DIRECTORS ROUNDTABLE

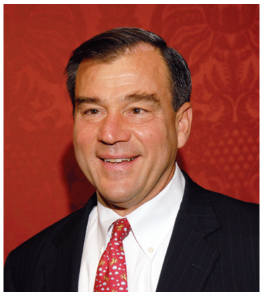
WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Robert E. Bostrom

Executive Vice President, General Counsel, Freddie Mac

THE SPEAKERS:



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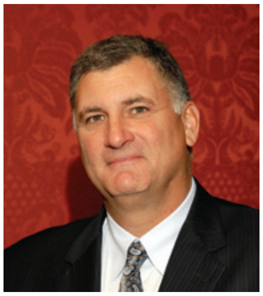
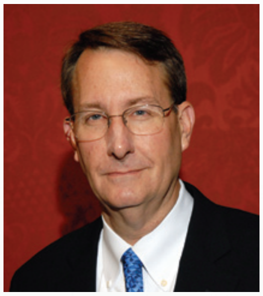


David Galainena
Winston & Strawn LLP

Bruce A. Baird
Covington & Burling LLP

Jonathan I. Mark
Cahill Gordon & Reindel LLP

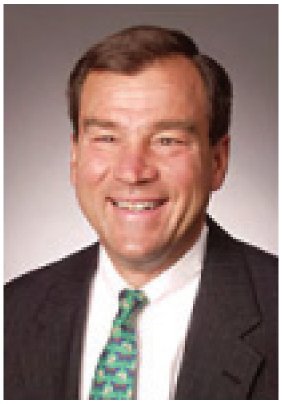


Jeffrey Q. Smith
McKee Nelson LLP

TO THE READER:

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Boards of Directors and their advisors including General Counsel. In recognition of Robert Bostrom's distinguished career, in Fall 2007 we presented him with the leading global honor given to General Counsel. He was the distinguished Guest of Honor at a special Roundtable in Washington, D.C. entitled, "World Recognition of Distinguished General Counsel." What follows is information on the Guest of Honor, an edited transcript of the event, and the bio and firm information for each of the Distinguished Speakers.

Jack Friedman
Directors Roundtable
Chairman & Moderator



Robert E. Bostrom
Executive Vice President
General Counsel
Freddie Mac

Robert E. Bostrom was named Executive Vice President and General Counsel at Freddie Mac effective February 1, 2006. In his role as principal legal counsel to Freddie Mac, Bostrom reports directly to Chairman and CEO Richard F. Syron. Bostrom is a member of the executive leadership team and has oversight and management responsibility for all legal and regulatory strategies, services, and resources and corporate governance matters. He also serves on a number of executive management committees.

Bostrom joined Freddie Mac from Winston & Strawn LLP, where he had been managing partner of the New York office, a member of the firm's executive committee, and head of its financial institutions practice. Bostrom originally joined Winston & Strawn in 1990. At Winston & Strawn, in addition to his financial institutions practice, Bostrom advised clients in connection with corporate governance and Sarbanes-Oxley issues, the structuring of compliance and enterprise risk management programs and internal controls, Board of Director and Audit Committee issues, regulatory examinations, and strategic planning. He advised various financial institutions in connection with federal and state supervisory actions and internal investigations involving compliance problems and potential violations of law.

While at Winston & Strawn, Bostrom served as the senior partner on teams supporting the special counsel to the Independent Consultant to the Audit Committee of the National Association of Security Dealers (NASD) pursuant to a consent order with the Securities and Exchange Commission (SEC) regarding the NASD and NASDAQ market and the Independent Consultant to the Bear Stearns Securities Corporation in connection with the A.R. Baron & Co. consent order with the SEC.

From 1992 until 1996, Bostrom served as Executive Vice President of Legal, Regulatory and Compliance and General Counsel of National Westminster Bancorp (NatWest), a $32 billion bank holding company. At NatWest, he was the executive officer responsible for corporate governance, legal, regulatory and compliance affairs, including regulatory examinations and supervisory relationships. He was a member of the Office of the Chief Executive Officer, the Management Committee and the Risk Policy Committee. He also served on the Board of Directors of NatWest Bank (Delaware) and Coutts International.

Bostrom's legal career spans more than 25 years. He is an expert on financial institutions regulation, corporate governance and Sarbanes-Oxley issues, director education, compliance and enterprise risk management programs, and internal controls at financial institutions. He is a frequent lecturer, including at Duke University's Directors' Education Institute, and has written extensively on these subjects.

Bostrom received a B.A. with honors from Franklin & Marshall College, an M.I.A. from Columbia University, School of International Affairs, and a J.D., cum laude, from Boston College Law School.

Freddie Mac is a stockholder-owned company established by Congress in 1970 to support homeownership and rental housing. Freddie Mac fulfills its mission by purchasing residential mortgages and mortgage-related securities, which it finances primarily by issuing mortgage-related securities and debt instruments in the capital markets. Over the years, Freddie Mac has made home possible for one in six homebuyers and nearly four million renters in America. www.FreddieMac.com

JACK FRIEDMAN: I am Jack Friedman, Chairman of the Directors Roundtable. I'd like to welcome all of you. We are a civic group which has done about 650 events worldwide, in 16 countries, over the years. Our primary mission is to organize the finest programming for Boards of Directors and their advisors.

Directors have said to us that companies rarely get positive statements of recognition of the good things that they do. It is important to recognize the positive leadership of corporations and their executives.

Today our Guest of Honor for this global recognition is Robert Bostrom, the General Counsel of Freddie Mac. He has previous experience both as a General Counsel elsewhere and, and as a law firm partner.

In addition, our distinguished panelists will be Jonathan Mark of Cahill Gordon & Reindel, Bruce Baird of Covington & Burling, Jeff Smith of McKee Nelson, and David Galainena of Winston & Strawn. Each one will make a brief presentation following our Guest of Honor's remarks, and then we'll have an extensive roundtable discussion and interaction with the audience. Afterwards, we invite the audience to come up and meet with the speakers.

We invite Bob to be our first speaker.

ROBERT E. BOSTROM: Good morning. Thank you, Jack, and the Directors Roundtable for this opportunity and all of you for coming. For those of you not familiar with Freddie Mac, I would like to take a few minutes to fill you in. Freddie Mac is a stockholder-owned, NYSE-listed company. Freddie Mac was chartered by Congress in 1970 with the mission of bringing liquidity, stability, and affordability to the U.S. housing markets and expanding homeownership and affordable housing rental opportunities. We fulfill our mission by purchasing conforming residential mortgages and mortgage-related securities in the secondary mortgage market. We are one of the largest purchasers of mortgage loans in the United States. We purchase mortgages and bundle them into mortgage-related securities that can be sold to investors. We can then use the proceeds to purchase additional mortgages from primary market mortgage lenders, thus providing them with a continuous flow of funds. We also purchase mortgage loans and mortgage-related securities for our investment portfolio. We finance our investment purchases and manage the associated interest-rate and other market risks primarily by issuing a variety of debt instruments and entering into derivative contracts in the capital markets.

As one of the largest purchasers of mortgage loans in the United States, we provide a vital link between mortgage lenders and investors. We don't make mortgage loans directly to homebuyers. Rather, we benefit consumers by providing lenders across the country with a steady flow of low-cost mortgage funding in good times and bad. Since 1970, Freddie Mac has purchased or guaranteed more than 50 million mortgages.

We are chartered by Congress, and regulated by the Office of Federal Housing Enterprise Oversight (OFHEO) and HUD, but our business is funded entirely with private capital. We are a NYSE-listed company that must comply with all of the same listing standards as any other NYSE-listed company. Our Board of Directors is subject to the same corporate law (in our case Virginia) fiduciary standards as the directors of any other company. And although our securities are exempt from SEC registration, we are still subject to the general antifraud provisions of the federal securities laws and have committed to the voluntary registration of our common stock with the SEC under the Securities Exchange Act of 1934.

Let me just throw out some numbers to give you more of a flavor about the size and significance of Freddie Mac:

- NYSE-listed, with over 600 million shares of common stock outstanding
- Total mortgage portfolio of almost $2 trillion (as of 7/31/07)
- Total mortgage investment portfolio of approximately $720 billion (as of 7/31/07)
- Over $780 billion in long- and short-term debt securities issued in 2006

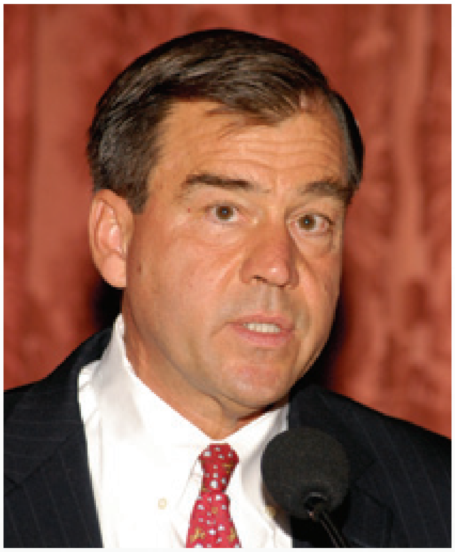
What makes us unique is our congressional charter — which forms the framework for our business activities, shapes the products we bring to market, and drives the services we provide to the U.S. residential housing and mortgage industries. Our charter also limits what we can do, including the types of mortgage loans that we are permitted to purchase, and requires us to focus our business on affordable housing and our mission.

Our mission as defined in our charter is:

1. To provide stability in the secondary market for residential mortgages;

2. To respond appropriately to the private capital market;
3. To provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
4. To promote access to mortgage credit throughout the United States. (including central cities, rural areas and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

In other words, everything we do comes back to making America's mortgage markets liquid and stable and increasing opportunities for homeownership and affordable rental housing across the nation.



Why did I join Freddie Mac? Although Freddie Mac was facing some incredible legal and intellectual challenges, I was attracted by the public service character of its mission which I have just discussed. When I joined Freddie Mac, the company was still facing an SEC enforcement action, a multi-billion dollar securities class action, shareholder derivative suits, and related ERISA litigation resulting from the financial restatement announced in 2003, a Federal Election Commission investigation, and was operating under a Consent Order with OFHEO, its safety and soundness regulator. And, it was an NYSE-listed company that was not yet able to file timely annual or quarterly financial statements. There were legislative, regulatory, and political challenges facing both Freddie Mac and Fannie Mae. There also were the significant business challenges to support a *Fortune* 50 company with over $2 trillion of mortgage assets. Looking back, it seemed as if our Board was in almost constant session dealing with the restatement aftermath and legal and regulatory issues.

When you think about all of that and add in the other responsibilities of a General Counsel in a highly regulated company, it was a great challenge to participate as part of a new management team and deal with all the complexities. And yet, the outcome has been very good. We have now successfully settled our restatement-related lawsuits, the SEC enforcement action and the FEC investigation. We have achieved great progress in satisfying the requirements of our OFHEO consent order. We have materially upgraded our corporate governance, compliance, and enterprise risk management functions by continuing to implement best practices. And, we have returned to producing annual and quarterly financial statements.

