THE WALL STREET JOURNAL.

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Show of Strength

How Media Giants Are Reassembling The Old Oligopoly

Mix of Broadcast and Cable Proves Lucrative in Making Deals, Promoting Shows

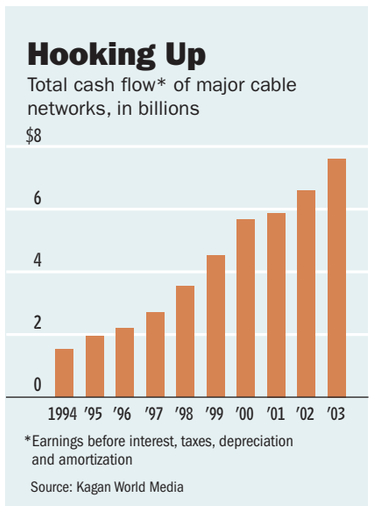
Playing Hardball With Barbie

By Martin Peers

Two years ago, Mattel Inc. gave CBS a choice. The network had refused to broadcast the toymaker's movie "Barbie in the Nutcracker" in prime time. So Mattel threatened to pull millions of dollars of advertising from the Nickelodeon cable channel—owned by CBS parent Viacom Inc.

Viacom, which had spent a decade bulking up with acquisitions, now wielded its new clout, according to people familiar with the situation. If Mattel made good on its threat, Viacom said, it would be blacklisted from advertising on any Viacom property—a wide swath of media turf that also includes MTV, VH-1, BET, a radio broadcasting empire and even billboards. Mattel backed down, and the Barbie movie ended up running during a less-desirable daytime period.

Neither company will comment on the scrape, but Viacom says Mattel remains a "valued advertising partner." More generally, President Mel Karmazin in an interview is blunt about his company's strategy: "You find it very difficult to go to war with one piece of Viacom without going to war with all of Viacom."



Viacom and its big media peers have been snapping up cable channels because they're one of the few entertainment outlets generating strong revenue growth these days. More broadly, the media giants have discovered that owning both broadcast and cable outlets provides powerful new leverage over advertisers and cable- and satellite-TV operators. The goliaths are using this advantage to wring better fees out of the operators that carry their channels and are pressuring those operators into carrying new and untried channels. They're also finding ways to coordinate promotions across their different holdings.

Entertainment giants such as Viacom, NBC parent General Electric Co. and Walt Disney Co., which owns ABC, now reach more than 50% of the prime-time TV audience through their combined broadcast and cable outlets. The total rises to 80% if you include the parents of newer networks—such as News Corp.'s Fox and AOL Time Warner Inc.'s WB—and NBC's pending acquisition of Vivendi Universal SA's cable assets, estimates Tom Wolzien, an analyst at Sanford C. Bernstein & Co.

The big media companies are quietly re-creating the "old programming oligopoly" of the pre-cable era, notes Mr. Wolzien, a former executive at NBC. Of the top 25 cable channels, 20 are now owned by one of the big five media companies.

The idea of owning broadcast networks as well as cable channels is "comfortable for people like ourselves," says Bob Wright, chairman of NBC, which two weeks ago signed a preliminary agreement to acquire Vivendi Universal's USA and Sci Fi cable channels, along with the Universal film studio, bolstering a stable of cable channels that includes Bravo,

Please Turn to Page A11, Column 1

INDEX

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What's News—

Business and Finance

WTO TALKS COLLAPSED in a severe blow to the future of global trade talks. Negotiations had hinged on how deeply rich nations would cut their farm subsidies. But the breakdown came over investment and antitrust policies that the EU and Japan hoped to launch against opposition by developing countries.

(Articles in Column 6 and on Pages A2 and A18)

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■ **Big Three auto makers** agreed to a unique master pact, as the UAW staved off health-benefits cuts.

(Article on Page A3)

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■ **Several NYSE board members** are considering ways to quell the furor over Grasso's pay package, including potentially seeking the chairman's resignation.

