced, according to Mr. Legere.

Global's restructuring plans are by no means a sure thing. Under bankruptcy law, the court must give other bidders an opportunity to top the bid from Hutchison and Singapore Technologies. The company's advisers are hopeful that the Asia deal will kick-start a court-supervised auction process, which the company hopes will attract bids from large American and European telecom companies. Possible bidders include Germany's **Deutsche Telekom** AG, **Verizon Communications** Inc., of New York, and **SBC Communications** Inc., of San Antonio, according to people close to the matter.

Global Crossing will need to win the support of its large creditors to succeed with its planned restructuring. It hasn't yet spelled out how much its current creditors stand to recover under this or another plan. People close to the deal say the company could be forced into liquidation if the deal isn't approved. Mr. Legere rebutted that notion in an interview, saying there still were many steps in the bankruptcy process before that even was considered.

Global Crossing's network reaches 27 countries and 200 major cities around the world, the company says. But a capacity glut for such high-speed networks has undercut the prices for the bandwidth they provide. Global Crossing was paying approximately $600 million in debt service each year, and company officials said it has just $900 million in remaining cash. Mr. Chopra estimates the company spent $13.7 billion building the network.

The company posted a net loss of $3.4 billion for its third quarter as sales of telecommunications-capacity, or bandwidth, continued to fall.

Though its share price has been declining for months, the seriousness of Global Crossing's financial troubles became public late last year. The company announced in mid-December that it would halt dividend payments to save $46 million each quarter. The company then refused to honor a $400 million loan agreement with its subsidiary,

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Telecom Troubles

Some firms that sought bankruptcy protection in 2001

COMPANY	DATE FILED	PHYSICAL ASSETS (in millions)	STATUS
NorthPoint	Jan. 17	**$454**	AT&T bought assets for $135 million
Winstar	April 19	**$2,986**	IDT bought wireless licenses for $314 million
Teligent	May 21	**$560**	Investacorp bought conference division for $60 million
360networks	May 28	**$637**	Reorganization
PSInet	June 1	**$707**	Reorganization
Covad	Aug. 15	**$327**	Emerged from bankruptcy Dec. 21, 2001
Exodus Comm.	Sept. 28	**$2,075**	Attempting to restructure
Excite@Home	Oct. 1	**$332**	AT&T withdrew its $307 million offer

Sources: Deutsche Bank; company filings

Tyco Discloses It Paid Director On Merger Deal

By Mark Maremont
Staff Reporter of The Wall Street Journal

Tyco International Ltd. paid a total of $20 million to one of its outside directors and to a charity he controls, in return for his help in brokering a major acquisition last year.

The unusual move drew fire from corporate-governance experts who have advocated more director independence from top management.

According to Tyco's annual proxy statement filed yesterday, director Frank E. Walsh Jr. received a $10 million cash fee because he was "instrumental in bringing about" Tyco's $9.5 billion acquisition of finance company CIT Group Inc. Tyco also made a $10 million contribution to a New Jersey charitable fund of which Mr. Walsh is trustee.

The deal that Mr. Walsh helped broker didn't last very long. CIT, now called Tyco Capital, is scheduled to be the first Tyco unit spun out of the giant conglomerate as part of a corporate breakup plan announced last week.

Charles Elson, director of the Center for Corporate Governance at the University of Delaware, said he had never heard of a payment of that size to an outside director, calling it "highly inappropriate."

Mr. Elson says it is a conflict of interest for an outside director to also serve, in effect, as an investment banker on a particular transaction, because his personal interest in getting paid may not coincide with the interests of Tyco shareholders.

Mr. Elson said Mr. Walsh should have resigned from the board once any kind of fee arrangement was discussed, and at minimum should have recused himself from participating in discussions and board votes relating to the CIT deal.

Paul Lapides, a professor who studies corporate governance at Kennesaw State University in Georgia, concurred, saying "$20 million is a lot of money for a company to be paying a director for doing what may be his fiduciary duty" to help the company.

While Mr. Walsh's role may have merited some payment, Mr. Lapides said, Tyco's board should have hired outside experts to determine a proper figure.

Tyco spokeswoman Maryanne Kane said Tyco's board decided, without any outside help, that the $20 million payment was "appropriate based on the amount of work" Mr. Walsh did, which she said included providing guidance, advice and facilitating meetings. Mr. Walsh also received Tyco's normal director fees, which are the equivalent of $75,000 in cash and options on 10,000 Tyco shares.

A spokesman for Mr. Walsh said the director "acted as a catalyst and accelerated the negotiations" between Tyco and CIT, in part due to the "implicit trust" that the chief executives of both companies had in him. The spokesman said Mr. Walsh voted on the deal, but said the vote was "unanimous, so it wouldn't have made any difference" had Mr. Walsh recused himself.

Mr. Walsh, 60 years old, isn't standing for re-election as a Tyco director at the annual meeting scheduled for Feb. 21. Mr. Walsh is a former chairman of Wesray Capital Corp., which had its heyday as a private-equity firm in the 1980s. During the time he helped broker the CIT deal, Mr. Walsh also served as a member of Tyco's corporate-governance committee and was listed in last year's proxy as its "lead director," meaning he was the chief representative of the board's independent directors.

Tyco employed Lehman Brothers as its main investment banker on the CIT deal. Tyco's Ms. Kane said Lehman was paid more than $20 million, but wouldn't specify a figure.

In addition, Tyco disclosed that it paid its auditor, PricewaterhouseCoopers, $37.9 million for consulting, advisory, tax and accounting services, in addition to $13.2 million in auditing fees. The payment by companies of consulting and other fees to their outside auditors has been the focus of attention in recent weeks because of the **Enron** Corp. blowup. But outside observers said Tyco's payments, principally for accounting and tax work, didn't seem out of line given its size and complexity.

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Delta Air Begins Search for New Auditor As It Considers Ending Ties to Andersen

By Martha Brannigan
And Jeff D. Opdyke
Staff Reporters of The Wall Street Journal

Delta Air Lines, struggling with whether to end its longtime ties to **Arthur Andersen** LLP, the big accounting firm embroiled in the **Enron** Corp. scandal, has begun a search for a new independent auditor, according to individuals familiar with the airline.

If Delta decides to switch auditors, it would be the most significant defection since the controversy broke late last year over Andersen's role in Enron's collapse. It also would mark the first concrete indication that the accounting firm is having trouble retaining big clients and could encourage additional companies to change auditors as well. Indeed, several other large companies are now reviewing their relationship with Andersen, which was Enron's auditor and is now being investigated for destroying documents potentially relevant to the congressional investigations of the fallen energy concern.

Delta's board wants to protect the airline from the potential risk of having to scramble to find a new accounting firm if mounting problems at Andersen affect its ability to deliver services, people close to the situation said.

Andersen Chief Executive Officer Joseph Berardino made a presentation to Delta's board at a regularly scheduled meeting Thursday in Atlanta, asserting that the Big Five firm remains in a strong position to handle Delta's auditing needs despite growing concerns about its conduct in the Enron affair. At Mr. Berardino's side at the meeting was Steve Rogers, Andersen's managing partner in Atlanta, who oversees the Delta account. Delta said in its proxy statement last year that it paid Andersen $1,920,000 for auditing services and $3,970,000 in other fees during 2000.

Delta has invited Andersen to participate in the competition for the audit contract.

Thomas J. Slocum, Delta's senior vice president of corporate communications, said, "Arthur Andersen is continuing to perform its duties for Delta in a professional way. The matter of Delta's independent auditor for 2002 is under review by the board. As is our normal practice, the independent auditor will be named in the proxy in early March."

Some major Andersen clients, including **Georgia-Pacific** Corp., insist they are standing by the firm despite its woes. Andersen has served as Georgia-Pacific's auditor since 1948. The Atlanta forest-products company views Andersen's troubles as an issue with Andersen's Houston office, which handled the Enron account. "We continue to support our local auditors here in Atlanta," said Georgia-Pacific spokesman Greg Guest.

But some other companies have put the auditor under review. **FedEx** Corp. is assessing its relationship with Andersen, which goes back at least 20 years, but hasn't solicited offers from other auditing firms, according to people familiar with the situation. **BB&T** Corp., of Winston-Salem, N.C., the nation's 16th-largest banking company in terms of assets, said Andersen's business with the company is up for review after a 36-year relationship and its board will decide by late February whether to stick with Andersen. Several smaller companies have dropped Andersen as an auditor already this year. Indeed, many industry experts say small firms are more likely to flee Andersen because they typically don't have the long ties to the 88-year-old accounting firm.

Constellation Brands Inc., a Fairport, N.Y., spirits and wine marketer, says it

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Merck Plans to Shed Medco, Its Pharmacy-Benefits Unit

Continued From First Page

holder value," she said in a recent interview. "You don't do that by rationalizing two separate organizations' favorite projects or merging separate organizations' different cultures."

Instead of a big deal, Mr. Gilmartin says he is pursuing a string of small ones. "Our efforts ... will include a continuing, intense focus on the entire spectrum of product licensing, from early- to late-stage opportunities, as well as targeted acquisitions," he says.

Aggressive Push

Mr. Gilmartin held on to Medco and pushed its growth aggressively when he became chairman and chief executive shortly after the Medco purchase. Medco now has 1,700 managed-care customers. It directs drug purchases for 65 million Americans and oversees 537 million drug purchases per year. In sales dollars, its Internet site, where patients order drug refills, is among the world's busiest.

And the PBM business is once again in favor. Most proposals in Congress to offer a Medicare drug benefit involve one or more PBMs. Medco started a national drug discount-card program with Reader's Digest that has spawned a raft of imitators.

In the four years after its 1993 purchase, Merck drugs' share of Medco's sales grew to 15% from 10%, Merck says. It says the reason wasn't that Medco was favoring Merck's drugs but rather that Merck had changed from a company hostile to managed care to one that was among the friendliest. Still, the fit was an awkward one, and Mr. Gilmartin has signaled from time to time that Merck was evaluating its relationship with Medco. "What we have to answer," he said in a recent interview, "is if both businesses can grow faster together than they can separately."

While Merck's huge resources have allowed Medco to build two giant automated pharmacies, Medco's growth has posed some problems for Merck. Medco's margins are razor thin. So Medco's growth has caused the company's overall profit margin to shrink.

PBMs increasingly get their profits from drug companies, which pay them to push doctors to switch prescriptions to their drugs, according to AdvancePCS chairman David Halbert. But drug companies may worry that Medco pushes their drugs with less vigor than Merck's own.

Medco's competitors have long told potential managed-care clients that Medco serves Merck's interests and not theirs, a charge Medco hotly denies. Lawyers have sued Medco on behalf of patients, contending its selections favor Merck drugs and hurt patients and managed-care programs.

Merck executives have tried for years to convince Wall Street that Medco was a good fit. Now, they concede it's a distraction, at a time when their attention is needed in the core medicines business.

Merck's troubles in that business mirror those in the rest of the pharmaceutical sector. Bristol-Myers Squibb, Schering-Plough Corp. and Eli Lilly have all warned recently that earnings will disappoint. All are also struggling to overcome patent expirations of major drugs.

Lab Inefficiency

The industry is suffering for several reasons, but the most important is the inefficiency of its labs. Drug discoveries often come in waves, and the industry is in a terrible trough. Through much of the 20th century, drug companies came up with new medicines largely through lucky breaks. They synthesized hundreds of chemicals and gave them to sick animals, hoping something would happen. Good results moved the drugs to human tests.

By the 1970s, scientists realized how much certain crucial body chemicals such as enzymes and neurotransmitters affected health. They sought to interrupt or enhance the work of these chemicals. Merck found a compound that slowed the work of a liver enzyme that creates cholesterol. The development of what is now Mevacor led to a class of drugs, statins, that now includes the world's biggest sellers.

In the 1970s and early 1980s, Merck developed an unparalleled array of medicines. But the easy pickings are over, and this kind of science now often leads to chemicals that don't produce enough benefit to justify their side effects. Biologists hope gene and stem-cell discoveries will solve the mysteries of diseases that remain intractable, but drug breakthroughs based on this science appear a long way off.

Companies are scrambling to manage their way through the drought. Some have scoured the world's labs for molecules to license or co-market. Merck, proud of its history of developing its own drugs in house, has largely focused on the fruit of its own labs. Given its track record, it felt it could beat the patent-expiration challenge. Since 1995, Merck has launched 17 new drugs, such as Fosamax for osteoporosis, Singulair for asthma, Crixivan for AIDS and Propecia for baldness.

Yet even Merck's skills haven't been enough to fill in the huge gap left by the five expiring drugs. In 1999, about a third of Merck's $14.4 billion in medicine sales came from those five. It's as if McDonalds had to give up selling a third of its Big Macs and come up with something just as popular.

Sales of branded drugs used to drift downward after patent expiration. Now they fall off a cliff. Within two months after the August 2000 patent expiration for Vasotec, generics grabbed 75% of the $2 billion hypertension drug's U.S. sales.

Merck marketers may also have underestimated competitors. Merck pioneered the anticholesterol market and used to dominate it. But in 1997, tiny Warner-Lambert Co. launched a pill called Lipitor with a clever marketing strategy: a lower price and an initial starting dose that was more powerful than that of Merck's Zocor. By the time Merck had increased Zocor's own starting dose and done trials proving Zocor just as effective, Lipitor had become the dominant pill. Lipitor and Warner-Lambert are now owned by Pfizer. Failing to anticipate the impact of Lipitor was a multibillion-dollar mistake.

"No one can say on the marketing front that everything has gone perfectly," says William Bowen, a Merck board member who is a former Princeton president and now heads the Andrew W. Mellon Foundation. "But major lessons have been learned."

Adds Mr. Gilmartin: "You'd like things to go as planned, but the real question is how do you respond when they don't?"

Generic Threat

Merck has also declined to play the delay game. Almost every other drug company that has faced the loss of big-selling drugs has fought generics in court with patents on such things as the color, scoring and coating of pills. They generally lose these battles ultimately but often win months or years of delays—and billions in added revenue. Just filing suit can winnow the number of competitors for the first six months of generic competition from 10 to one.

Had Merck tried this for four of its five drugs, it might have been able to meet analysts' profit estimates for 2001 and 2002. (The fifth drug is Prilosec, sold by AstraZeneca with Merck getting 32% of U.S. revenue. AstraZeneca has sued generics makers.) The company could still fight generic versions of Prinivil, a heart medication whose patent expires in June. But Merck executives see such tactics as a distraction to their mission.

"To extend the life cycle of our drugs undermines the intensity and commitment to create that next blockbuster," says Mr. Gilmartin. Medco boasts that it substitutes nearly all of its customers from Merck's branded drugs to cheap generics within weeks of the generics' launch.

Instead of delay tactics, Merck is betting its business on the famous productivity of its labs. Indeed, it seemed to be returning to its old glory in 1999 with Vioxx.

Along with rival Celebrex, Vioxx belongs to a new class of painkillers that are supposed to ease painful inflammation with a lower risk of stomach bleeding than from, for instance, aspirin. Though Celebrex came first in 1999, Vioxx had nearly overtaken that Pharmacia-Pfizer drug by last year. Marketers for the two fought viciously. As Merck marketers pointed to Celebrex shortcomings, their rivals from Pharmacia and Pfizer pointed to an anomaly in Merck's data: Vioxx patients had a higher rate of heart attacks than those taking naproxen, a nonprescription painkiller.

Merck's scientists said that Vioxx users' heart-attack rate was no higher than would be expected among the normal population and that naproxen had simply provided aspirin-like heart protection. But Merck's pivotal study didn't include a placebo group, so this couldn't be proved. Vioxx's sales growth nearly stopped.

Merck's CFO, Ms. Lewent, asked every division for cost cuts, but the numbers didn't add up. One morning in early June, she printed out five charts and walked to Mr. Gilmartin's office, where she gave him the bad news: Merck would never meet analysts' forecasts for 2001 profits, and results for 2002 would be grim as well. On June 22, Merck issued a statement saying 2001 earnings would grow no faster than 10% instead of the 12% hoped for. The stock fell 9% in a day.

Worrisome Profiles

Then in August, a study in the Journal of the American Medical Association concluded that the cardiac profiles of both Vioxx and Celebrex were worrisome. Although other experts criticized the study's methodology, it hurt Vioxx still more. Celebrex sales suffered, too. Since neither drug cures pain any better than older pills costing pennies apiece, the only reason doctors prescribe them is their perceived safety benefit. Once that perception was muddied, doctors stuck with older and far cheaper remedies.

Vioxx's 2001 sales came to $2.55 billion—a blockbuster level, yet still far off the $3.5 billion Merck projected last February. Merck executives slashed expenses to the bone. Marketing departments were consolidated, advertising cut, construction groups slashed.

"The organization had to turn on a dime," says Mr. Gilmartin. "We're already spending money thinking expenses will rise by double-digits, and we put on the breaks to bring spending growth down to the low single digits."

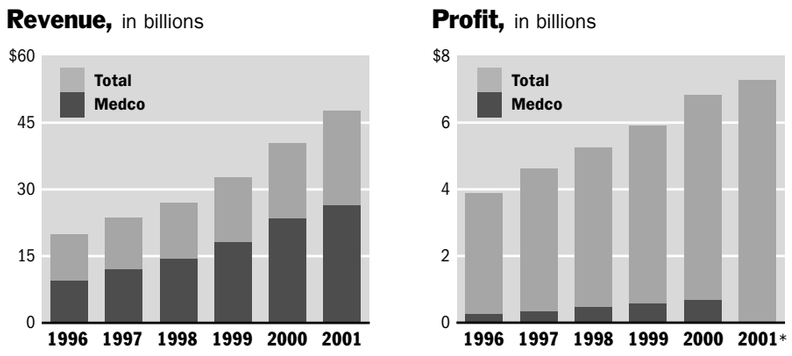
Meanwhile, more patent losses loom. The cholesterol reducer Zocor, with nearly $7 billion in annual sales, will lose patent protection by 2006.

Merck expects to extract itself from these problems as it always has, by getting new drugs out of its labs. By next year, the company expects earnings to grow again at double-digit levels with the expected launches this year of two new drugs. In fact, Merck expects to launch or seek approval to sell 11 new medicines over the next five years.

Peter Kim, deputy chief of research, says gene discoveries will accelerate research productivity. "People ask me, 'How come the company is in such bad shape?'" Dr. Kim says. "But it's in great shape. ... After a hiccup, Merck continues to come back."

Merck Plus Medco

Merck's pharmacy-benefits manager, Medco, provides a huge share of revenue but far less of Merck's profit.



Source: the company

*Medco's profit isn't available

'Our efforts ... will include a continuing, intense focus on the entire spectrum of product licensing, from early- to late-stage opportunities, as well as targeted acquisitions,' Mr. Gilmartin says.

Lawyer Says He Has Data for Regulators Showing Ford Mustang Safety Problems

By Norihiko Shirouzu
Staff Reporter of The Wall Street Journal

DETROIT—A lawyer who recently settled a case with **Ford Motor** Co. said he is going to turn over to federal auto safety regulators information, including Ford internal documents, that he says shows Ford compromised on the safety of the Ford Mustang since the mid-1990s.

A Ford spokeswoman said the charges by Atlanta attorney Joseph Fried that the design of the Mustang's fuel tank and doors didn't meet Ford's own safety standards were unfounded. "Our Mustang through those years have met and exceeded all government standards. We take the safety of our products very seriously, and we believe the Mustang is a very safe product," she said.

Mr. Fried earlier this month settled with Ford a case involving a 47-year-old woman who was badly injured in an accident and later died in Atlanta. He said there may be potentially serious safety issues involving Ford Mustang models produced between 1994 and 1998. He said in an interview with a small group of reporters that he plans to turn over a "package" of information he acquired in the case to the National Highway Traffic Safety Administration.

"They never subjected the final [production-ready] product to their internal standard tests. Without [such a] test, how can you say your vehicle meets your internal standards?" he said.

Mr. Fried's allegations come in the wake of more than a year of damaging controversy over the safety of Ford's best-selling sport utility vehicle, the Ford Explorer. A Ford spokeswoman yesterday said some of Mr. Fried's information was in error.

Mr. Fried said he had data that indicated Ford ignored failing results in half a dozen crash tests designed to test the car's vulnerability to fuel tank leakage in a rear-end crash. "Every one of the crash-test reports for this program read as a failure," he said.

According to documents that Mr. Fried says are internal Ford documents, the last of the six tests—conducted in December 1992—showed that the Mustang's fuel tank, located in the rear of the vehicle behind its axle and near the rear bumper, leaked 1.2 ounces of fuel upon impact and 9.4 ounces in the first five minutes following the impact. Federal guidelines allow a leakage of one ounce upon impact and five ounces in the first five minutes. Ford engineers Mr. Fried deposed before he settled the Mustang convertible accident case told him Ford's internal goal is "zero leakage," Mr. Fried said.

But Ford in April 2001 revised the test results in question and noted in an internal notice that "there was no ... spillage from the vehicle after impact" in the last rear-end crash test. "It is also apparent that less than one ounce of [fuel] surged during impact from the filler cap and roll-over valve," one of the documents said.

Mr. Fried said the change was made as he was set to depose a Ford official on the test results. A Ford spokeswoman, Sarah Tatchio, said the change was made after Ford found "typographical errors" in the test results.

Meanwhile, another set of documents, which Mr. Fried also says are internal Ford documents, showed that Ford apparently deviated from its own safety standards in the early 1990s even though that meant the doors of a convertible Mustang sports car may not open after a 35-mile-per-hour rear-end crash.

Ms. Tatchio said Ford did deviate from its internal door design criteria for the Mustang convertible, "because in this case it is a convertible with a soft top, we felt we would be able to stay with the intent of the guideline even if we granted that deviation." The purpose of Ford's door design standards is to assure that rescue teams can get to victims in a crash, she said. Rescue teams could cut through a convertible top if necessary.

Toys 'R' Us to Close 64 Stores and Lay Off 5% of U.S. Work Force

By a Wall Street Journal *Staff Reporter*

PARAMUS, N.J.—**Toys "R" Us** Inc., aiming to bolster profitability in a tough retail market, said it will close 64 underperforming stores and eliminate 1,900 jobs, or about 5% of its U.S. work force. As a result, the toy-store chain plans to record net pretax charges of $213 million for its fiscal fourth quarter, ending Feb. 2.

The company said the restructuring will boost pretax earnings by $25 million this year and by $45 million annually beginning in 2003. Investors applauded the move, with Toys "R" Us stock trading at $19.90 a share, up $1.15, or 6%,, at 4 p.m. in New York Stock Exchange composite trading.

The company, which has been remodeling its stores, said the closings will involve 37 of Kids "R" Us clothing stores and 27 unremodeled Toys "R" Us stores. John Eyler, chairman and chief executive, said the company will open new redesigned stores in 10 of the markets where toy stores are being closed and add enhanced clothing departments to toy stores in places where Kids "R" Us stores are closing. Toys "R" Us has about 1,600 stores, including about 700 U.S. toy stores and 184 Kids "R" Us stores.

Under Mr. Eyler, who joined the company from FAO Schwartz two years ago, Toys "R" Us has been upgrading its stores in a bid to differentiate itself from large discount retailers such as **Wal-Mart Stores** Inc.

The company said the restructuring itself will result in pretax charges of $237 million for the current quarter. For the period, Toys "R" Us also intends to reverse $24 million in previously accrued charges related to the restructuring of its international business. For the year-earlier period, ended Feb. 3, 2001, Toys "R" Us reported a net income of $251 million, or $1.23 a share, on revenue of $4.8 billion.

Tyson Foods Net Quadrupled for Quarter

By a Wall Street Journal *Staff Reporter*

SPRINGDALE, Ark.—**Tyson Foods** Inc. said its fiscal first-quarter net income more than quadrupled, fueled by its acquisition of IBP Inc. and stronger chicken sales.

In its first full quarter to include results of the IBP acquisition, net income was $126.9 million, or 36 cents a share, in the quarter ended Dec. 29. That compares with net income of $27 million, or 12 cents a share, in the year-earlier period, on fewer shares outstanding. The consensus of analysts surveyed by Thomson Financial/First Call was for 35 cents a share in the latest quarter.

Sales for the period increased to $5.86 billion from $1.77 billion, driven largely by IBP's pork and beef revenue. Chicken sales, Tyson's core business prior to the IBP deal, increased 7% to $1.77 billion from $1.66 billion in the year-earlier quarter, when the company was battered by a price-depressing glut of birds.

After attempting unsuccessfully to back out of its acquisition pact, Tyson bought IBP last fall in a cash and stock deal valued at $2.8 billion plus the assumption of $1.7 billion in debt.

Tyson warned that its fiscal second-quarter earnings would trail analysts' expectations, but the company boosted its fiscal full-year outlook, saying it anticipates better results in the summer when more people grill and eat out. The company said it expects to earn 17 to 20 cents a share in quarter ending March 30, compared with a loss of three cents share in the year-earlier period, when Tyson didn't own IBP. Analysts had been expecting 26 cents a share in the latest fiscal second quarter.

The company upgraded its first-quarter earnings estimate earlier this month but didn't give a full-year earnings outlook. Now, the company says it expects to earn $1.10 to $1.20 a share in the fiscal year ending Sept. 28. That is 15 cents higher than the range it gave last November.

In 4 p.m. composite trading on the New York Stock Exchange, Tyson was up 28 cents at $12.38.

U.S. New Homes Had Record Sales Level In the Course of 2001

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tremely low by historical standards.

December's numbers were skewed higher by an unexpected 35.1% rise in sales in the West, though economists cautioned against making too much of that number since the sample of buyers in each region is relatively small. Sales fell 9.6% in the Midwest, 1.1% in the South and 1.4% in the Northeast. At the same time, December activity in general got a boost from unseasonably warm weather, as well as incentives offered by builders after Sept. 11, including free amenities and upgrades.

Other indicators, including applications for new mortgages, continue to show strength. Meanwhile, the supply of new homes on the market fell to 3.9 months in December from a 4.2-month supply in November, suggesting the market remains tight. "I think it's inevitable that we're not going to hold the 946,000 [sales pace] going forward," said Dave Seiders, the chief economist at the National Association of Home Builders, who added that there might not be much pent-up demand for housing in 2002. But "the underlying story is still one of remarkable resilience of demand."

The median sales price for a new home—half the houses sold for more, half sold for less—rose 4.6% to $170,200 in December from $162,800 in November. The average price was $225,400, up 10.9% from a $203,300 average in November.

Journal Link: Read the full text of the new-home sales report for December, in the Online Journal at **WSJ.com/JournalLinks**.

Ticketmaster Reports Loss for Quarter, Plans Layoffs at Citysearch

Dow Jones Newswires

LOS ANGELES—Ticketmaster reported a fourth-quarter loss and said it plans more job cuts at its Citysearch unit.

The company, which sells tickets and online personal ads and operates online-entertainment guides through Citysearch, said it had a loss of $46 million, or 32 cents a share, for the quarter. Excluding amortization; merger and other charges; advertising provided by USA Networks Inc. for which Ticketmaster paid no consideration; and other items, the company said it had profit of six cents a share.

For the year-earlier quarter, Ticketmaster posted a loss of $84.9 million, or 60 cents a share, including $4.1 million in merger and other charges.

Earnings before interest, taxes, depreciation and amortization—a measure commonly used in the media business—totaled $19.2 million for the recent quarter, up from $13.5 million a year earlier.

However, Citysearch remains unprofitable on an Ebitda basis, reporting a loss on that basis of $7.1 million, compared with a loss of $10.8 million a year ago.

Ticketmaster said Citysearch will undergo a further restructuring, which will result in the layoff of 111 employees. Company representatives weren't immediately available to provide the number of employees that work at Citysearch. In July, Ticketmaster said it would fire between 90 and 100 people at Citysearch as part of a drive to reduce operating expenses at the division, which produces online city guides.

Tyco Details Payment to Director

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Also in the proxy statement, Tyco said its chairman and chief executive, L. Dennis Kozlowski, was paid $1.65 million in salary and a $4 million bonus for the fiscal year ended Sept. 30, 2001. The total of $5.65 million was up about 36% from the prior year, when Mr. Kozlowski received $1.35 million in salary and a bonus of $2.8 million. In explaining the larger bonus, Tyco's board cited, among other things, the company's reported 39% rise in net income before nonrecurring items. Mr. Kozlowski also received restricted stock that Tyco valued at about $30.4 million, $4.5 million in other compensation and 1.4 million new options on Tyco shares.

In addition, Tyco said it signed a new employment agreement with Mr. Kozlowski that lasts to 2008. As part of the agreement, Mr. Kozlowski received 800,000 new restricted shares, which vest gradually between now and late 2008. At current market prices, the restricted shares would be worth $33.6 million. Under the breakup plan, Mr. Kozlowski would continue as chairman and CEO of a company about half of Tyco's current size, comprising Tyco's security and electronics businesses.

Tyco's stock, which has been under pressure since it announced its breakup plan, fell 6.7%, or $3, to $42 as of 4 p.m. in New York Stock Exchange composite trading.

FleetBoston Sets Argentina Charge

Continued From Page A2

not deposits.

A week ago, the government reversed that policy and said it would devalue deposits, a concession to banks operating in the country.

At 4 p.m. in New York Stock Exchange composite trading, FleetBoston was up 11 cents at $35.09—close to the price before the devaluation announcement, as investors bet the impact on the bank would be lessened.

FleetBoston and **Citigroup** Inc., of New York, have the largest exposure to Argentina of any U.S. banks.

Analysts have said FleetBoston and other foreign banks operating in Argentina will have to consider exiting that country if conditions fail to improve.

FleetBoston, which has operated more than 85 years there, hasn't ruled out that option.

A person familiar with the matter said the bank considers it "very doubtful" it will invest any more money in its Argentina business for now and will re-evaluate its commitment to its operations there if the government doesn't implement policies that allow banks to operate profitably. In 2000, Argentina accounted for about 3% of the company's profit, or $125 million.

THE WALL STREET JOURNAL.