Now a bit about Freddie Mac's Legal Division. We have a total staff of over 170 people, with approximately 90 talented attorneys, who are organized around practice areas:

1. Corporate Governance
2. Corporate Affairs
3. Securities
4. Litigation
5. Mortgage Transactions
6. Legislative and Regulatory

Many issues or transactions require the involvement of attorneys from one or more practice areas. By organizing along lines of expertise rather than functional lines or in parallel to the corporate organizational chart, the Legal Division facilitates the development of expertise in the various legal disciplines and is able to provide high-quality legal services in a rapidly changing environment.

Our Legal Division actively partners with business clients to achieve corporate objectives. As I mentioned, Freddie Mac's business fundamentally involves transactions in legal instruments, including mortgages, debt securities, mortgage-related securities, equity securities, hedging instruments, servicing rights, and guarantees. Consequently, we are involved in virtually all aspects of the company's daily operations — assisting clients in structuring and negotiating transactions; advising on securities issuance and disclosure issues; advising on charter, regulatory and governance issues; drafting and interpreting complicated contracts; counseling on IT and intellectual property issues; and providing employment and litigation advice and services.

To put it into numbers, in 2006, the Legal Division provided legal support for almost 2,000 single family and multifamily mortgage transactions, almost 1,200 debt offerings, over 1,000 swap transactions, over 190 mortgage securities offerings, a common stock repurchase, and two preferred stock offerings. This pace has continued in 2007.

We did virtually all of this work in-house, although we do rely upon a limited number of extremely capable outside counsel for complex specialized support.

And now that you know a bit more about me and Freddie Mac, it's time to move on to the substance of what I would like to talk about.

A. Post-SOX Perspective

Over the past few years, corporate scandals involving Enron, WorldCom, and a host of others leading up to the enactment of Sarbanes-Oxley (SOX) called into question whether traditional corporate governance structures, compliance programs, internal controls, and risk management systems were adequately addressing the challenges faced by companies and Boards of Directors.

In the wake of SOX, regulators and stock exchanges enacted new rules and regulations and stepped up enforcement actions, private litigants filed numerous lawsuits, and companies rushed to put into place new processes and protections.

Consider some of the protections advocated and/or implemented over the past few years:

- Greater push for independence of Board members, including stock exchange requirements that a majority of Board members, and all members of the audit and compensation committees, be independent;
- Adoption of requirement that the CEO and the CFO certify financial statements;
- Increased focus on auditor independence;
- SOX Section 404 assessment of internal controls;
- Requirements for Code of Ethics, implementation of confidential hotlines, and adoption of anti-retaliation protections for whistleblowers.
- Proposals to appoint Lead or Presiding Director, or separate the Chairman and CEO roles;
- Retention by Boards of separate outside counsel and other advisors to advise them on their responsibilities and liabilities;
- Establishment or enhancement of compliance and risk management functions; and
- Increased external auditor liability and scrutiny.

And yet, notwithstanding all of these requirements since Sarbanes-Oxley, reports and disclosures of accounting irregularities, earnings restatements, violations of law, enforcement actions, corporate investigations, and corporate governance breakdowns (e.g., Hewlett-Packard, insider trading scandals, mutual fund scandals, Collins & Aikman, Bristol-Myers, Hollinger, and option backdating investigations at more than 130 companies) have continued unabated.

Some have responded by suggesting that Sarbanes-Oxley may not have gone far enough. Others say it went too far and is threatening the competitiveness of the U.S. market. We could debate that issue indefinitely.

But, in any event, the same disturbing themes keep emerging over and over again:

- Inappropriate corporate culture and tone at the top
- Ineffective compliance and risk management systems
- Inadequate internal control structure
- Inadequate disclosure and transparency
- Inadequate Board oversight

A number of obvious questions can be asked:

- Why haven't the reforms resulted in fewer of these incidents?
- Is it just that there hasn't been enough time for them to start working effectively?
- Are we only hearing about the exceptions?
- Is it that the behaviors that we are hearing about now all occurred pre-SOX?
- Are there fundamental problems with our corporate structure that just lead to legal and ethical lapses?
- Or is the fact that we are hearing about these events simply evidence that the post-SOX reforms are working — i.e., the controls, processes, and protections put in place are catching these irregularities?

Every one of us in this room would probably have different answers to these questions.

B. Role of the General Counsel

More importantly, what role should the General Counsel play and how can General Counsels successfully address the risk of these events happening at our companies, particularly in light of the increased prevalence of legal actions being taken against General Counsels?

In advocating the General Counsel's role as the "corporate conscience," a recent article in *Corporate Board Member* (July/August 2007) cites three recent departures of General Counsels:

- Apple's General Counsel, quitting in the wake of the option-backdating accusations;
- the involvement of the General Counsel at Hewlett-Packard in the HP spying case; and
- the General Counsel of Bristol-Myers Squibb, leaving the company investigation in the wake of an FBI investigation.

Other General Counsels who have been charged by the SEC or lost their jobs in the wake of option backdating include the General Counsels of McAfee, Monster Worldwide, and Comverse Technology.

The article expresses the view that the forced departures of General Counsels is evidence that "in matters of corporate conscience and ethical conduct, the buck stops where the guidance starts — in the office of the top attorney." While the scandals at Enron, HealthSouth, and the like were the result of financial and accounting issues, the article suggests that "these more recent ones often stemmed from a general counsel's failure to speak out against ethical lapses."

In an article published in the November 2006 issue of *Business Lawyer*, Norman Veasey and Christine DiGuglielmo advocated that in-house lawyers should serve as "persuasive counselors" and "attempt, through their legal counsel, persuasively to guide their clients to the right course of action." Under this model, "lawyers go further than simply describing the law and suggesting ways to comply with it. Instead, they affirmatively, proactively, and courageously try to persuade their client to follow the law, to go beyond mere compliance with the law, and to 'do the right thing' from a moral or ethical perspective." In this regard, they suggest that the General Counsel is "often the 'conscience' of the corporation."

The authors note that General Counsels play a broader role in many corporations. General Counsels serve on corporate executive committees. The departments that report to them have been expanded beyond the legal department and corporate secretarial function to include other departments which can frequently include compliance, government relations, ethics, public relations, stockholder relations, tax, security, and risk management. Most importantly, as persuasive counselors they play a critically important role in corporate governance and compliance.

The authors note that General Counsels can act as persuasive counselors and guide their clients to the right course without compromising their ability to provide their corporations with excellent and independent legal advice, service, and advocacy.

Key questions which are identified by the authors include:

1. Why is the General Counsel uniquely suited for the role of persuasive counselor?
2. How do both the CEO and the Board benefit from having the General Counsel serve as a persuasive counselor?
3. How does a General Counsel as a persuasive counselor play a critical role in corporate governance and compliance?

The article suggests that in order for the General Counsel to fulfill this broader role:

1. The independent directors should invite the General Counsel to attend executive sessions.
2. Corporations should develop and implement policies to ensure the optimal quality and quantity of information flows to the General Counsel.
3. The General Counsel should have an extensive knowledge of the corporation's business and be present at Board meetings.
4. In order for the General Counsel to have access to information about the company, the General Counsel or a member of the law department should attend all meetings of senior management. Access to this information at all levels is essential in order to be proactive and anticipate legal and compliance problems early.
5. General Counsels need to think ahead and anticipate what is coming. In their capacity as persuasive counselors, more General Counsels are focusing their attention on issues like ethical behavior, going beyond mere compliance with the letter of existing law.

One of the issues that arises is the identity of the client and the client relationship. Is it:

- the corporation?
- the shareholders?
- the Board of Directors?
- the CEO?

It is clear that the roles and responsibilities, expectations, and burdens of the General Counsel are changing.

In addition to managing the conflicting client relationship issues, how does the General Counsel balance the various roles — chief legal officer, senior executive officer, manager of the legal function, advisor to the CEO, chief governance professional, and advisor to the Board? Does this change if other responsibilities are added involving oversight of other areas such as compliance, ethics, internal audit, and risk management, or the addition of government relations, investor relations, and other business functions?

Although I have raised many questions, in my view, there is no "one size fits all" answer. Every company is different; and different structures may be necessary at different points in time, depending on the issues facing the company. Instead, the key themes that every General Counsel needs to keep in mind are:

- the importance of culture
- the "tone at the top"
- transparency
- trust
- accountability
- reputation
- independence, and, most importantly,
- doing the right thing

C. Importance of Independence

The theme of the articles is that no matter where a General Counsel sits in an organizational structure, and no matter how many hats the General Counsel wears, a General Counsel must focus on building effective relationships within the company and the Board of Directors. A General Counsel can't proactively keep issues from arising or address those that already have arisen unless the General Counsel is trusted and respected as an independent, unbiased advisor. The General Counsel must foster and reinforce a commitment to the appropriate "tone at the top" of the company.

The nature of the General Counsel position creates the potential for conflicts. For example, as a member of management, the General Counsel reports to the CEO; but the General Counsel also has a duty to report to and advise the Board both as General Counsel and as corporate secretary. When an issue requiring investigation arises, does the General Counsel oversee an internal investigation, or does he or she bring in external counsel or other third parties instead? What does the General Counsel do when there is a violation of law and senior management refuses to take action?

D. Thinking Ahead — Preparing for the Unknown

With all that being said, what are the biggest issues that keep me up at night? There is just one — *what I don't know*. What I know, I can deal with. As important as it is for a General Counsel to actively manage the issues and risks most pressing to the company and the Board, it is equally important for the General Counsel to focus on anticipating what can happen, what the big issues may be, and proactively be prepared to respond to unforeseen events.

To be effective in this role, a General Counsel must focus on understanding the company, its market, and the external environment that the company does business in. While a General Counsel must follow trends in the business and the legal and regulatory requirements that apply to the business, a General Counsel must spend time thinking proactively and anticipating the unexpected.

E. Pressing Issues of Today

In terms of the known issues facing General Counsels today, the list of issues du jour is long and getting longer. For example, in the corporate governance arena, they include:

- Executive compensation
- Shareholder advisory votes on executive compensation
- Majority voting for directors
- Proxy reform
- Use of independent consultants for the Board
- Dealing with conflicts between the CEO and the Board
- Board oversight intruding into management
- Corporate governance ratings
- Board evaluations
- The role of the independent director
- Board secretaries
- The Board's role in strategic planning
- Role of the Lead Director

I won't go into detail on any of them — instead, I'll now briefly touch on some top areas that General Counsels are thinking about today:

Financial Disclosure

For public companies, the focus and scrutiny on securities law compliance in financial disclosures is likely to continue. Companies must focus on establishing and maintaining effective internal controls and disclosure controls and ensuring senior management involvement in the review of public disclosures. Failure to establish and maintain an adequate control environment could result in a material error in reported financial results (restatement risk), inadequate disclosure of material information (financial or otherwise), and loss of market confidence. Senior management and the Board should be aware that securities law liability can arise from public disclosures even when numbers (i.e., financial statements) are not involved.