(Article in Column 5)

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■ **Microsoft said it will double** its dividend. The software company also will unveil a mobile-phone partnership with Motorola.

(Articles on Pages A3 and B5)

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■ **ChevronTexaco and Exxon Mobil** are expected to submit rival proposals to buy a 25% stake in Russian oil producer Yukos-Sibneft.

(Article on Page A3)

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■ **The White House plans** a Commerce Department team to investigate evidence of unfair competition by foreign manufacturers.

(Article on Page A2)

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■ **The Fed is expected to leave** rates unchanged tomorrow, amid signs the economy is strengthening and inflation may edge up.

(Article on Page A2)

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■ **Corporate taxes** to state and local governments jumped by $20 billion, or 5.5%, in the fiscal year ended June 30, a study found.

(Article on Page A2)

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■ **Boeing could be hit** with up to $1 billion in liability claims by insurers over satellite malfunctions.

■ **Airbus said** it sees an opening into the U.S. military market due to Boeing's contract problems.

(Articles on Page A8)

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■ **Pechiney accepted** Alcan's $4.52 billion takeover bid, paving the way to form the world's biggest aluminum firm in sales.

(Article on Page A11)

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■ **Intel plans to discuss** expanding wireless-communications capabilities at its developers' forum.

(Article on Page B3)

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■ **Securities regulators agreed** to create a joint federal-state working group to find ways to coordinate enforcement probes.

(Article on Page C10)

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■ **A U.S.-Canadian task force** issued a timetable for last month's blackout, focusing on initial power failures in Ohio.

(Article on Page A5)

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■ **Bank of America's probe** of fund trading has led to a larger shake-up of its New York office that caters to wealthy clients.

(Article on Page C1)

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■ **A Swiss lawyer was indicted** for conspiring to bribe foreign officials in connection with a failed $450 million Caspian Sea oil deal.

(Article on Page A16)

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■ **Four California health plans** are giving members discount coupons for various generic drugs.

(Article on Page B5)

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■ **Oracle reported** a drop in new-license sales for database and business-applications software.

(Article on Page B5)

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—Markets—

Stocks: NYSE vol. 1,241,853,820 shares, Nasdaq vol. 1,683,800,149. DJ industrials 9471.55, ▲ +11.79; Nasdaq composite 1855.03, ▲ +8.94; S&P 500 index 1018.63, ▲ +2.21.

Bonds (4 p.m.): 10-yr Treasury ▲ +15/32, yld 4.261%; 30-yr Treasury ▲ +21/32, yld 5.165%.

Dollar: 117.33 yen, +0.26; euro $1.1288, +0.82 cent against the dollar.

Commodities: Oil futures $28.27 a barrel, ▼ −$0.55; Dow Jones-AIG futures 119.677, ▼ −0.918; DJ-AIG spot 151.365, ▼ −1.221.

World-Wide

■ **POWELL VISITED Baghdad as the U.N. moved toward a key Iraq vote.** Security Council allies agreed Saturday on restoring Iraqi rule as fast as possible, but specifics proved elusive in the hunt for a compromise to lend the U.S. a hand in the occupation. A U.S. soldier was killed in an ambush in Fallujah, which has been a tinderbox since eight Iraqi policemen were killed by mistake at a U.S. checkpoint Friday. Bush drew cheers Friday on a visit to the Third Infantry Division's Georgia base. He said Saturday that his administration has a "clear strategy" for pacifying and rebuilding Iraq. (Pages A4 and A18)

The setbacks of recent weeks have driven Bush's poll numbers down to pre-Sept. 11 levels, but so far he has escaped the political free-fall that Britain's Blair has experienced.