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TUESDAY, MARCH 5, 2002 **C1**

• **World Stock Markets:** *Will the Hong Kong small-cap rally last?* ***Page C12.***

Litigation: *Creditors get a victory in the Global Crossing case* ***Page C12.***

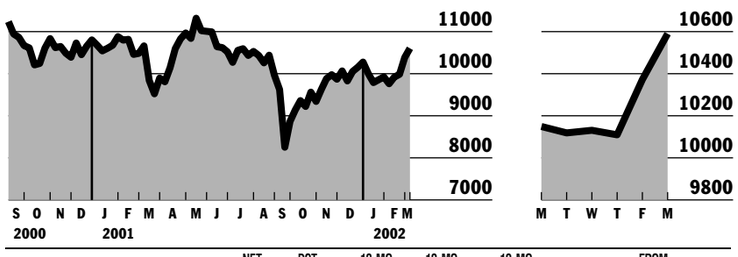
MONEY & INVESTING

Credit Markets: *Wal-Mart and Target issue large bond deals* ***Page C14.***

Fund Track: *AmSouth Value seeks accounting-beaten stocks* ***Page C19.***

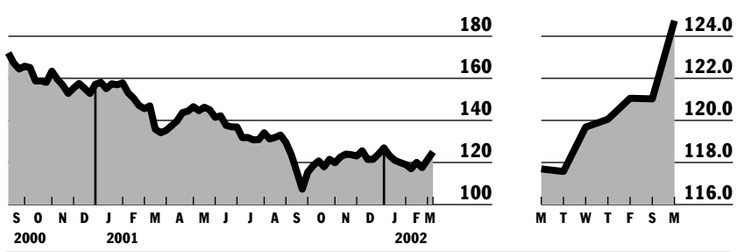
MARKETS DIARY 3/4/02

STOCKS Dow Jones Industrial Average **10586.82 +217.96**



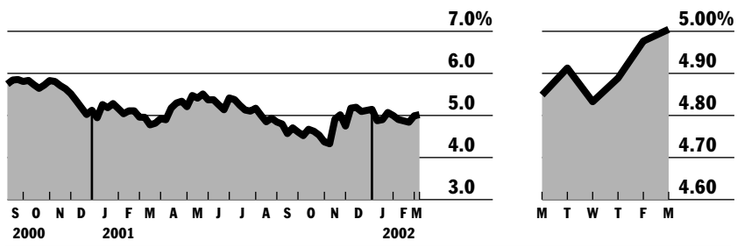
INDEX	CLOSE	NET CHG	PCT CHG	12-MO HIGH	12-MO LOW	12-MO CHG	%	FROM 12/31	%
DJIA	10586.82	+217.96	+2.10	11337.92	8235.81	+24.52	+0.23	+565.32	+5.64
DJ US Total Market	267.45	+5.50	+2.10	304.94	222.35	−20.08	−6.98	+0.74	+0.28
S&P 500	1153.84	+22.06	+1.95	1312.83	965.80	−87.57	−7.05	+5.76	+0.50
Nasdaq Composite	1859.32	+56.58	+3.14	2313.85	1423.19	−283.60	−13.23	−91.08	−4.67
Russell 2000	488.00	+9.66	+2.02	517.23	378.90	+12.21	+2.57	−0.50	−0.10

INT'L STOCKS DJ World Stock Index (excl. U.S.) **124.71 +3.72**



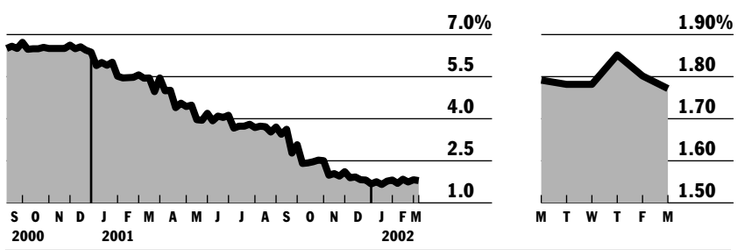
INDEX	CLOSE	NET CHG	PCT CHG	12-MO HIGH	12-MO LOW	12-MO CHG	%	FROM 12/31	%
DJ World (ex. U.S.)	124.71	+3.72*	+3.07	148.14	106.99	−20.99	−14.41	+0.81	+0.65
MSCI EAFE(Prelim.)	1147.34	+35.18	+3.16	1394.80	995.60	−226.46	−16.48	−7.66	−0.66
DJ Euro STOXX 50	3748.55	+103.22	+2.83	4582.07	2877.68	−598.85	−13.77	−57.58	−1.51
FTSE 100 (London)	5242.0	+73.0	+1.41	6012.0	4433.7	−689.3	−11.62	+24.6	+0.47
Nikkei 225 (Tokyo)	11450.22	+638.22	+5.90	14529.41	9420.85	−871.94	−7.08	+907.60	+8.61
Xetra DAX (Frankfurt)	5245.84	+148.43	+2.91	6305.64	3787.23	−970.54	−15.61	+85.74	+1.66
CAC-40 (Paris)	4607.44	+121.02	+2.70	5693.47	3652.87	−761.39	−14.18	−17.14	−0.37

BONDS 10-Year Treasury Note Yield (4 p.m.) **5.003% +0.028**



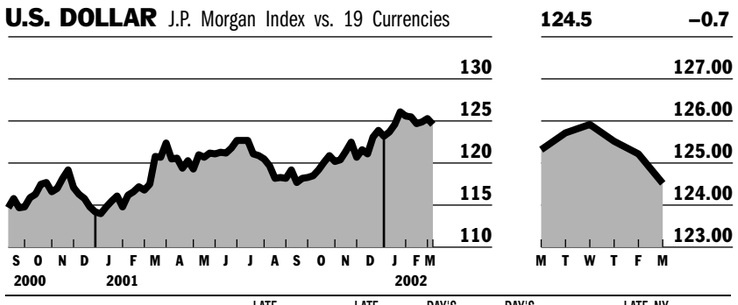
INDEX	MON	MON YIELD	FRI	FRI YIELD	12-MO HIGH	12-MO LOW	YTD %CHG
Lehman Brothers Long T-Bond	10072.62	5.63%	10161.06	5.55%	10726.90	9305.67	+1.25
DJ 20 Bond (Price Return)	102.11	7.35	102.28	7.33	104.66	100.74	−1.14
Merrill Lynch Mortgage	1059.72	5.91	1059.79	5.89	1063.62	978.61	+1.92
Bond Buyer municipal	104-24/32	5.41	104-30/32	5.38	108-03/32	101-08/32	+2.10
Merrill Lynch corporate	1215.06	6.36	1215.22	6.34	1230.20	1121.06	+0.78

INTEREST Federal Funds (N.Y. Fed, Prebon Yamane) **1.77% −0.03**



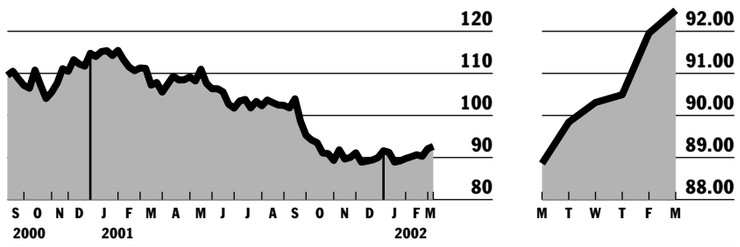
ISSUE	CLOSE	FRI	YEAR AGO	12-MO HIGH	12-MO LOW
3-month T-bill	1.76%	1.75%	4.72%	4.72%	1.55%
3-month CD (new)	1.78	1.78	4.68	4.68	1.71
Dealer Comm. Paper (90 days)	1.83	1.83	4.90	5.00	1.58
3-month Eurodollar deposit	1.88	1.88	5.13	5.13	1.69
LIBOR (3-month)	1.92	1.90	5.08	5.09	1.72

U.S. DOLLAR J.P. Morgan Index vs. 19 Currencies **124.5 −0.7**



CURRENCY	LATE NY	LATE FRI	DAY'S HIGH	DAY'S LOW	LATE NY 12-MO HIGH	LATE NY 12-MO LOW
British pound (in U.S. dollars)	1.4229	1.4181	1.4247	1.4159	1.4814	1.3727
Japanese yen (per U.S. dollar)	132.22	133.37	131.91	133.57	134.79	116.29
Canadian dollar (in U.S. dollars)	0.6287	0.6278	0.6298	0.6277	0.6622	0.6195
Euro (in U.S. dollars)	0.8696	0.8650	0.8715	0.8632	0.9347	0.8366

COMMODITIES DJ-AIG Commodity Index (1991=100) **92.482 +0.544**



COMMODITY	CLOSE	CHANGE	FRI	YR AGO	AT CLOSE 12-MO HIGH	AT CLOSE 12-MO LOW
Gold (Comex spot), troy oz	$296.70	$−1.30	$298.00	$262.50	$303.50	$255.60
Oil (Nymex crude future), bbl.	22.45	+ 0.05	22.40	28.60	29.98	17.45
Wheat (#2 hard KC), bu.	3.1625	− .0100	3.1725	3.5075	3.5850	3.0200
Steers (S. Dakota choice), 100 lb.	67.40	unch	67.40	79.40	81.00	61.25

*-Reflects Sunday trading.

MONEY & INVESTING INDEX

Journal Link: For 24-hour updated news, stock quotes, company background information and more, see The Wall Street Journal Online at **WSJ.com**

Blue-Chip Rocket: Up 480 Points in Two Days

MONDAY'S MARKETS

By E.S. Browning
Staff Reporter of The Wall Street Journal

Exuberance has returned to the stock market. But is it the rational or irrational kind? And how long will it last?

Inspired by last week's economic data suggesting that the economic recovery may be stronger and faster than expected, investors piled into stocks for a second day, powering the Dow Jones Industrial Average to its biggest two-day percentage gains since September.

The Dow soared 2.10%, or 217.96 points, to 10586.82, returning to a level it hadn't seen since July 20. Counting Friday's leap of 262.73 points, the rally left the index up 480.69 points in two days, the first time since October 2000 that it has gained 200 points on two consecutive days. The Dow now is up 5.6% since the year began, although it remains 9.7% below its record high of 11722.98, set Jan. 14, 2000.

"A lot of cash has been hiding on the sidelines, waiting for some mystical moment when the spirits would come and wake them up, and I think we have had the moment right now," said Ned Riley, chief investment strategist at State Street Global Advisors, the money management subsidiary of Boston financial group State Street Corp.

Some traders said they are skeptical that the rally can continue much longer.

"I can't see that enough incremental information came out to surprise people and convince them that the world has suddenly become a wonderful place," said stock trader Rob Cohen of brokerage firm Credit Suisse First Boston. "We haven't seen a sustainable uptick" in corporate financial performance.

He pointed out that the broader S&P 500 index, which also put in a big gain, now is nearing the top of the range in which it has traded since the latter part of last year. Mr. Cohen said he doubts that the rally is strong enough to push the S&P to new post-September highs. **Oracle**, a leading software concern, for example, has just warned that its quarterly financial results will be weaker than it had expected.

Despite their own strong performance over the past two trading sessions, the S&P 500 and the Nasdaq Composite Index both remain below their recent highs in January, with the Nasdaq composite still 63% off its record close in March 2000.

Tech stocks such as **Intel** and more traditional manufacturing stocks such as **General Motors**, which would be the first to benefit from a strong economy, led the gains.

The Nasdaq composite and the S&P 500, which are heavily exposed to tech, also benefited from the recent surge. The Nasdaq composite yesterday soared 3.14%, or 56.58 points, to 1859.32, while the S&P 500 rose 1.95%, or 22.06 points, to 1153.84.

But, unlike the Dow industrials, neither of those indexes has yet returned to its high for the year, which in each case was set Jan. 4. For the year to date, the Nasdaq remains down 5%, though the S&P 500 has inched into positive territory, up 0.5%.

These two indexes are trailing the Dow because tech stocks—and the many financial stocks in the S&P 500—were harder-hit earlier this year than were the many manufacturing stocks in the Dow industrials.

The two-day point gain of 480.69 was the third-largest ever for the Dow industrials, behind a gain of 525.18 for the two sessions ended Dec. 5, 2000. But in percentage terms, which are more significant for comparative purposes, the two-day gain of 4.8% wasn't among the top 100 for the blue-chip average.

The day's gains were essentially a carryover from last week's news of surprisingly strong economic activity, traders said. Over the weekend, investors took stock of the news and decided to move some money back into stocks, concluding that the news could mean stronger corporate profits to come. In addition, the rally forced short-sellers, who bet against stocks by borrowing stock and selling it, to abandon their positions. To do so, the short-sellers are obliged to buy stock and return it to lenders, which accelerates the rally.

Most prominent in last week's cascade of favorable economic data was a report that manufacturing activity began expanding again in February. In addition, investors heard more reports that computer-chip makers have been able to raise prices recently.

Treasury bond prices fell as money shifted toward the suddenly red-hot stock market. The yield on the 10-year Treasury note, which moves inversely to price, crossed back above the 5% level, to 5.003%.

In major U.S. market action:

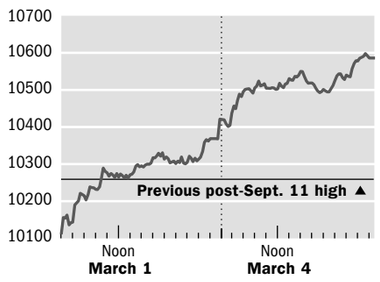
Stocks advanced. On the Big Board, where 1.61 billion shares traded, 2,248 stocks rose and 933 fell.

Bonds fell. The 10-year Treasury note fell 7/32, or $2.1875 per $1,000 invested. The 30-year bond fell 2/32 to yield 5.505%.

The dollar weakened. Late in New York, it traded at 132.22 yen, down from 133.37 yen, while the euro rose against the dollar to 86.96 cents from 86.50 cents.

Best of the Dow, So Far

The Dow Jones Industrial Average's past two trading sessions have produced the best gains, in both points and percentage terms, of the year. DJIA at 5-minute intervals on Friday and yesterday.



Source: WSJ Market Data Group

How Is Tyco Accounting for Its Cash Flow?

Its Touted Measure of Strength Leaves Room for Interpretation

HEARD ON THE STREET

By Mark Maremont
Staff Reporter of The Wall Street Journal

Watch the cash flow. That is the advice **Tyco International** Ltd. and its supporters on Wall Street have given nervous stockholders lately.

But cash flow isn't the immutable measure of financial health that many, in the wake of the rapid collapse of once-seemingly profitable **Enron** Corp., may think.

Tyco stock is off 44% this year as investors have questioned the company's accounting practices and fretted about its access to capital, after the company was forced to draw down on emergency bank credit lines to finance its operations. While defending its accounting as conservative and its liquidity as ample, Tyco repeatedly has pointed to what it characterizes as its strong "free cash flow." Tyco says its free cash flow was $4.8 billion last year, and is expected to be at least $4 billion this year.

Registered in Bermuda but with operational headquarters in Exeter, N.H., Tyco has operations in security and fire-protection services, electronics, medical supplies, valves and pipes, and financial services; it reported revenue of $36.3 billion for the fiscal year ended Sept. 30, 2001.

Cash flow—in a broad sense the difference between cash coming into a business and cash going out—is a measurement regarded by some investing cognoscenti as, in some ways, a more accurate reflection of a company's underlying strength than reported earnings. Conventional wisdom is that measurement of cash flow is a cut-and-dried process, unlike net income that is subject to all kinds of assumptions as well as interpretations of accounting rules.

But investors might want to take a close look at Tyco's huge security-alarm business. The complications there show that cash flow can be as open to interpretation as the accounting for net income.

Although Tyco didn't disclose this in regulatory filings, in response to questions it revealed spending $830 million last year buying roughly 800,000 individual customer contracts for its security-alarm business from a network of independent dealers—a sum that didn't count against its free cash flow. That is because the company treated the purchases as "acquisitions," a category that it excludes from that measure.

Conversely, however, every cent of the monthly fees paid by these new customers immediately added to Tyco's cash flow—and its earnings. The exact amount of this incoming cash is impossible for outsiders to calculate, but Tyco executives acknowledge that the 800,000 new customers are likely to contribute at least $200 million in their first 12 months, after subtracting some costs. Typically, the customers are homeowners, who pay a $30 monthly fee for Tyco to monitor their alarm systems.

How Tyco treats the acquisition of these contracts in its earnings statements con-

Please Turn to Page C2, Column 3

Raising Alarm

Tyco International stock price

Employers Say They May Cut 401(k) Rations

By Ellen E. Schultz
And Theo Francis
Staff Reporters of The Wall Street Journal

Facing legislation that would stop companies from loading up employee retirement plans with their own shares, employers warn they would slash or eliminate contributions to the plans.

But many benefits experts say that is unlikely because it would have the side effect of making plans less generous for higher-paid employees.

"If we do get limits on company stock in retirement plans, frankly, I don't think it would have a material effect on the flow of money that companies put into these plans," says Brooks Hamilton, a Dallas benefits consultant.

Under current law, when too few lower-paid workers participate in the retirement plan, and contribute too little money, the plan won't pass "discrimination tests" that are intended to ensure that the retirement plan benefits employees of all incomes. When this happens, the highly compensated might not be allowed to contribute the full amount that the law otherwise would permit, currently $11,000 a year.

One of the more effective and common ways to boost participation among the lower-paid is to provide a matching contribution, often with company stock. "The [employer's] match is there to stimulate participation," says Norman Stein, a law professor at the University of Alabama in Tuscaloosa, who is a pension law expert.

The collapse of **Enron** Corp., which decimated the savings of employees holding a lot of Enron stock in their 401(k)s, has led to proposals in Washington to cap the amount of employer shares in retirement plans at 10% to 20%. Other proposals would enable employees to sell employer-contributed shares sooner—many current plans lock employees into these shares until

Please Turn to Page C17, Column 1

GETTING GOING ◈ *By Jonathan Clements*

We Love 'Bob & Shelly & Fred & Sue'

YOUR NEIGHBORS SAVE pathetically little, trade stocks like crazy, dabble in overpriced initial public stock offerings and dump hard-hit mutual funds that are ripe for a rebound.

And you, of course, should cheer them on.

Your neighbors may not realize it, but they are performing an enormously valuable service. Without their fear and greed, it would be extraordinarily difficult for the rest of us to make good money. So go ahead: Give your neighbors a little encouragement.

"You've got a real eye for bargains, Fred": As Fred steers his leased BMW down the driveway of his doubly mortgaged home and heads out for another Saturday afternoon at the local mall, you should offer up a small prayer of gratitude.

True, Fred saves so little that he may never retire. But where would the economy be without folks like him? After all, if we all saved diligently and never went into debt, economic growth would stagnate, bond yields would plunge, and the stock market would go into a tailspin. Sort of like Japan.

Sound apocalyptic? Consider a less extreme scenario. Suppose we saw a modest increase in the savings rate among today's spendthrifts. That would likely drive down investment returns for the rest of us, says William Reichenstein, an investments professor at Baylor University in Waco, Texas.

"At any point in time, there are a limited number of good investment opportunities," he notes. "Naturally, savers seek the best investment opportunities available. The more people save, the more money you have chasing less and less promising investments."

"Shelly, you can't afford to stand still in this market": Shelly flits in and out of stocks, buying and selling like crazy as she reacts to breaking news and recycled rumors.

All of this involves hefty trading costs and unnecessary risk. But without traders like Shelly, the rest of us couldn't do the rational thing, which is to buy market-tracking index funds.

After all, those of us who index need traders to ensure that the market is reasonably efficient and to take the other side of our trades when we buy and sell. They diligently research stocks and rack up huge trading costs. We reap the reward. It is, in truth, delightfully unfair.

"No doubt about it, Sue, that IPO is going to be hot": During the heady days of the late 1990s, buying initial public offerings briefly seemed like a one-way ticket to wealth.

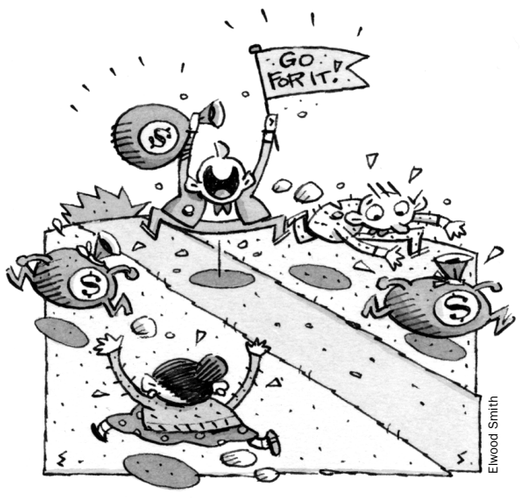
But the longer-run statistics tell a different story. Jay Ritter, a finance professor at the University of Florida in Gainesville, calculates that IPOs since year-end 1969 climbed an average of 10.6% a year over their first five years vs. 14.1% for a control group of seasoned stocks of comparable stock-market capitalization.

Prof. Ritter's calculations are based on an IPO's closing price on its first day of trading, and thus it excludes the big first-day gain that IPOs often enjoy. Many investors miss out on that initial gain, because they don't get to buy shares at the offering price.

But even if you were lucky enough to purchase shares at the offering price, you would merely have kept pace with other stocks over the past three decades, Prof. Ritter says.

"For the young growth companies that investors tend to get most excited about, those historically have been the biggest disappointment," he adds.

Fortunately, your neighbor Sue has the courage to ignore the statistics and pony up for the latest stock offering. By her selfless actions, she provides the financial reward for hard-working entrepreneurs and the money needed to keep young businesses going.



Indeed, because IPO buyers perform such a valuable service with only a slim chance for personal enrichment, William Bernstein has taken to calling them "capitalism's philanthropists."

"Initial public offerings are the lottery tickets of the stock world," opines Mr. Bernstein, an investment adviser in North Bend, Ore. "Unfortunately, they don't pay off big very often."

"You're right, Bob, the fund is a real dog": Bob jumps on the hottest stock funds, only to bail out in a panic when their performance falters. Undeterred, he plunges into the next hot sector, joining the rest of the sheep in their headlong rush to the shearing shed.

And Bob is to be commended. If risky investments didn't seem risky, the rewards would be scant indeed. Long-term investors need shortsighted folks like Bob.

In his classic investment guide, "The Intelligent Investor," legendary value investor Benjamin Graham talked about Mr. Market, who often "lets his enthusiasm or his fears run away with him" and offers to buy or sell shares at a price that seems "a little short of silly."

"Your neighbor is Mr. Market," Mr. Bernstein says. "In a world where everybody is fixated on the short term, the person who focuses on the long term has an insurmountable advantage. A fixation on short-term risk drives share prices to extremes. That provides an opportunity to the long-term investor."

Journal Link: For a searchable archive of articles by Getting Going columnist Jonathan Clements, go to the Online Journal at **WSJ.com/JournalLinks**

A 'Tell All' Book On Brokers Gets NASD's Thumb

By Kate Kelly
Staff Reporter of The Wall Street Journal

Bad Wall Street brokers are causing legal issues again. But for once, it isn't with their investors.

The **National Association of Securities Dealers** is attempting to block publication of a book by a Florida securities investigator that details the disciplinary history of the organization's 5,400 brokerage-firm members.

In a letter, NASD lawyers contend the book's editor, Edward Siedle, could have inappropriately copied broker records from the organization's database, and that even if he didn't, he has no right to make money off the records.

Mr. Siedle begs to differ. "It's public information," he says. Unable to reach a compromise with the NASD, Mr. Siedle's lawyer appealed last week in a telephone call to Securities and Exchange Commission Chairman Harvey Pitt in hopes that he will support the book's publication. A spokeswoman for the SEC said Mr. Pitt wasn't familiar with Mr. Siedle's situation, and therefore the commission couldn't comment.

Set up nearly 15 years ago, the NASD's public disclosure program is a well of information on the organization's member firms

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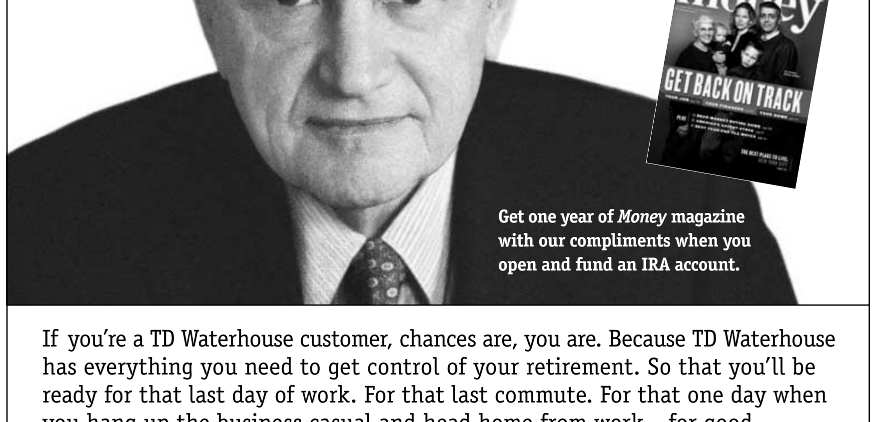

NOTICE TO THE HOLDERS

The CIT Group $200MM
Floating-Rate Global Notes
Due May 31, 2002
CUSIP Number 125577 AG1

Interest Reset Date:	February 28, 2002
Interest Determination Date:	February 26, 2002
Interest Payment Date:	**May 30, 2002**
FLOATING INTEREST RATE CALCULATION:	
US 3-month LIBOR on February 26, 2002	1.90125%
Spread	.15%
Floating Interest Rate	2.05125%
Interest to be Paid:	US$1,048,416.67

NOTICE TO THE HOLDERS

The CIT Group $300MM
Floating-Rate Global Notes
Due May 31, 2002
CUSIP Number 125577 AH9

Interest Reset Date:	February 28, 2002
Interest Determination Date:	February 26, 2002
Interest Payment Date:	**March 29, 2002**
FLOATING INTEREST RATE CALCULATION:	
US 1-month LIBOR on February 26, 2002	1.85%
Spread	.17%
Floating Interest Rate	2.02%
Interest to be Paid:	US$488,166.67

Emerson Electric, Caterpillar Rise As Blue Chips Show More Strength

ABREAST OF THE MARKET

By ROBERT O'BRIEN
Dow Jones Newswires

NEW YORK—Wall Street often has second thoughts after it closes out a week with a big move. This time, investors apparently spent the weekend fretting that they weren't bullish enough, because the Dow Jones Industrial Average followed up Friday's record-setting rally with the second-biggest gain of the year.

Stocks exposed to what investors now seem convinced is a powerful economic recovery paced the day's gains.

Shares of durable-goods makers rose sharply, with **Emerson Electric** climbing $3.96, or 6.7%, to $63.36, while **American Standard** advanced 2.69, or 4.2%, to 67.09. **Ingersoll-Rand** added 2.86, or 5.7%, to 53.31 and **Caterpillar** improved 2.75, or 4.9%, to 59.08. Both Ingersoll and Caterpillar recorded 52-week highs. **Parker-Hannifin**, the Cleveland maker of motion-control systems, climbed 3.65, or 7.3%, to 53.85, after Salomon Smith Barney boosted its rating on the stock.

Transportation stocks, another group reliant on an economic recovery, also made sharp progress. Among airlines, **Delta** rose 2.42, or 6.7%, to 38.59, while **Continental** advanced 2.10, or 6.4%, to 34.80. Among truckers, **Roadway** added 2.58, or 6.9%, to 39.99, and **Werner Enterprises** jumped 2.73, or 11%, to 26.97, both on Nasdaq. Among rail-transport companies, **Union Pacific** advanced 2.30, or 3.7%, to 65.05, while **Burlington Northern** moved ahead 1.64, or 5.6%, to 31.21.

The gains came against a relatively quiet news backdrop, which meant there was little to rebut upbeat indications released last week suggesting the economy has been progressing in early 2002, after sinking into recession last year.

There may have been more giddiness than coherence at work in the session. Both the airline and energy sectors improved—they often move in opposite directions since strong fundamentals for airlines, such as lower fuel costs, tend to hurt exploration and production companies. The Dow Jones Transportation Average moved up a whopping 5.3%, while energy producer **Kerr-McGee** gained 1.04, or 1.9%, to 57.31, and **Amerada Hess** added 1.27, or 1.8%, to 73.20.

The Dow Jones Industrial Average rose 217.96 points, or 2.10%, to 10586.82, the highest it has stood at the end of a session since July 19.

"The shift in the momentum is just amazing," said Arthur Hogan, chief market analyst at Jefferies. "But, unlike some of the big moves we got earlier this year when we were oversold, I think this one is more sustainable, because we have seen some solid evidence the economy is stabilizing," he said.

The Nasdaq Composite Index, which advanced more than 4% Friday, rose 56.58, or 3.14%, to 1859.32.

Technology stocks also got caught in the updraft. **Novellus Systems**, which scored a 14% gain Friday on the heels of its forecast of better-than-expected earnings, rose 2.45, or 5.1%, to 51.01 in Nasdaq Stock Market trading. **KLA-Tencor** gained 2.41, or 3.8%, to 66.63 on Nasdaq, a 52-week high.

Amkor Technologies climbed 1.98, or 12%, to 18.63 on Nasdaq. Thomas Weisel Partners boosted its financial forecasts for the West Chester, Pa., provider of semiconductor packaging and test services. The firm also boosted its rating on **Teradyne**, the Boston maker of semiconductor test equipment; the stock rose 1.65, or 4.4%, to 39.20.

Micron Technology advanced 2.41, or 6.6%, to 38.70 in a strong session for technology. Lehman Brothers boosted its earnings forecast for the Boise, Idaho, maker of memory chips, citing strength in pricing for DRAM chips.

EBay climbed 4.60, or 8.4%, to 59.46 on Nasdaq. Deutsche Banc Alex. Brown boosted its rating on the San Jose, Calif., online auction service, citing the firm's confidence in eBay's ability to gain operating leverage from an economic recovery.

Yahoo added 1.20, or 7.2%, to 17.81 on Nasdaq. CIBC World Markets boosted its rating on the Santa Clara, Calif., Web portal.

The technology sector advanced in the face of unsettling developments for some stocks that often act as bellwethers for the group. **Oracle**, for example, fell sharply after the database company issued a warning late Friday that earnings would fall short of estimates for the second consecutive quarter. The warning prompted pessimistic comments from analysts. Oracle shares fell 2.32, or 15%, to 13.67 on Nasdaq, with trading volume reaching 208 million shares.

Sun Microsystems fell 26 cents, or 2.9%, to 8.67 on Nasdaq after a Merrill Lynch analyst said that his estimate for the Palo Alto, Calif., computer hardware and software maker's fiscal third quarter earnings could be at risk.

Wireless-communications service providers dropped in the session. **AT&T Wireless Services** fell 29 cents, or 3.4%, to 8.31, a 52-week low. Merrill Lynch lowered its rating on the stock, which sank 15% Friday after the company reduced its 2002 financial projections. Other wireless services stocks also faded, with **Nextel Communications** off 20 cents, or 4.1%, at 4.70 on Nasdaq, while **Triton PCS**, Malvern, Pa., shed 63 cents, or 7.1%, to 8.30.