Corporate Governance

Corporate governance practices play an integral role in ensuring that the company's directors and officers fulfill their fiduciary duties. The scrutiny of corporate governance matters will only continue to increase. There is likely to be continued pressure from institutional investors, shareholder activists, and others to go beyond the stated requirements of the law regarding corporate governance practices.

Companies must ensure that Boards are properly informed. Often this involves careful balancing and judgment to ensure that the "right" amount of information is given to the Board for effective decision making, without overloading the directors with unnecessary information. However, procedures should be in place to ensure that information is:

- Complete — Information is complete in terms of the explicit purpose for providing it; any omissions would not render the information presented misleading to the user.
- Accurate — Information is correct and has been derived from appropriate sources and has been approved by the appropriate levels of management.
- Reliable — Information in reports is of sufficient quality that the Board, management committees, or senior management could reasonably rely on it in carrying out their responsibilities.
- Transparent — Information and messages in reports can be clearly understood, are presented in the appropriate context, correctly reflect the underlying information, and consider what would be important to the audience.
- Timely — Information contained in a report must be sufficiently recent, and must be reported at a sufficiently early time, to adequately support Board, management committees, and senior management functions that rely on such information.

Information Security

With the ever-increasing dependency of most companies on technology, the risk in this area grows at the same rate of speed as technological advances. The risk includes not just protecting the company's information, but also data privacy issues to the extent that the company also has consumer data.

Effective Compliance Programs

In setting up or reviewing an existing compliance program, a company must consider a compliance philosophy: Should the compliance program be part of good business or should it be a defensive move? The answer for your company may well depend upon the degree of regulatory scrutiny. Other sources of pressure include plaintiffs' bar, state and federal enforcement authorities, institutional investors, shareholder activists, corporate governance ratings, analysts, D&O insurers, market forces, competitor actions, and "best practices."

The existence of an effective compliance and ethics program is a key factor under the Federal Organizational Sentencing Guidelines and a factor considered by the Justice Department when deciding under the McNulty Memorandum standards whether to bring criminal charges against the company.

Conduct of Investigations

When faced with the need to conduct an internal investigation, the critical first step is to define the purpose of the investigation. While this can be difficult to assess until all facts are known, at a minimum, it is essential to define the questions that need to be answered.

The next key question is who will conduct the investigation — will it be done internally versus externally? If done internally and related to the financial statements, should it be conducted by Internal Audit? If outside counsel, should it be the company's regular counsel, or special counsel? The advantages of using in-house counsel are to minimize cost and business disruption, and in-house counsel will know the company better. The advantages of external counsel are the perception that an external party will add a level of objectivity and independence to the investigation, help internal counsel avoid potential internal political pressure, provide specialized substantive knowledge of issues under review, expertise in investigative process, and perspectives on potential reaction of regulators.

Other issues to be considered include: how the investigation will be conducted; whether to prepare a written investigative report (and related attorney/client privilege and work product issues); multiple representation and separate counsel issues; to what extent the information learned during the investigation will be kept confidential; voluntary versus required disclosure to regulators or prosecutors; and, potential securities law disclosure requirements.

Litigation Management

Preventing litigation or regulatory enforcement action is a vital function of the General Counsel. However, it is equally important to prepare for the possibility of litigation or regulatory action and create the framework for project management before litigation is filed or regulatory action is threatened. This requires adequate document management and retention policies and procedures to avoid the negative consequences of discovery and document production lapses.

Proper document management and retention is essential. The failure to establish and follow records retention policies, establish timely litigation reports, and properly produce documents may expose the company to greater legal risk than the underlying claim or action.

Conclusion

In summary, the role of the General Counsel is no longer just evolving but rather is rapidly changing in a very complex environment. The General Counsel of today must balance competing demands, roles, and responsibilities as a MANAGER, LAWYER, ADVISOR, and PERSUASIVE COUNSELOR to the CEO, the company, the shareholders and the Board in an environment of increased roles and responsibilities coupled with increased scrutiny, accountability and liability.

JACK FRIEDMAN: We'll be discussing Bob's remarks later during the discussion period. One of our prior honorees made the point that as a parent, he noticed that small children watch very, very carefully the actual conduct, not just the words, of parents as a model. He noticed that in the adult world, employees look very, very carefully at the leadership at the top as to what they really do. For example, is their gut reaction to do the honorable and honest thing, or rather calculate and do the minimum that is required?

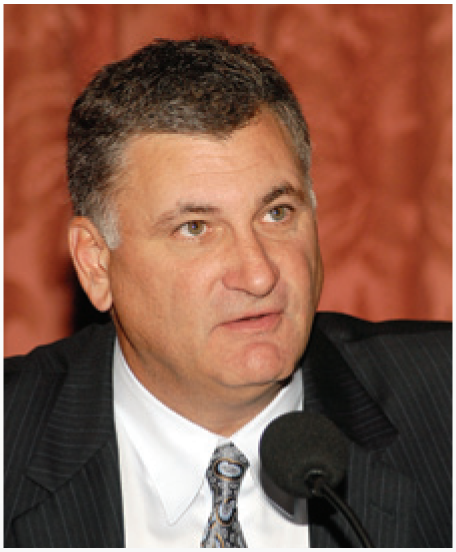
How does the General Counsel set an example and communicate values to the staff?

ROBERT E. BOSTROM: Well, Jack, I think the key word is communication. I think you need to articulately, repeatedly, and forcefully communicate a message; but it's got to be reinforced with behavior.

As you said, actions speak louder than words; and you have to *live* repeatedly, constantly, in an ever-present fashion, these kinds of values.

JACK FRIEDMAN: Thank you very much. Our next speaker is David Galainena of Winston & Strawn.

DAVID GALAINENA: Good morning. I'm David Galainena with Winston & Strawn. Bob, I want to let you know, as well as the people and partners in front of you from your former firm, how proud we are of you in the role you're playing at Freddie Mac, and the job you're doing at Freddie Mac.



What I'd like to do today is talk about securitization. And because we're in a mixed crowd, i.e., we're not all securitization lawyers, I think the right way to attack it is to start with the ABC's of securitization, work through those elements, and then basically work through what Freddie Mac does in the securitization market, because they truly are one of the primary players in the securitization market, and have been since their inception.

So what is securitization? It is basically the pooling of financial assets — car loans, motorcycle loans, home loans — pooling them in a critical mass, and then tranching or creating cash flows from that pool of financial assets. The beauty with mortgages, and it was the first asset to be securitized, is they're very homogeneous, and there are a lot of them. Because of the nature of the underlying paper — the home mortgage, it's very simple, it's very straightforward. There is a lot of history of the process for originating a mortgage and how you foreclose on a piece of property in the event of a default. In effect it was a rational starting point for the securitization market.

So why would one securitize? Okay, we have an asset, but why even bother doing it? The reality is there are probably three key fundamental reasons to securitize. One, you can create liquidity. Just like what Freddie Mac does, they create liquidity to the primary lenders in the mortgage market. You could just be a straight savings and loan or bank and originate mortgages, but your balance sheet can only hold so many mortgages at any one point. So at some point what you do is you pool them and you do a sale of the mortgage in the form of a securitization, moving them off your balance sheet. So you therefore create liquidity.

You also can create basically an arbitrage with the interest rate of the assets that you sold into securitization. And what I mean by that is, if you have home loans of 8%, and you go and securitize at 6%, you create an interest rate differential that is a profit to the party that created the transaction.

The third function of securitization is you basically move the risk of those financial assets off of your balance sheet. Now in a sense, what people don't fully understand is, you move only a part of the risk off of the balance sheet, because oftentimes, a securitizer will retain the bottom piece of the risk in the subordinate bonds, so that, therefore, the idea that you move all your risk off isn't quite accurate, but you move some of the risk off.

But, in any event, in all cases, you're creating liquidity.

So that's your basic securitization structure.

So what does, and how does, Freddie Mac play in this structure?

Bob mentioned some of the key elements of the charter of Freddie Mac, and I don't know if you're following along, but on page 4 of the presentation, there is articulated the four elements of the Freddie Mac charter. One is to provide stability in the secondary residential mortgage market.

What does that mean? That means that Freddie Mac is not a primary lender. They don't go out and make home loans to homebuyers. What they do is they interface with the entities that originate mostly loans. And they're there to basically buy those loans or guarantee those loans.

The reality also is that Freddie Mac is not alone in this space. There are two very strong competitors in the space. One is Fannie Mae which, as Freddie Mac, is a government-sponsored enterprise but there is another one known as Ginnie Mae that also participates in residential home mortgage market and has the full faith and credit of the U.S. Government behind it.

The essence of the benefit that Freddie Mac brings to the table is liquidity, liquidity, liquidity. And the way they do it, if you go to page 6, is through the basic, most fundamental security which they create, which is known as the PC, or pass-through certificate.

In effect, what they do is they go to banks. What they would do with a company like Freddie Mac is basically take home mortgages, pool them, and then sell those home mortgages to Freddie Mac in exchange for a pass-through certificate which is guaranteed by Freddie Mac. And what that does is what's coming back to the bank is a security — it's no longer individual home mortgages — and you have a lower interest rate, because what Freddie Mac does, it keeps some of the interest rate on that pool of home mortgages as a guarantee fee. You're obviously not going to do this for free, and Freddie Mac takes a fee for their guarantee. You have a lower interest rate on your pass-through certificate that the bank now holds.

So, in that way, there's liquidity, because what the bank can do with the PC security is trade it (i.e. sell it), enter into a repo agreement with Wall Street, or they can actually resecuritize it in their own securitization structures.

The other way Freddie Mac can participate in providing liquidity is to purchase the mortgage and then do its own securitizations. So basically, you move now from Step 1, i.e., the home loan, into the pooling and the creation of a PC. And that's the most fundamental building block to mortgage securitizations that Freddie does, and Wall Street does, and the bank does.

What happens is that there is a building of a critical mass of PCs. And you create a structure that is known as a REMIC [real estate mortgage investment conduit]. What a REMIC really is, it's a tax election made by somebody who wants to securitize mortgages or PCs. It's a tax election made by a structure that was created by Congress probably in 1983, as an amendment to the Tax Code, and it makes clear that you can issue mortgage-backed securities that essentially pass through all of the mortgage cash flows to the holders of those securities and yet still get debt for tax treatment. What that does is create the most efficient structure available to Wall Street and parties who want to securitize.

So once again, the emphasis is on liquidity in the homeowner marketplace. There is a consistent theme here — support of Freddie Mac, support of Fannie Mae, support of Ginnie Mae, and now the Tax Code, working for the benefit of liquidity in the residential mortgage market.