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■ **Sharon's deputy said** killing Arafat is an option as last week's call to remove the Palestinian leader drew international denunciation and revived a career in twilight. Meanwhile, Israel backed off a plan to build a border fence around some settlements far inside the West Bank. (Page A19)

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■ **Swedish voters rejected** the euro despite a wave of sympathy over the Lindh assassination, the latest sign of trouble for the currency. (Column 4)

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■ **The U.N. nuclear agency set** an Oct. 31 deadline for Iran to prove it isn't running a covert nuclear-arms project, drawing howls from Tehran.

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■ **The U.S. and Pacific allies began** training to board ships suspected of hauling illicit arms as North Korea decried the exercise as provocative.

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■ **An Afghan police station was set** ablaze near the Pakistan border by suspected Taliban fighters riding on motorcycles. There were no injuries.

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■ **The CIA said** a recent tape indeed carries bin Laden's voice, but it can't be dated. In a Virginia court, Saudi financing is under scrutiny. (Page A5)

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■ **Bill Clinton campaigned** for Democratic candidates in Iowa and California. Ex.-Gen Clark may join the presidential race this week. (Page A4)

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■ **Texas Democrats face** a third special legislative session today after failing in bids to block Republican redistricting by fleeing to other states.

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■ **Joe Kernan was sworn in** as Indiana's governor Saturday, hours after predecessor Frank O'Bannon died of complications from a Monday stroke.

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■ **The U.N. voted** to lift 11- year-old Libya sanctions on Friday after deals were reached on compensation for U.S. and French airliner bombings.

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■ **A court in Yemen has ordered** the execution of a Muslim extremist who killed three American missionaries at a hospital in Jibla last year.

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■ **Colombian rebels kidnapped** four Israelis, two Britons, a German and a Spaniard near an archaeological site in northern mountains on Friday.

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■ **Chavez foes were frustrated** once again as Venezuela election officials Friday threw out a petition demanding a vote on recalling the president.

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■ **Zimbabwe police shut** the nation's only independent daily newspaper after it protested a new media law by refusing to get a government license.

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■ **Guinea-Bissau's army overthrew** the government of the impoverished Portuguese ex-colony in West Africa, arresting the president and top aides.

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■ **South Korea assessed** damage after Typhoon Maemi struck Friday with 135 mph winds, leaving at least 85 people dead and dozens missing.

■ **Hurricane Isabel swirled** in the Atlantic as forecasters worried that it may hit somewhere from North Carolina to New Jersey late in the week.

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■ **Died: Johnny Cash,** 71, country-music icon who sang with sympathy for the outcast, Friday, in Nashville, Tenn., of diabetes complications. ... **John Ritter, 54,** sitcom star, Friday, in Burbank, Calif., of an aorta tear.

—Online Today—

WSJ.com **Eyes on the Road:** Designers at the Frankfurt auto show seem keen to marry the practicality of the classic sedan with the allure of the coupe, Joe White says.

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■ **Medical Limbo:** Plans for a national system of electronic health records have stalled. Laura Landro looks at why and what comes next.

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■ **Real Time:** Some of the latest pop-up ads are irritating, but a judge was right to rule that they're also legal.

Money Trouble

Rising Deficits in Europe Give Euro Its Toughest Challenge Yet

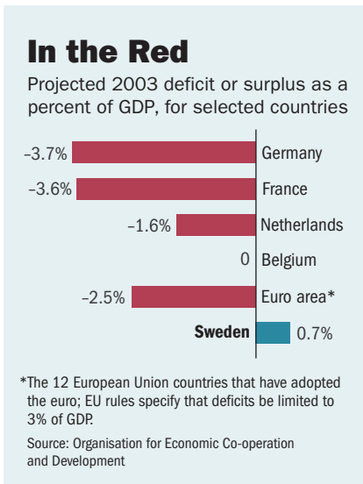
As France and Germany Miss Targets, Smaller Countries Voice Sharp Complaints

Swedes Opt to Keep Krona

The euro—the most prominent sign of European integration—is facing its most severe test.