By contrast, wireless-technology concern **Qualcomm** gained 2.90, or 8.1%, to 38.87 on Nasdaq.

Manugistics climbed 3.03, or 21%, to 17.60 on Nasdaq, helped by upbeat comments from Thomas Weisel Partners.

Tyco Hails Its Cash Flow, but a Close Look Shows That Accounting for It Can Be Complex

HEARD ON THE STREET

Continued From Page C1

forms to generally accepted accounting principles, or GAAP—not just according to the company, but several outside accounting experts. "There are rules for that," and "that's what we follow," says J. Brad McGee, a Tyco executive vice president.

But some accounting specialists fault Tyco for its almost complete lack of disclosure about the purchases, which it makes from about 2,300 independent dealers around the world who sell the contracts primarily under Tyco's ADT brand name. Mr. McGee agrees that Tyco hasn't separately disclosed any details of its alarm-contract purchases, saying the deals aren't material to its overall results.

Charles Mulford, an accounting professor at Georgia Institute of Technology in Atlanta, notes that if Tyco had acquired its customers through in-house marketing efforts, different accounting rules would have applied—and, as a result, the company would have shown much lower upfront earnings and free cash flow from the new customers. Tyco "is effectively buying earnings and operating cash flow" with the contract purchases, he says.

Prof. Mulford says "investors need to be aware" of Tyco's alarm-system purchases and how it accounts for them, because the practice "raises questions about whether their earnings and cash flow are as sustainable as they say." If Tyco stopped the purchases tomorrow, he notes, its operating cash flow would drop off immediately.

Mr. McGee disputes any assertion that the accounting treatment drives Tyco's purchases of the alarm contracts. Instead, he says the dealers are a valuable sales channel for ADT, helping the company reach certain types of residential customers in a cost-effective way. Tyco also sells alarm systems through a direct sales force, using its own employees. Tyco's security-alarm business is signing about 125,000 new customers a month, says Mr. McGee, declining to specify how many are acquired directly versus through dealers.

Tyco defines free cash flow as cash generated by operations, minus dividends and capital expenditures. Tyco considers the measure so critical that its chief financial officer, Mark Swartz, told investors last month to "forget reported earnings" and instead focus on cash-flow generation as a percentage of net income, to "show that our quality of earnings is good."

To understand why security-alarm accounting is important, consider the hypothetical case of a company that spends $1,000 to acquire two customers: one through a dealer, the other attracted directly. In both cases, the customer pays nothing upfront, but agrees to pay a $30 monthly fee to monitor the alarm. But the alarm company records immediate positive free cash flow from one customer and negative from the other.

How? With the purchase of the dealer contract, the $1,000 spent is categorized as an "acquisition," and never counts against free cash flow. But the $30 a month paid by the new customer adds to cash flow. Net free cash flow for the first 12 months: $360.

With the other customer, the entire $1,000 counts against cash flow immediately. (About half is treated as an operating expense, reflecting sales and marketing costs; the rest is put on the books as two different types of assets, and the cash associated with each also counts against free cash flow.) The $1,000 in negative cash flow more than offsets the $360 cash inflow from the customer. Net free cash flow: negative $640.

There is another twist in the way Tyco handles dealer contracts. When buying a contract, Tyco says it charges the dealer a $200 "connection fee." So instead of paying the dealer, say, $1,000, it sends a check for $800, but records the full $1,000 as an acquisition. Tyco then records the $200 difference as a reduction in its expenses, boosting both its cash flow and its operating earnings by the same amount.

Mr. McGee says the practice is proper, because the $200 fee reimburses a portion of its "direct cost" to connect that new account to its monitoring network, including monies spent ensuring that the connection works.

Wayne Shaw, a professor of accounting at Southern Methodist University in Dallas, says the treatment is "not necessarily wrong," but, without full disclosure, "it's difficult for the investor to understand what's going on." He says Tyco is sending real cash out the door to pay for items such as salaries for employees to perform such tasks, but instead of including those costs in operating expenses, he says, it is capitalizing them, then amortizing them over a decade with no free-cash-flow impact.

Tyco's Mr. McGee says the company has long discussed details of its purchases of dealer contracts with investors who inquire. "Anybody who has followed us," he adds, "has gone through this ad nauseam."

Still, Tyco seems reluctant to discuss the purchases publicly and in regulatory filings. For example, in Tyco's 10-Q filing for this year's first quarter—filed after the company promised more disclosure on its myriad small acquisitions—Tyco said it spent about $670 million in cash on "approximately 50 smaller acquisitions and business lines." Asked how Tyco reconciles that figure of "50" with the hundreds of thousands of alarm contracts it now agrees were included in the $670 million, Mr. McGee says the company considers the contract purchases a single "business line."

Responding to investor concerns about liquidity, Tyco last month released a projection showing it intended to spend $1.4 billion on "other acquisitions" during the rest of the fiscal year. Some investors wondered why Tyco intended to spend so much when it had drawn down credit lines and was frozen out of the commercial-paper market. In response to conference-call questions, Mr. Swartz, the chief financial officer, said the majority of the spending was "discretionary," without providing details.

But if Tyco uses this discretion to eliminate or sharply curtail buying alarm contracts, that, of course, would cut into its free cash flow.

STOCK MARKET DATA BANK 3/4/02

MAJOR INDEXES

†12-MO HIGH	†12-MO LOW		DAILY HIGH	DAILY LOW	DAILY CLOSE	NET CHG	% CHG	†12-MO CHG	% CHG	FROM 12/31	% CHG
DOW JONES AVERAGES											
11337.92	8235.81	**30 Industrials**	10600.10	10366.78	x10586.82	+ 217.96	+ 2.10	+ 24.52	+ 0.23	+ 565.32	+ 5.64
3049.96	2033.86	**20 Transportation**	3050.98	2897.66	3049.96	+ 152.83	+ 5.28	+ 110.56	+ 3.76	+ 409.97	+ 15.53
398.44	273.64	**15 Utilities**	288.97	284.00	288.76	+ 4.71	+ 1.66	– 103.05	– 26.30	– 5.18	– 1.76
3392.23	2489.27	**65 Composite**	3074.37	2991.68	x3074.06	+ 82.25	+ 2.75	– 162.43	– 5.02	+ 181.84	+ 6.29
304.94	222.35	**DJ US Total Mkt**	267.47	261.77	267.45	+ 5.50	+ 2.10	– 20.08	– 6.98	+ 0.74	+ 0.28
STANDARD & POOR'S INDEXES											
1312.83	965.80	**500 Index**	1153.84	1130.93	1153.84	+ 22.06	+ 1.95	– 87.57	– 7.05	+ 5.76	+ 0.50
547.06	404.34	**400 MidCap**	528.90	515.44	528.84	+ 13.40	+ 2.60	+ 28.17	+ 5.63	+ 20.53	+ 4.04
238.92	181.09	**600 SmallCap**	239.19	233.76	238.92	+ 5.16	+ 2.21	+ 21.99	+ 10.14	+ 6.74	+ 2.90
284.31	209.52	**1500 Index**	252.74	247.73	252.74	+ 4.97	+ 2.01	– 15.30	– 5.71	+ 2.09	+ 0.83
NASDAQ STOCK MARKET											
2313.85	1423.19	**Composite**	1859.72	1789.72	1859.32	+ 56.58	+ 3.14	– 283.60	– 13.23	– 91.08	– 4.67
2052.57	1126.95	**Nasdaq 100**	1495.19	1422.22	1494.70	+ 59.29	+ 4.13	– 421.98	– 22.02	– 82.35	– 5.22
1581.51	1027.69	**Industrials**	1382.35	1339.15	1381.34	+ 46.41	+ 3.48	– 7.02	– 0.51	– 7.85	– 0.57
2483.83	1973.74	**Insurance**	2498.10	2478.30	2483.83	+ 1.31	+ 0.05	+ 432.78	+ 21.10	+ 134.79	+ 5.74
2271.63	1746.73	**Banks**	2272.85	2242.51	2271.63	+ 26.33	+ 1.17	+ 342.71	+ 17.77	+ 136.74	+ 6.41
1164.83	653.13	**Computer**	934.22	882.76	932.28	+ 29.90	+ 3.31	– 120.67	– 11.46	– 48.20	– 4.92
408.67	160.66	**Telecommunications**	181.65	175.21	181.56	+ 6.84	+ 3.91	– 218.77	– 54.65	– 55.07	– 23.27
NEW YORK STOCK EXCHANGE											
663.56	504.21	**Composite**	598.97	588.63	598.89	+ 10.26	+ 1.74	– 29.96	– 4.76	+ 9.09	+ 1.54
826.70	620.11	**Industrials**	751.57	740.79	751.31	+ 10.52	+ 1.42	– 27.25	– 3.50	+ 15.60	+ 2.12
425.99	293.53	**Utilities**	315.20	311.13	315.15	+ 4.02	+ 1.29	– 91.59	– 22.52	– 14.69	– 4.45
500.69	332.91	**Transportation**	500.99	482.96	500.69	+ 17.73	+ 3.67	+ 29.44	+ 6.25	+ 61.88	+ 14.10
636.14	494.41	**Finance**	602.36	585.78	602.36	+ 16.58	+ 2.83	– 1.69	– 0.28	+ 8.67	+ 1.46
OTHERS											
958.75	780.46	**Amex Composite**	876.69	870.99	876.57	+ 3.79	+ 0.43	– 50.40	– 5.44	+ 28.96	+ 3.42
693.69	507.98	**Russell 1000**	609.50	597.38	609.50	+ 12.12	+ 2.03	– 46.34	– 7.07	+ 4.56	+ 0.75
517.23	378.90	**Russell 2000**	488.90	478.34	488.00	+ 9.66	+ 2.02	+ 12.21	+ 2.57	– 0.50	– 0.10
722.85	529.66	**Russell 3000**	638.58	625.86	638.56	+ 12.70	+ 2.03	– 43.64	– 6.40	+ 4.40	+ 0.69
422.07	294.60	**Value-Line**	368.24	359.22	368.05	+ 8.83	+ 2.46	– 30.75	– 7.71	– 1.50	– 0.41
12142.14	8900.45	**Wilshire 5000**	10767.95	10560.00	10767.92	+ 207.91	+ 1.97	– 666.62	– 5.83	+ 60.24	+ 0.56

†-Based on comparable trading day in preceding year.

MOST ACTIVE ISSUES

NYSE	VOLUME	CLOSE	CHANGE
AT&T Wrls	41,325,500	8.31	– 0.29
GenElec	32,070,300	40.20	+ 0.75
TycoInt	30,517,500	33.14	+ 2.84
AOL Time	28,249,200	27.12	+ 1.14
EMC Cp	24,031,300	12.05	+ 0.63
Compaq	19,522,600	x10.65	+ 0.24
CitiGp	18,790,100	47.61	+ 1.81
LucentTch	17,074,800	5.87	+ 0.09
SprintPCS	16,880,100	9.07	+ 0.24
TX Instr	16,471,000	33.99	+ 2.49
JPMorgChas	16,328,000	32.50	+ 2.84
FordMotor	16,068,200	16.17	+ 0.53
Nokia	15,822,000	23.00	+ 1.60
Gap Inc	14,423,200	12.38	+ 0.31
Calpine	14,391,400	7.86	+ 0.57
NASDAQ			
OracleCp	205,174,000	13.67	– 2.32
SunMicrsys	92,761,900	8.67	– 0.26
CiscoSys	91,720,100	16.48	+ 1.48
Intel	56,301,300	31.85	+ 0.87
WorldCom	41,632,400	8.27	+ 0.28
JDS Uniphs	39,444,600	5.77	+ 0.79
Microsoft	36,227,800	63.30	+ 1.93
DellCptr	33,454,400	27.68	+ 1.24
JunprNtwk	33,424,000	11.73	+ 1.90
AppldMatl	27,619,500	50.06	+ 2.08
SiebelSys	26,867,400	32.53	+ 2.10
EricsnTel	22,733,400	4.79	+ 0.37
Nextel	21,956,200	4.70	– 0.20
AMEX			
NASDAQ100	104,935,600	37.15	+ 1.41
SPDR	27,075,900	115.75	+ 2.01
DJIA Diam	8,155,100	105.92	+ 2.08
Semi HOLDRs	6,545,000	46.94	+ 2.66
SPDR Fncl	6,370,000	26.78	+ 0.88

DIARIES

NYSE	MON	FRI	WK AGO
Issues traded	3,368	3,345	3,369
Advances	2,248	2,226	1,936
Declines	933	931	1,199
Unchanged	187	188	234
New highs	339	184	159
New lows	20	22	35
zAdv vol (000)	1,309,235	1,081,908	970,469
zDecl vol (000)	293,410	326,472	353,255
zTotal vol (000)	1,609,612	1,445,483	1,338,536
Closing tick[1]	+851	+996	+359
Closing Arms[2] (trin)	.54	.72	.59
zBlock trades	32,404	27,941	25,156
NASDAQ			
Issues traded	3,857	3,798	3,873
Advances	2,297	2,264	1,911
Declines	1,244	1,204	1,624
Unchanged	316	330	338
New highs	171	115	73
New lows	25	46	62
Adv vol (000)	1,746,982	1,475,093	1,295,652
Decl vol (000)	526,685	389,177	333,858
Total vol (000)	2,291,269	1,883,082	1,654,540
Block trades	n.a.	21,203	17,349
AMEX			
Issues traded	850	808	844
Advances	465	463	430
Declines	282	246	315
Unchanged	103	99	99
New highs	56	38	39
New lows	14	11	11
zAdv vol (000)	68,542	55,551	47,476
zDecl vol (000)	7,096	5,290	9,535
zTotal vol (000)	76,890	62,006	57,782
Comp vol (000)	197,006	158,600	155,371
zBlock trades	n.a.	1,269	1,112

PRICE PERCENTAGE GAINERS...

NYSE	VOL	CLOSE	CHANGE	% CHG
OrbitalSci wt	77,900	3.49	+ 0.65	+ 22.9
Metris	4,370,900	20.79	+ 3.81	+ 22.4
Elan ADS wtB	12,800	2.70	+ 0.45	+ 20.0
UAL Cp	5,723,500	16.40	+ 2.73	+ 20.0
CrownCork	5,238,600	7.00	+ 1.12	+ 19.0
JabilCircuit	3,057,900	22.77	+ 3.33	+ 17.1
SymbolTch	5,356,300	10.31	+ 1.46	+ 16.5
Salton	298,600	23.59	+ 3.26	+ 16.0
Advantest ADS	170,800	19.71	+ 2.71	+ 15.9
SciAtlanta	3,759,500	27.00	+ 3.69	+ 15.8
DeRigo ADS	14,200	6.80	+ 0.92	+ 15.6
E Trade	4,642,300	9.25	+ 1.20	+ 14.9
Celestica	5,073,200	37.33	+ 4.81	+ 14.8
OrbitalSci	1,095,400	6.79	+ 0.84	+ 14.1
Scania ADR A	2,200	19.25	+ 2.25	+ 13.2
WescoInt	41,500	6.96	+ 0.81	+ 13.2
MSDW&CoSPARQS	9,100	14.51	+ 1.66	+ 12.9
ProvdnFnl	4,473,500	4.55	+ 0.51	+ 12.6
Pearson ADS	119,300	12.83	+ 1.43	+ 12.5
UNOVA	107,600	6.75	+ 0.75	+ 12.5
NASDAQ				
INTERSHOP ADS	28,100	6.80	+ 2.00	+ 41.7
FstSoBcsh	2,100	2.73	+ 0.71	+ 35.1
Cholestech	772,100	15.86	+ 3.69	+ 30.3
DgtlRiver	1,131,100	15.56	+ 3.28	+ 26.7
NobelLearng	37,800	6.70	+ 1.40	+ 26.4
InrangeTech B	517,300	11.51	+ 2.23	+ 24.0
PLX Tch	447,100	16.17	+ 3.12	+ 23.9
RealNtwks	2,913,400	6.89	+ 1.31	+ 23.5
ADE Cp	36,300	13.35	+ 2.51	+ 23.2
SanminaCp	15,162,900	12.69	+ 2.37	+ 23.0
AkamaiTch	2,832,600	3.92	+ 0.73	+ 22.9
Immersion	113,900	2.45	+ 0.45	+ 22.5
WebExComm	1,388,500	15.47	+ 2.83	+ 22.4
Trnsgn ADS	4,700	2.85	+ 0.52	+ 22.3
AMEX				
RamprtCap	65,100	3.20	+ 0.85	+ 36.2
UniMart	67,000	2.90	+ 0.60	+ 26.1
TechOpsS	61,300	9.80	+ 1.75	+ 21.7
SlSmBr Junpr	3,000	2.87	+ 0.35	+ 13.9
BennettEnvr	186,200	15.96	+ 1.93	+ 13.8

AND LOSERS

NYSE	VOL	CLOSE	CHANGE	% CHG
djOrthopedics	1,965,800	8.50	– 1.65	– 16.3
FTI Cnsltng	1,255,700	25.25	– 4.00	– 13.7
Alamosa	444,500	3.90	– 0.60	– 13.3
FleetwdEnt	1,559,000	7.60	– 1.10	– 12.6
ACLN Ltd	461,900	10.45	– 1.23	– 10.5
Humana	1,492,900	12.45	– 1.05	– 7.8
Triton A	676,100	8.30	– 0.63	– 7.1
Interpool	27,200	16.50	– 1.20	– 6.8
KftFoods	3,580,000	36.45	– 2.53	– 6.5
ApriaHlthcr	627,700	20.92	– 1.43	– 6.4
Covance	897,400	16.15	– 1.06	– 6.2
Citigroup pfG	220,900	47.20	– 3.00	– 6.0
LndnPac ADS	28,100	3.25	– 0.20	– 5.8
SL Ind	5,200	7.65	– 0.45	– 5.6
BcoFran ADR	147,300	2.75	– 0.16	– 5.5
CorrCorp	129,700	15.99	– 0.91	– 5.4
USB Hldg	16,400	14.20	– 0.80	– 5.3
AshntGldfld	275,900	4.50	– 0.25	– 5.3
MidAtlMed	656,600	26.60	– 1.41	– 5.0
PhilpsIntRlty	34,600	1.90	– 0.10	– 5.0
NASDAQ				
ftd.com	913,700	6.07	– 2.93	– 32.6
MexicnRestr	2,500	2.75	– 0.55	– 16.7
Axonyx	153,600	2.53	– 0.46	– 15.4
RightMgt	540,500	19.38	– 3.44	– 15.1
TelwstComm	63,300	2.19	– 0.39	– 15.0
OracleCp	205,174,000	13.67	– 2.32	– 14.5
AmHlthways	504,200	16.32	– 2.65	– 14.0
InhaleThera	2,601,900	11.25	– 1.74	– 13.4
Connetics	2,334,700	8.75	– 1.25	– 12.5
CityHldg	43,400	14.09	– 1.96	– 12.2
Orthovita	14,000	2.20	– 0.30	– 12.0
NtlMedHlth	67,800	11.10	– 1.48	– 11.8
FountnPwrbt	13,000	2.65	– 0.34	– 11.4
Unilab	123,000	18.14	– 2.31	– 11.3
AMEX				
ECC Int	18,000	2.10	– 0.41	– 16.3
ILX Rsrt	42,900	6.75	– 1.16	– 14.7
ImplntSci wt	7,100	2.25	– 0.35	– 13.5
PeoplesHldg	8,400	33.49	– 3.01	– 8.2
WebcoInd	5,000	4.10	– 0.30	– 6.8

VOLUME PERCENTAGE LEADERS

NYSE	VOL	% DIF*	CLOSE	CHANGE
JP Realty	2,739,200	6265.8	26.53	+ 2.10
Advantest ADS	170,800	3051.3	19.71	+ 2.71
djOrthopedics	1,965,800	2056.9	8.50	– 1.65
RitchieBros	144,000	1613.7	27.61	– 0.39
OmnovaSol	1,073,600	1590.5	7.27	+ 0.02
Mykrolis	1,412,600	913.1	13.20	+ 0.80
AllenTele	661,700	823.3	7.12	+ 0.03
ImpTob ADS	365,000	807.2	26.65	– 0.53
BlythInc	1,409,700	767.9	21.49	– 0.05
BrushEngr	518,000	739.6	11.15	+ 0.25
CntlEurFd	100,700	729.3	13.07	+ 0.37
PrentisProp	846,800	638.5	28.99	+ 0.21
SevenEleven	483,500	633.7	10.35	+ 0.81
WattsInd A	223,700	582.9	15.85	+ 0.35
CircorInt	99,800	579.0	19.61	+ 1.01
BOC Gp	64,100	543.1	30.04	+ 0.24
AsiaPacFd	172,600	481.8	9.88	+ 0.34
Quanex	280,900	464.4	31.70	– 0.05
AmerUsGp A	1,019,400	445.5	36.58	+ 1.28
Glatfelter	303,500	425.9	18.83	+ 0.58

*Common stocks of $5 a share or more with average volume over 65 trading days of at least 5,000 shares.
a-has traded fewer than 65 days. b-10,000% or greater.

NASDAQ	VOL	% DIF*	CLOSE	CHANGE
GenBindng	312,700	4128.5	12.99	+ 0.38
ftd.com	913,700	1276.6	6.07	– 2.93
SpacelabMed	274,000	1275.2	15.95	+ 0.80
FstEsxBcp	243,100	914.1	27.02	+ 0.05
StageStores wtA	256,800	a899.0	17.50	+ 0.35
Durect	903,800	865.7	7.01	+ 0.34
HoenigGp	77,100	861.8	12.27	....
MainStBcp	315,400	764.2	16.58	+ 0.23
DuraAutoSys	640,000	750.6	14.44	+ 1.84
ApolloUnvPhnx	1,125,700	734.8	40.06	+ 2.03
Connetics	2,334,700	714.5	8.75	– 1.25
Orthofix	351,300	686.4	34.25	+ 0.45
FnlInd	44,900	657.6	13.75	– 0.20
TtlEntRestr	157,400	642.2	7.49	+ 0.39
UnicoAm	56,400	641.5	6.12	– 0.75
OverlndData	656,600	605.0	11.25	– 1.12
AMEX				
iShrRuMidGrth	708,600	6262.0	69.94	+ 2.60
iShrMSSng	1,144,100	1187.6	5.87	+ 0.25
HollywdCno	868,500	1075.2	15.35	+ 0.75
iShrDJUSRE	176,400	927.1	83.19	+ 0.89
Practicewks	231,000	852.9	12.12	+ 1.07

BREAKDOWN OF TRADING IN NYSE STOCKS (9:30 a.m. to 4 p.m. Eastern time)

BY MARKET	MON	FRI	WK AGO
New York	1,609,612,450	1,445,482,770	1,338,536,000
Chicago	87,177,960	70,334,210	69,545,800
CBOE	....	....	....
Pacific	883,000	681,900	895,300
Nasdaq InterMkt	179,102,800	163,017,780	175,034,610
Phila	7,624,200	6,422,100	5,288,000
Boston	25,306,000	35,171,800	34,933,700
Cincinnati	9,992,400	8,636,800	8,615,100
Composite	1,919,698,810	1,729,747,360	1,632,848,510

NYSE first crossing 1,965,100 shares, value n.a.
Second (basket) 4,788,205 shares, value $150,639,809

½-HOURLY	MON	FRI	WK AGO
9:30-10	178,390,000	146,430,000	142,880,000
10-10:30	166,403,490	148,336,470	112,978,090
10:30-11	138,556,510	115,073,530	95,101,910
11-11:30	116,099,420	119,678,010	89,944,770
11:30-12	98,980,580	94,161,990	81,735,230
12-12:30	89,952,750	85,004,740	77,043,020
12:30-1	92,237,250	78,515,260	61,516,980
1-1:30	78,945,110	68,502,020	67,057,360
1:30-2	81,994,890	81,777,980	85,332,640
2-2:30	92,576,310	77,182,730	82,841,620
2:30-3	106,233,690	88,557,270	105,328,380
3-3:30	132,582,600	110,538,030	126,849,940
3:30-4	236,659,850	231,724,740	209,926,060

[1] The net difference of the number of stocks closing higher than their previous trade from those closing lower; NYSE trading only.

[2] A comparison of the number of advancing and declining issues with the volume of shares rising and falling. Generally, an Arms of less than 1.00 indicates buying demand; above 1.00 indicates selling pressure.

x-Ex-dividend of Hewlett-Packard Co., $0.08, lowered the Industrial Average by 0.55. This ex-dividend lowered the Composite Average by 0.09.
z-NYSE or AMEX only.

THE WALL STREET JOURNAL.

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Applying Pressure

Drug Makers Fight To Fend Off Cuts In European Prices

Battle Has Big Consequences In the U.S., Where Patients Pay More for Medicine

'Subsidizing the Norwegians'

By Vanessa Fuhrmans And Gautam Naik

As the buyer of nearly 80% of Germany's prescription drugs, the German public health-insurance system pours billions of euros a year into the pharmaceutical industry's coffers. But last winter, in an unusual role reversal, a group of the world's biggest drug makers contributed 200 million euros, or about $189 million, to the state-sponsored health plan.

DRUG PRICES
Why They Keep Soaring
Sixth in a series

The payment was part of an 11th-hour deal between the industry and Chancellor Gerhard Schroder to stop Germany's Health Ministry from imposing a 4% price cut on prescription drugs. In November, over a bottle of red wine at the chancellery in Berlin, industry executives agreed to set up a trust fund into which 36 drug companies would kick in money if Mr. Schröder vetoed the proposed price cut. The contributors included such multinational giants as Pfizer Inc., Merck & Co. and GlaxoSmithKline PLC.

Better a donation to help Germany finance its soaring health-care costs, the industry negotiators concluded, then a painful price cut that could set a precedent for other European governments.

The German gamblit is just one volley in the drug industry's increasingly desperate battle to fend off mandatory price cuts across Europe, where governments have long dictated prices. And the outcome has direct implications for the soaring price of drugs in the U.S.

That's because the U.S. is the only major industrialized nation without some version of government price controls for drugs. In the past few years, as drug prices have been slashed in Europe, drug makers have raised U.S. prices by between 2% and 3% annually, and sometimes even more. Earlier this year, for example, Merck boosted prices 5.9% on three of its best-selling products: the heart drug Cozaar, Singulair for asthma, and the osteoporosis treatment Fosamax.

Political Pricing

	Lipitor (Lowers cholesterol, made by Pfizer; Wholesale price per 10 mg pill[1])	Prilosec (Treats ulcers, made by AstraZeneca; Wholesale price per 20 mg pill)
U.S.	$1.88	$3.69
U.K.	$0.86	$1.31
Italy	$0.74	$1.34
Germany	$0.69	$1.39[2]
France	$0.60	$1.22

[1]In U.S. dollars converted from euros at current rate
[2]Prices in this market may reflect pressure from generic competition.
Sources: the companies

"Step-by-step, the profitability of European markets is decreasing, and we're depending on the U.S. more and more," says Jean-Francois Dehecq, chief executive of French drug maker Sanofi-Synthelabo SA. "At the beginning of a drug's life cycle, it isn't so bad. But each year we increase prices a little in the U.S. And each year we have to decrease a little in Europe. ... After a few years down the line, it's a disaster."

The result is huge price disparities between the U.S. and other markets. Rita Cohn, a 70-year-old retiree who lives in Hollywood, Fla., pays as much as $3.96 apiece—most of it out of pocket—for the

Please Turn to Page A7, Column 1

INDEX

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What's News—

Business and Finance

NEW YORK PROSECUTORS are pursuing a broader probe into whether Tyco repeatedly used its money to buy homes and artwork for several corporate officials without disclosing it to shareholders. If prosecutors find that Tyco used company money to pay for personal property, they could seek to indict the firm and its officers.

(Articles in Column 5 and on Pages A5 and B1)

* * *

■ **Adelphia inflated** the number of cable-TV subscribers by 400,000 to 500,000 and kept two sets of books to boost the amount it spent to upgrade its systems.

(Article on Page A3)

* * *

■ **Intel cut** its forecast for second-quarter sales and profitability, signaling worse-than-expected demand for personal computers.

(Article on Page A3)

* * *

■ **R.J. Reynolds was ordered** to pay a $20 million fine after a judge ruled it "indirectly targeted" youths in cigarette ads.

(Article on Page A3)

* * *

■ **Stocks tumbled,** with the S&P 500 falling to its lowest level since Sept. 27. The industrials slid 1.7% to 9624.64; the Nasdaq lost 2.5%.

(Article on Page C1)

* * *

■ **An EU court ruled** that the European Commission was wrong to stop a British tour operator from acquiring a rival in 1999.

(Article on Page A8)

* * *

■ **Long-term economic effects** from the Sept. 11 attacks and the war on terrorism may be worse than suspected, the OECD said.

■ **U.S. household net worth** edged up in the first quarter, boosted by stronger real-estate values.

(Articles on Page A2)

* * *

■ **Retail sales rose 2.4%** in May, though stores said chilly weather damped results. Wal-Mart's same-store sales climbed 6.2%.

(Article on Page B5)

* * *

■ **New York and North Carolina** are mulling a plan to limit pension-fund business to firms that agree to change stock-research practices.

(Article on Page C1)

* * *

■ **U.S. steelmakers and unions** are stepping up pressure on the White House not to grant tariff exemptions to foreign steel firms.

(Article on Page A4)

* * *

■ **Iraq** cut the illegal surcharges it imposes on oil it sells through the U.N. oil-for-food program.

(Article on Page A2)

* * *

■ **Jurors in the Andersen trial** spent nine hours in deliberations without reaching a verdict.

(Article on Page C1)

* * *

■ **Perot Systems conceded** it tried to sell advice on how to trade power in California, but insisted the material was public information.

(Article on Page B6)

* * *

■ **Four Enron directors resigned** from the board. Raymond Troubh was named interim chairman.

(Article on Page A5)

* * *

■ **The Treasury called** for legislation to reduce benefits for companies that relocate in tax havens.

(Article on Page B4)

* * *

■ **Martha Stewart** was among the acquaintances of Imclone's ex-CEO who sold shares in the firm just before the stock tumbled.

(Article on Page B2)

* * *

■ **Amtrak is undertaking** a management restructuring and is seeking to borrow over $200 million.