What happens is you can create what's known as a single-tier REMIC, where you simply take PCs, you move them into a REMIC structure and then tranche — tranching means to basically create sequential pay notes or bonds out of the cash flows of the underlying PCs. The single-tier REMIC is the most simple one. On page 9 is a diagram of the single-tier REMIC, which is a fairly simple structure, although it looks fairly complex. A double-tier transaction — what we're seeing now is more financial engineering, in which you're taking not only the PCs, but now you're going to basically structure the REMIC securities issued by another REMIC. You're going to combine multiple REMIC securities and create even more complex securities. And through the allocation of the cash flows, you can actually create bonds that have specific targeted amortization dates and maturity dates, which is ironic in the sense that if you think about a mortgage, one never knows when it's going to fully amortize — since most homeowners do not hold a mortgage until maturity date — so, basically through computer systems and tracking, you're able to anticipate on an assumed basis when you're going to have a payout on a particular bond tranche supported by the mortgages or REMIC sales. And if you think about it, drilling down three levels, we've gone from mortgages to PCs to REMICs, to REMICs on REMICs; and you're able through technology and Freddie Mac's working with Wall Street, to create a security that creates direct liquidity for the mortgage market which is the ultimate benefit that Freddie Mac provides to homeownership.

Bottom line is, three words: liquidity, liquidity, liquidity, for homeowners. Thank you.

JACK FRIEDMAN: I just have a quick question. What type of firms on Wall Street are examples of ones that are leaders of these deals and so forth?

DAVID GALAINENA: The primary players would be Lehman Brothers, Merrill Lynch, Credit Suisse, and UBS.

JACK FRIEDMAN: What types of entities are on the buyer side of these deals?

DAVID GALAINENA: In terms of whom the investor is?

JACK FRIEDMAN: Yes.

DAVID GALAINENA: Frankly, the deepest market is the insurance companies.

JACK FRIEDMAN: Do they want a long payout, a 30-year payout, to match the insurance company's liabilities?

DAVID GALAINENA: Well, as I mentioned, these structures can be financially engineered in such a way as you can basically move cash and have maturities of two, three, seven, nine years, supported by 40-year or 30-year mortgages, so they can actually pinpoint that specific area of an insurance company's needs, and the reality is that this paper has been extremely safe.

JACK FRIEDMAN: How about pension plans?

DAVID GALAINENA: Pension plans, as well.

JACK FRIEDMAN: Any large institution or group of institutions that could have long-term commitments that match the mortgage payout system could be....

DAVID GALAINENA: Can be a player, yes.

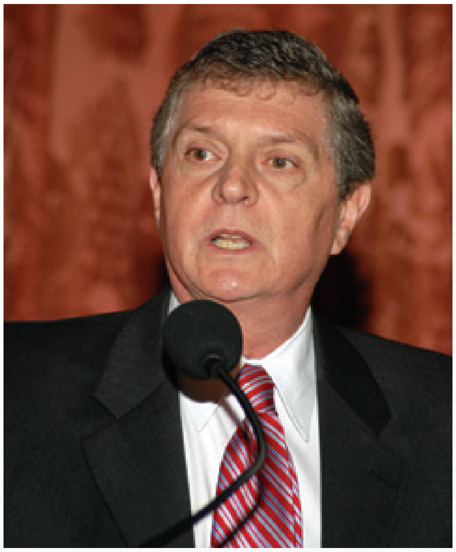
JACK FRIEDMAN: Thank you very much. Our next speaker is Bruce Baird of Covington & Burling.

BRUCE A. BAIRD: Thanks. As someone who saw some of the problems at Freddie Mac that Bob referred to before he came, I can only say that it's a testament to him, and it exemplifies his worthiness of this honor that he came in and solved the problems and did it in a way that reduced their visibility and reduced the impact that they had on a very large company.

I want to talk about an area that Bob alluded to in his opening remarks. He talked about in the wake of Sarbanes-Oxley some of the things that companies have done. In particular, I want to talk about internal investigations run by special committees, which have existed for a long time, but in the wake of Sarbanes-Oxley, have become a real feature, a seemingly permanent feature, of corporate life. Bob referred to the ongoing stream of issues, and seemingly together with that, there's been an ongoing stream of special committees, and of problems with them. They're new in some respects, and I'm not sure that companies have entirely figured out how to run them and how to govern them. They do things sometimes that are too broad; they don't communicate always, even with the company, with the company's General Counsel, and certainly with the individuals under investigation; they don't finish — I'm involved in a couple of them that have been going on for over a year, and that seems to me almost on its face an unacceptably long time for something to go on like that. When they don't finish, that has consequences — the accountants won't certify the financials; the company gets delisted from the stock exchanges; they have trouble with their lenders, they have trouble with efforts to sell the company; and, of course, they cost an arm and a leg.

What can be done here? I raise it as a question, not having all the answers. But I want to identify some elements, I think, of what an answer might be.

Special committees are not separate freestanding entities that have no relationship with the corporation. They of course have no more power than the Board. They are a subset of the Board; they're a group of independent directors, typically. They report to the Board; they have a fiduciary responsibility, not to the government, not to the SEC, but to the company. It seems to me, that's a basic proposition that we would all agree on, but sometimes special committees don't act as if they have those responsibilities.



Let me talk about what follows, it seems to me, from this fiduciary responsibility that special committees have to the corporation. Sometimes they freeze out the General Counsel. They talk to the SEC, maybe to the Department of Justice, but not to the company, not to the full Board. They might make periodic progress reports, but they don't say what they're doing, in part because, I think the fear is that they are communicating with the very people they are investigating. I think that's a mistake. But that's a question. Should there be more reporting? Should there be more transparency — a word that Bob used and that I agree with — in the work of special committees. And what counsel should they use? Often, in my experience, these special committees find lawyers that have no prior relationship with the company. They find accountants or forensic accountants that have no relationship with the company. They find experts that have no relationship with the company. Sometimes, even the directors have very little relationship with the company in those circumstances where companies hire a new director, simply for this purpose, because their other directors are all being investigated. So you have a group of people without roots in the company and without the understanding of the company that people with broad experience would bring, and they have the future of the company in their hands. It is also hard to stop them once they get started. That's an extremely serious problem, and I'd ask the question, at least, whether that isn't done too frequently; whether it isn't the case very often that the company could do such investigations, if not internally, at least with counselors that they know and trust and in the care of directors that have long experience with the company.

Another thing that follows from that is how you treat the individuals being investigated. Often in these large cases, the people being investigated include the CEO, the CFO, the General Counsel, and half the Board. How should those people be treated? Should they be treated as if they're drug defendants from whom all information should be kept? No, I don't think so. I think that from the fiduciary responsibility that those directors doing the investigating have to that corporation, it seems to me it follows that you talk to people! You tell them what's going on. You share information. You want to find out the facts. You want to find out the truth. You don't want to substitute for a public prosecutor; that's not the role, it seems to me. And I think sometimes special committees lose sight of that distinction.

There are times when there is a need for a totally separate, independent decision. An example of that is in a derivative case under Delaware law and many state corporate statutes. You need a decision made on taking over a derivative claim, and that needs to be made in a particular independent way. But that's a very, very small subset of what special committees do. I think the model has been extended beyond where it needs to have been extended.

Finally, let me just ask as a question, what do you do when one of these investigations goes off the rails? When it just seems to go on forever? I'm involved in one right now in which the investigation as originally conceived ended long ago, but it's still going on — it's been over a year; they've found new things to investigate. Corporate officers have been terminated for things like having pornography on their computers. There's a real sense in which one of these things can go on forever. And the company must sell itself at some point, because it has been delisted, it has no financials. What do you do when an investigation goes off the rails?

If you think about that question, by far the best answer is, don't get in that situation in the first place. It's very hard in a situation in which an investigation is going on for a director to say, well, we shouldn't investigate.

So these are hard questions and they're big issues. They're issues that many companies face in the wake of Sarbanes-Oxley, and I don't have all the answers. But I think the pendulum has swung too far in one direction, and there needs to be a lot of thought given to the structure and future role of these special committees. Thank you.

JACK FRIEDMAN: Our next speaker is Jonathan Mark, who is going to be speaking in the governance area as well. John is with Cahill Gordon & Reindel.

JONATHAN I. MARK: Good morning. Bob, it's a pleasure to be here and see you honored in this fashion. I appreciate the opportunity to be here. And I want to thank you, Bruce, for the wonderful set-up. That was well done, because what I'd like to do is take you inside one of the types of investigations that Bruce was describing, from the committee point of view. I've represented, along with my partner, Bart Friedman, a number of audit committees and special committees in the types of investigations that Bruce has been describing to you.

And imagine, if you will, an independent committee that's conducting an independent investigation of alleged corporate wrongdoing. Section 10A of the Exchange Act, which I'll get to a little bit later, has been invoked, and the committee is under a lot of pressure. The committee may meet frequently — once a week, maybe once every ten days. The committee will get detailed reports on the progress of the investigation from independent counsel, as Bruce observed, and from other investigators — perhaps the company's independent auditors and outside independent forensic auditors.

The investigation is conducted at great expense — counsel fees, auditor fees, forensic auditor fees, local counsel fees, and travel expenses. The committee is facing possibly difficult decisions that can be significant for the company, such as disciplining or even terminating senior management personnel. Then there is the fall-out from that sort of situation — the company will be late in filing its '34 Act [Securities Exchange Act of 1934] reports; it's probably received a delisting notice from a stock exchange; and its bondholders have issued a default notice under its public debt instruments; and that's not to mention the derivative lawsuits that may have been commenced.

Well, the issue that I'm going to talk about is what happens to a committee, an audit committee, a special committee, that finds itself in that sort of investigatory posture, as compared to the other Board members that are not participating in the investigation.

In that scenario, there's a large information gap between what the committee members know about the investigation and what the other Board members know or think about the investigation. It has happened, from time to time, that the other Board members become vocally critical of the investigatory process. They are critical of the time, the expense, the delayed filings, the notice of default, and the apparent absence of any value added to be gained from the exercise — all things that you touched on, Bruce.

Since the CEO is likely to be a Board member but not a member of the committee, the CEO's dissatisfaction with the process filters down to the other members of senior management, creating a corporate atmosphere that is hostile to the committee's work.

The committee members, looking at it from their vantage point, begin to feel that they are under siege. They begin asking themselves, and perhaps their outside counsel, if they should resign — a potentially disastrous course to follow — mid-investigation. It would leave the process rudderless, and the company even further exposed.

Well, what to do if one is advising a committee in that situation? Thinking about it, there are at least four things that we have done in the past. One, make sure the committee members have a clear sense of what their purpose and role is. Make sure they are very clear on what the sources of their authority to conduct the investigation are, and what their duties are. This can be done by reviewing in detail the scope of the committee's authority under its charter, reviewing relevant bylaw provisions, and perhaps, most compelling, reviewing with them Section 10A of the Securities Exchange Act of 1934.

Under Section 10A, which was put into that statute by Sarbanes-Oxley, if in the course of conducting an audit, an auditor detects or has information that an illegal act has occurred, the auditor must report that to management and make sure that the audit committee is adequately informed of the circumstances. If appropriate remedial action is not taken by the company, the auditor must, under the statute, resign its engagement. That is a very poor result, to say the least, for the company. Public companies in that sort of situation really, as a practical matter, cannot afford to have their independent auditor resign.

Therefore, an independent investigation of the alleged illegal activity is essentially compelled upon receipt of a 10A notice from an auditor, and that, in part, answers some of the questions that Bruce was raising.

