Westlaw Journal Formerly *Andrews Litigation Reporter*

CORPORATE OFFICERS & DIRECTORS LIABILITY

Litigation News and Analysis • Legislation • Regulation • Expert Commentary

VOLUME 26, ISSUE 6 / SEPTEMBER 13, 2010

WHAT'S INSIDE

BREACH OF DUTY

6 Court asked to bar Genzyme from taking $18.4 billion Sanofi offer

Kahn v. Termeer (Mass. Super. Ct.)

PRE-SUIT DEMAND

7 Lead plaintiff who bypassed Delaware discovery strikes out in California

In re VeriFone Holdings S'holder Derivative Litig. (N.D. Cal.)

BOOKS & RECORDS

8 Second chance for plaintiff who raced to courthouse with cart before horse?

King v. VeriFone Sys. (Del.)

SETTLEMENT ISSUES

9 Judge OKs $69 million settlement of charges against ACS CEO in Xerox deal

In re ACS S'holder Litig. (Del. Ch.)

BREACH OF DUTY

10 Judge gives Dollar Thrifty–Hertz merger vote green light

In re Dollar Thrifty S'holder Litig. (Del. Ch.)

FRAUD

11 Sterling seeks dismissal of fraud suit over commercial loans

Roseville Employees' Ret. Sys. v. Sterling Fin. Corp. (E.D. Wash.)

NEWS IN BRIEF

COMMENTARY

Compensation risk analysis: The bank director's role

Attorneys David Baris and Anastasia Davis of BucklesSandler LLP discuss recent regulatory developments attempting to address the imbalance between risk-taking and executive compensation of bank directors in the U.S. and Europe.

SEE PAGE 3

BREACH OF CONTRACT

Forced-out CEO seeks $460 million from Abu Dhabi energy firm

The former CEO of the Abu Dhabi National Energy Co. claims in a federal lawsuit in Michigan that he was terminated, harassed and forced to flee the Arab emirate because he tried to stop "kickbacks, bribery, accounting fraud and corruption."

Barker-Homek v. Abu Dhabi National Energy Co. PJSC aka TAQA et al., No. 13448, complaint filed (E.D. Mich. Aug. 27, 2010).

Peter Barker-Homek said he filed the breach-of-contract suit in federal court in Ann Arbor, Mich., because that is where ADNE's U.S. subsidiary TAQA New World Inc. is based and because in Abu Dhabi, the ruling family "controls everything — the courts, police, military and the press."

He claims he was hired to rid the state-controlled energy company of bribery and corruption. However, when he attempted to do that, he was summoned to an October 2009 meeting and given the choice of signing an agreement on the spot to step down as CEO immediately or be arrested and sent to prison, the suit says.

The Capital Gate building in Abu Dhabi REUTERS/Jumanah El-Heloueh

CONTINUED ON PAGE 6

40856733

THOMSON REUTERS™

Westlaw.

Westlaw Journal Corporate Officers & Directors Liability

Published since November 1985

Publisher: Mary Ellen Fox

Executive Editor: Jodine Mayberry

Production Coordinator: Tricia Gorman

Managing Editor: Donna M. Higgins

Editor: Frank Reynolds
Frank.Reynolds@thomsonreuters.com

Westlaw Journal Corporate Officers & Directors Liability (ISSN 2155-5885) is published biweekly by Andrews Publications, a Thomson Reuters/West business.

Andrews Publications
175 Strafford Avenue
Building 4, Suite 140
Wayne, PA 19087
877-595-0449
Fax: 800-220-1640
www.andrewsonline.com
Customer service: 800-328-4880

For more information, or to subscribe, please call 800-328-9352 or visit west.thomsom.com.

Reproduction Authorization
Authorization to photocopy items for internal or personal use, or the internal or personal use by specific clients, is granted by Andrews Publications for libraries or other users registered with the Copyright Clearance Center (CCC) for a fee to be paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923; 978-750-8400; www.copyright.com.

How to Find Documents on Westlaw
The Westlaw number of any opinion or trial filing is listed at the bottom of each article available. The numbers are configured like this: 2009 WL 000000. Sign in to Westlaw and on the "Welcome to Westlaw" page, type the Westlaw number into the box at the top left that says "Find this document by citation" and click on "Go."