Simmering tensions over the Continent's common currency and its rules have flared into a full-blown fight between member countries. The rules require individual countries to keep down budget deficits, potentially forcing cuts in generous social welfare programs and other government spending in some of Europe's biggest countries. The brewing controversy over the nearly five-year-old euro is revealing centuries-old fault-lines and raising questions about Europe's resolve to become a united economic and political power.

*By **Christopher Rhoads** in Stockholm and **G. Thomas Sims** in Stresa, Italy*



In the past week, France made it clear it would look after its own interests first, with French Prime Minister Jean-Pierre Raffarin dismissing the rules underpinning Europe's currency as obscure "accounting equations." The European Central Bank warned that unless France and Germany limit their surging budget deficits, as European Union rules require, the credibility of the euro could be damaged. The Netherlands threatened to sue the European Commission—the EU's budget watchdog—to make sure it requires the big countries to follow the rules they themselves wrote.

In Sweden yesterday, voters soundly rejected the euro and kept the krona, despite a wave of last-minute sympathy following the stabbing death of the nation's popular and pro-euro foreign minister, Anna Lindh. Among the reasons for the defeat: Fears that adhering to EU budget rules would force Sweden to slash its generous cradle-to-grave social welfare system.

The EU's 15 finance ministers fretted over the developments this past weekend during closed-door meetings in Stresa, Italy. If France and Germany say no to complying with the currency's rules, "Who can you trust in the future development of Europe?" said Nout Wellink, governor of the Dutch central bank, in an interview.

The infighting has consequences that go well beyond Europe. To sustain the

Please Turn to Page A14, Column 1

Lonesome Highways: In Japan, Big Tolls Drive Cars Away

Commuters Take Slow Road, Truckers Head for Exits; $50 to Cross a Bridge

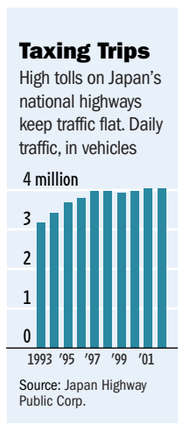
By Jason Singer

TOKYO—Avid surfer Yoshiko Hayakawa will do anything to avoid driving on Japanese highways. Weekends, to get to a beach where the surf's up, she snakes along narrow Tokyo city streets for hours, when she could make the round trips much faster by highway.

She just doesn't want to pay $32 in tolls.

So on Friday nights, Ms. Hayakawa, a 26-year-old graphic designer, plans her route using her car's global positioning system and checks it against a map listing tolls. Getting up before dawn, she says, she thinks twice about all those meandering streets and traffic lights, when there's a straight shot down the broad expressway. "I always ask myself, 'Do I have the energy?' " she says. She always does.

For many Japanese drivers, it's their way—not the highway. They'll do almost anything not to have to pay the big tolls demanded on the national road system. A two-hour trip on almost any stretch of a Japanese expressway can cost $47; crossing a bridge can run $50. Driving the length of Japan, a country smaller than California, rings up $330 in tolls.



All 4,350 miles of expressway in Japan's national system are toll roads. The fees were originally imposed to pay for building the highways but now are used to pay down the nation's massive debt from wasteful public-works projects—$358 billion. Japan began building its national highways in 1956, with money borrowed from the World Bank, and it imposed tolls to pay off the loans. The loans were retired, but the tolls never were. Though expressways in and around Tokyo see a lot of traffic, the rest of the system is sparsely traveled.

Toll roads are a hot topic in Japan because they are a symbol of the country's economic problems. Prime Minister Junichiro Koizumi would like to privatize the expressways. The main opposition party wants to abolish tolls.