The second thing that the committee must do is that they must be unanimous as to the action they're taking. The committee will not be able to effectively weather the criticism from its fellow Board members or explain its actions to the other Board members if there is a lack of unanimity among committee members. If there are issues among committee members, they must be talked through, and common ground arrived at, if the next step I'm going to describe is to have any chance of success.

And that next step is simply communication — communication with the other Board members. What this often means, though, is imposing on the other Board members and imposing on their schedules to schedule update meetings that occur between the regularly scheduled quarterly meetings of the Board. These updates can be informal — they can be by telephone conference — but their purpose is to allow the committee to provide a status report on the progress of the investigation — not the substance or interim findings as the investigation is not complete — and to the extent practicable, the timeline for completion.

If there is no timeline, as often is the case, certainly early on, given the open-ended nature of some of these investigations, the committee should make that clear and should advise that further update sessions will be scheduled.

Fourth, and last, is cultivating a good working relationship with the company's outside corporate counsel. Independent counsel is chosen by a committee conducting such an investigation for that very reason — their independence form the company, and this is, in part, a response, although it wasn't originally intended as such, to some of Bruce's comments.

One essential element to the independence of the counsel chosen is that they have no prior history with the company. In this context, the downside is that they are easily perceived by other Board members, those not on the committee, as negatively interfering with established Board relationships. Much of what is viewed as troublesome about the investigatory process is laid at committee counsel's doorstep — the expense, the delay in filing company reports, etc. Counsel may be blamed for leading the committee by the nose, and thus be considered the source of much that is not as is it once was at the company.

With a good line of communication to outside corporate counsel, some of the whys and wherefores for how the investigation is being conducted can be talked through; and if corporate counsel is willing to be an honest broker, it can often be explained by that counsel to the other Board members, including the CEO. The other Board members may not like the situation they find the company in any better, but an explanation coming from a trusted advisor, a known quantity, can sometimes be useful in reining in some of the more harsh criticism that is aimed at the committee.

Now, none of these measures are a panacea. It may be that after taking these steps, the criticisms continue; and committee members continue to feel besieged. However, I'm fairly certain that without taking these steps, the situation I've described will have little chance of improving.

Taken to a logical end point, this type of dysfunction could threaten the independence of the investigation, trigger resignations of committee members, and leave the company even more exposed than did the allegations that triggered the investigation in the first place.

Once the investigation is completed, the committee members will have ample opportunity to reflect on their experience and decide in a less charged atmosphere whether or not they wish to continue to associate with their other colleagues on the Board. Thank you.

JACK FRIEDMAN: I'm going to hold back on my interim question on governance, because I think everybody will end up wanting to speak about it, so let me invite Jeffrey Smith of McKee Nelson to be our next speaker.

JEFFREY Q. SMITH: Thanks. It's a pleasure to be here on this occasion. As Bob knows, I first became Freddie Mac's outside antitrust counsel in 1979. I was a second-year associate at the time, and I can remember the partner handling the account was based down here in D.C. He called me up — I'm sitting in my office in New York — and he said, "Jeff, we hear you're doing some good work up there. We'd like to make you the antitrust counselor for Freddie Mac." I'm stunned! I said, "Wow! That's great — thank you very much!" And I got off the phone and I told my office mate, and I called my parents, I said, "Ah, this is great! Look what's happened! My career is just really taking off here!" And then I took a look at the famous charter that Bob alluded to before, and I'm reading along, and I come to this provision, which says the Company shall be "immune from antitrust liability." So I'm saying, "Well, this is great! I'm the antitrust lawyer for a company that couldn't be liable under the antitrust laws, even if it wanted to be!"

Now, of course, what Congress gives, it can take away; and indeed, it did take away that immunity many years ago, so we have had some things to do in the passing years. We're proud of the fact that Freddie Mac has never been found liable under the antitrust laws, and obviously we aim to keep it that way.

My topic this morning is to talk a little bit about recent developments in securities litigation and antitrust. The United States, of course, has long been the financial center of the world. That status has been jeopardized in recent years, as capital formation activity has increasingly migrated to London and the Far East.

There are many reasons for this unhappy development, but two are sure to be near the top of everybody's list: perceived excessive regulation in the United States and a litigation environment here thought by many to be hostile to business, particularly financial firms.

The subject of abusive, expensive, and unpredictable litigation is hardly new. For more than a decade, Congress has labored to remedy perceived excesses in securities litigation, starting with the passage of the Private Securities Litigation Reform Act back in 1995 (PSLRA). That law, of course, made it more difficult to file securities claims, because it required plaintiffs' lawyers to make detailed factual allegations about the supposed fraud at the outset of the case. The law also halted all discovery until a court determined if the allegations were properly detailed and if the complaint was otherwise legally sufficient.

But that statute had an unintended effect. Essentially, it made state courts a more attractive place to file securities lawsuits, because state courts did not require detailed fact allegations at the pleading stage and allowed discovery to proceed at the outset of the case. Accordingly, plaintiffs' lawyers began to migrate their cases from federal court to state court.

Once again, Congress stepped in — this time passing a statute called the Securities Litigation Uniform Standards Act (SLUSA). That statute made federal courts the exclusive forum for most securities class action lawsuits based on state laws. There are a couple of exceptions to that, however.

Congress also amended Rule 23 of the Federal Rules of Civil Procedure, which addresses class actions, making it possible to timely appeal a class certification decision. It did so in recognition that class certification often puts insurmountable pressure on a defendant to settle, even where the defendant otherwise has a good chance of succeeding on the merits.

It is noteworthy that in the last nine months alone, the courts of appeals in three instances have reversed district court decisions granting class action status in securities fraud cases. The most prominent example of those was in the Enron litigation.

Whether by coincidence or design, the Supreme Court has chosen to hear a lot more cases important to business, particularly those involving antitrust law and securities law. And the Supreme Court has shown increasing sensitivity to the issue of costly litigation and its impact on business and society.

For example, in the Dura Pharmaceuticals case, the Supreme Court expressly recognized the "harm" of permitting a "plaintiff with a largely groundless claim to simply take up the time of a number of other people, with the right to do so representing an in terrorem increment of the settlement value."

And just last term, in *Bell Atlantic v. Twombly*, the Supreme Court again emphasized the need to "avoid the potentially enormous expense of discovery in cases with no reasonably founded hope that the discovery process will reveal relevant evidence." In *Twombly*, the Court expressed this concern over enormous discovery costs in the context of evaluating the proper standard for pleading an antitrust conspiracy — what you must allege to get a case going.

The question before the Court was whether a complaint should survive a motion to dismiss when it merely alleges a conspiracy to restrain trade based on parallel business behavior.

The Court ruled that it is not enough to rely on parallel conduct that could just as well be the result of independent action as opposed to an unlawful agreement. A plaintiff must do more than simply establish a possibility that he will be able to prove his case. He must allege enough facts to raise his right to relief above the speculative level.

In clarifying the appropriate pleading standard, the Court went out of its way to retire language from its 1957 decision in *Conley v. Gibson*, which had stated that a complaint should be upheld "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

The lower courts, since this case has come down, have understood the message that the Supreme Court was trying to send. They have demanded more precise pleadings, not just in antitrust cases, but in all cases generally.

Another important antitrust decision was handed down in June by the Supreme Court in *Credit Suisse Securities (USA) LLC v. Billing*. In that case, the plaintiffs accused many of the country's largest underwriters of participating in a vast antitrust conspiracy to only sell newly issued securities to buyers that were willing to engage in selected after-market practices. Plaintiffs alleged that the underwriters' agreement artificially inflated the prices of shares for the securities in question. The SEC weighed in and advised the district court that application of the antitrust laws to the conduct at issue could conflict with, and seriously interfere with, its regulation of the securities offering process. So you have a potential conflict between the antitrust laws and the securities laws.

The district court agreed with the SEC and dismissed the complaint, finding that the conduct at issue enjoyed implied immunity under the antitrust laws. The Second Circuit reversed, and the Supreme Court accepted the case. It ruled that the securities laws were "clearly incompatible" with the application of the antitrust laws in this instance, and therefore that the securities laws "implicitly preclude the application of the antitrust laws to the conduct alleged." In other words, the securities laws trump the antitrust laws when the two are in conflict.

In finding the securities laws incompatible with the antitrust laws, the Court declared that permitting an antitrust lawsuit in these circumstances would circumvent the procedural requirements that Congress recently tightened when it passed the PSLRA and SLUSA in an "effort to weed out unmeritorious securities lawsuits," and it noted that otherwise plaintiffs would simply be able to "dress what is essentially a securities [fraud] complaint in antitrust clothing" and avoid the restrictions Congress sought to impose.

The *Billing* case is likely to have significant implications for all companies involved in heavily regulated industries.

The most recent securities decision the Supreme Court handed down, *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, like *Twombly*, addressed the proper pleading standard, but this time, for fraud claims under the PSLRA. The issue in *Tellabs* was what Congress intended when it provided for an enhanced pleading requirement for a fraud claim. What did Congress mean when it required pleading with particularity facts giving rise to a "strong inference" of scienter? Can a court consider only the inferences urged by plaintiffs, or all possible inferences, or something in between, when deciding whether or not a securities fraud claim is sufficient?

The Supreme Court held that the requisite inference must be more than "merely 'reasonable' or 'permissible.' It must be cogent and compelling, thus strong in light of other explanations." Thus, the Court held that a securities fraud complaint under the PSLRA will survive "only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any imposing inference one could draw from the facts alleged." In *Tellabs*, as in *Twombly* and *Billing*, the Court once again took note of Congress's efforts to weed out abusive, costly litigation.

Next up for the Court is the viability of so called scheme liability under Rule 10b-5 of the Securities Exchange Act of 1934. This is a theory of liability that was literally invented by the plaintiffs' bar after the Supreme Court's decision in *Central Bank* holding that in a private suit, no aiding and abetting liability exists.

The issue is presented in a case called *Stoneridge Investment Partners* which was actually argued on Tuesday of this week. There were many, many articles in the newspapers about the case, in part because it's thought potentially to be the most important securities case to be heard by the Supreme Court in decades. The outcome will certainly be carefully watched by vendors, accountants, lawyers, investment banks, and other parties that often are drawn into lawsuits, by reason of their potential deep pockets, simply because they engage in business dealings with issuers that are later alleged to have committed fraudulent acts. Thanks.

JACK FRIEDMAN: A number of years ago, we had a program hosting the SEC in Paris. The keynote speaker was the chairman of a huge French bank. He said that he had been the defendant in a lawsuit in the United States for a loan that the bank had made from France to an industrial company in Iraq a number of years ago which was legal under French law and under U.N. sanctions. It was just a straightforward manufacturing facility. He said that he asked his attorneys how is it possible that they were being sued in America for a loan between France and Iraq. He said that he has now learned the term "deep pocket." So it's a worldwide issue.