TABLE OF CONTENTS

Breach of Contract: ***Barker-Homek v. Abu Dhabi Nat'l Energy Co.***
Forced-out CEO seeks $460 million from Abu Dhabi energy firm (E.D. Mich.) 1

Commentary: By David Baris, Esq., and Anastasia Davis, Esq.
Compensation risk analysis: The bank director's role 3

Breach of Duty: ***Kahn v. Termeer***
Court asked to bar Genzyme from taking $18.4 billion Sanofi offer (Mass. Super. Ct.) 6

Pre-suit Demand: ***In re VeriFone Holdings S'holder Derivative Litig.***
Lead plaintiff who bypassed Delaware discovery strikes out in California (N.D. Cal.) 7

Books & Records: ***King v. VeriFone Sys.***
Second chance for plaintiff who raced to courthouse with cart before horse? (Del.) 8

Settlement Issues: ***In re ACS S'holder Litig.***
Judge OKs $69 million settlement of charges against ACS CEO in Xerox deal (Del. Ch.) 9

Breach of Duty: ***In re Dollar Thrifty S'holder Litig.***
Judge gives Dollar Thrifty–Hertz merger vote green light (Del. Ch.) 10

Fraud: ***Roseville Employees' Ret. Sys. v. Sterling Fin. Corp.***
Sterling seeks dismissal of fraud suit over commercial loans (E.D. Wash.) 11

Product Liability/Fertilizer: ***Lea v. Growmark Inc.***
Fertilizer firm's ex-president not liable for alleged contamination (Wis. Ct. App.) 12

Legislation/Regulations
SEC requires firms to put investor nominees on proxy materials 13

Product Liability/Conspiracy: ***United States v. Schulte***
Former Spectranetics execs indicted for conspiracy (D. Colo.) 14

News in Brief 14

Case and Document Index 15

HOW TO SUBMIT A COMMENTARY OR BYLINED ARTICLE

West Publishing, a Thomson Reuters business, encourages its readers to submit commentaries or expert analysis on a variety of topics. Our focus includes trends affecting the legal community, as well as issues arising from court rulings or legislative initiatives. Articles between 2,000 and 2,500 words are preferred but other lengths will be considered. Please contact the editor of this publication, or contact Phyllis Skupien, Managing Editor, at phyllis.skupien@thomsonreuters.com for more information.

ABOUT ANDREWS

Andrews Publications is a specialized information publisher focusing on litigation developments. A division of Thomson Reuters, Andrews produces newsletters and Westlaw databases tightly focused on more than 45 individual practice areas. Andrews' softbound books and online continuing legal education courses draw on the expertise of legal practitioners and experts across the country to create a knowledge-sharing community. Andrews' customers are lawyers, insurers, corporate counsel, medical groups, academics, government agencies and other professionals whose work requires up-to-date litigation information.

© 2010 Thomson Reuters

Compensation risk analysis: The bank director's role

By David Baris, Esq., and Anastasia Davis, Esq.

The federal banking regulatory agencies have acknowledged that incentive compensation practices in the financial industry contributed to the financial crisis. Current regulatory developments have made incentive compensation a hot-button topic for bank directors, who are struggling to understand and adopt compensation programs that do not encourage inappropriate risk-taking and thereby threaten institutional safety and soundness.

BANK EXECUTIVES RESPOND MEANINGFULLY TO INCENTIVE COMPENSATION

Recent research suggests that bank executives assume or avoid risk in response to compensation incentives in their contracts.

A recent report published by the Federal Reserve Bank of Kansas City analyzing the risk-taking activities of banks based on the features of CEO pay[1] concluded that "risk-seeking bank management shifts away from traditional portfolio lending and toward less traditional investment and off-balance sheet activities, *i.e.*, activities that are more reliant on noninterest income and the systematic risk associated with it."

The report found that "banking executives respond in economically meaningful ways to the incentives present in their compensation contracts."

The significance of incentive pay for financial executives is not merely academic. The compensation of bankers has claimed the attention of the public, the media and policymakers, both in the United States and Europe.

In July the European Parliament adopted rules limiting banker bonuses to a percentage of salary, deferring bonus payouts, and making some portion of bonuses contingent and subject to recall if a troubled bank requires rescue.[2]

The American approach, on the other hand, has been defined by guidelines rather than rules. While the guidelines do not define excessive compensation, some of the largest U.S. banks have publicly committed to reducing or reviewing executive pay packages. Focused scrutiny on bankers' pay may have paved the path for a permanent government role in compensation practices in financial institutions.

This article discusses federal banking agencies' recent attempts to address imbalances between incentive pay and risk-taking[3] that could compromise institutional safety and soundness.

> A report found that "banking executives respond in economically meaningful ways to the incentives present in their compensation contracts."