(Article on Page B6)

* * *

—Markets—

Stocks: NYSE vol [illegible] shares, Nasdaq vol. [illegible],625,320. DJ industrials 9624.64, ▼ -172.46; Nasdaq composite 1554.88, ▼ -40.38; S&P 500 index 1029.15, ▼ -20.75.
Bonds (4 p.m.): 10-yr Treasury ▲ +9/32, yld 5.012%; 30-yr Treasury ▲ +15/32, yld 5.625%.
Dollar: 124.24 yen, -0.24; euro 94.56 cents, +0.60 against the dollar.
Commodities: Oil futures $24.79 a barrel, ▼ -$0.10; Dow Jones-AIG futures 97.310, ▼ -0.215; DJ-AIG spot 123.307, ▼ -0.273.

World-Wide

■ **BUSH PROPOSED** a massive overhaul of homeland defense programs. On a day when Washington was fixated on Capitol Hill testimony on Sept. 11 intelligence lapses, the president arranged TV time to announce creation of a cabinet-level department to oversee homeland security and counterterrorism, a step he had resisted. The sense of haste gave an impression of a bid to eclipse the congressional hearings. The new department will oversee a budget of $37 billion and have more than 169,000 employees in agencies ranging from the Secret Service to the Coast Guard. It wasn't immediately clear if Ridge will head it. (Page A2)

A Senate panel heard from Minnesota agent Coleen Rowley, who added no details to her scathing critique of FBI handling of the Moussaoui case but painted a portrait of a bureaucracy that strangles any initiative.

* * *

■ **Israel withdrew** its forces from Arafat's Ramallah compound after destroying some buildings and shelling the Palestinian leader's bedroom in retaliation for Wednesday's bus bombing that killed 17 Israelis. Arafat accused Israel of trying to kill him, but Israel denied it. U.S. diplomats urged that he not be hurt and worked to avert his expulsion.

* * *

■ **Pakistan vowed** not to start a war and a visiting State Department official challenged India to match the pledge. Armitage's visit opens a U.S. diplomatic offensive that continues with Rumsfeld's arrival next week. Longtime Pakistan ally China is taking a more evenhanded approach as it also works to head off a nuclear war on the subcontinent. (Page A8)

* * *

■ **The government is enlisting** companies that analyze credit-card and insurance records to run checks on travelers making airline reservations. The databases involved weren't identified, but scrutiny of suspicious purchasing patterns hasn't been ruled out, one official said. (Page A4)

* * *

■ **The Senate cleared the way** for a final vote on its $31.4 billion antiterrorism package but resisted stripping out unrelated items in a bid to avert a Bush veto. The House voted 256-171 to make estate-tax repeal permanent, but the measure faces long odds in the Senate. (Page A4)

* * *

■ **The Pentagon is drafting** a plan to give European contractors billions of dollars of missile-defense work. The aim is to blunt criticism of U.S. missile-shield plans by giving the Europeans a share. (Page A4)

* * *

■ **Russia was designated** a market economy by the Commerce Department. The move is significant in that it nudges Moscow toward eventual accession to the WTO and gives it a leg up in trade disputes. (Page A2)

* * *

■ **The alleged Sept. 11 mastermind** is believed to have once gone to college in the U.S., the Associated Press said. Khalid Shaikh Mohammad also visited the German city where hijacker Mohammed Atta lived in 1999.

■ **Many Afghanistan detainees were** Taliban sympathizers, but few fought U.S. forces, a lawyer for families of 70 Guantanamo detainees claimed. He says the U.S. doesn't appear interested in investigating the claims.

* * *

■ **Pakistani prosecutors finished** with their final witness in the trial of four men accused of killing Wall Street Journal reporter Daniel Pearl. They plan to deliver their closing statements early next week.

* * *

■ **France votes** Sunday in the first round of legislative elections. Polls predict far-right candidates aren't likely to fare well, but forecasters failed to predict Le Pen's first-round shocker in April presidential voting.

* * *

■ **A human bone was was found** by detectives hired by Chandra Levy's family near the site where her remains turned up May 22. Washington's police chief said it was "unacceptable" that his officers missed it.

* * *

■ **Italy has committed itself** to building what would be the world's largest suspension bridge, linking Sicily to the toe of the boot over the two-mile-wide straits of Messina. The $4.3 billion project may begin in late 2004.

—Online Today—

Boom Town Exchange: Foreign programmers are cheap, and this has broad implications for American jobs and the global economy. Readers tell columnist Lee Gomes what they think.

* * *

■ **Seven Questions:** Value guru David Dreman defends his recent bet on Tyco International.

* * *

■ **Interactive Graphic:** A historical overview of the conflict in Kashmir, and what it means for the region.

Meet Michael Tarazi, A Harvard-Law Grad And PLO Emissary

He Makes Palestinian Case At a Difficult Moment; Lunch With Three Rabbis

By Peter Waldman

How does a Wall Street lawyer defend suicide bombings in Israel? Gingerly.

"We've got to ask why they are happening," says Michael Tarazi, who abandoned a corporate-law career two years ago to become a legal adviser to the Palestinian Liberation Organization in the West Bank. "Some Palestinians say we have no choice, that [terrorism] is the only thing that works. We have to give these people an alternative."

That alternative, Mr. Tarazi insists, is full Israeli withdrawal from Arab territory occupied since the 1967 war and the birth of a Palestinian state. It's a tough case to argue right now, with Israelis under unrelenting attack by Palestinian suicide bombers, the latest, Tuesday, killing 17 people. But Mr. Tarazi prides himself on tough arguments.

Michael Tarazi

Born in Kuwait, raised in America and educated at Andover and Harvard, the 34-year-old U.S. citizen is emerging as the most articulate and sophisticated Palestinian advocate to come along in years. A rising star on the cable-news channels, Mr. Tarazi is everything most Palestinian spokespeople are not: young, witty, fluent in American English, knowledgeable about international law and steeped in Western liberal ideals.

His graceful speeches and sound bites, and sharp, well-researched legal papers, borrow a page from Israel's playbook: statesmanlike spin, in perfect English.

"Abba Eban comes to mind," says Rabbi Joshua Stampfer of Portland, Ore., after having lunch with Mr. Tarazi last month. Mr. Eban, South African-born and silver-tongued, helped win international support for the founding of Israel in 1948. "Tarazi is closer than anything the Palestinians have had before," Rabbi Stampfer says.

But he isn't there yet. On a recent speaking tour of several U.S. cities, Mr. Tarazi told civic groups and private gatherings that Palestinians are misunderstood. He called suicide attacks on Israelis desperate acts by desperate people—acts he personally opposes "point blank," he said. Yet many listeners, after hearing him, said he comes across as almost too forceful, sometimes flippant and condescending.

Speaking at the World Affairs Council chapter in San Francisco, for example, Mr. Tarazi outlined a range of options that Palestinians are willing to explore for compensating or resettling their refugees. He was a study in open-mindedness, until this: "We'll ask Israel how many non-Jews can you take in your ethnically pure state, as racist as that is," he said.

After the talk, some peopled grumbled on the way out about that gratuitous slap at Zionism. Asked about some of his contentious statements, Mr. Tarazi says he doesn't play the "media game" and insists on speaking his mind. "The minute I try to become a polished machine then I start betraying myself and I won't be effective," he says.

As a child growing up in Pennsylvania and Colorado, Mr. Tarazi had no idea he was Palestinian. Then, one day when he was a 15-year-old sophomore at Phillips Academy in Andover, Mass., he called home to find his mother in tears over the massacre of hundreds of Palestinians at the Sabra and Shatilla refugee camps in Lebanon. "That's when she told me, 'We are Palestinian; those are our people,'" Mr. Tarazi recalls.

He went on to college and law school at Harvard, then worked in corporate law for seven years in New York and Europe, starting with the law firm White & Case and then becoming European general counsel for software-maker Euronet Services Inc. of Leawood, Kan. "I knew more Jews connected to Israel than Ar-

Please Turn to Page A6, Column 3

Sad Account

Andersen's Fall From Grace Is a Tale of Greed and Miscues

Pushed to Boost Revenue, Auditors Acted as Sellers, Warred With Consultants

'Three Pebbles and a Boulder'

By Ken Brown And Ianthe Jeanne Dugan

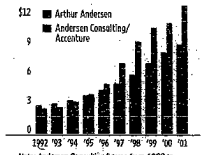
At "Andersen U.," the lush, 150-acre campus where Arthur Andersen LLP has trained tens of thousands of new recruits, there's a shrine to ethical accounting.

A display in the Andersen Heritage Center is devoted to yellowing press clippings of a long-ago campaign to clean up the accounting industry by Leonard Spacek, who led the firm from 1947 to 1963. In one, he accused Bethlehem Steel of overstating its profits in 1964 by more than 60%. In another, he bashed the Securities and Exchange Commission for failing to crack down on companies that cooked their books, saying that at best the regulatory agency has been "a brake on the rate of retrogression in the quality of accounting."

Now, it's the quality of Andersen's accounting that has set off an ethical crisis. Since 1993, the firm has been embroiled in a series of major accounting scandals—from Sunbeam Corp. to Waste Management Inc. to Enron Corp. Facing an obstruction-of-justice charge in a Houston federal court, Andersen itself is disintegrating and will likely be gone in a matter of months regardless of the verdict—a humiliating end to a company that once stood as the world's largest professional-services firm and whose 85,000 employees last year generated $9.3 billion in revenue.

Andersen's descent from conscience of the accounting industry to accused felon didn't happen overnight. Rather, it stemmed from a series of management miscues and compromises over the decades. As the firm grew from a close-knit partnership to a globe-spanning behemoth, pressure to boost profits became intense. Andersen leaders responded by pushing partners to become salesmen—upsetting the delicate balancing act any auditor must perform between pleasing a client and looking out for the public investor.

Shifting Focus
Andersen's fast-growing consulting business overshadowed traditional audit and tax work. Annual revenue, in billions.



Note: Andersen Consulting figures from 1992 to 1996 reflect revenue during calendar years; all others are fiscal years ended Aug. 31. In 2000, Andersen Consulting became independent and renamed itself Accenture.
Sources: the companies; Harvard Business School

This shift saw the rise of a new breed of accountant—such as the senior executive who punctuated his speeches with violin music and exhorted his troops to "empathize" with the companies whose books they checked.

Andersen spokesman Patrick Dorton acknowledges that the firm has made some mistakes in the past, but says it was undertaking reforms. He adds: "The issues and concerns raised affect the entire profession and not only Andersen."

Arthur Andersen himself originally built his business by putting reputation over profit. In 1914, months after the 28-year-old Northwestern University accounting professor founded his tiny company, the president of a local railroad demanded that he approve a peculiar transaction that would have lowered the company's expenses and boosted earnings. Mr. Andersen, who at the time was worried about meeting his next payroll, told the president that there was "not enough money in the city of Chicago" to make him do it, according to a book published by the firm in 1988. The client promptly fired the accountant, but Mr. Andersen was vindicated months later when the company filed for bankruptcy.

Mr. Andersen lived in a bygone era. Back then, competition among account-

Please Turn to Page A6, Column 1

Expanding Tyco Inquiry Targets Company Spending on Executives

By Laurie P. Cohen And Mark Maremont

In indicting Tyco International Ltd.'s former chief executive for tax evasion, New York prosecutors are pursuing a broader investigation into whether the company repeatedly used its money to buy homes and artwork for several corporate officials without disclosing it to shareholders, according to people with knowledge of the matter.

Board Bewilderment

- Tyco's board is struggling to get to the bottom of Kozlowski's dealings, A5.
- Stephen E. Kaufman will use his famed skills to help the defendant, B1.
- Manhattan's prosecutor Morgenthau grabs headlines again at age 82, B1.

If prosecutors in the Manhattan District Attorney's office find that Tyco used company money to pay for personal property, they could seek to indict the company and its officers on charges ranging from income-tax evasion to keeping false books and records. New York prosecutors have said that Mr. Kozlowski used company funds—borrowed from a stock-loan plan intended for other purposes—to buy more than $13 million in artwork. Mr. Kozlowski, who led Tyco for a decade until he resigned this week, is facing a 12-count indictment charging that he evaded more than $1 million in New York state and city sales taxes on the art purchases.

Under Mr. Kozlowski Tyco, a once-sleepy industrial concern, grew in the 1990s through a blitz of acquisitions into a Wall Street star. Any indictment of Tyco could also potentially spark further interest in the company by the Securities and Exchange Commission, which has already opened a preliminary investigation into questions raised by Mr. Kozlowski's alleged failure to pay sales tax. It could also touch off a federal income-tax probe, say people with knowledge of the situation.

Prosecutors are also looking at the purchase for $18 million of Mr. Kozlowski's Fifth Avenue Manhattan apartment. A person close to Tyco's board said corporate funds were used to buy Mr. Kozlowski's apartment two years ago. This person offered an explanation that could exonerate Tyco. He said the apartment—while it is listed in Mr. Kozlowski's name—is actually owned by Tyco itself. "It's company property," this person said, adding that the setup was used to get around rules that forbid anyone except the person living in a cooperative apartment from owning it. "There's a contract between Dennis and the company acknowledging that the company owns it and he's the nominee," this person said.

Mr. Kozlowski did not pay any rent on the apartment, nor was its value to him included in the compensation reported in Tyco's proxy filings, this person said. That could be a violation of federal securities rules, which require such costly perks to be disclosed and included in pay calculations, legal experts say.

This person said the Tyco board knew about the apartment purchase. But three other people close to a num-

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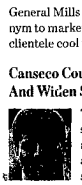
INSIDE TODAY'S JOURNAL



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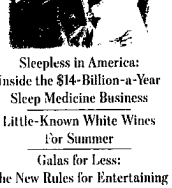


Tyco Board Criticized on Kozlowski

By JOANN S. LUBLIN And JERRY GUIDERA

Tyco International Ltd.'s board is struggling to get to the bottom of the financial dealings of its former chief executive, L. Dennis Kozlowski, in what some people close to the matter describe as an internal environment that is confused and lacking guidance.

People close to a number of Tyco directors said that the board had no knowledge that Tyco funds were used in 2000 to pay for an $18 million apartment for Mr. Kozlowski in Manhattan. These people assert that the first knowledge the board received of that came Wednesday and that some directors were "shocked" by the news.

But as just one indication of the confusion at the company, people close to Tyco executives asserted the board had full knowledge the company had purchased an apartment for Mr. Kozlowski's use.

Mr. Kozlowski was indicted Tuesday on charges he conspired with art galleries and consultants to evade paying more than $1 million in sales tax. He pleaded not guilty and is free on a $3 million bond, pending trial. New York prosecutors are also looking into whether he improperly used company funds to purchase the apartment.

A large number of Tyco's 10 directors were meeting in New York yesterday to discuss the company's internal investigation of Mr. Kozlowski's dealings, which are under investigation by the Manhattan district attorney and the Securities and Exchange Commission. A Tyco spokesman declined to characterize the gathering as an official board meeting.

Meanwhile, Tyco shares fell 16%, or $2.70, to a new 52-week low of $14.60 in 4 p.m. composite trading on the New York Stock Exchange. The shares are sharply off their 52-week high of $60.09.

Corporate-governance experts say directors of the big conglomerate, rocked by the allegations, must act quickly to restore investor confidence. But these observers' general assessment of the board is that it has been far too unquestioning of Mr. Kozlowski for too long, despite several warning signs, and that they are therefore also to blame for the company's straits.

Brad McGee, a company spokesman, didn't return several calls seeking comments and responses to critics of the board.

Charles Elson, a director of four corporate boards and head of the University of Delaware's Center for Corporate Governance, faults Tyco's board for having too many long-serving members. Six of its eight nonmanagement directors have held their seats for between 10 and 20 years. Some shareholder activists favor term limits of 10 years.

Tyco's practice may explain why "this board was very comfortable" with Mr. Kozlowski, Mr. Elson says. For years, he adds, the ex-CEO "was very successful. The stock price was up. The profits were up. No one wanted to rock the boat."

On Monday, following Mr. Kozlowski's resignation, Tyco said his predecessor, board member John F. Fort III, was assuming "primary executive responsibilities" until a new CEO could be named, and would lead the internal investigation. He was given no interim title. According to people close to the company, Mr. Fort is working on the investigation with fellow director Joshua M. Berman, a Tyco vice president, and former outside counsel.

But Raymond S. Troubh, named yesterday as interim chairman of Enron Corp., as part of the rescue effort there, says the investigation should be limited to "only truly independent members of the board." He also says it is important that the Tyco panel hire a truly independent outside law firm to assist with the investigation. Mr. Troubh also believes Mr. Fort needs to have a formal title, such as interim chief executive, so staffers "know who to look to for answers and for leadership."

Of the 10 board members, two—Mr. Berman and Chief Financial Officer Mark Swartz—are Tyco employees. A third, Mr. Fort, was chairman and chief executive until 1992.

Three others—Michael Ashcroft, James S. Pasman Jr., and W. Peter Slusser—came onto the board in Tyco's 1997 merger with security-alarm concern ADT. The other board members are Richard S. Bodman, a venture capitalist; Stephen W. Foss, the CEO of a textile concern; Wendy Lane, a former investment banker who runs her own investment concern; and Joseph F. Welch, CEO of snack-food maker Bachman Co.

Institutional Shareholder Services, a company that advises shareholders on proxy issues, classifies only four of the board members—Ms. Lane and Messrs. Welch, Pasman and Slusser as completely independent. ISS says that four others—Messrs. Fort, Ashcroft, Bodman and Foss—are "affiliated outsiders."

Paul Lapides, director of the Corporate Governance Center at Kennesaw State University in Georgia, says "there were very clear signs something was amiss at Tyco" that should have prompted aggressive questioning of Mr. Kozlowski before the indictment.

One, he says, was a $20 million payment the company made—$10 million to former director Frank E. Walsh Jr., and another $10 million to a charity for which he is a trustee—for helping Tyco buy CIT Group Inc. for $9.5 billion last year. Mr. Walsh left the board after the payout, which outraged investors. That should also have been "a wakeup call" that triggered an internal investigation of Mr. Kozlowski, Mr. Lapides said.

He adds that if the board didn't know about the use of corporate funds to buy an apartment for Mr. Kozlowski, that represents a failure of oversight. And if it did know about it, that shows "that the company neglected to make the proper disclosures."

New York Tyco Probe Expands to Include Company's Spending

Continued From First Page

ber of Tyco directors said this week's revelation about the apartment purchase came as a complete surprise to the board members.

J. Brad McGee, a Tyco spokesman, declined to comment on the Fifth Avenue apartment, saying Tyco had an internal investigation into this and other matters.

The company has also come under scrutiny because prosecutors believe that Tyco's use of corporate money to pay for its officers' personal property may have been routine—and that it extended beyond Mr. Kozlowski's art and apartment.

Purchase Piques Interest

Tyco's undisclosed purchases, if any, may have begun three years ago. That's when a real-estate transaction first caught the attention of Manhattan District Attorney Robert Morgenthau, according to people with knowledge of the matter. Prosecutors in Mr. Morgenthau's office at the time questioned Tyco lawyers about a Boca Raton, Fla., home that a Tyco director had sold to a Tyco in-house attorney for more than $2 million, funds that apparently came from the company.

Tyco lawyers assured prosecutors that the home was being used as a guest house and the investigation ended, people with knowledge of the matter said. The names of the director and the lawyer haven't been disclosed.

Mr. McGee, the Tyco spokesman, said he had no knowledge of any company-owned house in Boca Raton.

Tyco's name resurfaced at the Manhattan District Attorney's office in January of this year. Investigators at the New York State Banking Department became suspicious when they noticed a Jan. 3, 2002, wire transfer for $3.95 million from a Tyco bank account in Pittsburgh to a New York bank account held by art dealer Alexander Apsis. Mr. Apsis transferred much of that money out of the New York account the next day to an offshore account in the Bahamas, leading the state banking investigators to suspect possible money laundering. Two more money transfers by Mr. Apsis to offshore accounts—having nothing to do with Mr. Kozlowski or Tyco—further fueled their suspicions.

All three of these transactions were brought to the District Attorney's attention by state banking regulators in mid-January. But it was the one with Tyco's name on it that piqued the most interest, because of the earlier 1999 probe into the Boca Raton home sale.

The person close to Tyco's board said the funds wired to Mr. Apsis came from the Tyco loan program. Although Tyco filings indicate the loans were supposed to be used only to help executives pay taxes on stock awards, this person said wording in the original stock plan can be interpreted to allow loans for other purposes. Mr. Kozlowski used the loans "like a revolving credit facility," this person said. "If his wife goes to London and sees a painting, he uses the credit line to buy the painting."

Mr. Kozlowski's attorney, Stephen Kaufman, has declined to make his client available to comment.

According to people with knowledge of the probe, Assistant District Attorney John Moscow, who is spearheading the investigations, came to believe that the January money transfers for the purchase of a $3.95 million Monet painting were related to potential tax evasion, rather than money laundering.

Robert Katzberg, who is representing Mr. Apsis, said that Mr. Apsis "has done nothing wrong and has conducted his business in a completely lawful manner." Mr. Katzberg added that Mr. Apsis, who sells 19th century paintings out of his Fifth Avenue Manhattan apartment, "is cooperating fully with the District Attorney's investigation."

Mr. Moscow brought a former New York prosecutor now working at the New York State Department of Taxation and Finance into the probe. By February, according to people with knowledge of the matter, the tax investigator, Joseph Brooking, had determined that the money transferred into Mr. Apsis's account had been used to pay him his commission and to pay the Monet's former owner, who had given it to Mr. Apsis to sell. But no state sales tax had ever been paid on the Monet, leading to the investigation into Mr. Kozlowski and his art purchases.

Mr. Brooking declined to comment. Although Tyco's headquarters are in New Hampshire, Mr. Morgenthau claims jurisdiction because the company has an office and shareholders in New York.

Tracing Art Deals

For three months, investigators quietly traced Mr. Kozlowski's art-buying habits and how his art was shipped. According to individuals with knowledge of the probe, a major breakthrough came when art consultant Christine Berry, of Fine Collections Management, was subpoenaed to testify before the grand jury looking into Mr. Kozlowski in early May.

Ms. Berry, an art consultant through whom Mr. Kozlowski and his wife had bought much of their art, had arranged for the paintings' transfer to the Kozlowskis' Manhattan home at 950 Fifth Ave., according to people with knowledge of the case. Ms. Berry also handled many of the invoices which falsely indicated that the paintings were being shipped to New Hampshire and elsewhere. Prosecutors have alleged that in several instances, empty boxes were shipped instead.

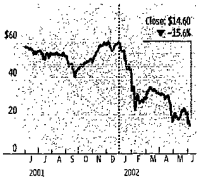
As is usually the case with those who testify before New York State grand juries, Ms. Berry received immunity for her testimony, people familiar with the situation said.

Ms. Berry's New York attorney, Alan Futerfas, declined to comment, saying only that she and Fine Collections Management won't be charged with wrongdoing and have responded expeditiously to inquiries from prosecutors.

Meanwhile, CIT Group, Tyco's finance unit, was widely expected to file an updated prospectus yesterday for an initial public offering, considered key to Tyco's plan to raise cash in an effort to reduce its $27 billion debt load. But, by late yesterday, CIT had not.

Asleep at the Switch?

Tyco's daily closing stock price



Source: Thomson Datastream

Four Depart Enron's Board, Three Named for Slots

By KATHRYN KRANHOLD And MITCHELL PACELLE

Four longstanding directors of Enron Corp. resigned from the board yesterday, having remained for several months despite indications to creditors they would leave shortly after the energy company filed for bankruptcy-court protection in December 2001.

The Houston company said in a prepared statement it has recommended three candidates and was prepared to approve them yesterday at its board meeting. The statement said the vote was postponed because the creditors' committee hadn't approved the candidates. The Enron board eventually is expected to be composed of as many as nine members.

Raymond S. Troubh, meanwhile, was named interim chairman, and is expected to remain on the board indefinitely; he was named to the board in the fall shortly before Enron's collapse.

The resigning directors are: Robert Belfer, who is Enron's longeststanding director having joined prior to the formal creation of Enron in 1985; Wendy Gramm, the former chairman of the U.S. Commodity Futures Trading Commission who joined in 1993; acting board chairman Norman Blake Jr., who joined in 1993; and Herbert S. Winokur Jr., who joined in 1985. The resignations were effective yesterday.

Messrs. Blake and Winokur have both offered to stay on as unpaid advisory directors, Enron said. It will be up to the board to accept or reject the offer.

Last week, Enron announced the appointment to the board of Corbin McNeill Jr., a veteran electric-utility executive, and John Ballantine, a private investor who specializes in risk management.

In recent weeks, the creditors' committee ratcheted up the pressure on acting Chief Executive Officer Stephen Cooper to bring about the resignations, said one person involved with the creditor's committee. Another person connected to the committee said the committee had a deal with Mr. Cooper that Enron's directors who had been with the company before its bankruptcy would "disappear." The person said, "That deal wasn't being honored."

W. Neil Eggleston, who represents the departing directors, said they resigned "to permit the orderly transition of the board." He added they hope the "three remaining directors will be able to work with the creditors' committee" to elect the new members they had "unanimously recommended." The creditors' committee doesn't get to vote on the board members, but is consulted on each nomination.

Enron has said that it was seeking an orderly transition, replacing old board members with new directors as they are identified. Finding qualified directors willing to join Enron's board while the company has been in crisis has been difficult, said one person close to the process.

Enron spokesman Mark Palmer said the company has been working "with creditors committee to identify and review with them qualified candidates to become independent directors."

Mr. Troubh, a 76-year-old financial consultant and a member of eight other public company boards, said he hopes Enron's board "can be a paragon of corporate governance." He said he and Mr. Cooper are going to do everything "we can to hasten the business recovery" while maximizing returns for the creditors because "they own the company." The board and management want "to re-create a real business and keep people working," he said.

Judge Rules RJR's Magazine Ads Reach Too Many Youths

Continued From Page A3

nolds was violating the agreement. A judge in New York, however, found that the same behavior was allowed by the settlement. The fourth case was dismissed.

The tobacco companies' $206 billion settlement pact with 46 states bars them from taking "any action, directly or indirectly, to target youth" in the sale of cigarettes. But the deal contains no specific provisions limiting magazine advertising. Reynolds's Mr. Payne said California's lawsuit was an effort to "rewrite" the agreement and win a concession in court that the states didn't get at the negotiating table.

Soon after the agreement was signed, state attorneys general began pressuring cigarette makers to restrict their ads in magazines read by substantial numbers of teenagers. **Philip Morris** Cos. eventually agreed to pull ads from magazines with a youth readership of more than 15% or two million people. **Brown & Williamson Tobacco** Corp., a unit of British American Tobacco PLC, and **Loews Corp.**'s Lorillard Tobacco made similar concessions. For this reason, the magazine industry—beleaguered as it is—already has taken a hit and won't be sharply affected by this ruling.

But Reynolds resisted, saying further cutbacks would prevent it from being able to compete effectively with No. 1 Philip Morris, which now sells more than half the cigarettes smoked in the U.S. Reynolds currently advertises in magazines that have a teen readership of less than 25%. Mr. Payne said yesterday's court decision "has nothing to do with kids, and everything to do with the attorney general's desire to censor, if not ban, legal marketing to adult smokers."

Judge Prager ordered the company to adopt "reasonable measures" to reduce youth exposure to its cigarette ads "to a level significantly lower than the level of exposure to targeted groups of adult smokers." Mr. Payne said that would "preclude us from realistically looking at any reasonable level of magazine advertising in" California. Mr. Payne pointed to InStyle magazine as the kind of title from which Reynolds could have to withdraw. The magazine, he said, contains plenty of ads for R-rated movies and alcohol, other products for adults. Barring cigarette ads from such magazines "sets up an illogical double standard," he said.

Intel's Forecast Cuts Signal Lower Demands for PCs

Continued From Page A3

sales of analog chips will grow 25% to $30 billion in 2003, while microprocessor sales are expected to grow just 12% next year, also hitting $30 billion.

"It's no longer Intel or the PC that is the bellwether for the semiconductor industry," argued Brian Halla, National's chief executive officer. "Intel is really kind of in a niche at this point."

National swung in its fourth quarter to a profit of $17.1 million, or nine cents a share, from a year-earlier loss of $44.4 million, or 26 cents a share. Excluding an $11.5 million tax refund, National put its earnings at three cents a share, much better than the consensus of a loss of eight cents a share forecast by analysts surveyed by Thomson Financial/First Call.

Shares of National were up 22 cents to $30.88 at 4 p.m. in composite trading on the New York Stock Exchange.

National's revenue rose 4.6% to $419.5 million in the fourth quarter from the year-earlier period, and was up nearly 14% from its third-quarter mark of $369.5 million. The company benefited, in particular, from sales of analog chips for cellphones to Nokia Corp. and Sony Ericsson, the joint venture of Telefon AB L.M. Ericsson and Sony Corp., Mr. Halla said. National projected that revenue will rise 6% to 8% in the current period, while its gross profit margin should improve to 44% to 45% from 43%.

Intel, on the other hand, abruptly reversed a positive trend in its profitability. The company had produced a welcome surprise in the first quarter by posting a margin of 53.6%—topping its original 51% projection—and suggested margins could stay at the 53% level for the remainder of the year.

But unit sales of microprocessors, which came in at the low end of the company's seasonal pattern, and a mix of less-profitable products caused the adjustment yesterday to 49%.

"The lower revenue you can get over, but the gross margin is really the shocker," Mr. Osha said.

Andy Bryant, Intel's chief financial officer, said the average selling prices of the company's chips "took a hit," contributing to the margin shortfall. In the first quarter, prices for its low-end chips were strong because Intel couldn't meet customer demand; in the second quarter, average prices fell as Intel caught up with demand for inexpensive chips, he said.

After those positive signs in the first quarter, "we got a little aggressive in our forecast," Mr. Bryant said.

Intel isn't yet adjusting any expectations for the rest of the year, which call for a stronger second half according to normal seasonal patterns. The projection for average gross margin for the year remains at 53%, but Mr. Bryant conceded that that figure is likely to be revised downward by a percentage point or so.

Besides results from operations, Intel said it expects to take a $230 million expense from acquisition-related amortization in the second quarter, compared with a previous projection of $115 million. The change is primarily due to a write-off associated with a line networking circuit boards acquired when Intel bought Xircom Inc. last year.

The news from Intel capped a tumultuous day for semiconductor stocks, triggered by a downgrade of seven companies by Merrill's Mr. Osha. In a research note, he argued that signs of an accelerated recovery for the industry are evaporating, making many chip makers' stocks look overvalued at the moment.