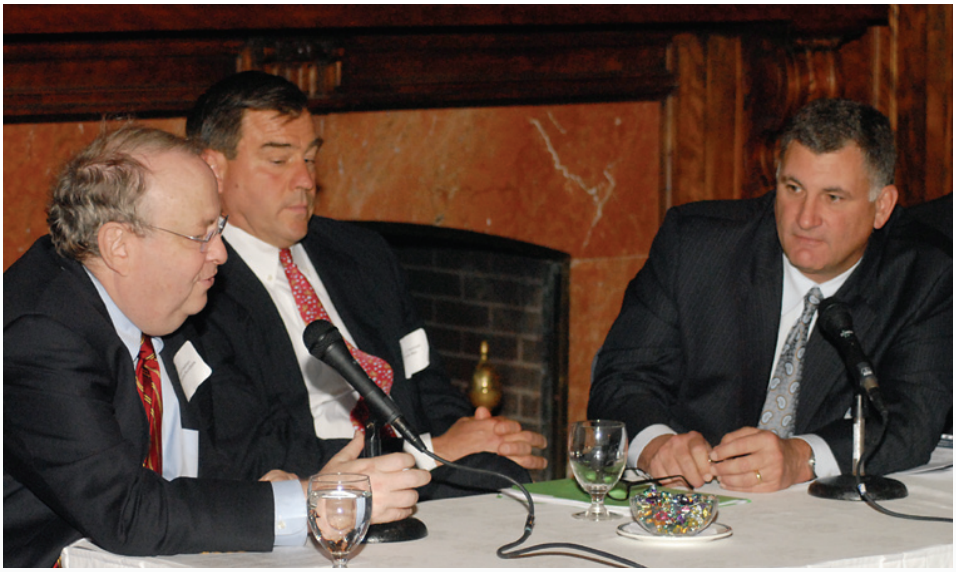
This is a historic moment that Freddie Mac, the real estate industry, and the mortgage industry are going through. I'd like to ask the question of defining what are some of the major issues in Washington and Wall Street that are being discussed now?

DAVID GALAINENA: If you really look all the way through it, the meltdown started in a very narrow area, i.e., the subprime area. And what it really created was a crisis of confidence, and some of that crisis of confidence really worked its way back to the rating agencies that rate these securitizations. So I think one party that's going to be in front of Congress, and frankly is in front of Congress right now, will be the rating agencies. So, they will be present.

JACK FRIEDMAN: I'd like to go back to governance for a second. We had the General Counsel of a mega corporation who said that his company had $20 billion a year of capital expenditure. There was hardly any time in the entire year where the full Board had time to consider that budget. If there was anything that a company should be focusing on, it's where it is putting our $20 billion this year.

My question is, how do Boards give their business advice, manage all the responsibilities that they have, and have the right priorities when they're just consumed by all these regulatory requirements? How are Boards ever going to get from under this problem?

ROBERT E. BOSTROM: I'll take a shot at it. I have a couple of quick observations and really more just sharing issues identified. For the last, I guess, five years, I've had the privilege of being a faculty member of the Duke University Directors' Education Institute, which is really a great program, because it brings together about 120 directors of public companies in a very dialogue-oriented, interactive format. I would say that without doubt, the most consistent theme is the issue that you just raised, Jack, and that is a sense of



being completely and totally overwhelmed with paper, unable to prioritize over the voluminous paper they receive. Probably their most difficult challenge — especially the audit committee — is knowing what's important, what isn't important, are they getting too much information or not enough information.

So I think you've really identified one of the key issues that has been sparked by the post-Sarbanes environment of liability fears. Boards have really gotten very confused over the oversight versus management roles. Where the traditional Board role was really a very high-level oversight, Board members are now getting pushed into almost micromanaging the company out of fear of liability.

A PANELIST: That sounds like something I've seen, as well, that is a core problem. Traditionally, as Bob said, Boards were supposed to decide whether management was doing a good job or not, but management was supposed to run the company. With the fears of liability and the Sarbanes-Oxley requirements, suddenly the Board and particularly, as Bob said, the audit committee, has responsibilities seemingly to ensure against fraud. And that's, of course, impossible.

A PANELIST: I think, just to supplement what Bruce and Bob were saying, it's still the case that under state corporate law the obligation of the Board of Directors is to supervise the company; it's not to manage the company. Yes, the world is more complex, there's greater sensitivity, there's lot of litigation that's blossomed despite all efforts to curtail it. But I think that, then, puts a lot of pressure on the General Counsel and the General Counsel's staff, among others, in trying to triage things and to do what they can to make sure that what does go up to the Board are things that are appropriate for a Board to see, from their supervisory perspective.

A PANELIST: From a legal perspective, you can't be sure that you'll catch every disaster before it happens. But what you can try to make sure of is that you make a record that you've appropriately looked at every stage. That's something, in the General Counsel's function, to make sure that what the Board sees and the record that's made of what the Board does and thinks about seems appropriate, so that if the disaster happens that you haven't foreseen, as will always be the case, at least no one can say the Board has shirked its responsibilities or didn't do what it should have done, leading up to it.

JACK FRIEDMAN: Hasn't, in large part, the federal securities law trumped state law? I had a conversation with the Chief Justice of Delaware. My comment was, "It's amazing how the federal government can do something in five minutes that can take you guys ten years of cases, because they just have a threat of throwing somebody in jail." He laughed. He said that's true, they can move quicker than we can, if necessary.

A PANELIST: If the SEC had its way, it would trump, but it hasn't happened yet.

A PANELIST: Yes. I think state corporate law is still very vital, and critical Delaware Chancery Court opinions on corporate law are given enormous weight in corporate processes and how Boards were supposed to conduct themselves.

JACK FRIEDMAN: There used to be the saying that there's we versus them — the "we" was everybody involved in the corporate side versus the outsider — if there was some litigation or regulatory matter. And then after Enron, "we" became the independent directors only, not the whole corporation or the whole Board or all of top management. Now there's a tendency that "we" has become "I", where every director says "I need to get my own attorney, and even if I'm only a witness. God forbid I have to be a witness against another Board member because of something that was said in the hallway."

My question is, how do you keep the Board together in the litigation environment, where everybody's panicky about themselves?

JONATHAN I. MARK: Well, it's difficult, because there is a proliferation of lawyers. It's not an easy process to manage. You have to first identify whether these people are acting in common, or they have conflicting views. Can you form some sort of joint defense arrangement with them? Obviously, there is a lawsuit, we're assuming, going on; that lawsuit has to be defended, and as the attorney representing the company, you need to report to the appropriate people as to how that lawsuit is progressing.

It may be, however, that the officers of the company have a slightly different view than the directors as to how the activity should be best pursued, and even within the directors, there may not be unanimity, depending on the nature of the allegations.

JACK FRIEDMAN: Does everybody get their own lawyer involved? Say the committee has a lawyer, the corporation has a lawyer, I have a lawyer. Let my lawyer talk to everybody else's lawyer because I'm nervous here.

BRUCE A. BAIRD: There's no law that can prevent that from happening. My favorite case was one in which there was a corporate counsel, a counsel doing a special committee investigation, a separate counsel representing the special committee itself for their own liability, and then the members each had their own lawyer. So, if there isn't one counselor that people trust, there's going to be a proliferation; and the only answer, it seems to me, is to have a lawyer that knows the company that the directors trust to give them straight from the shoulder advice, and to tell them if more is needed.

A PANELIST: Bruce, in that feeding frenzy you just described, you forgot the fact that oftentimes many of the more critical interviewees will also want their own counsel.

BRUCE A. BAIRD: Absolutely. Absolutely without question, the company pays for everything!

JACK FRIEDMAN: Bob, a company has certain things like major litigation that may be in the news, but there's a lot of legal work that proceeds on a bread and butter basis. In terms of litigation, regulatory matters, contractual matters, intellectual property or whatever it is, what are things that you and your department get involved with?

ROBERT E. BOSTROM: I mean, it really runs a gamut. I have traditionally been a bank regulatory attorney for most of my practice, over almost 30 years now. So I was relatively used to dealing with heavily regulated industries, whether it be the Fed, the OCC, the FDIC, or state banking authorities. And although Freddie Mac is regulated somewhat like a bank, it's really much more heavily regulated even than a bank. So we have a safety and soundness regulator, which is OFHEO, and we have our charter power regulator, which is HUD.

Virtually every transaction we engage in has to go through a charter power review. Virtually everything we do is subject to the safety and soundness authority of OFHEO, our safety and soundness regulator. So that requires, on a daily basis, for just a routine day, we have probably 13 or 14 legislative and regulatory lawyers whose jobs are to make sure that they keep us within the boundaries of both our safety and soundness regulator and our charter power regulator.

In addition, although we have a broad, subjective mission description to provide affordability, stability, and liquidity to secondary mortgage market, we have very specific numerical affordable housing goal requirements to make sure that the requisite numbers of mortgages we purchase are from low and moderate-income individuals and the right underserved areas in the country, which is in and of itself another major regulatory framework that has to be dealt with.

So behind the scenes, in non-confrontational, day-to-day business way, we have an incredible regulatory regime within which we have to operate.

We are very much a technology company. We couldn't do what we do without a tremendous investment in technology.

One of the ways that we're trying to control costs is to decide between keeping activities in-house versus outsourcing. This is really a difficult decision for a company to make because when you start outsourcing critical functions, you lose control to a large extent. We probably have done more significant outsourcing contracts than a lot of companies in the country have. On the litigation side, there is a tremendous amount of routine litigation that goes on that is relatively non-controversial, but nonetheless gets dealt with, and there are always the more highlighted pieces of litigation that have to be addressed. There is supporting the compliance function, which has a series of responsibilities in the privacy area and ethics. We have to support the compliance group, which again raises a lot of issues about some of the things that Bruce and John brought up earlier about investigations and who does them, how do you do them, what goes to the Board, what doesn't go to the Board, what is the process by which ethics complaints or other complaints come into the hotline, how are they triaged, how are they processed, and who gets involved — internal audit, compliance, legal?

JACK FRIEDMAN: How many employees roughly does Freddie Mac have?

ROBERT E. BOSTROM: There are about 5,400 employees, and about an additional 1,500 consultants or independent contractors.

JACK FRIEDMAN: So you have all the usual employee problems of compensation, withholding, leave rights, holidays, "I didn't get a promotion," "someone was mean to me."

ROBERT E. BOSTROM: The short answer is "yes"!

JACK FRIEDMAN: I'm sorry to give a personal anecdote; I usually don't do it. I was on tour in Russia, under the Communist regime, and the tour leader actually said with a straight face, "Nobody in the Soviet Union goes to work because they have to. People go to work only because they like their jobs." As polite as the tourists tried to be, we were laughing hysterically about that one. No one has ever figured out how to get that reality in place.

What is a bit about your philosophy about selection and interaction with outside law firms and so forth? What is your sort of policy or how you approach it?

ROBERT E. BOSTROM: Two observations. One is, I won't give you the number, but our outside counsel billings are really astoundingly low for a company of our size and complexity. And that's a function of really an amazing cadre of in house lawyers who are both incredibly talented and incredibly hard-working.

So we start with the proposition that we do it all in house. Now, for specialized matters, when we need independent third-party advice, expertise we don't have — and there are some perfect examples of it up here today — we rely upon a very small number of specialized outside counsel in very discrete and specific areas. That was the philosophy before I got here, and I'm a very large proponent of it.