FDIC PROPOSAL TO INCORPORATE COMPENSATION INTO RISK-BASED ASSESSMENTS

In January the Federal Deposit Insurance Corp. floated the idea of factoring compensation criteria into an insured institution's risk-based assessments. FDIC Financial Institution Letter FIL-l-2010 announced that the agency is considering adjusting banks' deposit insurance rates to adequately compensate the deposit insurance fund for perceived excess risk-taking.[4]

In its background statement, the FDIC cited statistics indicating that in one-third of the material loss reviews issued in 2009, employee compensation practices were a contributing factor to the failed institution's losses. (Material loss reviews are studies performed by the federal banking agencies on the causes of the failure of FDIC-insured banks where the losses to the deposit insurance fund exceed the greater of $25 million or 2 percent of the institution's assets.)

While claiming it "does not seek to impose a ceiling on … compensation" where stock awards are involved, the FDIC has suggested the use of restricted, non-discounted stock and multi-year vesting periods for significant stock awards. The FDIC also seems to favor subjecting stock awards to "clawbacks" to account for the outcome of risks assumed in earlier years.

Finally, the FDIC's proposed rulemaking encourages compensation programs administered by a compensation committee of the board of directors composed of independent directors with input from independent compensation professionals.

In its letter, the FDIC sought public comment on these questions:

- Should the FDIC's risk-based assessment system reward firms whose compensation programs present lower risk or penalize institutions with programs that present higher risks?
- How many basis points would an adjustment to the institution's initial risk-based assessment rate need to be for the FDIC to have an effective influence on compensation practices?
- Which employees should be subject to the compensation criteria that would be used to adjust the FDIC's risk-based assessment rates?

The public comment period ended Feb. 18. The responses were blunt on both sides of the issue.[5]

Both supporters of restrictions on bank executive pay and opponents weighed in, with more than 15,000 comments received.

The American Bankers Association strongly opposed the proposal, calling it "ill-advised," "out of step" and "unworkable."

The Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce objected, stating "the proposed rulemaking is neither well thought-out nor timely" and that "in identifying the issues emerging from the financial crisis, the FDIC did not list executive compensation."

© 2010 Thomson Reuters

On the other hand, the California Public Employees Retirement System, generally known as CalPERS, and other investors supported the FDIC's exploration of the issue.

As of Aug. 12, the FDIC had taken no further action on the proposal. In light of publication of joint agency guidance on incentive compensation in June (discussed below), the FDIC's risk-based assessment proposal may be dormant for now.

BANKING AGENCIES GUIDANCE ON SOUND INCENTIVE COMPENSATION POLICIES

The Federal Reserve Board issued proposed guidance on incentive compensation in October 2009 and, jointly with the FDIC, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, issued its final "Guidance on Sound Incentive Compensation Policies" June 25.[6]

The guidance has three key principles:

- Employee compensation incentives should appropriately balance risk and reward.
- Compensation incentives should be compatible with effective controls and risk management.
- Compensation incentives should be supported by strong corporate governance with oversight by the corporation's board of directors.

The guidance does not address or define when or how incentive compensation will be considered excessive.

Large banks vs. small banks

Large banks are the focus of the guidance for two reasons: They are more frequent and intensive users of incentive compensation, and ineffective approaches to incentive compensation at large banks can have ripple effects throughout the financial system.

The supervisory agencies expect that small banks, believed to use incentive compensation less frequently, will have less extensive, less formal and less detailed plans for incentive compensation.

The guidance says large banks should monitor industry, academic and regulatory developments involving executive compensation, a requirement not identified for smaller banks. Large banks are encouraged, not required, to have experience and expertise in risk management and compensation represented on their boards, while smaller banks are encouraged to educate their directors on the issues through training or rely on advice from outside lawyers and consultants.

In fact, throughout the guidance, the standards for compensation-related review are higher for large banks than small banks.

Regardless of a bank's size, however, the supervisory agencies will be including findings concerning incentive compensation in their examination reports and have stated their intention to take enforcement action against institutions whose incentive compensation encourages imprudent risk-taking.

Employees covered by joint agencies' guidance

The guidance spells out the type of risk designed to be balanced through appropriate compensation policies and is not limited to financial risk. Imprudent risk-taking can include credit risk, market risk, liquidity risk, operational risk, legal and compliance risk, and reputational risk. This laundry list of risks suggests that employees throughout an institution, and not just senior management, may be subject to the incentive pay risk-balancing test.

> The significance of incentive pay for financial executives is not merely academic.

Indeed, the guidance applies to "covered employees," which include senior management, plus others in the bank with the ability to expose the bank to material amounts of risk. Groups of employees in the aggregate may be in a position to expose an institution to material amounts of risk, in which case they are covered as well.