Adelphia Cable Base Is Called Into Question

Continued From Page A3

been made on whether to file, Adelphia is running out of options and the board is now seriously weighing the possibility, these people said.

The directors are expected to meet sometime over the next two days to get an update from advisers on the asset sale and to discuss the best course for Adelphia. But time is running out. The company faces a June 15 deadline to pay more than $50 million in interest expense to bondholders. While the company is trying to sell assets or raise as much as $1 billion in private equity, neither is happening quickly. "The more time that passes without a resolution, the more likely a bankruptcy option becomes," said a person close to the company.

While investigators have known for weeks that Adelphia appeared to have inflated its subscriber numbers, early estimates were that the discrepancies averaged about 60,000. In recent days, however, investigators found new evidence suggesting Adelphia's public subscriber counts were much higher than the count used in internal documents. The number represents between 7% to 10% of the company's reported subscriber base of 5.8 million.

Adelphia's advisers briefed the SEC yesterday on its findings, according to people familiar with the situation.

Adelphia representatives declined to comment on the report or the cable-subscriber numbers.

According to people familiar with the situation, Adelphia's publicly disclosed numbers were based on a more generous accounting system than the numbers used internally. For instance, in its public disclosures, the company counted customers who bought high-speed Internet connections as cable subscribers. It also counted connections to multifamily units as multiple connections—even though each unit may have had only one paying subscriber.

In addition, the federal grand juries investigating the company are focusing on a transaction that involved a transfer of digital converter boxes to an entity owned by the Rigas family, which founded Adelphia. According to people familiar with the transaction, Adelphia made a bulk purchase of set-top boxes at a discount, and transferred $100 million worth of boxes to a Rigas partnership.

Although the Rigas partnership paid for the boxes in the form of a company receivable, the partnership didn't need the boxes for its own operations, these people said. The transaction had the net effect of artificially reducing Adelphia's debt load by parking the unneeded goods in the Rigas-held entity. People close to the investigation said Adelphia also sought to boost its stature on Wall Street by inflating the amount of capital spending it was doing. While Adelphia told analysts it was upgrading about 50% of its cable-TV systems, people close to the investigation said the company actually rebuilt less than 40%.

THE WALL STREET JOURNAL.

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Relationship Trouble

Uncle and Nephew Find Legal Ethics Strain Family Ties

In an Alabama Federal Court, If Mr. Price Is on the Case, Judge Clemon Can't Be

Some Say He's a 'Poison Pill'

By MICHAEL OREY

BIRMINGHAM, Ala.—When Terry Price was a small boy, his uncle taught him how to play the piano by drawing keys on a cardboard box. That uncle, U.W. Clemon, went on to become a pioneering figure in the civil-rights movement and a federal judge.

As Mr. Price grew up and moved from college to law school and then to a successful career as an attorney, Judge Clemon was a steady source of inspiration and advice. In recent years, however, Mr. Price's relationship with his uncle has also become a source of contention.

Terry Price

Mr. Price, 48 years old, specializes in helping companies fend off employee lawsuits. To avoid a conflict of interest, federal law requires that Judge Clemon remove himself from any case in which his nephew's firm is involved.

Though Mr. Price denies it, the widespread view in the Birmingham legal community is that corporate clients routinely hire him to keep his uncle off their cases. Judge Clemon, the only African-American federal judge in Alabama's northern district, is generally perceived as sympathetic to workers' claims.

Federal judges have raised questions about the pattern for years. In 1995, Judge William Acker Jr. of the federal district court was assigned a case after Judge Clemon was forced to drop it. In a written opinion, Judge Acker cited 15 cases in the previous 2½ years in which Judge Clemon had been knocked off a case because Mr. Price's then-firm had been hired to represent the defendants. Each case involved a different defendant, but Judge Acker wrote that an "intelligent guess" would suggest that Mr. Price had been hired to get rid of his uncle in at least some instances.

A year later, the Eleventh U.S. Circuit Court of Appeals in Atlanta refused to allow Boeing Co. to add Mr. Price's firm to its defense team. Though courts rarely prevent a party from hiring a particular lawyer, the court noted that federal judges in Alabama were "obviously concerned" that clients were hiring the firm to bump Judge Clemon. Boeing declined to comment.

U.W. Clemon

Now the controversy is surfacing again—with an unusual twist. In a discrimination suit against BellSouth Corp., lawyers for the workers have argued that Mr. Price and his firm, Lehr Middlebrooks Price & Proctor, should be dropped from the case instead of Judge Clemon. U.S. District Judge C. Lynwood Smith, in Huntsville, Ala., is expected to rule on the matter soon. If Mr. Price remains on the case, Judge Clemon will have to step aside.

Tactical maneuvering to try to get a favorable judge is common in the American legal system, but it can cross ethical lines. Seven justices on the U.S. Supreme Court issued a statement in which they expressed concern that parties hoping to remove particular justices from a case could hire law firms where their own relatives work.

Judge Clemon, in a recent interview, said his relationship with Mr. Price has suffered. The two men haven't spoken in months. "It's obviously not a very comforting feeling to think that one's close

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INDEX

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What's News—

Business and Finance

TYCO MAY HAVE SPENT over $135 million to benefit L. Dennis Kozlowski, the former CEO who resigned in June before being charged with tax evasion. Investigators say the funds were used for loans or for the CEO's charitable donations and other personal spending. Among the biggest items, Tyco secretly wiped clean $25 million in loans in 1999.

(Article in Column 4)

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■ **Members of the Rigas family** are under investigation for possible tax violations related to the alleged looting of Adelphia, the cable-TV firm they founded.

(Article in Column 5)

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■ **Stocks surged,** helped by speculation the Fed will cut rates. The industrials rose 2.9% to 8274.09; the Nasdaq leapt 4.4% to 1259.55.

(Article on Page C1)

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■ **Investigators are examining** whether Enron committed accounting fraud when it borrowed $1 billion in a bid to avoid Chapter 11.

(Article on Page A2)

* * *

■ **Cisco boosted profit margins,** helped by lower costs and stable pricing, even as revenue trailed forecasts. Its shares jumped 8%.

(Article on Page A3)

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■ **Vivendi is considering selling** its videogame-software business in an effort to slash its debt.

(Article on Page A3)

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■ **Xerox's black employees** at its Cincinnati facilities were subjected to a racially hostile environment, the EEOC concluded.

(Article on Page A3)

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■ **Interpublic shares slid again** following the advertising company's announcement that it would delay its earnings report.

■ **Omnicom's earnings** rose on strong revenue growth largely driven by a recent buying spree.

(Articles on Pages B1 and B9)

* * *

■ **GM said** it will begin recording stock options as an expense next year but expressed concern about valuing them accurately.

(Article on Page B3)

* * *

■ **FleetBoston said** its president of global banking is resigning to run for congress in Brazil.

(Articles on Pages A2 and A12)

* * *

■ **Only about 5% of top U.S. firms** have complied with the order to certify their financial results, with the deadline only a week away.

(Article on Page B2)

* * *

■ **Chinese prosecutors charged** three ex-executives of a listed company with accounting fraud.

(Article on Page A12)

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■ **Abbott was warned** by the FDA to improve reporting of side effects caused by some of its drugs.

(Article on Page D4)

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■ **AstraZeneca was asked** by the FDA to provide more clinical data on its Crestor cholesterol drug, delaying the U.S. launch.

(Articles on Page D4)

* * *

■ **ATA Holdings replaced** its airline's CEO and split the carrier's charter and scheduled operations.

(Article on Page B9)

* * *

■ **American Air has cut** select business fares in the past few weeks in an experiment to boost revenue. Northwest matched the move.

(Article on Page D6)

* * *

■ **Sotheby's net climbed** 25% as higher auction commissions, strong real-estate sales and staff cuts offset a drop in art sales.

(Article on Page A10)

* * *

—Markets—

Stocks: NYSE vol. 1,515,076,420 shares. Nasdaq vol. 1,515,480,771. DJ industrials 8274.09, ▲ +230.46; Nasdaq composite 1259.55, ▲ +53.54; S&P 500 index 859.57, ▲ +24.97.

Bonds (4 p.m.): 10-yr Treasury ▼ -1, yld 4.3335%; 30-yr Treasury ▼ -31/32, yld 5.2449%.

Dollar: 120.87 yen, +1.26; euro 96.66 cents, -1.53 against the dollar.

Commodities: Oil futures $27.17 a barrel, ▲ +$0.59; Dow Jones-AIG futures 97.623, ▲ +0.763; DJ-AIG spot 124.638, ▲ +0.973.

World-Wide

■ **RUMSFELD SAID** military intelligence agencies need improvement.

Following a series of mistaken attacks in Afghanistan and a lack of information on the location of top Taliban and al Qaeda officials, the defense secretary called for creation of a post to oversee all the agencies and improve coordination. He also said "there is no question" the Palestinian Authority has been involved in terrorist activities and sees no reason for Israel to cede land to it.

Rumsfeld played down a leaked Rand report that urged the U.S. to punish Saudi Arabia if it doesn't do more to fight terrorism. Powell told his Saudi counterpart the report doesn't represent U.S. policy.

* * *

■ **Israel sent** tanks into the Gaza Strip and killed two Palestinian militants in the West Bank. It also said it will revoke the citizenship of two Israeli Arabs suspected of terrorist links. Officials said the U.S. is considering moving consular offices from east Jerusalem due to security concerns. Powell plans to meet with a Palestinian delegation tomorrow.

* * *

■ **Jordan's king met** with Iraq's foreign minister, who vowed afterward that Baghdad would defeat any attack. Abdullah also met with Turkey's foreign minister, and both nations expressed reservations about U.S. war plans. The U.N. pressed Iraq to readmit weapons inspectors.

* * *

■ **Bush signed** the "fast track" trade bill and legislation intended to quicken permanent-resident approval for children born to American parents overseas. The president, before departing for a monthlong vacation in Texas, was given a clean bill of health by doctors at Bethesda.

* * *

■ **Doctors in Los Angeles separated** one-year-old Siamese twins from Guatemala who had been joined at their heads. One girl, however, developed bleeding complications after the 22-hour surgery by a team of 50.

* * *

■ **Medicare patients sued** the government for failing to set up an appeals process for coverage decisions. Congress mandated such a process two years ago. The suit involves a drug for macular degeneration. (Page B9)

* * *

■ **A U.S. vaccine shortage ended** in late July, according to the CDC. An effort to catch up has begun as parents, doctors and clinics attempt to get children back onto a recommended schedule of shots. (Page D1)

* * *

■ **Patients' lawyers told** a court that Lilly and Bristol-Myers Squibb knew a Kansas City, Mo., pharmacist was diluting cancer drugs years before his arrest. Lilly said documents and testimony had been mischaracterized.

* * *

■ **Jack Grubman gave** $100,000 to the Democrats' senatorial campaign days before the WorldCom scandal broke. It was the most the analyst ever gave, but Democrats called the timing "purely coincidental." (Page A2)

* * *

■ **Taiwan's president tried to soften** weekend remarks favoring an independence referendum, and postponed a navy exercise. But China ratcheted up its rhetoric, threatening military action over such a vote. (Page A13)

* * *

■ **North Korea hosts** a groundbreaking ceremony today for a Western-financed nuclear plant meant to wean Pyongyang from nuclear-arms development. The U.S. sent an official.

■ **China freed** a South Korean missionary jailed eight months for helping North Koreans escape through China. Beijing has hinted it may soften its policy on such asylum bids.

* * *

■ **Rep. Dingell (D., Mich.) declared** victory in a tough primary challenge by Rep. Rivers. Dingell, longest-serving House member, had his district redrawn by Republicans. (Page A4)

* * *

■ **AIDS drugs will be given** by Anglo American to its workers free. The mining firm, which employs 134,000 in southern Africa, had gone back and forth on the issue. (Page A13)

* * *

■ **Spain took the first step toward** banning Batasuna, the political wing of the Basque separatist rebel group ETA. The move follows the killing of two people in a weekend bombing.

—Online Today—

WSJ.com

The Middle Seat: The likely head of the FAA faces a slew of problems, Scott McCartney says, including how to prevent a return to gridlock in the sky.

* * *

■ **Fund Fiend:** Warren Buffett is sniffing around the smoldering telecom sector, leading investors to wonder if it's time to bottom fish.

* * *

■ **The Harris Poll:** Americans' confidence in the economy may be shaken, but they still have hope.

Executive Privilege

How Tyco's CEO Enriched Himself

Mr. Kozlowski, Ex-Chief, Got Secret Loans, Spent Firm's Cash as His Own

A $6,000 Shower Curtain

By MARK MAREMONT And LAURIE P. COHEN

In 1998, L. Dennis Kozlowski, then chief executive of Tyco International Ltd., moved into a new home in Boca Raton, Fla.: a 15,000-square-foot, Mediterranean-style, waterfront mansion complete with pool, tennis court and fountain.

Although Mr. Kozlowski was one of America's best-paid corporate executives, he didn't have to reach into his own pocket to finance the lavish spread. Instead, he paid for it with a $19 million, no-interest loan from Tyco.

L. Dennis Kozlowski

Two years ago, Tyco quietly forgave the entire loan as part of a "special bonus" program, according to people familiar with the company. To cover Mr. Kozlowski's income taxes on the forgiven loan, these people say, the company kicked in an extra $13 million. Not a penny of these deals was disclosed to Tyco shareholders.

Mr. Kozlowski, who had been one of the most celebrated chief executives in the U.S., resigned on June 2—the day before the Manhattan district attorney charged him with evading more than $1 million in New York state sales taxes on his purchases of art. Mr. Kozlowski, 55 years old, has pleaded not guilty to those charges.

But according to people investigating the company, Mr. Kozlowski's questionable activities at Tyco went well beyond tax evasion. For a period of at least five years, while publicly claiming devotion to high standards of corporate governance, Mr. Kozlowski regularly reached into Tyco coffers to finance his extravagant lifestyle and polish his image. All told, it appears that more than $135 million in Tyco funds went to benefit Kozlowski, largely in forgiven loans and company payments for real estate, charitable donations and personal expenses.

Among the biggest items, which until now haven't come to light: Tyco secretly wiped clean another $25 million in loans to Mr. Kozlowski in 1999, according to people familiar with the company. More than $11 million of Tyco's cash paid for antiques, art and other fancy furnishings in Mr. Kozlowski's New York apartment, including a $6,000 gold-and-burgundy floral patterned shower curtain. The huge decorating bill came on top of the $18 million Tyco paid for the Fifth Avenue duplex, which Tyco considered a corporate apartment.

Then, last summer, Tyco picked up half the tab for a $2.1 million junket to the Italian island of Sardinia, people familiar with the company say. The central event of the weeklong extravaganza was a 40th birthday party for Mr. Kozlowski's wife, Karen, complete with a performance by singer Jimmy Buffett.

Tyco, a huge conglomerate with interests ranging from disposable diapers to undersea fiber-optic cables, itself is under investigation by the Manhattan district attorney and the Securities and Exchange Commission, and the U.S. Attorney in New Hampshire has made inquiries, people familiar with the probes say. The company may face SEC charges that it didn't disclose the true compensation levels for Mr. Kozlowski and other executives. And there may be

Please Turn to Page A6, Column 1

On the Company's Tab

Under Dennis Kozlowski's leadership, the line between Tyco's funds and the chief executive's personal money was blurred

■ **REAL ESTATE**

Rye, N.H.: Home bought in 1996 for $875,000. Company funds may have been used and repaid. ▼

Nantucket, Mass.: Home bought in 1997 for $5 million. Company funds may have been used and repaid.

Boca Raton, Fla.: Estate assembled between 1997 and 2001 for $13.5 million. $19 million loan helped finance property and construction; later forgiven by Tyco.

Boca Raton, Fla.: Home bought by Tyco in 1997 for $2.5 million, used while estate was being built.

New York: Corporate apartment bought in 2000 for $18 million. More than $11 million in Tyco funds spent on furnishings.

■ **ART**

Paintings: Collection worth $13.1 million, some paid for with Tyco funds.

■ **CHARITY**

1996: Tyco donates $1.7 million toward Kozlowski Athletic Complex for school attended by Mr. Kozlowski's daughters.

1997: Tyco pledges $5 million for building at Mr. Kozlowski's alma mater, Seton Hall.

1992-2002: Tyco directed more than $35 million to Mr. Kozlowski's favorite charities.

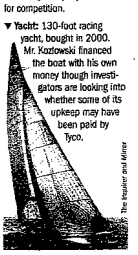
■ **ENTERTAINMENT**

2001: Company meeting and birthday party for Mr. Kozlowski's wife on Italian island of Sardinia. Tyco picks up half of the $2.1 million tab.

■ **HOBBIES**

Team Tyco racing yachts: Owned by company and used for competition.

▼ **Yacht:** 130-foot racing yacht, bought in 2000. Mr. Kozlowski financed the boat with his own money though investigators are looking into whether some of its upkeep may have been paid by Tyco.



The Insulator and Mirror

In Argentina, People Mad at the Banks Go After the Tellers

* * *

With Withdrawals Limited, Physical Attacks Mount; See This Hand Grenade?

By MICHELLE WALLIN

BUENOS AIRES—As Argentina endures a horrific economic crisis, bank lobbies have turned into high-risk workplaces. Just ask Francisco Bidetti, an account executive at a Bank of Nova Scotia branch here.

In May, Mr. Bidetti was posted at the door to give customers bad news. The bank's Canadian parent company was halting most operations in Argentina. Since December, depositors had access to just a small portion of their savings. Throughout the banking system, the government has limited weekly withdrawals by individual depositors to just 300 pesos, about $85.

One agitated bank client threatened to get a gun unless Bank of Nova Scotia returned the $40,000 he had on deposit. Mr. Bidetti and other bank workers say. Then the depositor pulled out a syringe and stabbed Mr. Bidetti twice in the arm with the needle. Mr. Bidetti says the depositor told him the syringe contained HIV.

Mr. Bidetti has now twice tested negative for the AIDS virus, but he is still shaken. "I understand his problems, but it's just not my fault," says Mr. Bidetti.

These days in Argentina, once Latin America's wealthiest nation but now an economic disaster, bankers' hours are full of woe. Unable to vent their wrath over the deposit freeze on the five Argentine presidents who have served since December, bank customers are reaching out and throttling the neighborhood teller. In April, an enraged customer at a branch of Credicoop bank hurled a 10-inch glass vase that hit operations manager Gustavo Labitzke just above the left eyebrow. The cut required four stitches. The scars have healed, Mr. Labitzke says, but he is worried about post-traumatic stress. "They always say that these things come out much later," he says. In the port city of Bahia

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Adelphia Founders Face Tax Probe Stemming From Fraud Charges

By JERRY MARKON

Members of the Rigas family that founded Adelphia Communications Corp. are under investigation for possible tax violations relating to their alleged looting of the cable-television company, a person close to the matter said.

The tax probe, spearheaded by the U.S. Attorney's office in the Middle District of Pennsylvania, follows last month's charges that John J. Rigas and two of his sons used the company as their "personal piggy bank" in one of the biggest cases of alleged insider dealing ever. Those charges, filed in a federal court in New York, accused the family members of illegally taking hundreds of millions of dollars out of the nation's sixth-largest cable TV company, which filed for bankruptcy-court protection in June.

John J. Rigas

If the Rigases didn't disclose the alleged payments as income on their tax returns, they could face felony charges of tax evasion or filing false returns. Tax evasion carries a penalty of up to five years' imprisonment per count. The penalty for filing false returns is up to three years' imprisonment per count. Any such charges would likely hinge on a conviction or guilty plea in the original fraud case because prosecutors would need to show that the income was illegally obtained.

The existence of the tax investigation signals that the government is throwing all of its legal ammunition at the case. After the Rigases were routed last month from their company-owned apartment on New York's Upper East Side in a dramatic early-morning arrest, President Bush hailed the case as the latest effort by the government to crack down on corporate crime. As the government seeks to restore confidence in stock markets shaken by corporate scandals, it is going out of its way to punish alleged wrongdoers publicly.

Although it would be unusual for charges to be filed against the same people in separate jurisdictions, government officials decided that prosecutors in Pennsylvania would focus on tax issues because they wanted a piece of the broad investigation of Adelphia, which is based in Coudersport, Pa. Prosecutors are still considering bringing criminal charges against the company, which was accused of fraud last month in a civil complaint filed by the Securities and Exchange Commission.

Mr. Rigas, the company's 78-year-old founder and former chairman, and sons Timothy J. Rigas and Michael J. Rigas, the former chief financial officer and former operations vice president, respectively, were charged last month with securities fraud, wire fraud and bank fraud. Adelphia has said it supports the arrests.

In one startling allegation, the elder

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Comics offering drug tips are meant to keep users healthy, says their United Kingdom publisher. A dangerous strategy, says a drug-prevention group's chief. B1

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Venture Capitalists, Exit Here

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White House Sets Hurdles For Human-Rights Movement

In the second intervention of this type in a year, the U.S. seeks to quash a suit claiming Exxon was complicit in killing Indonesians. B1

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How Tyco's Ex-CEO Enriched Himself at Company Expense

Continued From First Page

additional charges against Mr. Kozlowski: One avenue being explored by the Manhattan district attorney is whether the former Tyco chief failed to pay New York state and city income tax on some of his compensation, including the company apartment and forgiven loans. After Mr. Kozlowski's departure, Tyco's board launched its own investigation into the executive's activities, and hired attorney David Boies to lead it.

Hubris and Greed

The allegations against Mr. Kozlowski follow a wave of disclosures of CEO hubris and greed. Like other top executives who have come under fire in recent weeks, Mr. Kozlowski allegedly took advantage of the 1990s boom to help himself to a smorgasbord of financial rewards—from undisclosed loans to fat options grants to a giant salary—in order to transfer massive sums of wealth to himself at the expense of shareholders. But Mr. Kozlowski's brazen use of a public company as his personal cash machine looms as a particularly egregious case.

Before he stepped down, Mr. Kozlowski had been hailed by Wall Street as a management guru who cracked the secret of running a successful, lean conglomerate. At their peak early last year, Tyco shares had soared more than 14-fold from when Mr. Kozlowski took the helm a decade ago. That image began to crumble when Tyco's aggressive accounting practices were first questioned more than two years ago. Although Tyco's stock has rebounded slightly in recent weeks, it is still down nearly 80% since the start of this year amid questions about the company's liquidity and heavy debt load, and the management turmoil surrounding Mr. Kozlowski's abrupt departure. Tyco's stock closed yesterday at $12.76, up 17 cents in 4 p.m. composite trading on the New York Stock Exchange.

Tyco says it remains a strong company, with valuable assets and operations that will produce more than $2.5 billion in free cash flow in the current fiscal year ending Sept. 30. Walter Montgomery, a Tyco spokesman, says that "nothing uncovered to date could be considered to be material to the company's financials."

A person speaking on Mr. Kozlowski's behalf vehemently disputes that Mr. Kozlowski misspent Tyco funds for personal benefit or that he knows of any forgiven loans. This person says Mr. Kozlowski entrusted his financial interactions with Tyco—including his loans—to company employees, and assumes they accounted for his finances accurately. This person also says Tyco is holding all of Mr. Kozlowski's personal financial records and that he is unable to recall details of many transactions without them. For instance, this person says, the Sardinia trip was timed to coincide with a Tyco subsidiary's board meeting at the same resort, and that Mr. Kozlowski told subordinates he was responsible for all the non-Tyco expenses associated with the trip and assumes the subordinates allocated them properly.

People familiar with the company say Tyco believes Mr. Kozlowski owes the company more than $75 million—mostly from forgiven loans that were never authorized by directors and $19 million in loans that were outstanding when Mr. Kozlowski left the company. For his part, the person speaking for Mr. Kozlowski claims that Tyco owes him "tens of millions" of dollars in deferred compensation. The person speaking for Mr. Kozlowski says Tyco may be exaggerating his past financial dealings to avoid paying him.

Mr. Kozlowski was known for spending his own time and money on worthy causes. But he was also very generous with Tyco's money, donating tens of millions of corporate dollars to charities he favored—often getting credit in his own name rather than Tyco's. A Maine private school attended by his daughters got $1.7 million in Tyco money for its Kozlowski Athletic Center, while his alma mater, New Jersey's Seton Hall University, received a $5 million Tyco pledge for Kozlowski Hall.

Meanwhile, as Mr. Kozlowski publicly boasted about Tyco's lean corporate overhead, he quietly put his doctor and fitness trainer on the Tyco payroll, as well as a yachting expert whose duties included helping Mr. Kozlowski build a 150-foot sailboat. Once, the Tyco chief met a chef he liked and had Tyco hire him. Two new executive dining rooms were opened to feature the chef's creations.

The person speaking for Mr. Kozlowski says the trainer and doctor were hired as part of a corporate wellness program, and the chef and corporate dining rooms were added to cut costs and improve efficiency, as many executives were ordering in costly meals or leaving the office to eat.

The revelations of apparent out-of-control spending raise new questions about oversight by Tyco's board, which is packed with insiders and directors who had questionable financial dealings of their own with the company. One of those inside directors, Tyco Chief Financial Officer Mark Swartz, received $16 million in forgiven real-estate loans and related taxes as part of the 2000 special bonus, according to people familiar with the company. Mr. Swartz didn't return calls seeking comment.

Mr. Montgomery, the Tyco spokesman, says the Tyco board "was not aware of expenditures that would have required disclosure at the time they were made. When the directors became aware, they took immediate action." Responding to why Tyco never disclosed the "special bonus" program that forgave relocation loans to Mr. Kozlowski and other top executives and allocated money to cover personal taxes, Mr. Montgomery says the Tyco board didn't learn about the program until the internal investigation, which began in June.

As part of its post-Kozlowski revamping, Tyco this month hired a new chief executive, former Motorola Inc. executive Edward Breen. Last week, Mr. Breen took his first tough action to clean house, forcing out Mr. Swartz as chief financial officer after negotiating a drastically reduced severance package. Yesterday, Mr. Breen hired another outsider to fill a new post, senior vice president of corporate governance. Tyco also announced it had added a new independent director, John A. Krol, the former chairman and chief executive of DuPont Co.

When Mr. Kozlowski took the helm at Tyco in 1992, extravagant spending was taboo. The conglomerate was generating $3 billion in annual sales from such mundane products as sprinklers and packaging materials. It was run from a modest, two-story structure in Exeter, N.H. Corporate costs, which included salaries for its three dozen staffers, amounted to only $14 million a year.

Mr. Kozlowski's predecessor, John F. Fort, was so thrifty that he drove a Pontiac that didn't have air-conditioning, recalls John Armacost, a retired Tyco vice president. One of Mr. Fort's first acts as chief executive was to ground the company's fleet of aircraft. Under Mr. Fort, there was no corporate dining room, and employees were forbidden from taking each other out on the company tab. "Dennis was a big spender," Mr. Armacost says. "John wasn't."

Mr. Kozlowski, who grew up in a working-class neighborhood in Newark, N.J., as the son of a police detective, quickly developed a taste for personal luxuries. He became a keen yachtsman and later bought a rare 1930s racing sailboat, Endeavour. Other forms of recreation included piloting his own helicopter and riding his Harley-Davidson motorcycles.

Around the time that Mr. Kozlowski took the reins at Tyco, his marriage to his first wife, Angie, was falling apart. He soon took up with Karen Mayo, a tall, athletic blonde who was then a waitress at Ron's Beach House, a waterfront restaurant on the New Hampshire coast and frequent gathering spot for Tyco executives. Ms. Mayo's second marriage, to a lobsterman, ended in divorce in 1991.

At Tyco, Mr. Kozlowski was determined to make the company—often confused in those days with a toy-maker of the same name—into an international powerhouse. The already-acquisitive company stepped up its buying binge, and by mid-1997, revenue had more than doubled under his tenure. That year, Tyco did its biggest deal ever, a $6.6 billion merger with Bermuda-registered ADT Ltd., the world's leading provider of security alarms. The merger was structured as an ADT takeover of Tyco, so that the surviving company could stay in tax-friendly Bermuda. Tyco became one of the first big U.S. companies to register itself as officially based offshore to save on U.S. taxes.

The merger brought with it a huge pay raise for Mr. Kozlowski—even as he publicly pronounced his distaste for runaway executive pay. In an April 1997, interview in The Wall Street Journal, Mr. Kozlowski praised Tyco's strict pay-for-performance compensation program. "Options are a free ride ... a way to earn megabucks in a bull market," Mr. Kozlowski said in response to a question about why he had never received options from Tyco. Several months later, just after the ADT deal closed in July, Mr. Kozlowski received 3.3 million options, according to company filings.

The person speaking for Mr. Kozlowski says the new Tyco board, which included ADT representatives, preferred the options plan, and says Mr. Kozlowski turned in some of his unvested restricted shares in exchange for the options package.

Mr. Kozlowski also pocketed $9.3 million in pay in the first three months after the ADT deal closed, filings show. His pay rose to about $24 million in fiscal 1998—plus another $41 million in options gains. Tyco then added a rich retirement program for Mr. Kozlowski that currently guarantees him at least $4.1 million a year for life after age 65. A huge life-insurance policy was also executed for his benefit. All told, Mr. Kozlowski reaped more than $400 million in salary, stock grants and gains from the sale of stock options during the past four years, according to the company's proxy filings.

Despite this rich pay package, people familiar with the company say Mr. Kozlowski abused a Tyco corporate loan program set up to help executives pay taxes on their restricted-stock awards. Restricted stock awards trigger taxes when they vest—even if the employee doesn't sell the shares. To encourage employees to hold onto their restricted stock, many companies lend them money at low interest to pay taxes due. But people familiar with the company say Mr. Kozlowski treated the program as if it were a charge account, routinely paying bills such as those for the expensive artwork that figures in the tax-evasion case. He repaid most of the loans at a later date, either by turning in restricted stock he had been granted, or by exercising options and signing over the stock to Tyco.

At one point in fiscal 1999, Tyco's regulatory filings show, Mr. Kozlowski owed the company $52.7 million under the stock-loan program. By the end of that year, the remaining loan balance was zero. Although Mr. Kozlowski repaid some of that sum, people familiar with the company say $25 million in loans to the Tyco chief were simply wiped off the books at Mr. Kozlowski's direction in fiscal 1999, again without board approval. These people say there is no evidence that Tyco included the forgiveness of the $25 million in Mr. Kozlowski's W-2 tax form, a matter that could pose additional tax problems for Mr. Kozlowski.

'No Knowledge'

The person speaking for Mr. Kozlowski says he has "no knowledge" of any $25 million loan forgiveness in fiscal 1999, again saying the former CEO assumes subordinates followed his instructions to pay off all his loans at the end of each year with some of his restricted stock or other compensation. The former Tyco chief relied "upon the company for accurate records," this person says.