I'm a very firm believer in a smaller number of firms who know the company extremely well, and who I personally, as well as the lawyers on my staff, have access to the right people at the firm to get the right things done. Kind of one call gets you what you need. We've really been quite blessed in most cases to have that relationship with the two or three firms that we use in the broadest variety of areas. Then the other — there's a very small number of very specialized firms that we use for specialized support. I don't have to worry about who I'm going to call, when I'm going to call, will they be there, how will I find them. There's a good enough relationship there that we get instant service, instant reaction, the right people at the right time, and with the right level of support, and without having to do a lot of introduction about what the question is, because they know the company as well or better than I do.

JACK FRIEDMAN: I'm trying to get some basic questions about the modern General Counsel, because it's not just the glory of dealing with the Board or Congress or the press or whoever you have to deal with, but there's just getting the job done in the modern world. I always wonder, how does a General Counsel ever have time to read anything? For example, you have meetings, phone calls, you're on call – I assume that certain executives have your home or have your cell phone number – day, night, weekends. How do you organize it so that you can keep up with all the things that you have to do that can't be delegated?

ROBERT E. BOSTROM: Well, you point out the first and foremost way you manage is to have really good people that you can delegate to, who you trust, and who understand how you would react to a situation, and you believe will react in a similar way if you're not there to offer your views.

Beyond that, it's really a matter of judgment and prioritization. And adding four hours to the work day. But it is a real challenge when you spend virtually eight or nine hours of your day in meetings, to actually...

JACK FRIEDMAN: Eight or nine hours a day there are meetings?

ROBERT E. BOSTROM: Oftentimes. And you get out and there's a voluminous pile of messages, e mail; you get used to using e mail at meetings, when you can, because a lot happens while you're there and you need to react to it. But part of the problem is with such a rapidly changing environment and such a rapid pace of events externally and internally, you really need to have some really good people around that can begin to assume responsibility for a lot of the space, getting back to delegation. And then you've got to really exercise judgment and prioritize and be very proactive in trying to select where you're going to be and when you're not going to be somewhere.

But the biggest issue you face is, no matter how well you may plan all of that, if you get the call from a director or the CEO or the CFO, you have to respond. So it's that inability to control the schedule – you may try very hard to exercise judgment and prioritize your day, decide what meetings you need to be at, which ones you don't have to be at, and that whole attempt to schedule a day can blow up at 7:30 in the morning if something happens that's unexpected.

JACK FRIEDMAN: In the five minutes a month that you have free for yourself, what's your idea of a vacation or hobbies or whatever it might be? Or don't you even remember what those are?

ROBERT E. BOSTROM: Well, in the summer, when possible, we have a longstanding relationship with Martha's Vineyard, so my family goes up there for the summer, and I try to get up when I can. I'm an avid landscaper. I like to move rocks and cut down trees and work outside. So that's a big part of what I do for stress relief.

JACK FRIEDMAN: How do you get the best terms on Wall Street, or people wanting to do business with you? I assume that investors get nervous at different times, and I don't mean just during a credit crunch. How does a company like a Freddie Mac deal with its public, its image in the financial community and so forth?

ROBERT E. BOSTROM: At some level, Wall Street is an economic animal, and it's its basic element, really. There are three fundamental players in this space: Freddie Mac, Fannie Mae, and Ginnie Mae. They work intimately with all three organizations to create the most sophisticated products possible to basically cheapen money costs; and, ultimately, the beneficiary is the homeowner, when you look all the way through the system.

The reality is each institution is extremely professional, from the top to the bottom. They've had hiccups, obviously, and they're trying to drill down through those hiccups; but from an historical perspective, Wall Street and these government-sponsored or governmental organizations in the mortgage space have had a very longstanding relationship. It's been there, frankly, since 1976, sort of when the secondary mortgage market had its inception.

JACK FRIEDMAN: Where do you interface with Wall Street? Is it in Washington or New York?

ROBERT E. BOSTROM: We have an office in New York, but it's not related to the securitization business. Much of that, really, gets done from here. You don't really have a lot of movement of people. Much of this is over the phone. It's electronic. Much of the trading side of it is not a function of people going from point "A" to point "B", but rather dollars and transactions moving.

JONATHAN I. MARK: Let me just add one thing in a broader sense. I would say, because I work in the securities area, as well, that once one gets past the financial statements, probably the key to the successful access to the financial markets is the market's belief in the integrity of management and the appearance of integrity of management. Going back to Bob's opening remarks on the role of General Counsel, I think that while the General Counsel doesn't go on road shows and doesn't sell bonds and doesn't sell stock, sitting as General Counsel does at the nexus between the law as it applies to an issue and the business side of an issue, in communications with the CEO and others and senior management, the General Counsel has a critical role to play to make sure that the tone at the top is one of integrity, and that the appearance of integrity is given substance through the actual integrity of management.

JACK FRIEDMAN: I'd like to open up the discussion to the audience, if anybody has question or a comment, either way, back there?

AUDIENCE MEMBER #1: Traditionally, a great emphasis or impact of the efforts of organizations like Freddie Mac has been to help finance priorities such as the growth of suburbs. With energy and other issues now, what thoughts are there about new directions in housing policy and urban planning?

ROBERT E. BOSTROM: I think it's fair to say that although it's a great observation, it's probably not an issue that we've focused on extensively. I think we are preoccupied with developing programs and products to make home possible for low and moderate-income individuals in designated areas, and I don't think we've yet been able to focus on some of the more unique and developing areas of public policy as it may impact that broader mission. But I would certainly welcome introducing you to some folks who you might have that kind of dialogue with at Freddie Mac.

AUDIENCE MEMBER #2: Is there a paradigm with all this experience that major companies ought to have permanent counsel to play it safe with the outside directors or the audit committee with issues of too many folks in the kitchen and how it's affecting General Counsel, and whether [you've] really reached some consensus on what is the best way to see that these unexpected things don't happen. Could you further comment on the relationship between directors and their legal counsel?

ROBERT E. BOSTROM: I'll take a stab at it first, and I'm sure that Bruce and John will have some observations.

This issue gets back to that same dilemma that Boards have — how much information do they really want, and what is too much? Can they read it all, can they digest it? What is their role — oversight or management? I think those same kind of issues arise in connection with the Board — either before, as a preventative, proactive measure, or after the fact, as a response to a problem — when the Board makes a decision, either at the independent director level or any particular committee level, to get separate counsel, again either in connection with that specific event or on an ongoing advisory basis.

It's a situation where the answer's going to be different for every company and every circumstance. Clearly, once an event occurs, there's no question that a Board or some segment of the directors will oftentimes, if not all times, consider and eventually retain separate counsel. Certainly in the case of the audit committee or a special litigation committee, without question that's what happens. Whether a Board needs to have ongoing outside counsel on a regular basis, in the absence of a specific precipitating event, I think depends upon what the role of that Board counsel would be. Would it be to go to every meeting, spot issues, provide the directors with the right questions to ask, keep them advised on an ongoing basis about what their fiduciary duties are, when they're getting enough information to properly fulfill those fiduciary duties? To what extent is that really the General Counsel's role? You know, I talk about the conflict that the General Counsel has about advising the Board, the company, and management. You know, can the General Counsel ever really advise the Board in that sense, without being conflicted by the fact that ultimately the CEO is paying his salary? You're always in a potentially awkward situation.

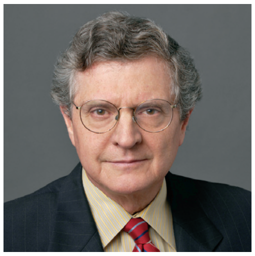
I think, on the other hand, when a Board on a regular basis has ongoing outside counsel, it adds a degree of complexity to the relationship that the General Counsel has with the Board, and puts a premium on the General Counsel and that outside advisor to the Board working very hard to maintain a good relationship and appropriate flow of information. At that point, the General Counsel communicating to the Board advisor becomes very important to the Board advisor doing his or her job; and vice versa, the Board advisor communicating to the General Counsel becomes very important for the General Counsel to be able to perform his or her job.

So I think it's a complicating series of factors and events that occurs on an ongoing basis. But there's no question, when a company's in trouble under a consent or an enforcement proceeding or investigation, whatever the case happens to be, that it's critical that the Board or the group of directors affected get their own counsel.

BRUCE A. BAIRD: I do have a comment on that. I guess I agree completely with what Bob said about the complexity that is created by extra counsel, and I've seen company counsel in many of those situations be able to give advice, assure the Board that the bases have been covered, give them the proper advice, and give the company proper advice, too. I don't think the first reaction should be to get another law firm. The first reaction should be that the law firm you have, who knows the company, can very often give the proper advice and do the proper crisis management. I'm not sure you need, in every case, separate counsel for the Board, even during an investigation. I have seen investigations and done them, and in situations in which the accountants were satisfied, the SEC was satisfied, all the constituents were satisfied with an investigation done by company counsel and it's credible. You don't need a separate law firm; you need a credible job.

JONATHAN I. MARK: I basically agree with Bob and Bruce. I would say in answer to your paradigm question, with certain exceptions, I would think the paradigm would be no, that committees of the Board shouldn't be established with the idea in mind that they're going to, from square one, have their own outside counsel. But it does happen, and sometimes quickly, that because of some event in the life of the corporation, that there is a need to get independent counsel and we've talked about that. But as a paradigm, I would think, no, you want the level of confidence in the General Counsel to be such, and the communications to be such, that the Board members can rely on what the General Counsel is advising them.

JACK FRIEDMAN: I want to thank our Guest of Honor for accepting our invitation and for speaking today. We thank our panelists for sharing their expertise and the audience, which is really the ultimate guest at our event, for coming. I think one of the things that we all walk away from in this event is not only your role and your title as General Counsel in terms of what you do at the company, but I think we also have gotten a sense of the enormously important role that Freddie Mac plays in housing in America. And I think some of the questions from the audience indicated a yearning for Freddie Mac or other agencies to work hard on national policy in this area. ■



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Jonathan I. Mark is a senior advisor to issuers and investment banks in public and private corporate and securities transactions, with particular emphasis on Investment Company Act and Investment Advisers Act matters. He has also advised on broker-dealer compliance matters including representation of a number of small firms through the broker-dealer registration process. Mr. Mark has practiced at the Wall Street law firm Cahill Gordon Reindel LLP for more than thirty years.

Mr. Mark advises clients in matters affecting corporate policy and strategy such as directors' du-ties and responsibilities and other aspects of corporate governance. He serves as independent outside counsel to a number of independent directors and Audit Committees of public companies, and in this capacity has led global investigations involving complex compliance, ethics and financial control procedural allegations, including accounting fraud, stock option backdating and bribery of foreign officials.

Jon earned his A.B. at Dartmouth College and J.D. at Columbia Law School in 1974.

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Cahill Gordon & Reindel LLP

Cahill Gordon & Reindel LLP was founded in 1919 and quickly built a national reputation for excellence in the financial and corporate areas. During the mid to late 1930's, the firm earned status as a "Securities Act" firm and during and after the Second World War, under the leadership of John T. Cahill, the legendary former U.S. Attorney for the Southern District of New York, Cahill grew dramatically. Maintaining its innovative corporate law practice, it also came to be counted among the leading litigation firms in the nation.