For example, a group of loan officers may fall in this category. Tellers and bookkeepers are listed as types of employees who are not likely to be able to expose the bank to a material amount of risk, but there is no blanket exemption in the guidance for them or any other specific occupational category.

Governing principles of the guidance

The guidance is based on three principles. The first of these, that incentive compensation should balance risk and rewards so as not to encourage imprudent risk-taking, is to be achieved by four methods:

- Risk adjustment of rewards.
- Deferral of payment of the incentive compensation.
- Longer performance periods for accumulating the benefits of the risk-based compensation.
- Reduced institutional sensitivity to short-term performance.

The second principle is that a bank's risk management processes and internal controls should support balanced incentive compensation arrangements.

There are three illustrative methods for achieving compliance with this principle:

- Risk management personnel should have input on compensation.
- Compensation for risk managers and internal control personnel should be sufficient to hire and retain able staff, whose own compensation should not be based on the performance of business units they review.
- When performance standards are not met, compensation should be reduced. This third mechanism basically means that incentive compensation should not be "one-way"; allowing bonuses and awards for good performance should go hand-in-hand with compensation consequences for performance failures.

The final principle of the guidance, and the one most directly pertinent to bank directors, is that incentive compensation programs should be supported by strong corporate governance and active oversight by the board of directors.

Again, the guidance suggests means for implementation:

- The board of directors should get data and analysis from management to assess the bank's incentive compensation program.

 © 2010 Thomson Reuters

- The board should have, or have access to, expertise in risk management and compensation practices.
- The board should directly approve compensation arrangements for senior executives.
- The board should approve and document any exceptions from the incentive compensation program.

The board's role is especially important because the guidance indicates that all organizations that employ incentive compensation to a significant degree should have a compensation committee reporting to the full board. It is predictable that larger banks with incentive pay programs will be examined for compliance with this element.

Mixed signals

The guidance straddles the fence. Ultimately, the agencies say, banks have "considerable flexibility" in structuring their incentive compensation arrangements. The guidance does not mandate or prohibit particular types of incentive compensation. The agencies seem aware that there may be countervailing consequences to some compensation "fixes."

For example, restrictions on golden parachutes may be less effective if departing executives can negotiate golden handshakes when they move on.

Reading between the lines of the guidance, incentives to promote employee retention are subtly discouraged when they apply to senior management but subtly favored in the context of risk management and internal control staff.

The guidance implies that bank shareholders have a dual, and somewhat incompatible, role to play in reducing the risks taken by incentivized management.

On one hand, it notes that "shareholders of a banking organization may be willing to tolerate a degree of risk that is inconsistent with the organization's safety and soundness."[7]

But on the other hand, banks are encouraged to share information on their incentive compensation arrangements with their shareholders "to allow them to monitor and, where appropriate, take actions to restrain the potential for such arrangements to encourage employees to take imprudent risks."[8]

CONCLUSION

The fallout from the worldwide financial crisis raised the bar for officers and directors of banks with incentive pay arrangements. Federal banking agencies have officially added "compensation risk assessment" to the duties of bank directors.

Caution suggests further educating board members on current compensation practices, establishing and permanently monitoring policies and procedures governing compensation arrangements, creating compensation committees that report directly to the board, using various tests to analyze and refine compensation programs, and possibly involving shareholders in compensation matters.

The challenge facing bank boards and their compensation committees is how to structure incentive compensation with a view that promotes an appropriate level of risk for that institution. WJ

NOTES

[1] "Executive Compensation and Business Policy Choices at U.S. Commercial Banks," by Robert DeYoung (University of Kansas, KU School of Business), Emma Y. Peng and Meng Yam (Fordham University, Graduate School of Business Administration), Presented at FDIC-JFSR Bank Research Conference, September 17, 2009, published by the Federal Reserve Bank of Kansas City, RWP 10-02, January 2010.

[2] *See* Press Release, European Parliament, European Parliament ushers in a new era for bankers' bonuses (July 7, 2010), *available at* http://www.europarl.europa.eu/news/expert/infopress_page/042-77908-186-07-28-907-20100706IPR77907-05-07-2010-2010-false/default_en.htm.

[3] The Dec. 16, 2009, proxy disclosure rules of the Securities and Exchange Commission requiring disclosure of compensation incentives likely to create or increase company risk are not considered in this article. Moreover, this article does not address Section 956 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires financial institutions with more than $1 billion in assets to disclose incentive arrangements to their federal regulators and requires federal regulators to adopt regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions.

[4] 75 Fed. Reg. 2823 (Jan. 19, 2010).

[5] View comments at http://www.fdic.gov/regulations/laws/federal/2010/10comAD56.html.

[6] 75 Fed. Reg. 36395 (June 25, 2010).