Shozo Shimoike, 63, who works several days a week in a tollbooth on a regional highway north of Tokyo, agrees the highway fees are exorbitant. Though his booth collects one of the lowest tolls in the coun-

Please Turn to Page A15, Column 1

Trade Talks Fail Amid Big Divide Over Farm Issues

Developing Countries Object to U.S., EU Goals; Cotton as a Rallying Cry

By Neil King Jr. And Scott Miller

CANCUN, Mexico—In a severe blow to the future of global trade negotiations, talks here among 146 countries collapsed in a dispute between rich and poor countries who failed to bridge differences over farm subsidies and other issues that have plagued trade-liberalization efforts for years.

The breakdown of the World Trade Organization talks was reminiscent of one four years ago amid massive demonstrations in Seattle. But this round of talks began in Doha a few months after the terrorist attacks of Sept. 11, 2001, and was billed then as a rare beacon of hope for a sputtering world economy and a testament to international cohesion after the Seattle debacle.

From the start, however, the talks in this Caribbean resort exposed raw differences between the world's rich and developing countries over what further trade liberalization means.

The talks all along hinged on how deeply the rich countries, particularly Europe, would be willing to slash their huge farm-subsidy programs. Developing countries say the $300 billion a year in rich-country farm payments depress worldwide crop prices, making it difficult for their own farmers to compete.

But with the subsidies as backdrop, the talks actually collapsed when developing countries refused to launch negotiations over trade-enhancing measures such as investment rules and antitrust policies that the Europeans and Japan said were key to their overall aims. Having received few assurances of deep farm cuts, the developing countries said they had no interest to bargain on other issues.

When all sides realized that the divisions were insurmountable, they pulled the plug on the talks hours before they were originally set to end late Sunday. Amid howls of glee from hundreds of anti-trade activists, trade diplomats in the stuffy convention hall where the talks took place said countries would now have to regroup and see what was worth salvaging.

"This collapse does not stop the agenda, but it does mean that everyone is going to have to rethink what we have

Please Turn to Page A18, Column 3

Several NYSE Directors Consider Removing Grasso to Stem Pay Flap

By Kate Kelly And Susanne Craig

Several New York Stock Exchange board members are considering ways to quell the furor over NYSE Chairman Dick Grasso's $139.5 million retirement-pay package, including potentially asking for Mr. Grasso's resignation, some Big Board directors say.

The concerned board members, including the heads of Goldman Sachs Group Inc., Morgan Stanley and other Wall Street firms and a former U.S. Secretary of State, have discussed in recent days their worries about the damage the flap over Mr. Grasso's pay is having on the NYSE's reputation, the directors say. The pay package, which was not disclosed in its entirety to the full board or the public until last week, totaled $187.5 million—$48 million of which Mr. Grasso gave up amid pressure from directors. Mr. Grasso built the nest egg, which has been widely criticized as excessive, over his 36 years at the exchange, though most of it came in the past five years.

In private phone calls, some board members have mapped out several scenarios to address mounting dissent from Big Board floor traders, according to directors with knowledge of the calls. As reported Friday in The Wall Street Journal, petitions are circulating among NYSE seatholders calling for major changes in management and the structure of the board. Exchange seats, currently selling for $2 million, allow institutions and individuals to trade on the NYSE.

The options these directors have discussed also include splitting Mr. Grasso's job with the appointment of a nonexecutive chairman and leaving Mr. Grasso as CEO. But Mr. Grasso previously has rejected such a suggestion, saying in private governance-committee discussions in recent months that he wouldn't serve as just CEO, one director says. Also being floated is the possibility of asking for the resignation of Kenneth Langone, a Big Board director who headed the board's compensation committee during many of the years in which Mr. Grasso received big payouts.


Dick Grasso

The 57-year-old Mr. Grasso said last week that despite the criticism he won't leave the exchange before his contract runs out in 2007. He declined to comment yesterday, saying through a spokesman that "it is inappropriate to comment on discussions with the board." Mr. Langone, in an interview yesterday, said he himself has no intention of resigning and is certain Mr.