The 1997 ADT merger had another selling point for Mr. Kozlowski: ADT operated out of Boca Raton, Fla., a place where he and Ms. Mayo enjoyed spending time. Months after the deal closed, Tyco quietly moved its executive offices from Exeter to Boca Raton, shifting 44 people including top executives, secretaries and even the company doctor and fitness trainer. Each was offered 15-year relocation loans from Tyco to buy new houses, generally with zero interest and no payments due for the first five years.

The 10-story Boca Raton office was a long way from the squat Exeter building. In Florida, executive-floor staffers could special-order breakfasts delivered to their desks on china. On Fridays, a masseur came around to soothe away stresses. By this year, some 80% of Tyco's headquarters staff worked in Boca Raton.

But the company continued to claim in regulatory filings that the modest New Hampshire offices were its U.S. operating headquarters. Mr. Kozlowski was quoted in a Business Week cover story last year extolling the virtues of spartan offices. "If you build an elaborate headquarters, people are tempted to spend a lot of time there and it becomes really unproductive," he said.

While Mr. Kozlowski and Ms. Mayo waited for their Tyco-financed, Boca Raton mansion to be built, they lived in a $2.5 million waterfront house that Tyco bought from ADT's former chief, Michael A. Ashcroft—a Tyco board member—a transaction now being probed by prosecutors. Since the mid-'90s, Mr. Kozlowski has bought fancy houses in Nantucket, New Hampshire and Colorado, and spent time at posh country clubs and traveling on Tyco's growing jet fleet. Mr. Kozlowski's first marriage officially ended in 2000; he married Ms. Mayo last year.

Mr. Kozlowski's $19 million relocation loan for the Boca Raton house was forgiven long before he had to repay it. In fiscal 2000, Tyco offered up the "special bonus" program—approved by Mr. Kozlowski—under which he and some other loan recipients saw their borrowings wiped off the books, people investigating the company say. Tyco also covered taxes due on the forgiven loans, which were recorded as income to the loan recipients. The special bonus program amounted to nearly $100 million in total, of which Mr. Kozlowski received about one-third. The bonus plan seemed to have been treated as a secret inside the company. Staffers were required to sign written agreements not to disclose the size of their "bonuses," even to each other, according to a person close to the situation.

The person speaking for Mr. Kozlowski says he gave subordinates instructions to "clean up" all his loans at the end of every year by applying his bonus and other pay to offset those loans. Mr. Kozlowski was "busy running the company, not sitting around looking at people's relocations," this person says.

In Boca Raton, Mr. Kozlowski and Ms. Mayo made big contributions to local charities, gaining favorable coverage in the news and society pages of the well-read Palm Beach Post. Mr. Kozlowski put a local public-relations executive named Barry Epstein on a Tyco retainer for 18 months. "I represented Dennis personally," Mr. Epstein says. "I reported to him and guided him on community involvement." Of the donations, Mr. Epstein adds, "most money was Tyco's" and not the CEO's personal funds.

The person speaking for Mr. Kozlowski says his dealings with Mr. Epstein were limited, and Mr. Epstein did not represent him personally.

Tyco gave $3 million to a local hospital and $500,000 to an arts center. The company also became one of the largest contributors to the local United Way; United Way of America honored Mr. Kozlowski himself as a "million-dollar giver," even though most of the money donated to the group was Tyco's.

In Nantucket, where the couple spent summers, Mr. Kozlowski joined the board of the Nantucket Historical Association, which hosts an annual antique auction that is one of summer's prime social events. He soon became a major backer of a new building the group was planning. The group's 2000 annual report lists "Mr. L. Dennis Kozlowski and Ms. Karen Lee Mayo" as donors of between $2 million and $5 million. But people familiar with the matter say Tyco itself paid $2 million to the Nantucket historical group. It's unclear if Mr. Kozlowski and Ms. Mayo added to that sum.

Jean Grimmer, director of development at the Nantucket Historical Association, says Mr. Kozlowski personally signed the financial pledge. "Who put up the money? I don't have that detail," she says.

In 1996, Mr. Kozlowski became president of the board of trustees at Berwick Academy, in South Berwick, Maine, after his daughters left the school, which is located not far from Tyco's original New Hampshire base. He quickly agreed to put up $1.5 million for a new gymnasium if the school raised a similar amount, says Richard W. Ridgway, the school's headmaster. When the project ran a bit over budget, Mr. Kozlowski kicked in the extra $200,000. Students and faculty informally refer to the building, dedicated in 1997, as the "Koz Plex."

Although several Berwick trustees say they thought the donation came from Mr. Kozlowski personally, Mr. Ridgway—after checking—says the school's records show the entire $1.7 million came from Tyco. Why, then, did Berwick name the structure after Mr. Kozlowski and not Tyco? "We never really thought of the money as separate from Dennis," Mr. Ridgway says.

The person speaking for Mr. Kozlowski says Tyco had longstanding ties with Berwick, believing that the seacoast area near Exeter needed a high-quality private school to help lure executives to Tyco. This person says Mr. Kozlowski doesn't recall the exact amount donated for the Koz Plex, but believes both he and Tyco evenly shared in the giving as part of a Tyco matching-gift program.

Mr. Kozlowski reserved the biggest Tyco sums for Seton Hall University, in South Orange, N.J., from which he graduated in 1968. Five years ago, Mr. Kozlowski pledged a $5 million "naming gift" for a classroom building then under construction at the university, according to people familiar with the company. The pledge was to be paid out in five annual installments, and four of the payments have been made with money from Tyco's coffers, these people say.

When the six-story Kozlowski Hall was dedicated in 1997, the university's chancellor extolled Mr. Kozlowski's "generosity and dedication," according to an account in the student newspaper. Kozlowski Hall, the chancellor added, "will bear his family name, and so for many decades, and perhaps centuries to come his dedication will be known."

Seton Hall declines to comment. Robina Schepp, a university spokeswoman, would say only that "Dennis Kozlowski has been a donor and Tyco has also been a donor."

The person speaking for Mr. Kozlowski says the former CEO personally pledged $10 million to Seton Hall over a 12-year period and believed the building was named based on his long-standing close involvement in the school, not for a particular gift.

The blurring of lines between Tyco's interests and Mr. Kozlowski's extended to one of Mr. Kozlowski's favorite hobbies. To compete effectively in round-the-world yacht races that cost millions, Tyco hired Michael Castania, an Australian yachting expert, and installed him in an office in Boca Raton. Mr. Castania helped lead Team Tyco to a fourth-place finish in the prestigious Volvo Challenge race in June. Mr. Castania also assisted with construction of an aluminum-hulled sailboat that Mr. Kozlowski was having built in Connecticut.

Mr. Castania defends the Team Tyco project, saying it helped bring together employees of the global company, as Tyco would host events for workers in various overseas locations as the race came into harbor. As for Mr. Kozlowski's new boat, Mr. Castania says he was involved "only on a consulting basis," but declines to provide further details. Mr. Castania says he joined Tyco as a full-time employee in 1996. The person close to Mr. Kozlowski says the former Tyco chief paid a portion of Mr. Castania's salary and expenses for any personal work he did.

A few years ago, Mr. Kozlowski started spending more time in New York, where the company's mergers specialists and lawyers were based. Tyco traded its formerly modest offices there for sumptuously decorated space in a tony midtown building and bought the Fifth Avenue duplex for Mr. Kozlowski.

To furnish the apartment, the company hired a Nantucket decorator, Wendy Valliere, who was a personal friend of the Kozlowskis and had decorated some of the couple's other properties. Her firm's tab for furnishings and decoration totaled about $7.5 million, according to people familiar with the company. Nearly $4 million was spent on other furnishings and art.

The person speaking for Mr. Kozlowski says $11 million "sounds awfully high," adding that the former Tyco chief recalls telling Tyco's top real-estate executive to keep the budget "within a few million." The bills, this person says, went to Tyco, and Mr. Kozlowski didn't personally approve any of them.

Ms. Valliere says the $7.5 million figure for her bills is "too high," but declines to specify another number. The decorating job, she adds, was "so mid-range compared to what a lot of people do."

—John Hechinger and Laura Johannes contributed to this article.

Journal Link: *See a timeline of key events for Tyco with links to past coverage in the Online Journal at* **WSJ.com/JournalLinks**.

Tyco's Timeline

- **1960** Tyco founded as a research lab, later moves into telecom cabling.
- **1968** Dennis Kozlowski graduates from Seton Hall University.
- **1976** Tyco hires Mr. Kozlowski.
- **1992** Mr. Kozlowski named CEO of Tyco.
- **1997** Tyco merges with Bermuda-based ADT, whose operations base is in Boca Raton, Fla.
- **1998** Tyco moves 44 people from its Exeter, N.H. headquarters to Boca Raton, giving them 15-year relocation loans that carried little or no interest.
- **1999** Tyco secretly wipes clean $25 million in company loans to Mr. Kozlowski.
- **2000** Tyco offers "special bonus" program – approved by Mr. Kozlowski – under which he and other relocation loan recipients had borrowings forgiven, and received additional money to cover the taxes on the bonus, which was recorded as income.
- **2001** Tyco picks up half the tab for a $2.1 million junket to the Italian island of Sardinia. The weeklong trip is planned to celebrate the 40th birthday of Mr. Kozlowski's wife, though a Tyco subsidiary's board meeting is held afterwards.
- **2002** Mr. Kozlowski borrows $19 million from a company loan program intended for the payment of taxes on restricted stock grants. Money remains unreimbursed.

Mr. Kozlowski indicted in June on charges that he evaded more than $1 million in New York state income taxes on the purchase of $13 million in art. Some of those purchases were paid for by Tyco.


Reuters

Dennis Kozlowski in 2002

Argentine Tellers Feel the Pain

Continued From First Page

Blanca, an angry elderly depositor pulled a knife on Oscar Maldonado, a bank administrator working at Nuevo Banco Industrial de Azul, according to Mr. Maldonado and the local bankers' union. "The bank workers suffer for the government's sins," Mr. Maldonado says, sighing.

Desperate Grab

The government's imposition of withdrawal limits, a policy known as the *corralito*, or little fence, came after Argentines made a desperate grab for deposits at the end of 2001. Argentines feared—prophetically as it turned out—that the government would resort to seizure of deposits and a currency devaluation to try to stem a prolonged recession and crisis of confidence. After freezing deposits, the government compounded the damage in January by devaluing the peso, which had been pegged to the dollar since 1991, in the aftermath of an economic crisis in the late '80s. Treasury Secretary Paul O'Neill, having visited Brazil and Uruguay, arrived in Argentina last night to discuss regional economic problems.

In downtown Buenos Aires, where depositors regularly gather for clamorous protests, banks have covered sleek glass facades with corrugated metal sheets and plywood. Graffiti—much of it calling bankers thieves, or *chorros*, in Argentine slang—is scrawled all over bank buildings.

The bank workers union says the number of employees seeking psychological assistance has tripled since December. Fundacion Salvat, a nonprofit job-training institute, has been holding group-therapy sessions at international banks. "They went from being people who sell products to being people who tell people they can't have their money," says Graciela Filippi, a labor psychologist.

Norberto Roglich, a 64-year-old pensioner, who is diabetic, had been worried about having hard cash for insulin supplies, according to his lawyer, Martin Navarro. So, in January, Mr. Roglich bought a replica of a World War II hand grenade and strolled into his branch of Banco Bansud in the heartland town of Tandil, according to Mr. Navarro. Brandishing his weapon, Mr. Roglich got bank officials to hand over cash—exactly how much neither Mr. Roglich nor the bank will disclose. Before police could arrive at his house with an arrest warrant, Mr. Roglich had hidden the money, his lawyer says.

The government dropped a weapons-possession charge against Mr. Roglich after determining the grenade was fake. Prosecutors are now considering extortion charges. "This is someone who had never run a red light in his life," says Mr. Navarro, the lawyer.

Even bankers themselves had trouble imagining how bad things could get in a country where the peso and dollar had been used interchangeably since 1991 and banks appeared solid until last year. Horacio Gallo, a 35-year veteran of a Banco Nacion branch in the town of San Andres de Giles, says family members had asked him for several years whether it was safe to keep their money in Argentina's banks. He had always assured them that it was.

Now, Mr. Gallo is guilt-ridden and stressed out. "My family trusted me," says Mr. Gallo, who is 57. Finally, Mr. Gallo decided to seek psychiatric help, taking a two-week leave and making the 60-mile trip to a Buenos Aires clinic. "The way I feel now, I don't think I can return to work," he says.

Making matters even harder for bank workers, judges have granted injunctions allowing certain depositors, claiming exceptional circumstances, to make extra withdrawals. More than four billion pesos of approximately 60 billion pesos in total deposits have trickled out of the banking system as a result of such court orders. Jorge Luis Illanes, an employee of Banco Nacion in the city of San Juan, said the injunctions favor a rich few who can afford lawyers. "Ninety percent of people will be left with nothing," he says. Carlos Martinez, the manager of a Banco Rio branch in La Plata, ended up spending the night in jail after he refused to recognize the validity of several court orders.

On Edge

When a group of about 50 lawyers representing depositors and armed with injunctions marched into Banco de la Provincia de Buenos Aires in La Plata in April, a larger group of bank employees ganged up on them. They pushed and shoved the lawyers off the premises, the lawyers claim in a criminal complaint. The bankers even turned two fire extinguishers on the lawyers, sending smoke billowing into the intruders' ranks, says Carlos Andreucci, head of the La Plata bar. "A banker had been punched in the face recently, and they were on edge," says Salvador Villano, the leader of the local bank workers union. The bank wouldn't comment.

Norma Ordones, 81, and her husband, Roberto, 86, arrived at the branch of Banco Nacion one morning in early May carrying an injunction granting them access to $32,000 of their savings, according to family members. After the bank refused to honor the injunction, the Ordonezes hunkered down in the lobby and posted handwritten signs on windows explaining their predicament. Their daughter, a journalist, phoned other reporters who appeared on the scene. A crowd of demonstrators showed up, beating pots and pans and chanting, "Thieves!" and "Give the old folks their money."(Banco Nacion wouldn't comment.)

Finally after an extended standoff, the bank agreed to pay the couple within 48 hours. The resolution came too late for one young bank worker, who suffered a panic attack, according to bank employees. Protesters outside the bank saw him being removed in a wheelchair to a waiting ambulance with his hands covering his ears.

Journal Link: *Read selected excerpts from the new anthology "Floating Off the Page: The Best of The Wall Street Journal's 'Middle Column' " at* **WSJbooks.com/floating**.

Adelphia Founders in Tax Probe

Continued From First Page

Mr. Rigas is accused of racking up more than $66 million in personal debt and then withdrawing so much money from the company for personal use that his son Timothy had to limit him to $1 million a month. The elder Mr. Rigas's annual compensation was listed at $1.9 million in public filings.

The criminal complaint also alleges that the Rigases used the company's three corporate jets for personal use that was neither approved by the board nor paid for by the family. Adelphia also allegedly paid for two Manhattan apartments, one used rent-free by John's daughter and son-in-law, who was a member of the board at the time.

Two other former Adelphia executives—James R. Brown and Michael C. Mulcahey—were also charged last month. The tax probe, however, is focusing on the Rigases.

Peter Fleming, a lawyer for the elder Mr. Rigas, said he was unaware of the tax investigation and declined to comment. A lawyer for Timothy Rigas, who has previously said his client would "defend the charges vigorously," declined to comment on the tax probe. A lawyer for Michael Rigas didn't return phone calls. A spokesman for the U.S. Attorney's Office for the Middle District of Pennsylvania declined to comment.

Under federal law, prosecutors in New York have until Sept. 3 to move their case against the Rigases forward with an indictment. If that doesn't happen, the Rigases would be granted a hearing at which evidence against them would be presented. In many cases, plea negotiations are conducted before the deadline for an indictment is reached.

Although attorneys for the Rigases approached prosecutors before the charges were filed to offer the family's version of events, another person familiar with the matter said there has been virtually no contact since then and that the family members are considering taking the case to trial.

The possibility of new charges involving tax evasion represent "another battlefield for the defense to worry about," said Robert Mintz, a former federal prosecutor in New Jersey who now heads the white-collar-crime practice group at McCarter & English in Newark, N.J., and who isn't involved in the case.

"If the Rigases were simply drawing money out of the company and concealing the fact that they were receiving payments, that's a very straightforward case for tax evasion and under-reporting your income," he said. "It's like getting a bonus and not reporting it as income."

Tyco Postpones Changes to Board

PEMBROKE, Bermuda—**Tyco International** Ltd. put on hold its plan to expand its board to 15 members from 11, pending a review of corporate governance by recently appointed Chief Executive Edward D. Breen.

Tyco had planned to increase the size of its board in order to add independent directors after the indictment of former CEO Dennis Kozlowski on charges of evading sales taxes.

The review by Mr. Breen, former president of Motorola Inc., will include possible changes to the board's composition, the company said. Among those changes, Tyco yesterday appointed John A. Krol, former chief executive of DuPont Co., to the board, to succeed former Tyco Chief Financial Officer Mark Swartz.

Also, Tyco named Eric M. Pillmore, former chief financial officer of Multilink Technology Corp., to the newly created position of senior vice president of corporate governance.

MONEY & INVESTING

THE WALL STREET JOURNAL.

Ahead Of the Tape

—Today's Market Forecast—

By Jesse Eisinger

Market-Based Economy

■ **For several weeks, investors have been giving thanks for rising stock prices. This week, they begin to find out if the thanks were justified.**

Tomorrow, investors will get a look at the Commerce Department's revision to the third-quarter estimate for gross domestic product, as well as the government-calculated corporate-profits figure. A consumer-confidence survey will be posted as well. On Wednesday, we'll get durable-goods orders for October.

Coming Tuesday

Revised annualized growth in quarterly GDP

Source: Commerce Dept.

There's a good chance the numbers could justify the recent optimism.

The third quarter is likely to be revised up from the 3.1% that the government originally posted, perhaps even sharply. For those suspicious of the numbers that public companies report, the aggregate corporate-profits figure in the GDP report will be a hopeful sign. It likely will show double-digit gains because of increases in productivity. Companies have also slowed the increases in their employees' wages, which is good for profits but could bode ill for consumer demand.

Alas, the higher the revision to the third-quarter GDP figure, the weaker the fourth quarter may be, economists say. Companies were building inventories in the third quarter as demand slowed. This will have the effect of robbing from the current quarter. Economists generally expect that the economy will grow at a 1% rate this quarter, though Goldman Sachs predicts that GDP growth will be only 0.5% this quarter.

Investors know all this. Stocks began rallying in recent weeks because the economy wasn't, in fact, falling off a cliff, as it seemed in late September. They have continued to rally because investors think the economy is going to recover next year.

The fact that stocks are going up and that corporate-debt spreads have narrowed could help the economy, as will any benefit from a resolution of the uncertainty about the Iraq situation, which Bane One economist Diane Swonk calls "Iraq-nophobia."

The pessimists on the economy cite high corporate and personal debt, a potentially weak labor market next year and the inevitable reduction in spending from state and local governments next year.

But if consumer spending only moderates rather than sharply decelerates and if companies, more confident about the markets, invest more, the economy might be out of the woods. That's what the markets are telling us. Now the question is whether we believe them.

Send comments to tape@wsj.com. Check today for last week's selected letters at wsj.com/tape.

—Inside—

■ **IPO Outlook:** Despite recent signs of life, IPO issuance is likely to be slow and thin following Thanksgiving hiatus.

(Article on page C5.)

* * *

■ **Regulation:** Media are at odds with securities-industry regulators over a new set of proposals on disclosure of analyst conflicts.

(Article on page C9.)

* * *

■ **Fund Track:** Another no-load mutual-fund firm is biting the dust.

(Article on page C15.)

MONEY & INVESTING INDEX

SEC Asks Tyco if It Withheld Data in Earlier Inquiry

Regulator Missed Cue to Uncover Possible Accounting Problems About Two Years Before Woes Arose

By Laurie P. Cohen

THE SECURITIES AND Exchange Commission missed a chance to root out possible accounting problems at Tyco International Ltd. – about two years before the company's woes began to surface.

In the latest twist in the Tyco case, the SEC has asked Tyco to investigate whether the conglomerate and its then-outside law firm withheld relevant information that would have helped the agency in its 1999-2000 inquiry into Tyco's accounting practices, say people with knowledge of the matter.

Had the SEC received the information it sought – or pressed harder for it – the agency might have continued the earlier accounting inquiry, the people say. Instead, the SEC ended its informal inquiry in July 2000 without action. A former senior Tyco executive persuaded the SEC to close its investigation before all the data came to light, said people familiar with the matter. The SEC declines to comment.

The new line of questioning was sparked by the recent discovery of documents the SEC never received, said people with knowledge of the matter. Among them: memoranda between two former top Tyco financial executives discussing ways Tyco would help U.S. Surgical show its growth after Tyco agreed to acquire that company – but months before the $3.17 billion purchase was completed in 1998, said people who have viewed them. (Such a move would have enabled U.S. Surgical to show faster growth once it was acquired.) In one, a former Tyco executive termed the Tyco plan for U.S. Surgical "financial engineering."

In 1999, an outside law firm for Tyco provided reams of material to the SEC. But there also were a number of significant documents that weren't handed over to the agency before it closed the inquiry, most of them involving U.S. Surgical.

The SEC reopened a broad investigation into Tyco in June of this year, after L. Dennis Kozlowski, Tyco's former chief executive, was charged with evading New York state sales tax by the Manhattan District Attorney's office. Mr. Kozlowski and former Chief Financial Officer Mark Swartz also face charges that they reaped $600 million in illicit gains from the company. Both men have denied the allegations.

The re-examination of the 1999-2000 accounting inquiry is the latest example of the SEC's failure to avail itself of an opening to get out front of a troublesome situation before it blew up for investors. The SEC is also playing catch-up with its current investigation into apparent conflicts between the investment banking and research arms of securities firms, an area in which it had poked around, although never seriously investigated, until New York State Attorney General Eliot Spitzer took it on this year.

Mark Swartz

The SEC recently asked Tyco to identify every U.S. Surgical document that wasn't provided to the agency in 1999 and 2000, say people with knowledge of the matter. Walter Montgomery, a Tyco spokesman, said the company is "fully cooperating" with the SEC, turning over all documents related to the U.S. Surgical acquisition. A person close to Tyco said the company doesn't expect the renewed inquiry into the U.S. Surgical acquisition to affect current financial results.

In December 1999, Tyco said the SEC asked it for documents supporting the method Tyco used to account for acquisitions-related charges and reserves. In September 2002, however, questions were raised about whether a secret $40 million payment Tyco made to settle a 2000 lawsuit represented a payoff to hide possible accounting improprieties.

These questions prompted the SEC to take an other look at documents from the earlier case, comparing them with documents that might cast a harsh light on Tyco's accounting practices. Tyco gave these documents to the Manhattan district attorney's office and the SEC in response to subpoenas connected to the secret payment. The subpoenas were based on testimony by witnesses who said they saw the earlier memos.

The existence of these documents came to light in the course of a U.S. Surgical-related lawsuit brought by nine former shareholders of Progressive Angioplasty Systems Inc. The SEC only recently learned about the case, which was sealed at the time of settlement. Progressive was

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December Forecast: a Blizzard of Key Data

By E.S. Browning

FOR THREE YEARS, most market indicators have seemed about as useful as a flashlight in dense fog. Investors finally may have a chance to see some road markers worth watching.

During the next several weeks, a number of significant market factors will come into view, potentially making December a turning-point month as investors try to determine whether the recent rally will hold.

In addition to marking the end of the year and the fourth quarter – traditionally a time when companies warm of problems to come and issue guidance about performance – December also will see the passing of deadlines for Iraq to comply with United Nations resolutions, which could indicate whether the U.S. will go to war. And it is the make-or-break month when many U.S. businesses, notably retailers, record their biggest sales.

ABREAST OF THE MARKET

"I see a lot of pieces fitting into the puzzle for 2003" during the next few weeks, says Ned Riley, chief investment strategist at State Street Global Advisors, a money-management arm of State Street Corp. in Boston.

Investors certainly seem hopeful. Despite a drop of 0.16%, or 16.31 points, Friday, the Dow Jones Industrial Average last week jumped another 2.63%, or 225.75 points, to 8809.84. That marks its seventh straight week of gains – its longest such streak since 1996.

Here are some of the indicators money managers will be watching.

Company Earnings

Hopes for earnings gains are driving the rally. But investors are painfully aware past hopes repeatedly have been dashed, so they will be closely watching corporate guidance. The big question is whether companies will sound more like **Home Depot**, which last week warned of softer sales, or **Hewlett-Packard**.

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Like Predicting the Weather

The stock market is showing signs of having bottomed out on Oct. 9, but there have been other rallies this year that have failed. Investors are awaiting some signposts in December that could indicate whether this rally will continue or sag.

Coming in December

Big companies often offer guidance about expected performance for the fourth quarter and the coming year.

Deadlines expire for Iraq to comply with U.N. resolutions or face war.

Sales make or break many companies' yearly results, so weekly retail-sales figures will be scrutinized.

Information on manufacturing activity and business investment could indicate how strong the economic recovery is.

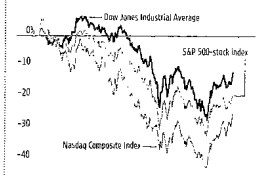
The rally could suffer if investors sell losers to offset tax gains on stocks they have held for years.

Tom Bloom

Sources: Datastream Thomson First Call

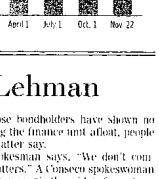
Major stock-market indexes have been gaining ground this fall...

Year-to-date performance



But earnings-growth forecasts have been lowered

Since July, analysts have been edging down their forecasts for year-over-year earnings growth in 2003 for S&P 500 companies.



France Sells Off Lyonnais Stake To BNP Paribas

By Jo Wrighton

Paris

IN A SURPRISE MOVE, the French government has sold its 10.9% stake in Credit Lyonnais SA to BNP Paribas SA, France's largest bank, for €2.2 billion ($2.1 billion).

The price represents a hefty 19% premium to the closing price of Credit Lyonnais Friday, before the government caught the banking community off guard by suddenly announcing the nearly instant auction. Moreover, the transfer of the stake upsets the ownership structure of Credit Lyonnais, one of the few medium-size French banks, and could precipitate a takeover battle.

"This deal opens the way for a bidding war between BNP Paribas and **Credit Agricole SA**," says Benoit Vincenzi, an analyst at Lehman Brothers in London.

Credit Agricole, a French farm bank that already owns 10.5% of Credit Lyonnais, had long been expected to eventually acquire the government's holding in the bank and then merge with Credit Lyonnais. Talks between the two sides have continually stalled, however, generally over management issues.

In a statement yesterday, Credit Agricole said BNP Paribas must now let its intentions be known to a group of controlling institutional shareholders, known as the the shareholder pact.

The shareholder pact – which controls around one third of Credit Lyonnais – includes Credit Agricole and AGF SA, part of German insurer **Allianz AG**, and other financial institutions. The pact was formed in mid-1999 to protect the newly privatized Credit Lyonnais from a hostile takeover, but the agreement expires in July. Other members of the pact, such as French insurance group **AXA SA**, Germany's **Commerzbank AG** and Spanish bank **Banco Bilbao Vizcaya Argentaria SA**, are considered likely sellers. Apart from the stake held by the government, the remainder of the bank is publicly traded or held by bank employees, which own about 6%.

Baudouin Prot, chief operating officer of BNP Paribas, said his bank was looking for partnerships but denied that it intended to seek full control of Credit Lyonnais. "This is not a question as things stand," Mr. Prot said, adding that he was looking for cooperation with Credit Lyonnais in all areas from retail banking to investment banking. "We offered a high price that reflects the special, called the extraordinary, opportunity to replace the state as the largest shareholder in Credit Lyonnais," Mr. Prot said.

BNP Paribas won Saturday's auction by agreeing to buy the state's 38 million Credit Lyonnais shares for €58 each. Credit Lyonnais shares had closed at just €38.91 on the Paris stock exchange on Friday. The bid values the whole of Credit Lyonnais at €20.22 billion. Industry watchers say the bid could spark a new round of consolidation in the French banking sector.

The government sped up the sale of its holding in Credit Lyonnais to help plug a growing budget gap amid the slowing economy. French finance minister Francis Mer said he planned to use €1.7 billion of the proceeds from the Credit Lyonnais stake to reduce state-owned companies' debt while the remaining €500 million would go into the French pension system.

Credit Lyonnais almost went bankrupt in the early 1990s after disastrous expansion in the Hollywood film industry and real estate. After being rescued by the state, the bank was privatized in

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Conseco's Mobile-Home Mess Has a Tenant: Lehman

By Joseph T. Hallinan And Mitchell Pacelle

WHAT'S WORSE THAN a mobile home nobody wants? Try 19,000 of them. That's how many repossessed homes Conseco is trying to unload in an attempt to shore up its ailing consumer-lending business. But the unit is sucking up so much cash that Conseco, which is on the verge of seeking bankruptcy court protection, has nearly run out of options.

The company has tossed the mess into the lap of its longtime lender, Lehman Brothers, which has to figure out a way to keep the business afloat if it wants to protect the roughly $1 billion it has extended to the company's finance unit.

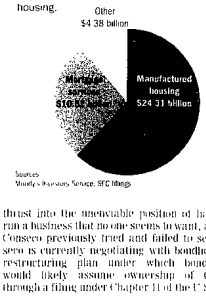
HEARD ON THE STREET

It remains to be seen whether Lehman, a unit of **Lehman Brothers Holdings**, will wind up taking control of the battered business. Conseco is currently seeking bids for all or parts of its finance business, but the mobile-home portion appears to be attracting the least interest. And for now at least, Lehman's loans appear to be covered by the value of assets Conseco posted as collateral, according to people familiar with Lehman's position.

But unless Conseco's continuing restructuring talks take an unexpected turn, Lehman could be thrust into the uneviable position of having to run a business that no one seems to want, and that Conseco previously tried and failed to sell. Conseco is currently negotiating with bondholders a restructuring plan under which bondholders would likely assume ownership of Conseco through a filing under Chapter 11 of the U.S. Bankruptcy Code. Those bondholders have shown no interest in keeping the finance unit afloat, people involved in the matter say.

Mostly Mobile Homes

Of Conseco's $39.22 billion in average managed receivables for the quarter ended Sept. 30, 62% were from manufactured housing.