[7] 75 Fed. Reg. 36395, 36405 (June 25, 2010).

[8] 75 Fed. Reg. 36395, 36402 (June 25, 2010). Section 951 of the Dodd-Frank Financial Reform Act requires public companies subject to the proxy rules to request, at least once every three years, a shareholder vote on executive compensation.

David Baris (left) is a partner and **Anastasia Davis** (right) is an associate attorney at **BuckleySandler LLP** in Washington. Baris is also executive director of the American Association of Bank Directors. The authors may be reached at (202) 349-8000.

© 2010 Thomson Reuters

Abu Dhabi

CONTINUED FROM PAGE 1

He claims he complied because of fears for his family but nevertheless faced increasing harassment until he fled the country in July with only what the family could hurriedly pack into suitcases.

A spokesman for TAQA, the ADNE operating company that focuses on oil and energy acquisitions, told Reuters "the company takes any challenge to its reputation extremely seriously and will vigorously defend itself and the individuals named against the spurious allegations in the filing."

> The ex-CEO says he filed his suit in the U.S. because in Abu Dhabi, the ruling family "controls everything — the courts, police, military and the press."

The only individual specifically named in the suit is Carl Sheldon, the general counsel for ADNE, who allegedly presented the plaintiff with the option of signing the agreement on the spot or being arrested.

"Because there is no due process in Abu Dhabi, Barker knew he could be arrested without cause and held indefinitely without bail or trial, he could languish in prison for years, be deprived of food, beaten and tortured or worse," the suit contends.

The plaintiff seeks up to $460 million in compensatory and exemplary damages. WJ

Attorney:
Plaintiff: Daniel Dulworth, Butzel Long, Detroit

Related Court Document:
Complaint: 2010 WL 3418392

See Document Section A (P. 19) for the complaint.

REUTERS/Brian Snyder

BREACH OF DUTY

Court asked to bar Genzyme from taking $18.4 billion Sanofi offer

A Genzyme Corp. shareholder has asked a Massachusetts judge to force the firm's directors to hold out for a bid that is much better than an initial $69-per-share merger offer from French pharmaceutical giant Sanofi-Aventis S.A.

Kahn v. Termeer et al., No. 10-3067, complaint filed (Mass. Super. Ct., Middlesex County Aug. 17, 2010).

The suit, filed in the Middlesex County Superior Court, accuses the Genzyme officers and directors of breaching their duty to the shareholders to get the best price for their stock.

Plaintiff Alan Kahn said he filed the suit on behalf of the Cambridge, Mass.-based biotech company because he had reason to believe CEO Henri Termeer and an all-too-compliant board of directors would cave in to pressure from Sanofi-Aventis and accept its first offer of $18.4 billion.

Sanofi, based in Paris, is one of the world's largest pharmaceutical companies and has U.S. headquarters in Bridgewater, N.J.

Genzyme is chartered in Delaware even though its headquarters are in Massachusetts.

As directors of a Delaware corporation, the Genzyme board members have a duty to seek out the best price for the company in any change-of-control situation but have not done so, Kahn complains.

Termeer said he has no intention of taking Sanofi's first offer.

"The company is not for sale at $69 a share," he told Reuters Sept. 1. "A deal will only get done when the strategic value of the company is properly recognized."

Sanofi's chief executive, Chris Viehbacher, has said in press statements that Genzyme shareholders face the choice of continuing to bet on their current management, taking Sanofi's offer, or hoping that another bidder will appear and rescue them.

Kahn asks the court to enjoin the Genzyme officers and directors from taking the current offer or from adopting defensive measures that could inhibit competing bids. WJ

Attorney:
Plaintiff: Mitchell Matorin, Needham, Mass.

Related Court Document:
Complaint:

© 2010 Thomson Reuters

Lead plaintiff who bypassed Delaware discovery strikes out in California

A lead plaintiff's decision to bypass a key discovery step proved fatal to his consolidated shareholder action against VeriFone Holdings when a California federal court judge threw it out for failure to back up his charge that the directors ignored "red flags" of financial problems.

***In re VeriFone Holdings Shareholder Derivative Litigation*, No. 07-6347, 2010 WL 3385055 (N.D. Cal. Aug. 26, 2010).**

U.S. District Judge Marilyn Hall Patel of the Northern District of California dismissed the second amended suit with prejudice because she found no hope that the charges would ever be able to pass muster under the "pre-suit demand" test required for all such cases brought in the name of the company.

A CAUTIONARY TALE

The ruling sets benchmarks for derivative plaintiffs who hope to clear that threshold to begin discovery, and the case history tells a cautionary tale of how one plaintiff failed to do that.