Please Turn to Page A10, Column 1

INSIDE TODAY'S JOURNAL

NYSE Weighs Options

Continued From First Page

Grasso doesn't either. "I would vote for it again," he said of Mr. Grasso's pay package.

The discussions show that for the first time since the controversy over Mr. Grasso's compensation erupted in May—when the Journal first disclosed the existence of the huge pay package—some NYSE directors are considering taking strong action to address the dissent on the exchange floor. The Big Board is owned by an amalgamation of 1,366 people and institutions who own "seats," or equity in the exchange. Some of these exchange members are upset about Mr. Grasso's oversize pay package at a time their own incomes were being hurt by weak stock markets.

"In any situation, if this kind of issue continues to be such a distraction that the board, Dick and the exchange can't focus on their primary mission, that's a problem," H. Carl McCall, an NYSE director and current chairman of the exchange's compensation committee, said in an interview over the weekend. "And I hope it doesn't come to that."

What action, if any, the directors take will depend in part on whether criticism continues to mount from the exchange floor, the Securities and Exchange Commission and the public. Even the board members involved in the discussions think Mr. Grasso has done an excellent job in running the exchange and don't have any replacement set. But they are angry over the way the disclosures have been handled. Some of them also resent having their names dragged into such a public dispute and being criticized for readily agreeing to an outsize pay package.

It's significant that several of the concerned directors are Wall Street executives because their firms are among the most powerful members of the exchange, even though they are a minority on the 27-member NYSE board. (Three directors, including Mr. Grasso, also serve as exchange managers. One board seat is currently vacant.)

Until now, directors had stood steadfastly behind Mr. Grasso, twice voting at recent board meetings to support his leadership and individually endorsing his achievements during his eight years at the helm, including his role in attracting new business and getting the NYSE up and running after the terrorist attacks on Sept. 11, 2001. Now, even that role has come under attack by some following disclosures that Mr. Grasso received a $5 million bonus for his post-9/11 efforts.

"I find it personally sickening that Mr. Grasso could accept a $5 million bonus for his actions following the events" of that day, says Andrew Jones, a retiree who once worked on the NYSE floor and continues to own a seat.

On Friday, the growing discord took a more public face, when LaBranche & Co. trader James Maguire Sr., an exchange veteran of more than 30 years, became the first floor member to publicly call for Mr. Grasso's resignation. Mr. Grasso "has become an issue that is distracting the exchange from its business," Mr. Maguire said.

LaBranche, along with a number of other trading firms on the NYSE floor, is under investigation for possible trading infractions.

Among the five most concerned of the exchange's directors making their feelings known to other directors behind the scenes, are Henry Paulson, Chairman and CEO of Goldman Sachs; Philip Purcell, Chairman and CEO of Morgan Stanley; William Harrison, Chairman and CEO of J.P. Morgan Chase & Co.; John Mack, co-CEO of Credit Suisse Group; and former Secretary of State Madeleine Albright, who heads the consulting firm Albright Group LLC, directors say.

Some of these five directors have been critical of Mr. Grasso's $139.5 million retirement package since they were first made aware of it. They and other directors were further incensed by a disclosure at last Tuesday's board meeting that Mr. Grasso was entitled to an additional $48 million in retirement compensation, a sum many thought initially was much lower. Some of the five directors in recent days have voiced their concerns to Mr. McCall, the compensation committee head, according to a person familiar with the matter.

Also taken aback was SEC Chairman William Donaldson, who after learning of the initial payout penned a strongly worded letter to Mr. McCall, criticizing the size of the package and requesting further information on how it happened. It was that early-September inquiry that led to the disclosure of the $48 million package. Some board members, including Mr. McCall, who is a private-equity executive, have said they didn't learn about it until shortly before its public announcement.

"My hope is that these criticisms we've heard will go away now that all this has been disclosed," Mr. McCall said.