Sources: Moody's Investors Service, SEC filings

A Lehman spokesman says, "We don't comment on client matters." A Conseco spokeswoman says that the company is "in the midst of a restructuring and sale of its businesses. As such, we don't feel it is appropriate to comment."

Lehman's misadventure in the mobile-home business – which predates Conseco's acquisition of the finance business in 1998 – isn't the first time a Wall Street firm has found itself stuck trying to turn around a collapsing business venture. During the 1990s, Morgan Stanley and its merchant banking fund partners spent $700 million trying to build a top-notch pug farm from scratch, only to be done in by plummeting hog prices, soaring feed prices and a virus that decimated the herd, among other problems. It lost nearly all of its investment.

Unlike Morgan Stanley, Lehman never intended to take a majority interest in Conseco's finance business. It merely acted as a lender to the Conseco unit, as other Wall Street firms did for numerous telecommunications firms that later failed, generating big losses. But the terms of the financing that Lehman provided Conseco make a quick exit by Lehman from the deal unlikely.

Lehman's loans to Conseco are secured by

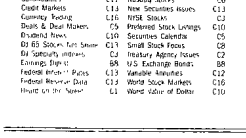
Please Turn to Page C3, Column 1

Markets Diary/ *Trading for Friday, November 22, 2002*

For 24-hour updated news, stock quotes, and background information see The Wall Street Journal Online at **WallStreetJournal.com**.

Stocks

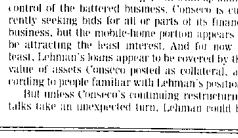
Dow Jones Industrial Average 8804.34 ▼ -40.31



Index	Close	Net Chg	% Chg	52 Week High	52 Week Low	YTD % Chg
Dow	8804.34	-40.31	-0.46	11.60	-12.14	
Nasdaq Comp	1465.74	+3.15	+0.62	22.63	-24.70	
S&P 500	938.55	+2.21	+0.24	19.11	-16.95	
Russell 2000	400.00	+2.32	+0.58	-12.75	18.12	

Global Stocks

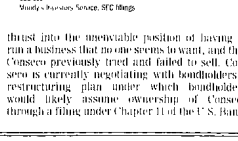
DJ World Stock Index (excluding U.S.) 106.63 ▲ +0.14



Index	Close	Net Chg	% Chg	52 Week High	52 Week Low	YTD % Chg
DJ World (ex U.S.)	106.63	+0.14	+0.13	-13.64	-13.76	
Nikkei 225	8722.56	-104.50	-1.21	-17.96	-16.79	
DJ Euro STOXX 50	2648.14	+4.04	+0.15	-29.80	-19.42	
MSCI EAFE	981.49	+3.26	+0.33	-14.49	-15.02	

Bonds & Interest

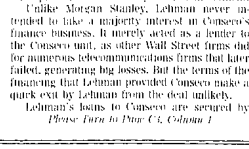
10-Year Treasury Note Yield (4 p.m. ET) Price Chg ▼ -7/32 Yield 4.182%



	Yield	Yield +/-BPS	YTD	YTD +/-BPS	52 Wk High	52 Wk Low
10-year Treasury note	4.182	-4.63	4.78	-4.75		
3-month Treasury bill	1.19	1.20	1.20	1.21		
DJ Corporate Bond Index	5.92	5.85	6.04	5.65		
Lehman Brothers AMBS	1035.86	5.16	1036.31	5.14		

U.S. Dollar

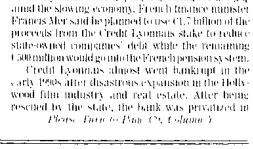
Percentage change since Nov. 22, 2001 115.2 ▲ +0.1



CURRENCY	LATEST NY	LATEST THU	DAY'S HIGH	DAY'S LOW
Euro (in U.S. dollars)	0.9777	1.0015	1.0015	0.9960
Japanese yen (per U.S. dollar)	122.80	122.68	122.47	122.99
British pound (in U.S. dollars)	1.5802	1.5796	1.5847	1.5778
Canadian dollar (per U.S. dollar)	1.5783	1.5778	1.5768	1.5818

Commodities

DJ-AIG Commodity Futures (1991=100) 105.793 ▲ +0.370



	Close	Change	High	Yr Ago
DJ-AIG Commodity Futures	105.793	+0.370	105.885	99.962
Oil (Nymex crude future)	26.76	+0.41	26.95	28.46
Gold (Comex spot)	320.70	+2.30	322.40	292.90
Wheat (CBT hard RED)	3.24	-0.01	3.40	3.36

Media Dispute Disclosure Guidelines

Proposals Aimed at Boosting Investor Confidence Raise Worries About Free Speech

By Kate Kelly
And Matthew Rose

A new set of proposals intended to win back investors' confidence in Wall Street stock research is creating a rift between the news media and securities-industry regulators, one of which already is backing away from its suggested guidelines as a result of the controversy.

The standoff stems from recent moves by the **New York Stock Exchange** and the **National Association of Securities Dealers** that would require that newspapers and magazines disclose analysts' stock ownership and other relationships with the companies they cover whenever they are interviewed for news articles. The Securities and Exchange Commission will rule on whether the proposals should become law in coming months.

Under the guidelines the NASD and NYSE are proposing, analysts would be expected to keep tabs on whether print publications make the required disclosures when quoting them by name. In cases where the publication fails to do so, "the analyst would be expected to decline further interviews with the media outlet," the NASD stated in its filing with the SEC.

Though the rules don't explicitly force news organizations themselves to change their practices, large media concerns such as **Dow Jones** & Co., which publishes The Wall Street Journal, **AOL Time Warner** Inc.'s Time Inc., and **New York Times** Co., say that if approved, the proposals would interfere with their publications' free-speech rights.

Regulators, though, argue that the proposed rules, submitted to the SEC in October, are a logical extension of disclosure guidelines imposed earlier this year on analysts who make electronic media appearances. Those rules require that the analysts disclose to the media outlet any conflicts or holdings regarding the companies they are discussing, meaning that those disclosures are often made live during television and radio reports.

However, on Friday, the NASD, parent of the Nasdaq Stock Market and the largest regulatory association for securities firms, said it plans to amend its proposal in light of complaints from media companies, which were alerted to the proposals by a Friday article in the New York Times. The latest changes eliminate any requirement that analysts track how they are quoted in print or decline future interviews when potential conflicts of interest aren't published.

"After receiving some complaints and looking at the original language, we realize we probably didn't get it quite right," said Howard Schloss, a spokesman for the NASD. "We're going to amend our rule filing to make it clear that while we want our analysts to make disclosures, we're going to leave it up to the media outlets to decide whether to use the disclosures or not, [and] we aren't going to tell our members who they should or shouldn't be talking to."

Ed Kwalwasser, head of regulation at the NYSE, said the Big Board has received no complaints from the media or from brokerage firms, and that despite the NASD's move on Friday, no change to the NYSE's October filing is in the works. "We think that it's very important that this information gets out," he said, adding that the proper disclosures could probably be made in a printed disclaimer as short as "fifteen words."

Mr. Kwalwasser also said the exchange would welcome feedback to the rule proposals during a public-comment period that is in the offing. A spokesman for the SEC said that period, which typically lasts at least three weeks, hasn't yet begun.

But while media companies said they are sympathetic to the regulators' intentions, they criticized their methods.

"The New York Times believes disclosure of analyst conflicts is important to investors and our readers, and we have endeavored to provide that in our coverage," said the paper in a written statement. "But it is for editors to decide how and whether to include them in our reports without governmental pressure."

In a written statement, Dow Jones said that while the company "would applaud" efforts by the NYSE, NASD, or SEC to disclose analysts' potential conflicts, it "would be a terrible mistake" for regulators "to seek directly or indirectly to mandate what information any member of the press includes in its articles. As a matter of both constitutional law and the bedrock tradition of the free press in this country, decisions as to what information to include in articles lie with reporters and editors. This ensures the independence of the press from government and corporate influences and the quality of the news that is published."

The Wall Street Journal regularly discloses information about analyst conflicts in its stories.

Rik Kirkland, managing editor of Time Inc.'s Fortune magazine, said the proposals would go "against the flow of information, not enhancing it, and that's the wrong direction."

Major Wall Street firms, including **Citigroup** Inc.'s Salomon Smith Barney unit; **Goldman Sachs Group** Inc.; and **Credit Suisse Group**'s Credit Suisse First Boston, say they plan to comply with whatever rules are implemented. Some brokerage firms, including Prudential Securities, already have moved independently to curtail their analysts' press comments, reflecting the charged atmosphere. Prudential last week confirmed that instead of making its analysts available for interviews, it will refer members of the media to analysts' written reports.

On Friday, Wall Street firms' trade group, the Securities Industry Association, said it applauds the regulators' proposed guidelines.

France's 10.9% Stake In Credit Lyonnais Sold to BNP Paribas

Continued From Page C1

1999 and since then the bank's chairman Jean Peyrelevade has successfully maintained the bank's independence.

Credit Lyonnais said in a statement Saturday that it regretted the government's "uncommon and sudden" decision to sell its stake to the highest bidder because it risked destabilizing the pact binding the bank's main shareholders. "Like any other company, Credit Lyonnais needs stability to pursue its development in sound conditions," the bank said.

According to people familiar with the situation, Credit Agricole had tried but failed to reach an agreement over the Credit Lyonnais stake. From there, the government considered splitting its stake between Credit Agricole and AGF, which owns just more than 10% of Credit Lyonnais. But when these two couldn't agree on the terms of a deal either, the Finance Ministry decided on the unprecedented step of a rapid sale of its stake to the highest bidder.

The Finance Ministry said four financial institutions took part in the bidding but declined to disclose their identities. Credit Agricole confirmed that it made a bid. AGF said it made an offer for 3.5% of Credit Lyonnais's capital with the aim of developing partnerships. **Societe Generale** SA declined to comment, although people familiar with the situation say the bank bid €46 per Credit Lyonnais share.

If BNP Paribas did acquire all of Credit Lyonnais, the combined bank would have a market capitalization of around €60 billion, compared to BNP Paribas's current €44 billion.

—Davide Gauthier-Villars of Dow Jones Newswires contributed to this story.

Lyonnais's Big Owners

BNP Paribas	10.9%
Credit Agricole	10.5
Allianz/Assurances Generales de France	10.0
Employees	6.5
Axa	5.3
Commerzbank	3.9
Societe Generale	3.8
Intesa BCI	3.7
Banco Bilbao Vizcaya Argentaria	3.6

Source: the company

New Focus on Old Tyco Inquiry

Continued From Page C1

acquired by U.S. Surgical in 1997 and shut down at Tyco's behest. The suit, filed in a San Mateo, Calif., state court, was settled before Tyco had to give plaintiffs documents germane to the SEC's 1999-2000 probe, people familiar with the case say.

So why didn't the SEC have all the relevant documents before it closed the previous accounting investigation in 2000?

The SEC believes it was misled by Mr. Swartz, who made a presentation to the SEC in 2000 in which he defended Tyco's acquisition accounting, said people with knowledge of the past and present Tyco accounting investigations. Two people who heard him credit Mr. Swartz with persuading the SEC to end its case.

Moreover, the SEC believed that Washington-based Wilmer, Cutler & Pickering, the outside law firm retained to represent Tyco at the time, had produced all relevant documents, said people with knowledge of the matter.

Charles Stillman, a lawyer for Mr. Swartz, declined to comment. William McLucas, the Wilmer Cutler lawyer leading the defense for Tyco, said that when his firm represents clients before government agencies, "We turn square corners when it comes to producing documents for the government." He added, "That's what we did here, and as far as I know, that's what the company did."

The SEC never sought a formal order of investigation in the 1999-2000 inquiry because Tyco was cooperative. The company gave the SEC access to Florida document storage warehouses. And Wilmer Cutler had a staff of 20 attorneys working on the case, led by Mr. McLucas, a former SEC enforcement chief.

Mark Belnick

Wilmer Cutler provided the SEC with about 160,000 pages of documents in response to specific requests, say people with knowledge of the matter. But the SEC has since learned there were an estimated 50,000 more pages in Wilmer Cutler's files, most of them about Tyco's acquisition of U.S. Surgical, that hadn't been produced by the time the SEC ended its informal inquiry, said people with knowledge of the Wilmer Cutler documents.

People who have spoken with Mr. McLucas say he has told them the remaining documents would have been produced had the SEC kept open the earlier accounting probe. These people say Mr. McLucas has said his law firm couldn't complete document production by mid-2000 because the SEC often amended or deferred its document requests. Once the SEC shut down its inquiry, Wilmer Cutler wasn't obligated to tell the SEC it missed an opportunity to review potentially relevant documents.

"Since the document production was voluntary in the first place, there is no affirmative obligation for a lawyer to produce potentially incriminating evidence unless the SEC asks for it," said Stephen Gillers, a professor at New York University's law school.

New questions were sparked by the discovery of documents the SEC never received.

Mr. McLucas, 52-years old, was the longest-serving SEC enforcement chief in history. He resigned to go into private practice in 1998 and Tyco was one of his first cases before the SEC as a defense lawyer. Mr. McLucas's clients include Enron Corp. and the WorldCom Inc. audit committee.

If the SEC determines, based on Tyco's own inquiry, that there is evidence that documents were intentionally withheld, it could open its own investigation. If that happens, Tyco or its lawyers could be charged with covering up material facts, which could result in fines.

Meantime, Tyco has claimed in a lawsuit, filed in a New York federal court, that its former general counsel, Mark Belnick, received a $2 million bonus at the end of 2000 for his role in wrapping up the SEC investigation into Tyco's accounting by the SEC without action. Mr. Belnick hasn't disputed this, saying only that his bonus was authorized.

Mr. Belnick retained Wilmer Cutler to represent Tyco in the earlier case. The company is now represented by the law firm of Boies, Schiller & Flexner.

Swiss Investor Martin Ebner Faces Insider-Trading Charge

By Goran Mijuk
Dow Jones Newswires

ZURICH—Swiss investor Martin Ebner, already reeling from financial woes, faces a criminal charge for insider trading.

The Zurich district attorney's office on Friday filed a criminal indictment alleging an investment vehicle controlled by Mr. Ebner sold shares in **Pirelli** SpA's Basel-based unit **Société Internationale Pirelli** AS, or SIP, in the spring of 1998 after receiving information from Pirelli management that the Italian tire company would buy back shares in the unit later that year at prices that wouldn't exceed 350 Swiss francs ($238).

The indictment alleges Mr. Ebner's investment vehicle, Stillhalter Vision, sold 6.2% of its shares in SIP between March 10 and March 11, 1998 at prices above 350 Swiss francs.

The sales came after Mr. Ebner learned on the morning of March 10 that Pirelli management would launch a buyback of SIP shares at a price below 350 Swiss francs, according to prosecutor Marc Jean-Richard-dit-Bressel.

Mr. Ebner in a statement denied receiving the information and indicated he lost money on the sales.

The criminal charges are the latest blow to Mr. Ebner who has been scrambling to restructure his **BZ Group** amid this year's plunge in stock prices. The maverick Swiss investor has been hard hit because his BZ Group had big positions in Swedish-Swiss industrial conglomerate **ABB** Ltd. and Swiss banking concern **Credit Suisse** AG, both of which have taken a beating this year.

In a bid to stave off his creditors, which includes Credit Suisse, Mr. Ebner recently jettisoned a 20% stake in Swiss chemicals concern **Lonza** AG, one of his core investments. This summer, he sold his once popular Vision funds to state-owned Zürcher Kantonalbank.

The charges filed Friday cap an investigation that has been gaining momentum this year after a former employee of BZ Group alleged that Mr. Ebner traded on inside information in connection with the 1998 restructuring of Pirelli.

In a statement, Mr. Ebner offered a different explanation for his stock sales. He said that in March 1998 his BZ Group initially offered to sell Pirelli SIP shares at 350 Swiss francs to Pirelli, reflecting the price of SIP shares at the time.

"Pirelli didn't respond to our offer initially," the statement said. "But then Pirelli shares rose sharply on the Italian stock exchange on rumors that BZ Group could take over Pirelli."

At that point, when the SIP shares were trading around 365 Swiss francs, Mr. Ebner's BZ Group started selling their holdings, according to the statement from BZ Group. But since the stock is so thinly traded, the sales by BZ Group quickly depressed the SIP share price, triggering an undisclosed loss for Mr. Ebner's company.

Mr. Ebner indicated in the statement that he was bewildered by the indictment. The BZ Group offered to sell the SIP shares to Pirelli at 350 Swiss francs "and we didn't know if Pirelli would accept the offer or not. Why shouldn't we be able to sell shares in the market at a comparable price," Mr. Ebner said in the statement.

Mr. Jean-Richard-dit-Bressel, the Zurich prosecutor, speculated that Mr. Ebner may question the Zurich district court's jurisdiction in this case and delay litigation by asking a higher court to take up the case. A trial date hasn't been set, the prosecutor said.

Campbell Soup Co.

Firm Might Owe Tax, Interest Totaling $79 Million, IRS Says

The Internal Revenue Service told **Campbell Soup** Co. that the Camden, N.J., company could be liable for $79 million in back taxes and interest. The IRS notice challenges Campbell's accounting for gains and interest deductions on government securities, the company said in a Securities and Exchange Commission filing. Campbell, the nation's biggest soup maker, said it reported the transactions properly on its 1995 tax return and will challenge the IRS proposal. "We believe this won't have a material impact, however it is resolved," spokeswoman Michelle Davidson said. Campbell Soup shares were at $23.70, up 24 cents, in 4 p.m. New York Stock Exchange composite trading Friday. The shares have declined 22% this year.

Alliant Energy Corp.

Broad Strategy Is Outlined In Bid to Boost Balance Sheet

Alliant Energy Corp. said it will pursue the sale of its nonregulated businesses and cut expected capital expenditures for 2002 and 2003 as part of a plan to maintain its credit profile and strengthen its balance sheet. As part of the plan, the Madison, Wis., electric and natural-gas utility said it will slash its $2 a share annual dividend to $1 a share, effective with the quarterly dividend to be declared and paid during the first quarter of 2003. Alliant also plans to cut $800 million to $1 billion in debt during the next year with funds from the sale of nonregulated assets. Assets targeted for sale during next year include Whiting, Alliant's affordable-housing and oil-and-gas businesses and several other noncore businesses. Alliant also plans to cut its anticipated 2002 and 2003 capital expenditures by about $400 million. It expects capital expenditures of $815 million for 2002 and $900 million during 2003.

—Dow Jones Newswires

Tracking the Economy

Nov. 25, 2002

INDICATOR	PERIOD COVERED	SCHEDULED RELEASE	PREVIOUS ACTUAL	CONSENSUS FORECAST
Existing-Home Sales	October	Today	5.40 million	**5.38 million**
Gross Domestic Product	Third quarter	Tuesday	+3.1%	**+3.8%**
Chain-Weighted Price Index	Third quarter	Tuesday	+1.1%	**+1.1%**
New-Home Sales	October	Tuesday	1,021,000	**980,000**
Consumer Confidence	November	Tuesday	79.4	**85.0**
Initial Jobless Claims	Week to 11/23	Wednesday	376,000	**385,000**
Personal Income	October	Wednesday	+0.4%	**+0.2%**
Personal Consumption	October	Wednesday	–0.4%	**+0.3%**
Durable Goods	October	Wednesday	–4.9%	**+1.5%**
Michigan Sentiment	November	Wednesday	80.6	**85.5**
Chicago PMI	November	Wednesday	45.9	**48.8**

Source: Dow Jones Newswires

THE WALL STREET JOURNAL.

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Power Outage

How Energy Traders Turned Bonanza Into an Epic Bust

Unleashed by Deregulation, Industry Greed and Deceit Undid the Nascent Market

'Shut Up and Delete This'

With dazzling speed, the energy-trading business sprang up in the late 1990s and seemed to become a $300 billion bonanza. Just a few years later, it's mostly gone, having collapsed in a flurry of fraud, aggressive accounting and flat-out greed.

How did it happen? Regulatory rollbacks and changes in accounting rules enticed some of the biggest names in the industry to remake themselves from staid utilities and pipeline operators into high-tech traders of contracts for electricity, natural gas and other fuels. Then, things got out of hand.

It's not that energy trading was necessarily a bad idea, says Peter Fusaro, an industry consultant in New York. The trading titans recklessly ruined it. "It became a big casino of making as much money as you could."

By Paul Beckett and Anthon Sugsford in New York and Alexei Barrionuevo in Houston

The companies looked for extra profits by taking advantage of customers. Trading became a means for fudging financial results. And a cozy core group of traders in Houston and elsewhere colluded on sham transactions aimed at fooling investors about the volume of activity in the new market. Eventually, the scam began to unravel. In the midst of an energy crisis in 2000, California officials accused avaricious traders of ripping off the state. Questions arose about concealed liabilities at Enron Corp. and dubious gas deals at Dynegy Inc.

Not everyone took this route. But enough companies did that energy trading is in shambles—one of the swiftest and largest examples of a market boom and bust in U.S. history. Investors in the trading companies have lost billions of dollars on paper, and the entire affair raises serious questions about whether such a complex market can operate safely without close regulation.

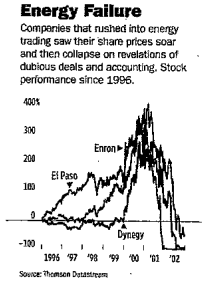
Enron is in bankruptcy-court proceedings, and four of its executives have been charged with or have pleaded guilty to crimes. Dynegy has paid $3 million to settle civil allegations of securities fraud by the Securities and Exchange Commission, and most of the company's executive team has been replaced. Williams Cos. recently agreed to settle with California and pay the state $150 million over eight years. Several other firms remain under civil and criminal investigation for their dealings with the state.

Not so long ago, supplying electricity and natural gas wasn't so complicated. Heavily regulated utilities that enjoyed local monopolies sold power and gas to consumers large and small. Beginning in the early 1990s, however, federal and state regulations were scaled back, and utilities were forced to open their transmission lines to rivals, the idea was that suppliers

Please Turn to Page A6, Column 1

Energy Failure

Companies that rushed into energy trading saw their share prices soar and then collapse on revelations of dubious deals and accounting. Stock performance since 1996.



Source: Thomson Datastream

What's News—

Business and Finance

A TYCO INTERNAL INQUIRY found "a pattern of aggressive accounting" intended to inflate the company's reported earnings, but concluded the problems weren't large enough to be "material" to overall profits. Tyco plans to take pretax charges totaling $382.2 million for fiscal 2002 to rectify several auditing errors.

(Article in Column 5)

* * *

■ **Oil prices** retreated from two-year highs after OPEC officials signaled that members are ready to increase output if prices remain at their recent lofty levels.

■ **Citgo is facing** pressure to find alternative crude supplies as the Venezuelan oil-industry stoppage drags into its second month.

(Articles on Page A3)

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■ **Existing-home sales fell** 3.5% in November, but the real-estate market appears to remain robust.

(Article on Page A2)

* * *

■ **Air-cargo volume grew** 14.2% in November, falling shy of some analysts' forecasts, in a sign of stop-and-go recovery at many businesses that use air freight.

(Article on Page A2)

* * *

■ **Blue chips are poised** to post their worst year since 1977. The Dow Jones Industrial Average has a 16.85% year-to-date decline.

(Article on Page C1)

* * *

■ **KPMG was ordered** by a federal judge to release to the court certain tax-shelter documents. The ruling could help the IRS obtain records the firm said were confidential.

(Article on Page A2)

* * *

■ **J.P. Morgan Chase agreed** to outsource an expected $5 billion or more in computer business to IBM over the next seven years.

(Article on Page A10)

* * *

■ **Mergers and acquisitions** with European targets eclipsed U.S. mergers this year for the first time since 1991.

■ **The long-awaited consolidation** of the software industry may have finally begun, with a steady flow of deals in the past month.

(Articles on Page C1)

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■ **Global Crossing founder** and Chairman Gary Winnick resigned after getting bankruptcy-court approval for a reorganization plan.

(Article on Page A13)

* * *

■ **Freddie Mac** is better positioned than Fannie Mae to endure a severe economic shock, though both companies meet minimum risk-based capital rules.

(Article on Page A2)

* * *

■ **China appointed** a career banker as its chief securities regulator as it moves to liberalize capital markets.

■ **China's economy grew** 8% this year, but a widening budget deficit and tapering exports may cause it to lose steam in 2003.

(Articles on Page A8)

* * *

■ **The dollar's continued fall** against the euro, Swiss franc and yen confirms its loss of safe-harbor status with investors.

(Article on Page C1)

* * *

■ **Companies are increasing** their sponsorship of college-football bowl games, but the value of the events and their branding benefits have come into question.

(Article on Page A10)

* * *

—Markets—

Stocks: NYSE vol. 1,034,595,700 shares, Nasdaq vol. 1,037,023,835. DJ industrials 8332.65, ▲ +29.07; Nasdaq composite 1339.54, ▼ -8.77; S&P 500 index 879.39, ▲ +3.99

Bonds (4 p.m.): 10-yr Treasury ▲ +5/32, yld 3.801%; 30-yr Treasury ▲ +15/32, yld 4.757%.

Dollar: 118.53 yen, -1.36; euro $1.0183, +0.45 cent against the dollar.

Commodities: Oil futures $31.37 a barrel, ▼ -$1.35; Dow Jones-AIG futures 110.356, ▼ -2.365; DJ-AIG spot 111.910, ▼ -2.028.

World-Wide

■ **THE U.N. CLAMPED DOWN further on Iraqi imports at U.S. urging.** The Security Council, with Russia and Syria abstaining, limited purchases of antiballistic, speedboats and equipment that can be used to jam communications. Moscow declined to join the effort after losing an argument to lift restrictions on imports of heavy trucks it makes. Since the Gulf War, the U.N. has controlled all goods flowing legally into Iraq under the so-called oil-for-food program.

Iraq accused the U.S. of a double standard in threatening it while using diplomacy in North Korea's case. Baghdad said the U.S. is using financial lures in a bid to obtain damaging disclosures from Iraqi scientists.

* * *

■ **Russia denounced** North Korea's reactivation of its nuclear program, urging adherence to arms-control agreements. The U.S. welcomed the criticism from one of Pyongyang's few allies. But South Korea said it doubted that pressure and isolation will end the nuclear brinksmanship.

* * *

■ **Gunmen in Yemen killed** a doctor and two other Americans at a missionary hospital in Jibla. The attack, which followed the assassination of a top secularist politician, was blamed on one of Yemen's numerous Islamic extremists. But the U.S. isn't sure al Qaeda had a hand. (Page A3)

* * *

■ **Venezuelan police detained** a dissident general at an anti-Chávez protest encampment erected on a Caracas plaza in October. The embattled leftist president's continued defiance in the face of a crippling month-old strike has protest leaders discussing different tactics, such as a tax revolt.

* * *

■ **Chechen rebels again attacked** pro-Russian forces in Grozny, killing four. The death toll in Friday's bombings rose to 83. Putin vowed to return all refugees to Chechnya and hold a constitutional referendum in March.

* * *

■ **Israel's high court rejected** appeals by army reservists who argued they shouldn't have to serve in the territories because Israel's occupation is illegal. Israeli troops killed a Hamas gunman and three other Palestinians.

* * *

■ **The Bush administration pledged** to meet today's deadline for putting systems in place to screen all airline luggage, but conceded a loose definition of "screening." (Page A4)

■ **French police detailed** the arsenal found in the car of a de Gaulle airport worker arrested Saturday. It included a handgun, machine gun and five bars of fused plastic explosives.

* * *

■ **A U.S. soldier was wounded** Sunday in a battle near the Afghan-Pakistan border. An American was wounded near Kandahar a day earlier, but hostile fire wasn't blamed.

* * *

■ **Pakistan's Musharraf said** India had been warned to expect a "nonconventional war" if it had invaded this year, but aides deny a nuclear attack was specifically threatened.

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■ **Turkmenistan sentenced** a former foreign minister to life in prison for the recent failed attempt to assassinate President Niyazov, but many believe he was railroaded. (Page A8)

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■ **A prison fire in Iran killed** at least 27 inmates and hurt 50 in the northern province of Golestan, the state news agency said. Prison officials said a short circuit started the blaze.

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■ **Umbilical-cord blood grew** in mice even after 15 years in frozen storage, an Indiana University study found. That may expand availability of material for marrow transplants.

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■ **Diesel-emission rules are being** drafted for off-road equipment such as bulldozers and tractors, and environmentalists warn lobbyists are trying to water them down. (Page A4)

* * *

■ **Kenya's Moi was jeered** by crowds as he appeared at the inauguration of his successor, Mwai Kibaki. The new president vowed to work to undo "years of misrule and ineptitude."

* * *

■ **A rescue boat set off** for three islets in the southeast Solomons hit by a 186-mph cyclone Sunday. With all contact lost, it may be days before the 1,300 inhabitants' fate is known.

—Online Today—

By the Books: "Be not afraid" and "think holistically" top our columnists' list of New Year's resolutions for for auditors, regulators and CFOs.

* * *

■ **Checkup:** See an interactive graphic tracking four drugs in the pipeline for erectile dysfunction.

* * *

■ **The Daily Fix:** We sort through the pro-football coaching shake-ups and survey more of the best sports writing from around the Internet.

Homespun Remedy: Turns Out Flogging Flax Is Big Business

South Dakota Farmer Touts Tiny Seeds Relentlessly; Scientists, Canadians Irked

By Paul Glader

ONAKA, S.D.—Rick Heintzman drew wisecracks from other farmers at the South Dakota state fair in the early 1990s. Surrounded by 6,000 bags of flaxseed, he didn't sell an ounce.

Ten years later, Mr. Heintzman is spinning flax into gold. His company, Heintzman Farms, based just outside this hamlet of 30, is one of the largest flaxseed producers in the U.S. It sells "Dakota Flax Gold" seeds, "Fairy Flax" snack packets and "Bite Me!" candy bars. The company has its own Web site and ships about 360 tons of flaxseed annually.

Rick Heintzman

The tiny, oval seeds Mr. Heintzman harvests have been used since ancient times. The fibrous stalk of the flax plant makes strong rope and fine linen garments, and linseed oil pressed from flaxseed is still found in paint, polishes and animal feeds. But Mr. Heintzman owes his newfound riches mostly to health-obsessed Baby Boomers. Research during the past decade indicates that omega-3 fatty acids may be helpful in preventing heart disease, and flax is loaded with the stuff.