To pass the pre-suit demand requirement, a derivative plaintiff has two choices:

- Before suing, give the company's directors the opportunity to review his charges and decide whether it is in the company's interest to file a complaint.
- Skip that step, but if the directors later move to dismiss his suit, he must be ready to show that he did not need to make pre-suit demand because the directors lacked the independence or objectivity to give the suit a fair review.

VeriFone shareholder Charles King chose the second option.

He became the lead plaintiff in a combined shareholder derivative action against the company partly because he was first to file one of many suits in the District Court after VeriFone announced a major financial restatement in 2007.

MAKING THE CHARGES STICK

King alleged that the VeriFone directors breached their duty to supervise the company when they ignored numerous red flags indicating serious flaws in inventory and accounting after a disastrous 2006 acquisition of Lipman Electronic Engineering Ltd.

When VeriFone finally acknowledged the errors, it was forced to restate its earnings for nearly a one-year period, and the stock price dropped, injuring shareholders, King charged.

However, when the VeriFone directors invoked their right to seek dismissal of the California suit for King's failure to make pre-suit demand, he did not have enough specifics to show that the directors were too conflicted or lacking in judgment to have given it a fair review.

His suit was dismissed the first time in May 2009 for failure to show that he did not need to make a pre-suit demand, but Judge Patel gave King another chance to pass the demand test if he could gather more specifics to bolster his case.

The judge suggested that King should go back to state court in Delaware, where VeriFone is incorporated, and file a books-and-records action, which is the right of a shareholder who suspects mismanagement.

But the Delaware Chancery Court told King that in his rush to be first to file his derivative suit in California, he had passed up his only opportunity to use that important discovery tool. *King v. VeriFone Holdings*, No. 5047, 2010 WL 190497 (Del. Ch. May 12, 2010).

NOT ENOUGH AMMUNITION

King's appeal of that ruling is pending in the Delaware Supreme Court, but in the meantime, he got limited records inspection and little ammunition to bolster his case, and Judge Patel threw out his suit for good in her recent ruling.

She said King could not prove that the board was too lacking in judgment to have reviewed his suit because his complaint did not adequately support any of the seven categories of supposedly ignored red flags (see box).

The complaint named seven "red flags" the directors ignored:

- The sharp and unprecedented increase in inventory
- The huge, last-minute, upward revisions to operating income and gross margins, which more than doubled VeriFone's operating income
- The inventory adjustments themselves
- The control deficiency over inventory
- The control deficiency over the financial statement closing process
- The inadequate accounting department and strain caused by the Lipman merger
- The alleged insider sale of stock by several directors

For example, one of the warning signs was a sudden rise in inventory, which would indicate problems with sales or distribution.

However, Judge Patel said, the revised complaint never solved the original version's failure to identify who knew what, when they knew it and how they would know whether it was significant.

She noted that the directors did look into the inventory question, and that was sufficient to show that they were not too out of touch to be able to render a fair decision about King's charges.

"Plaintiffs argue that basic accounting rules or principles combined with the sheer amount of overstatement would indicate that there were problems with the inventory valuation," Judge Patel said. "But this is not sufficient to show with particularity that the directors knew about such faulty accounting and decided to do nothing." WJ

Attorneys:
Plaintiff: Aaron Sheanin, Girard Gibbs LLP, San Francisco

Defendants: Michael Steinberg, Sullivan & Cromwell, Los Angeles

Related Court Document:
Opinion: 2010 WL 190497

© 2010 Thomson Reuters

Second chance for plaintiff who raced to courthouse with cart before horse?

A VeriFone Systems shareholder who initially won a race to the California courthouse by bypassing a key discovery step cannot file a belated records-inspection action in the Chancery Court to revive that West Coast derivative suit, the firm has argued to Delaware's highest court.

King v. VeriFone Systems Inc., No. 330-2010, answering brief filed (Del. July 19, 2010).

VeriFone argues in favor of a recent ruling that bars the plaintiff investor from filing a books-and-records action in the Chancery Court because he already sued the online bill-paying vendor's directors for breach of duty in California.

ONE CHANCE IN CHANCERY COURT

The Chancery Court dismissed Charles King's suit to get information about VeriFone's disastrous 2006 acquisition of Lipman Electronic Engineering because procedurally, he had put the cart before the horse.

Vice Chancellor Leo Strine said King should have filed his Delaware records action before he filed one of the many derivative and securities fraud suits investors lodged in a California federal court over that merger. *In re VeriFone Holdings Sec. Litig.*, No. 07-06140, 2009 WL 1458211; *In re VeriFone Holdings S'holder Derivative Litig.*, No. C07-06347, 2009 WL 1458233 (N.D. Cal. May 26, 2009).