The concerned directors are beginning to view the pay dispute as a larger issue that supersedes a single executive's career—even one as successful as Mr. Grasso's—and cuts to the heart of the institution's integrity. These board members are paying close attention to two petitions currently being circulated on the NYSE floor, according to people familiar with the matter.

Several influential seatholders are preparing one petition calling for a special meeting at which they will present an entire new slate of NYSE directors. These members say they have already secured commitments for more than the 100 signatures required to call the meeting, which would likely be scheduled for early October after the exchange's regular board meeting.

There is no provision in the NYSE bylaws or constitution for members to remove directors. Petition organizers would have to consult the New York state not-for-profit corporation law to see if that statute allows for the removal of directors by members. If not, members would need to amend the NYSE constitution, which requires 175 signatures to get an amendment in front of the board.

In a separate action, a group of retired seatholders is circulating a petition pushing for two additional seats on the NYSE board. Some 400 individuals who own seats but lease them to other members "have no representation," says Frank P. Maglio, who last year sold his floor brokerage firm to Bank of New York but continues to own a seat. He and his wife, who also owns a seat, are furious that the board claimed not to have understood the full compensation package. "Why did you vote on it then?" he asks.

Late last week, three Big Board directors who also run businesses on the floor called a member meeting Thursday to answer questions from brokers and traders. Robert Fagenson, vice chairman of the trading firm Van Der Moolen Specialists USA and an NYSE director, said the purpose of the meeting is to "spend some time with people who are down on the floor working, and make sure we're in touch with their thoughts."

Behind the budding resentment on the NYSE floor are "technology fees," which have been assessed to floor members in recent years to help fund new trading products. Such payments—which totaled more than $25 million last year—were inappropriate given Mr. Grasso's pay and the fact that their own margins were being squeezed by bear market for stocks, some floor members say.

—Ianthe Jeanne Dugan contributed to this article

In the Hot Seats

Non-management members of the New York Stock Exchange board and when their terms expire

H. Carl McCall*
HealthPoint Group, *vice chairman and managing director*
2005

Henry M. Paulson Jr.
Goldman Sachs Group, *chairman and CEO*
2005

William B. Harrison Jr.
J.P. Morgan Chase, *chairman and CEO*
2004

Philip J. Purcell
Morgan Stanley, *chairman and CEO*
2005

DIRECTOR	AFFILIATION, TITLE	TERM EXPIRES
Madeleine K. Albright	Albright Group, *principal*	2005
Herbert M. Allison Jr.*	TIAA-CREF, *chairman, CEO, president*	2005
Carol Bartz	Autodesk, *chairman, CEO, president*	2004
James E. Cayne	Bear Stearns Cos., *chairman and CEO*	2004
James M. Duryea	J.M. Duryea, *president*	2004
Robert B. Fagenson	Van Der Moolen Specialists USA, *vice chairman*	2005
Laurence D. Fink*	BlackRock, *chairman and CEO*	2004
Andrea Jung	Avon Products, *chairman and CEO*	2005
Mel Karmazin*	Viacom, *president and COO*	2005
Kenneth G. Langone	Invemed Associates, *chairman, CEO, president*	2004
Peter N. Larson	Brunswick Corp., *retired chairman and CEO*	2004
Gerald M. Levin*	AOL Time Warner, *retired CEO*	2004
George C. McNamee	First Albany Companies, *chairman and co-CEO*	2005
John J. Mack	Credit Suisse Group, *co-CEO*	2004
E. Stanley O'Neal	Merrill Lynch & Co., *chairman, CEO, president*	2005
Christopher C. Quick	Fleet Specialist, *CEO*	2005
Jürgen E. Schrempp*	DaimlerChrysler, *CEO*	2004
Larry W. Sonsini	Wilson Sonsini Goodrich & Rosati, *chairman and CEO*	2005
William B. Summers Jr.	McDonald Investments, *chairman*	2004

Note: One seat is vacant
*On the human resources and compensation committee; Mr. McCall is the committee chairman. Source: NYSE

Question of the Day: *What should the NYSE board's next step be in the controversy involving Chairman Dick Grasso's compensation? Visit* **WSJ.com/Question** *to vote.*

Nike Settles Case With an Activist For $1.5 Million

By Stephanie Kang

After losing a U.S. Supreme Court appeal over a case debating the constitutionality of commercial speech, **Nike** Inc. Friday settled with California activist Marc Kasky, in a deal that obliges the footwear company to pay $1.5 million during the next three years to a Washington worker-rights group.