Today, Cahill continues to be widely regarded for the strength of its corporate and litigation practice. Its lawyers regularly participate in many significant deals, with activity consistently at or near the top of the industry rankings of leading legal counsel to managers and underwriters in the banking and high yield debt financial markets. On the litigation side, the firm is often called on to handle "bet the company" litigations and governmental investigations, with trial lawyers who are known for representing the U.S.'s largest and most successful law firms when they themselves are faced with litigation threats. The firm's practice is top-ranked by *Chambers Global*, *Chambers USA*, the IFLR 1000, and Legal500.

Cahill includes lawyers who joined following distinguished careers in the Securities and Exchange Commission, U.S. Department of Justice, U.S. Treasury Department and Federal Trade Commission.

Cahill also has vibrant tax, insurance, antitrust, media, bankruptcy, intellectual property, real estate and trusts & estates practices.

Bruce A. Baird
Covington & Burling LLP

Bruce A. Baird is a senior partner and one of the country's leading white collar defense attorneys. He has successfully defended Fortune 500 corporations and their officers and directors in hundreds of cases involving securities enforcement, antitrust, health care fraud, environmental crime, government contracts and foreign trade controls. He also handles internal investigations and complex civil fraud litigation and designs corporate compliance programs. He recently led a team investigating the prominent failure of Adelphia Communications Corporation on behalf of its Board of Directors and another team investigating the widely publicized fraud by senior management on behalf of a Special Committee of the Board of Directors of Tyco International Ltd. He also advised the Securities Industry Association on the recent Sarbanes-Oxley legislation. He has been named one of the top criminal defense lawyers in Washington by the *Washingtonian* (December 2004) and is listed in *The Best Lawyers in America* (2005-06).

He has over 25 years in practice including 9 years as an Assistant United States Attorney in Manhattan, where he was Deputy Chief of the Criminal Division and Chief of the Securities and Commodities Fraud Task Force. In this latter role, he was responsible for all criminal securities cases, including those against Michael Milken and Drexel Burnham Lambert, as described in the book *Den of Thieves* by James Stewart. He has tried numerous complex cases to both court and jury, and has persuaded the Department of Justice, the Securities and Exchange Commission and other regulatory agencies not to proceed with cases on a significant number of occasions.

He is admitted to the Bars of the District of Columbia and New York as well as numerous federal courts.

He received a B.A. from Cornell University in 1970 and a J.D. from New York University School of Law in 1975, where he was editor-in-chief of the *New York University Law Review* and received the Vanderbilt Medal for extraordinary contribution to the school of law. He was then Special Assistant to the Deputy Attorney General of the United States from 1975 to 1976 and clerked for the Hon. James L. Oakes of the U.S. Court of Appeals for the Second Circuit from 1976 to 1977.

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Covington & Burling LLP

Covington & Burling LLP represents clients in cutting-edge technology, litigation, white-collar defense, transactional, governmental affairs, international, life sciences and other matters. In responding to the needs and challenges of our clients, our lawyers draw upon the firm's expertise and experience in a broad array of industries to provide solutions to difficult, complex, and novel problems and issues, whether in litigation, transactions, or regulatory proceedings.

From our offices in Brussels, London, New York, San Francisco, and Washington, we practice as one firm, holding closely to core values that start with a deep commitment to our clients and the quality of our work on their behalf. Our lawyers are recognized nationally and internationally for their legal skills and the depth of their expertise. Many have served in senior government positions. Virtually all of them provide public service through pro bono representation. The diversity of our lawyers strengthens our ability to evaluate issues confronting our clients and to communicate effectively on their behalf in any setting.

In the corporate, tax and benefits area, we take a multi-disciplinary approach, resulting in an ability to deliver innovative and creative solutions. Clients benefit from the collaboration of teams of lawyers having expertise in mergers and acquisitions, securities, finance, corporate governance, tax and benefits, bankruptcy and real estate.

Jeffrey Q. Smith

McKee Nelson LLP

Mr. Smith is a senior partner in McKee Nelson's Business Litigation Group. His practice includes national litigation with particular concentration in securities, antitrust/trade regulation and other complex commercial cases. In addition to trying cases and arguing appeals, Mr. Smith is experienced in the supervision and management of large cases. He is also well versed in various forms of alternative dispute resolution, including arbitration and mediation, and maintains an active counseling practice designed to help clients avoid and/or minimize litigation risks.

In securities matters, Mr. Smith has defended broker-dealers, securities issuers, and directors and officers of such issuers in connection with suits involving the equity, fixed income and derivatives markets. He is experienced in litigating claims arising under Sections 11 and 12 of the '33 Act, Sections 9, 10(b), 14, 16 and 20 of the '34 Act, Section 206 of the Advisers Act, and a variety of other federal and state statutes and the common law. He also represents clients who are the subject of investigations conducted by the SEC and/or self-regulatory organizations.

Mr. Smith has litigated a number of important antitrust cases involving claims arising under Sections 1 and 2 of the Sherman Act, Sections 2, 3 and 7 of the Clayton Act, Section 5 of the Federal Trade Commission Act and a variety of state law counterparts. The clients in these cases have been both plaintiffs and defendants engaged in a wide variety of industries, including investment banking, chemical manufacturing, health care, ocean shipping, petroleum fueling and refining, and textile manufacturing. He also represents clients involved in grand jury and civil investigations conducted by the government.

Finally, Mr. Smith has litigated cases involving consumer lending, employment, intellectual property, health care reimbursement and merger agreements. Many of these cases presented issues of industry-wide significance. Mr. Smith received his J.D., *cum laude*, from the New York University School of Law, where he was an editor of the *Law Review* and a member of the Order of the Coif. He received a B.A., *cum laude*, from Yale University.

He is a member of the American Bar Association and has been admitted to practice in New York, as well as before the Supreme Court, the Courts of Appeals for the Second and Ninth Circuits, and District Courts in various jurisdictions. He is listed in the current editions of *The Best Lawyers in America®* and *Chambers USA: America's Leading Lawyer for Business.*

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McKee Nelson Business Litigation Practice Group

McKee Nelson's Business Litigation Practice Group has extensive experience litigating securities, contract, tort and other claims for a diverse client base. The primary focus of the group is on the representation of financial institutions, including investment banks, hedge funds, investment advisors and others, in lawsuits involving complex financial products such as CDOs, asset-backed securities, mortgage-backed securities, swaps, and similar instruments. Our attorneys handle cases in federal and state court, as well as arbitrations.

The group also maintains an active counseling practice designed to avoid litigation, and represents clients in investigations initiated by the Securities and Exchange Commission, the Commodity Futures Trading Commission, state regulators, and self-regulatory organizations. In doing so, our lawyers work closely with the firm's White Collar/Investigations and Enforcement practice and draw on the experience and skills of our transactional and tax lawyers as needed. In addition to financial cases, the group also has leading practices in advertising, employment, and environmental/toxic tort claims.

Jeffrey Q. Smith is engaged in a national litigation practice with particular concentration in securities, antitrust/trade regulation and other complex commercial cases. In addition to trying cases and arguing appeals, Mr. Smith is experienced in the supervision and management of large cases. He is also well versed in various forms of alternative dispute resolution, including arbitration and mediation, and maintains an active counseling practice designed to help clients avoid and/or minimize litigation risks.

M. David Galainena

Winston & Strawn LLP

David Galainena is a partner in the firm's corporate department and concentrates his practice in asset securitization.

Mr. Galainena has 20 years of experience handling structured finance matters in both the asset-backed and mortgage-backed markets. Prior to joining Winston & Strawn, Mr. Galainena was a partner in the structured finance department of another major U.S. law firm, and worked for CS First Boston as an investment banker in the mortgage finance area.

Mr. Galainena represents both private and public finance companies as well as investment banks. Clients include Citigroup Capital Markets, Heller Financial, Inc. (a GE Company), SIRVA, Inc., Harley-Davidson Financial Services, Inc., Broadworth Capital, American Capital Strategies, Hercules Technology, Inc., Triple Point Capital, AON Corporation, Bally Total Fitness Corporation, Antares Capital Corporation (a GE Company), Amaranth, Carlyle-Blue Wave, Monroe Capital, Chicago Asset Funding, Textron Financial, and NewStar Financial.

His work on behalf of such clients has earned him a position on the list of the world's leading structured finance lawyers compiled and published by *Euromoney* and *Chambers Global* and *Chambers USA Leading Lawyers for Business* directories, as well as *Who's Who in American Law – Capital Markets.*

Activities:

Mr. Galainena is a member of the firm's Executive Committee, the Corporate Opinion Committee, and the Diversity Committee Advisory Group.

Education:

Mr. Galainena received a B.A., *magna cum laude*, Phi Beta Kappa, from Tulane University in 1980, and a J.D. from the University of Notre Dame Law School in 1983.

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Winston & Strawn LLP

Winston & Strawn LLP, founded in 1853, is one of the nation's oldest and largest law firms, with over 950 lawyers located in Charlotte, Chicago, New York, Washington, D.C., Los Angeles, San Francisco, Geneva, Paris, London, and Moscow. The firm serves Fortune 500 companies, major commercial and financial institutions, governments and governmental entities, as well as small and midsize companies, individuals, and entrepreneurs. The firm's practice encompasses virtually every major legal discipline.

A substantial portion of the firm's practice encompasses litigation and corporate matters. The firm has more than 350 attorneys practicing in the litigation area. Our litigators have handled cases in virtually every federal district in the United States and have represented clients before the United States Supreme Court and the U.S. Courts of Appeals.

The firm's corporate practice has more than 200 lawyers who serve financial institutions and corporations throughout the country and abroad in virtually all types of corporate and financial matters, including mergers and acquisitions, commercial lending, capital markets, private equity, lease finance, asset securitization, project finance, municipal finance, financial institution regulation, corporate governance, and restructuring.

From its beginning, the firm has attracted and cultivated some of the country's most talented and influential lawyers. The firm's chairman is Dan K. Webb, a former U.S. Attorney who is recognized nationwide for his courtroom skills in connection with numerous representations, including Microsoft and Philip Morris USA. Former four-term Illinois Governor James R. Thompson is Winston & Strawn's senior chairman. Other leaders of the American legal community that the firm counts among its ranks include several former congressional committee counsels, numerous former federal and state prosecutors, and many Fellows of the American College of Trial Lawyers. Winston & Strawn's culture encompasses a long tradition of public service, deep commitment to diversity, and leadership with regard to advanced technology. The firm actively recruits law students from the nation's top law schools.

Approximately 90 first-and second-year students participate in the firm's combined summer associate programs in Chicago, New York, Washington, D.C., Los Angeles, and San Francisco. Our associate programs are a key part of the firm's continuing development. We emphasize hands-on training and encourage early associate responsibility. Winston & Strawn provides a challenging work environment and offers competitive compensation, progressive workplace policies, and opportunities for pro bono activities.