The question for the Delaware Supreme Court is whether Vice Chancellor Strine went too far by ruling that when a plaintiff who wins the race to the courthouse is dismissed because his suit lacks specifics, he can never go back and file a records-inspection action, King says in his appeal of that ruling. *King v. VeriFone Holdings*, No. 5047, 2010 WL 190497 (Del. Ch. May 12, 2010).

SURVIVING PRE-SUIT DEMAND

Since VeriFone is incorporated in Delaware, even though its headquarters are in California, its shareholders have the right to inspect the corporate records if the investor has a proper purpose, such as confirming suspicions of management.

That information from the books-and-records suit is often crucial to a plaintiff who is bringing a suit on behalf of the company against its officers and directors.

Under Delaware law, the directors of a company facing such a derivative action — in Delaware or elsewhere — may decide the suit is not in the best interests of the company and move to dismiss it.

At that point, the plaintiff must be able to show that the directors were too conflicted or too uninformed to make an objective decision, or the suit will be dismissed before he can take discovery.

In his brief in support of his appeal, King claims Vice Chancellor Strine blatantly disregarded several Delaware state court decisions when he ruled that "once a plaintiff files a derivative suit, he has made his election, so that he can never again have a proper purpose" to file an inspection action.

NOTHING NEW HERE, VERIFONE SAYS

In its answering brief, VeriFone says there was nothing new in this ruling to justify an appeal.

Vice Chancellor Leo Strine Jr. REUTERS/Tim Shaffer

"Plaintiff's suit to compel production of books and records is nothing more than a form of backdoor discovery to obtain materials plaintiff is specifically precluded from obtaining in his derivative action," the brief says. "This obvious end run around the discovery rules of another court is an inefficient use of limited judicial resources."

If derivative plaintiffs were allowed to go back and correct their missteps by belatedly seeking ammunition from discovery in the Chancery Court, VeriFone said, it would "encourage wasteful litigation in the Delaware court." WJ

Attorneys:

Plaintiff: David Jenkins and Michele Gott, Smith, Katzenstein & Furlow, Wilmington, Del.; Judith Scolnick and Tom Laughlin, Scott & Scott, New York

Defendants: Raymond DiCamillo and Kevin Gallagher, Richards, Layton & Finger, Wilmington; Robert Sacks, Sullivan & Cromwell, Los Angeles; Brendan Cullen, Laura Swell, Ryan McCauley, Sullivan & Cromwell, Palo Alto, Calif.

Related Court Document:

Answering brief: 2010 WL 3350312

See Document Section B (P. 34) for the answering brief.

© 2010 Thomson Reuters

SETTLEMENT ISSUES

Judge OKs $69 million settlement of charges against ACS CEO in Xerox deal

A Delaware judge has approved a $69 million global settlement of suits by Affiliated Computer Services investors who claimed their CEO siphoned off hundreds of millions of dollars from Xerox Corp.'s $6 billion takeover of the student loan processor.

In re ACS Shareholder Litigation, No. 4940, settlement approved (Del. Ch. Aug. 24, 2010).

After an Aug. 24 hearing in the Chancery Court, Vice Chancellor Donald Parsons found the pact to be fair to the plaintiff class.

The deal releases all claims in suits over the merger filed in Delaware, where ACS is incorporated, and Texas, where it is based.

Vice Chancellor Parsons also approved the payment of $18.6 million in fees and expenses to the plaintiffs' attorneys.

In Delaware attorneys who win a monetary benefit for all shareholders may petition the court for attorney fees in proportion to the benefit their suit provided.

According to settlement papers, former ACS CEO Darwin Deason will individually pay $12.8 million and the company will pay the remaining $56.1 million, aided by insurance.

Two employee pension funds took the lead in combined suits filed in Delaware and Texas, claiming that the ACS board rubber-stamped self-dealing transactions that Deason set up to suck hundreds of millions from the Xerox merger process at the shareholders' expense.

The agreement to settle the case came on the eve of the scheduled May 10 trial.

During the settlement hearing, which was broadcast on Courtroom View Network, co-lead counsel Stuart Grant of Grant & Eisenhofer said "we were able to get a hefty chunk of change" for the ACS investors who claimed they were defrauded during the merger.

Judge Parsons agreed it was "a high monetary benefit" for the shareholders and granted final approval of the settlement. WJ

Attorneys:
Plaintiffs: Stuart Grant, Grant & Eisenhofer, Wilmington, Del.