Under the settlement, the Fair Labor Association will use the funds to promote workers' education, increase training and help create a global reporting standard for factory working conditions. The money also will go toward monitoring factory processes, which will directly affect some of Nike's employees in China, Vietnam and Indonesia. The FLA includes 179 universities, human-rights organizations, consumer groups and companies.

Nike, of Beaverton, Ore., admitted to no liability under the terms of the settlement. Both parties however, expressed relief at ending a legal dispute that went on for nearly five years.

"The main thing Mr. Kasky wanted was a change in practices by Nike, which happened," said his attorney, Patrick Coughlin. "And the money that will go to the FLA is a good way to develop corporate responsibility." Added Nike vice president and general counsel Jim Carter, "It's an opportunity to put $1.5 million through to the FLA to help them do their work in the factory monitoring process better, which is clearly better than spending money on the case."

While the suit between Mr. Kasky and Nike may be settled, the implications for U.S. businesses as well for the legal definition of commercial speech remain unclear.

In April 1998, Mr. Kasky filed a suit under a California consumer-protection law aimed at eliminating unfair competition. Mr. Kasky claimed that statements made by Nike about working conditions at its Asian factories misled the public and amounted to false advertising. The suit was dismissed in two lower California courts. But the state's highest court ruled that Nike's campaign addressing its critics, which included press releases, letters to the editor, and a report filed by Andrew Young, former ambassador to the United Nations, amounted to a form of commercial speech. Commercial speech receives a lower standard of protection under the First Amendment than noncommercial speech.

The resulting U.S. Supreme Court case was closely watched, as companies hoped for a definitive decision on what constitutes commercial speech. But the court's June 26 decision—to pass the case back to a California state court on technical grounds—left the issue unresolved.

"Until the Supreme Court resolves the issue, companies will have to factor in the possibility that they may be held accountable in California courts for what they say on matters of public concern," said First Amendment attorney David H. Remes, a partner at Covington & Burling in Washington, who wrote friend-of-the-court briefs supporting Nike on behalf of six companies including **Exxon Mobil** Corp., **Bank of America** Corp. and **Microsoft** Corp.

Rights group will use funds to help create a reporting standard for factory conditions.

U.S. companies will respond warily, but that may not be a bad thing, said New York University law professor Burt Neuborne. He said he expects companies to take more care in the kind of information they release or "less risk-taking, where companies won't disseminate anything at all." Nike said Friday that the lack of a decision over what protection a company has in the process of making public statements will alter its information-disclosure policy "into the foreseeable future."

"We are still restrained and will continue to be restrained to fully engage in the kinds of discussion that are at the heart of the allegations in this case," said Nike's Mr. Carter. The company will limit media events in California and won't publicly release its corporate responsibility report for fiscal 2002.

Further clouding the muddy free-speech waters is the acknowledgment from justices in both California and federal courts that Nike's campaign contained elements of commercial and noncommercial speech. The lack of a decision has left "no clear road map in sight" for U.S. companies, says NYU's Mr. Neuborne. "This settlement provides absolutely no guidance in an area that is completely confused," he said. "Basically, this doesn't help us out of the swamp."

As part of the settlement, Nike agreed to honor its existing commitments at all its foreign facilities to after-hours worker-education programs and to support small-loan programs for workers at a minimum of $500,000 during the next two years.