Flax is found now in breakfast cereals, waffles, breads, energy bars, chips and cookies. U.S. flax production has soared. In North Dakota, where 95% of U.S. flax is grown, nearly 800,000 acres of flax were grown last year, up from 80,000 acres in 1996. "We're hoping flax is the next soy," says Kaye Effertz, director of a state-funded trade group, Ameriflax.

These days, Mr. Heintzman, 51 years old, is reaping the benefits of going against the grain. He has traded in his Ford Aerostar for a Lincoln Navigator (license plates: "Flaxmen") and jets off to small sales offices he has set up in Brazil, Florida and California. He wears Italian dress shoes and black leather jackets on his farm. One of his brochures features him posing in a field of flax, wearing a tuxedo with a bottle of Champagne at his side.

A third-generation grain farmer and rancher, he was first drawn into the market by news of a new, golden flaxseed developed in 1989 at North Dakota State University. He liked the color—the seed was lighter than the traditional brown seeds, which some people say resemble wood ticks—and bought some to plant. He harvested 400 acres from the experimental seeds, and ended up with piles of golden flaxseed.

A year later, while in Washington to file for patents on farm-machinery inventions, Mr. Heintzman noticed people eating granola bars and other health snacks. "I've got eight semi-loads of seeds waiting back at my place," he remembers thinking, "and that's what I'm going to feed 'em."

Relatives and neighbors doubted him at first. "I didn't think he would do too well," says Ralph Malson, 79, another farmer from Onaka. But today Mr. Malson marvels at the fancy new farm equipment at the Heintzman Farm. "He's done pretty good with it," he says.

Heintzman Farms is uncomplicated: Mr. Heintzman's two sons harvest the crops. Twenty employees, including relatives and local farm wives, package and ship the various products from a steel shed, where five cats scout for rodents. Unlike other flax farmers who sell flax in

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—Notice to Readers—

The Wall Street Journal won't be published tomorrow, New Year's Day. News updates are available in the Online Journal at WSJ.com.

Easy Money

Former WorldCom CEO Built An Empire on Mountain of Debt

Eager to Win His Business, Many Banks Competed To Lend Ebbers Big Sums

Soy Beans, Yachts and Timber

In June 1998, Bernard Ebbers, then chief executive of WorldCom Inc., wanted to buy a ranch. It was no ordinary weekend getaway.

The property Mr. Ebbers hankered for was the Douglas Lake Ranch in British Columbia. The largest privately held ranch in Canada, the 500,000-acre property boasts 20,000 head of Hereford and crossbreed cattle, its own general store and a fly-fishing resort, complete with hot tub and yurts. Queen Elizabeth and Prince Phillip have visited.

The price, more than $65 million, was over Mr. Ebbers's budget, so he went to Bank of America Corp. for a loan.

Mr. Ebbers was a favorite client of the bank. Just three months before, it had lent him $13.8 million to buy a soybean and rice farm in Louisiana. But this new request baffled lending officers, who wondered why Mr. Ebbers so badly wanted another big chunk of real estate. They turned him down.

Into the breach rushed Toronto-Dominion Bank, and Mr. Ebbers became the fifth owner in the 114-year history of the ranch. A year later, he refinanced with a $63.2 million loan from Citibank.

The next time Mr. Ebbers asked Bank of America for money, it said yes.

Mr. Ebbers, 61 years old, built WorldCom with a series of daring acquisitions, funded by massive debt, that caught the attention of the rest of the telecommunications industry. Behind the scenes Mr. Ebbers was quietly building a huge personal empire, adopting the strategies he had learned on the job at WorldCom. Some of the same banks that financed WorldCom's ascent fell all over each other to make a mountain of loans to the company's CEO.

By Susan Pulliam, Deborah Solomon and Carrick Mollenkamp

Bank of America ponied up $253 million, Citigroup lent Mr. Ebbers $552 million. To help Mr. Ebbers pay back some of those loans, the WorldCom board lent him $415 million from the company's coffers. The bank loans went to fund a jumble of acquisitions, including timberland, a yacht-building company and a refrigerated trucking firm. Mr. Ebbers planned to manage the companies when he re-

Please Turn to Page A6, Column 1

In Deep

Over about seven years, Bernard J. Ebbers (pictured), the former WorldCom chief executive, racked up huge personal debts from a variety of lenders. He used some of his loans to pay off others.

LENDER	AMOUNT (In millions)	STATUS
Citigroup	$552.0	About $88 million has been repaid
WorldCom	$415.0*	Company has seized collateral backing the loans
Bank of America	$253.0	Repaid
UBS PaineWebber	$51.0	Repaid
Toronto-Dominion	about $40.0	Repaid
Morgan Keegan	$11.6	Repaid
J.P. Morgan Chase	$10.8	Repaid
Bank of North Georgia	$10.8	Repaid

*Including accrued interest

Source: Bank of America documents and public filings; WSJ research

Tyco's Internal Inquiry Concludes Questionable Accounting Was Used

By Mark Maremont And Laurie P. Cohen

Tyco International Ltd. routinely employed questionable accounting methods to boost its results in recent years, but the problems weren't large enough to be "material" to the company's overall profits, an internal inquiry into the company's bookkeeping practices concluded.

Capping a tumultuous year in which three of its former executives and a former director were indicted, Tyco filed with the Securities and Exchange Commission a 34-page report on the findings of the accounting examination, which was headed by attorney David Boies. Twenty-five lawyers and 100 accountants spent 65,000 hours analyzing financial information at more than 15 Tyco operating units.

Although cautiously written, the report paints a picture of a corporate culture gone awry, with a mix of lax controls and poor ethics resulting in "a pattern of aggressive accounting" that was "intended to increase reported earnings." Among other things, the report provides considerable evidence that the conglomerate habitually engaged in a practice it had long denied: suppressing the results of acquisition targets just ahead of swallowing them, to boost its own post-deal profits.

Even so, the company investigators said many of the maneuvers fell within accounting rules and didn't require any correction. Investigators also found a number of outright accounting "errors," including improperly dipping into reserves to pay for unrelated expenses and counting current expenses as long-term costs. But the report said these were relatively minor and didn't amount to a "systemic fraud."

To rectify these errors, Tyco said it would take pretax charges totaling $382.2 million for fiscal 2002, which ended Sept. 30. Those charges come on top of a host of other write-downs for the just-ended year, and bring the total loss for the year to $9.11 billion, or $1.73 a share, on revenue of $35.6 billion.

L. Dennis Kozlowski

The report also added some new details of excess at a company already known for a $6,000 shower curtain and $15,000 umbrella stand purchased for former Chief Executive L. Dennis Kozlowski. In one instance that hadn't been previously reported, Mr. Kozlowski had a Tyco division rent hotel accommodations for him in London, costing about $110,000 for 13 days. His personal assistant had her apartment in London paid for in 2001 and 2002 by that same division, the report said.

In other examples of loose oversight: A unit vice president approved a bonus for his boss; charitable contributions were made without authorization, in one

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INSIDE TODAY'S JOURNAL

Latin Trade Pact Poses Political Peril for Bush

Concessions Sought by Brazil and Others Clash With Demands of Backers in Crucial States

By Michael M. Phillips

Washington

WITH ELECTIONS and trade-talk deadlines approaching, President Bush may soon have to choose between making friends in Latin America and keeping friends in political battlegrounds such as Florida and West Virginia.

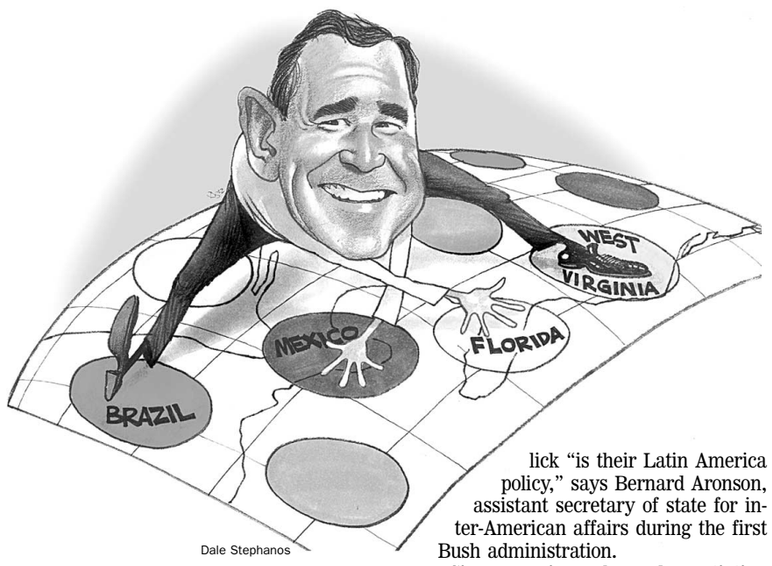
The administration is counting on a hemisphere-wide free-trade accord to regain the initiative in crisis-plagued Latin America, which Mr. Bush promised during his campaign would be a top priority. But Latin Americans—especially Brazil's leftist president-elect—are likely to demand U.S. trade concessions in citrus, sugar, steel, apparel and other industries centered in states that will be crucial to Mr. Bush and his fellow Republicans in the 2004 election.

Placating Brazil will pose "a big political hurdle in the U.S.," says Gary Hufbauer, senior fellow at the Institute for International Economics think tank in Washington. "I don't say it's an impossible hurdle, but it would [require] a major commitment by the administration."

Brazilian President-elect Luiz Inácio Lula da Silva, who takes office tomorrow, campaigned as a populist skeptical that the proposed 34-nation Free Trade Area of the Americas would benefit Brazil's working class. Now that Brazil is joining the U.S. as co-leader of the free-trade negotiations, Mr. da Silva says he intends to complete the talks by their January 2005 target. At the same time, he is signaling that Mr. Bush and his trade representative, Robert Zoellick, will have to cut subsidies, tariffs and quotas on sensitive items—especially farm products—if they want his cooperation.

"I told President Bush we will be very tough in the negotiations," Mr. da Silva said after a meeting with Mr. Bush at the White House this month. "But when we come to an agreement, we will be faithful to our commitments."

Mr. Bush, eager to court the new leader of Latin America's dominant economy, proposed they draw up a "road map" of important bilateral issues and schedule a summit in the spring, according to an official at the closed-door meeting. Trade is likely to top the agenda.



Dale Stephanos

Brazil, however, seems to be one of only a few Latin American countries to which the Bush administration is paying close attention. Important Latin America-related positions at the State and Treasury departments are unfilled. Mexicans, who initially placed great hope in Mr. Bush, are angry that he hasn't made progress in gaining amnesty for illegal immigrants in the U.S. Argentines, sinking fast into poverty, think the administration has fed them to sharks at the International Monetary Fund, which continues to demand tough budget and banking reforms in exchange for assistance.

The picture of disarray doesn't include trade, however. Trade Representative Zoellick "is their Latin America policy," says Bernard Aronson, assistant secretary of state for inter-American affairs during the first Bush administration.

Since securing enhanced negotiating authority from Congress in July, Mr. Bush has expanded trade benefits for the Andean nations, prepared to launch free-trade talks with Central America and completed a long-awaited trade pact with Chile.

After the Chile deal was sealed this month, Chilean President Ricardo Lagos told Mr. Bush that several other Latin American leaders had called to emphasize how important a signal the deal is for the region, according to a person familiar with the conversation. "The emphasis put on [the Chile agreement] by the administration is very much evidence of the priority of Latin America," one senior U.S. trade official says.

But the big win for Mr. Bush would be a deal for the hemisphere-wide free-trade area. That would require appeasing Mr. da Silva and Brazil during the very heart of U.S. election season.

Any concessions on U.S. steel tariffs or antidumping laws, which are loathed abroad, would set off alarms in West Virginia, a normally Democratic state that favored Mr. Bush in 2000. But U.S. trade officials believe the highest hurdles they will face involve citrus, sugar and Florida—the state that ultimately gave the Republicans the White House by the slimmest of margins.

Farm interests will actively protect their subsidies and trade barriers. Agribusiness donors gave $38 million to political candidates in the 2002 election cycle, and $59 million during the presidential-election year of 2000, according to data assembled by the nonpartisan Center for Responsive Politics. About 70% of that money went to Republicans.

The administration got a taste of how quickly those political allegiances can shift during the recent runoff for a Senate seat in Louisiana. With her campaign shaky as the Dec. 7 vote approached, incumbent Democrat Mary Landrieu warned voters that the administration was cutting a secret deal to allow more sugar imports from Mexico. She wound up winning.

Mexico and the U.S. have been negotiating for years over an update to the North American Free Trade Agreement that would allow more Mexican sugar into the U.S. and more U.S. high-fructose corn syrup into Mexico. U.S. trade officials insist no deal has been struck yet.

Meanwhile, U.S. sugar producers are fighting to protect tariffs, subsidies and quotas that shield them from foreign competition. "Our guys are rightfully very reluctant to open our markets essentially for Mexican government-produced sugar," says Jack Roney, director of economics and policy analysis for the American Sugar Alliance, which represents cane, sugar-beet and corn-sweetener producers.

Sen. Landrieu promises to fight any effort to loosen restrictions on sugar imports. "We cannot have this industry devastated by this kind of political deal-making," she says.

Sugar- and citrus-industry lobbyists are plotting a joint strategy for protecting their interests in the Free Trade Area of the Americas. Brazil and Florida are the world's two biggest producers of orange juice, and Brazil is awaiting a final ruling on a World Trade Organization complaint it filed over Florida's state tax on imported juice.

Florida Citrus Mutual, which represents 11,500 growers in the state, is planning to boost campaign contributions, rally congressional allies and pressure Mr. Zoellick not to surrender to Brazilian demands that the U.S. reduce the 28.9-cent-per-pound import tariff on frozen orange-juice concentrate, roughly a 29% tariff at current prices. The group's chief executive, Andy LaVigne, harnesses the persuasive power of a $9.1 billion-a-year industry that employs 90,000 people in Florida. "It seems these days we're becoming one of the key states to deal with politically," he says.

The U.S. trade team thinks it will be able to secure necessary negotiating room by telling Americans that they stand to gain more than they would lose from a Latin American trade deal.

But Mr. Hufbauer, of the Institute for International Economics, thinks that will be a tough sell during election season because "political advisers to President Bush, no matter what his poll ratings are, will have so much in mind what happened in the 2000 election and how close it was."

Scholars, Lawmakers Question FDA's Power to Regulate Cloning

By Leila Abboud
And Antonio Regalado

WASHINGTON—Food and Drug Administration officials are investigating claims that an American woman overseas has given birth to the first cloned human, but legal scholars and some lawmakers aren't sure that the agency actually has the authority to regulate the practice.

The FDA asserted its authority over cloning in 1998, saying it was part of its mission of assuring the safety and efficacy of drugs and medical devices that are used on human subjects in clinical research trials.

The agency considers the embryo created in the cloning process to be an experimental biological product and therefore subject to regulation. But questions have been raised in scientific and legal circles that the agency is stretching its authority when it classifies biological entities such as embryos or animals in the same way that it does blood or vaccines.

The FDA is investigating claims by **Clonaid**, a medical company founded by the Raelians, a futuristic religious group, to see whether any part of the alleged cloning process took place in the U.S. The agency said it may take enforcement action if the group disobeyed laws to protect human subjects in clinical trials. But the FDA's authority has never been tested and neither the courts nor Congress, which has been unable to agree on anti-cloning legislation, have clarified the question of its jurisdiction.

"There is no easy way to decide this question," said Peter Barton Hutt, the former general counsel of the FDA. In 1998 when a Chicago-based scientist announced plans to try to clone a human, the agency issued a letter asserting its jurisdiction over the process. Legal scholars are divided over whether the letter has a solid foundation in the Food, Drug and Cosmetic Act.

"If the FDA can go after it, it may negate the case for congressional legislation," said John Robertson, a law professor at the University of Texas at Austin. However, he said there was a strong case for questioning the agency's authority on constitutional grounds.

A law review written by Florida International University College of Law Professor Elizabeth Foley in the Harvard Journal of Law and Technology concluded that the agency would have authority only to regulate cloning intended to cure or prevent diseases, and not human cloning aimed at producing children. A similar debate came up last year when the FDA took enforcement action against several fertility clinics that were working on an experimental treatment for infertile couples that mimics cloning techniques. In that case, the FDA also claimed authority under existing statutes. Although fertility doctors and researchers complained, the agency hasn't been challenged in court. The scientists at the affected clinics have stopped their research and no longer offer the treatment to patients.

The FDA has investigated Clonaid before. After the grouped claimed it had begun cloning experiments, the agency located and closed a laboratory located in Nitro, W.Va., during the summer of 2001.

Clonaid's chief executive, Brigitte Boisellier, claimed FDA investigators had acquired her cellphone records, and that they came to interview her at Hamilton College in Clinton, N.Y., where she was previously a chemistry instructor.

According to Dr. Boisellier, Clonaid signed an agreement not to pursue cloning in the U.S. However, she retained an attorney and considered taking action in federal court. Her lawyer, Dennis Sheils, said during the weekend that no action had been taken. He said he hadn't received a call from the FDA.

FDA spokesman Brad Stone says the agency plans to meet with people from Clonaid and others who may have knowledge of the group's activities to try to figure out whether the claims that a cloned baby has been born are legitimate. Mr. Stone wouldn't comment on any possible enforcement options before the fact-finding probe was complete.

U.S. Vows to Meet Air-Luggage Screening Deadline

By Stephen Power

WASHINGTON—The Bush administration vowed to meet today's deadline for setting up systems to screen all airline luggage, but said it would take advantage of the law's loose definition of screening to avert holiday-travel bottlenecks at airports.

The concession by the head of the Transportation Security Administration, James Loy, is the agency's most explicit acknowledgment yet of the trade-offs it is making as it tries to keep bombs off planes without disrupting air travel. Some airport directors said their facilities lack the equipment and personnel needed to handle the job, and many aren't happy about the agency's decision to install bulky bomb-detection machines in their lobbies.

But Mr. Loy said his agency would fulfill the intent of a sweeping aviation-security law passed by Congress after the Sept. 11, 2001, hijack attacks on the U.S., by screening at least 90% of checked airline bags with a mix of X-ray machines and hand-held bomb-detection equipment. The remaining bags will be searched by hand, inspected by bomb-sniffing dogs or, at a "small" number of airports and only during peak travel hours, matched to boarded passengers before takeoff.

Mr. Loy declined to say what portion of bags would be matched to boarded passengers. He acknowledged that method doesn't eliminate the risk of suicide bombers who might check a bag and board a flight, but said Congress gave him the discretion to use alternate bag-screening measures at airports that lack bomb-detection equipment.


James Loy

Mr. Loy noted that before Sept. 11, 2001, only 5% of airline bags were screened for bombs. But some airport officials still expressed skepticism the agency could meet the deadline at the nation's 400-plus commercial airports.

At Phoenix's Sky Harbor International Airport, the government hasn't installed bomb-detection equipment in the facility's largest terminal of three, which accounts for 70% of passenger traffic there, Airport Director David Krietor said. In the lobby of another terminal, the TSA has installed a mix of X-ray machines and hand-held devices, but not all the equipment is running, Mr. Krietor said.

Looking beyond the deadline, the TSA is likely to face pressure from lawmakers who want it to enhance air-cargo security and to branch into other transport modes, such as ports and rail lines. But the agency is contending with airport directors who say the TSA is declaring success prematurely in the bag-screening effort.

Those officials want the agency to integrate bomb-detection equipment into their facilities' baggage-conveyor systems, rather than put them in lobbies. "If you say the goal has been completed … it takes the pressure off Congress and the administration to look for the best solution," said Stephen Van Beek, a senior vice president for policy at Airports Council International-North America, which represents airports in the U.S. and Canada.

Rules for 'Off-Road' Diesel Users Are Drawing Industry Concern

By John J. Fialka

WASHINGTON—The Bush administration, environmental groups and the oil industry are struggling to work out their differences over pending federal regulations that will require cleaner emissions from diesel-powered farm and construction equipment and railroad engines.

These "off-road" diesel users represent about 30% of the market for the fuel. The concern is how quickly the off-road fuel and engines can be made cleaner, once the U.S. implements an already promulgated rule mandating removal of most of the sulfur from highway-used diesel fuel by mid 2006. That rule also requires manufacturers to produce cleaner burning car, truck and bus engines starting in 2007.

Noting that the emission of tiny particles of soot from diesel engines is one of the most dangerous forms of air pollution, the leaders of eight environmental groups wrote the Environmental Protection Agency earlier this month pushing for the introduction of low-sulfur fuel for off-road vehicles by 2008. Removal of most sulfur from fuel is necessary before engine makers can produce engines with more-powerful catalytic converters and other pollution-reduction equipment that can be impaired by sulfur-laden fuel.

Jeffrey R. Holmstead, an assistant administrator of the EPA, said the government hopes to propose its rule for off-road diesel use by April, with implementation the following year. "There are lots of practical issues involved here," he said, referring to the industry's supply concerns. Diesel fuel comes out of the same supply system as home-heating oil.

Last month, oil-industry officials visited the Office of Management and Budget, which is working with the EPA on the off-road diesel rule. The industry raised concerns about how quickly oil refiners can remove the sulfur from enough diesel to supply off-road users, once it has provided cleaner-burning fuel for highway users.

"This will be difficult, but we're committed to do what we can," said Robert Slaughter, president of the National Petrochemical and Refiners Association. "We may not be able to do all of this at once, and we'll have to be sensitive to timing to make sure we don't have supply disruptions." He says the industry is looking at various ways to phase in the low-sulfur off-road diesel fuel, a process that may extend beyond 2008.

The phase-in, according to the environmental groups, could delay implementation of cleaner-burning engine equipment for "more than a decade from now," according to their letter. "What we're concerned about is creating loopholes that could drag this thing out," said Frank O'Donnell, executive director of the Clean Air Trust. Once the emissions from highway diesels drop, he noted, the off-road vehicles will be the largest source of soot, nitrogen oxides and other health-threatening emissions from vehicles.

Tyco Used Questionable Accounting, Internal Report Concludes

Continued From First Page

case to an entity that didn't even qualify as a charity; loans were forgiven without clear documentation; and bonus plans were changed in mid-year to loosen their payout terms.

Despite its relatively benign conclusions, the report amounts to a serious indictment of the company and its former management team under Mr. Kozlowski, who resigned in June just before being charged with sales-tax evasion. He and former Chief Financial Officer Mark Swartz were later charged with looting more than $600 million from the company through unauthorized compensation and illicit stock sales. The report will surely provide fodder for the many class-action cases alleging that investors were misled. Messrs. Kozlowski and Swartz have pleaded not guilty.

'Best Practices'

Tyco said it is beefing up corporate controls and making other improvements to deal with the deficiencies found by its investigators. New CEO Edward Breen's goal, the report says, "is to make Tyco's corporate governance and accounting not only acceptable but best practices."

The conclusions of the report by Boies, Schiller & Flexner LLP likely will cheer investors, who have been concerned that past bookkeeping abuses could complicate a planned restructuring of Tyco's debt. About $5.8 billion in Tyco borrowings need to be refinanced or repaid in February.

Even so, the report may not end Tyco's accounting woes. The company's bookkeeping also is being examined by the Securities and Exchange Commission, which among other issues is looking into why a large number of documents related to an earlier 1999-2000 SEC probe weren't turned over to securities regulators. A person familiar with the inquiry said that this continuing investigation could result in enforcement action and possible fines against Tyco.

SEC officials sometimes find accounting problems that elude outside investigators, such as Mr. Boies, who have been hired by the very companies under scrutiny. Xerox Corp., for example, earlier this year was forced to pay a $10 million fine and restate its results once again, after the SEC concluded that an internal probe had vastly understated the amount of misbooked revenue.

In Tyco's case, the Boies team was careful to hedge its conclusions, saying it didn't review every transaction or accounting decision, and was handicapped by poor documentation and the unavailability of key former executives. For example, the report examined just 15 major acquisitions, while noting that Tyco bought more than 700 companies during the period under review.

Officially based in Bermuda, Tyco is a huge conglomerate encompassing everything from fiber-optic networks to medical supplies to plastic hangers. Although the company has long claimed operating headquarters in New Hampshire, it is currently being managed from offices in New York.

According to the report, the most problematic of Tyco's divisions was its big Fire and Security unit, particularly the ADT security-alarm operation. More than half the new 2002 charge—$217 million—went to correct ADT problems, including too-quick recognition of income from fees it charged the network of independent dealers who sell and install many of the alarm systems.

In addition, the report left unresolved another important ADT accounting issue—the way it accounts for cancellations of alarm accounts. The issue was the subject of a page one article in The Wall Street Journal last month, which said Tyco may be writing off too slowly the accounts purchased from dealers, boosting its profits. Citing a low "attrition rate" among dealer accounts, Tyco has been writing off the accounts over a 10-year period, a practice that has been defended by new management. Big money is at stake; Tyco spent more than $1.3 billion buying accounts from dealers last year.

Rapidly Rising

But the Boies report said the attrition rate among dealer accounts had been rapidly rising, to as high as 18.8% in October 2002, double the rate in fiscal 1999. Citing what it called "uncertainty" in the 10-year calculation, Tyco said it will monitor the issue in the next year to determine "whether a write-off or write-down is appropriate in the future."

Critics have long accused Tyco of deliberately suppressing the results of its acquisition targets in the months before they get folded into Tyco, in some cases by creating overly large reserves, thus inflating the parent company's post-deal results. Although prior management vehemently denied the practice, the Boies report provides ample evidence that it was routine.

In one 1999 presentation to operating managers, a Tyco accounting official advised them to "be aggressive" in setting up reserves" and "create stories" to back the moves. One version of the document, the report said, included handwritten notes saying "Be careful, I wouldn't want this to get out," and "I would strongly recommend NEVER to put this in writing."

Other internal documents cited in the report called the practice "financial engineering," with one estimating that Tyco could "recognize" $176 million over three years from such manipulation involving the $3.17 billion purchase of U.S. Surgical Corp. in early fiscal 1999.

The Boies report said none of the problems it found would materially affect Tyco's reported revenue or earnings in 2003 and thereafter. However, left unstated was an obvious conclusion: Tyco's results for at least the past five years have been artificially boosted by questionable accounting. If the company's new management sticks to its pledge to clean house and adopt conservative accounting, investors should expect much lower margins and earnings for the foreseeable future.

In most cases, the Boies report concluded that the deal-related accounting was aggressive, not wrong. Just before being acquired by Tyco, for example, U.S. Surgical took a $132 million charge for grants, treated as expenses, that it intended to give hospitals and universities over the next five years. The charge, the Boies report said, "had the effect of accelerating expenses just prior to the merger" and boosting earnings after it. The report merely said that the "stated business purpose was to alleviate concerns" of recipients that the grants could be eliminated after the merger.

The Boies report also addressed what it called "questions" involved in the 1998 purchase of Sherwood, another health-care concern. In putting the new unit on its books, Tyco assigned a value of just $20 million to Sherwood's Angio Seal division. But a year later, it sold that division for eight times that amount, indicating that the earlier valuation may have been set artificially low. The Angio Seal sale resulted in a recorded gain of $111 million. But, citing among other things an "independent valuation" of Angio Seal done at the time of Tyco's purchase of Sherwood, the report concluded there was "not sufficient basis to revise the accounting treatment."

The report also found that Tyco executives, on occasion, set up reserves in acquisitions, then later reversed them "for the purpose of making [earnings] targets." It identified $41.4 million in such reversals from 1997 to 2001 in the 15 acquisitions that were closely scrutinized; the report didn't address any reversals of reserves set up in the hundreds of other Tyco deals.

In Tyco's annual report also filed yesterday, the company obtained an unqualified opinion from its outside auditor, PricewaterhouseCoopers LLP. Some investors had worried that the auditing firm mightn't give Tyco's books a clean bill of health.

Final Word?

Tyco report's conclusions:

- **There was no** significant or systemic fraud affecting prior financial statements.
- **There were a** number of accounting entries and treatments that were incorrect.
- **The incorrect accounting** entries are not material to overall financial statements.
- **Tyco's prior management** engaged in a pattern of aggressive accounting intended to increase reported earnings above what they would have been if more conservative accounting had been used.
- **Reversal or restatement** of prior accounting entries and treatments resulting from the aggressive accounting wouldn't adversely affect Tyco's reported cash flow for 2003 or thereafter.

High Court Steps In Temporarily In Suit on Copying DVDs Off Web

Associated Press

WASHINGTON—The U.S. Supreme Court has temporarily intervened in a fight over DVD copying, and the justices could eventually use the case to decide how easy it will be for people to post software on the Internet that helps others copy movies.

More broadly, the case—against a Web master whose site offered a program to break security codes for digital videodiscs—could resolve how people can be sued for what they put online.

Justice Sandra Day O'Connor granted a stay last week to a group that licenses DVD encryption software to the motion-picture industry, giving the court time to collect more arguments. The group has spent three years trying to stop illegal copying.

The DVD industry wants the Supreme Court to use its case to clarify where lawsuits can be filed.

New York technology analyst Richard Doherty said companies have delayed many new products, services and forms of entertainment because of the DVD industry's problems. "The future of digital delivery has been on hold ever since this case first came," said Mr. Doherty. "They need to know it's going to be protected, it's not going to be ripped off seven seconds after being put on the Internet."

In the California case, the state Supreme Court ruled in November that the former Web master, Matthew Pavlovich, cannot be sued for trade-secret infringement in California. Justices said he could be sued in his home state of Texas, or in Indiana, where he was a college student when codes that allowed people to copy DVDs were posted on his Web site in 1999.

The program was written by a teenager in Norway and is just one of many easily available programs that can break DVD security codes.

Mr. Pavlovich's attorney, Allonn Levy, said a group should not be allowed to "drag a student who's involved with a Web site into a forum that's halfway across the country." He said the case affects all people who use the Internet and businesses with sites on the Internet.

The California-based DVD Copy Control Association argued that California was the proper venue because of the movie industry's presence in that state. Lawyers for the association told the Supreme Court that the stay was needed to keep Mr. Pavlovich from reposting the decryption program on the Internet.

The issue of Internet jurisdiction has come up in Australia. Earlier this month, in a landmark decision for defamation law, Australia's High Court ruled that a Melbourne businessman can sue New York publishing company **Dow Jones** & Co. in Australia over an article published in the U.S. and distributed via the Internet. The article was published in Barron's, a Dow Jones business and financial weekly. Dow Jones also publishes The Wall Street Journal.

—Notice to Readers—

Alan Murray is on vacation. The Political Capital column will resume on Jan. 7.