Defendant (Deason): David McBride, Young Conaway Stargatt & Taylor, Wilmington

Defendants (ACS directors): Kevin Abrams, Abrams & Bayliss, Wilmington

Related Court Document:
Brief in support of settlement: 2010 WL 3216846

REUTERS/Hyungwon Kang

"We were able to get a hefty chunk of change" for the ACS investors who said they were defrauded during the merger, plaintiffs' attorney Stuart Grant told the judge.

© 2010 Thomson Reuters

The deal would create an auto rental giant since Hertz is already a close second in size behind industry leader Enterprise.

BREACH OF DUTY

Judge gives Dollar Thrifty–Hertz merger vote green light

At a hearing Aug. 27 dissident Dollar Thrifty Automotive Group shareholders failed to persuade a Delaware Chancery Court judge to put the brakes on Hertz Global Holdings' $1.1 billion merger offer until investors get more information on Avis Budget Group's $1.3 billion bid.

In re Dollar Thrifty Shareholder Litigation, No. 5458, hearing held (Del. Ch. Aug. 27, 2010).

The plaintiffs, led by several municipal pension funds, urged Vice Chancellor Leo Strine to stop Dollar Thrifty from holding a "premature" shareholder vote on approving the Hertz offer.

The deal would create an auto rental giant since New Jersey-based Hertz is already a close second in size behind industry leader Enterprise Holdings.

The Dollar Thrifty plaintiffs said their directors failed to seek the best price for the nation's fourth largest car rental company and instead accepted an offer that doesn't even include the normal "control premium," an amount above the current stock price to induce the shareholders to surrender control.

The pension funds sued Dollar Thrifty and its directors in May, claiming they breached their fiduciary duty to use a fair method to get a fair price.

At the hearing, televised on Courtroom View Network, the Dollar Thrifty directors defended the deal with Hertz and the concessions they made in order to preserve it.

They said they had brought Dollar Thrifty to the best place it could hope to be after negotiating a long and bumpy road during the recession.

The plaintiffs said the process and the deal were deficient and that both should be re-examined before forcing shareholders to vote on the merger.

Vice Chancellor Strine did not issue an injunction at the hearing and gave no indication that he found any aspects of the deal to require judicial intervention. WJ

Attorneys:
Plaintiffs: Jay Eisenhofer, Michael Barry and Stephen Grygiel, Grant & Eisenhofer, Wilmington, Del.; Marc Topaz, Lee Rudy, Michael Wagner and James Miller, Barroway Topaz Kessler Meltzer & Check, Radnor, Pa.; Darren Robins, Randall Baron and David Wissbroecker, Robbins, Geller, Rudman & Dowd, San Diego; Mark Lebovitch, Amy Miller, Brett Middleton and Jeremy Friedman, Bernstein Litowitz Berger & Grossmann, New York

Defendants: Donald Wolfe Jr., Matthew Fischer, Dawn Jones, Meghan Dougherty and William Green Jr., Potter Anderson & Corroon, Wilmington; Mitchell Lowenthal and Deborah Buell, Cleary Gottlieb Steen & Hamilton, New York

Related Court Documents:
Defendants' answering brief in opposition to motion for preliminary injunction: 2010 WL 3358379
Plaintiffs' reply brief in support of motion for preliminary injunction: 2010 WL 3358380

© 2010 Thomson Reuters

Sterling seeks dismissal of fraud suit over commercial loans

Sterling Financial Corp. urging a federal judge in Washington to dismiss a lawsuit alleging the firm defrauded shareholders by hiding its investments in soured commercial real estate deals.

City of Roseville Employees' Retirement System v. Sterling Financial Corp. et al., No. 09-CV-368, memo supporting dismissal filed (E.D. Wash. Aug. 30, 2010).

The 2009 class-action suit also names as defendants Sterling's ex-CEO Harold Gilkey, who left the company in October 2009, and CFO Daniel Byrne.

It says Spokane-based Sterling held hundreds of millions of dollars worth of securities backed by commercial construction and land-development loans on real estate that was "rapidly dropping in value."

The defendants allegedly violated the anti-fraud provisions of the Securities Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), by concealing Sterling's deteriorating financial condition in a series of statements between July 2008 and August 2009.

The plaintiff, the City of Roseville Employees' Retirement System, is seeking compensation of behalf of shareholders who bought Sterling stock during that period.

The case is pending before U.S. District Judge Edward Shea of the Eastern District of Washington.

In a recent motion to dismiss the suit, the defendants call the allegations "fraud by hindsight."

Sterling Financial says the allegations of financial misconduct should be thrown out as "fraud by hindsight."

"Plaintiffs repeatedly ignore the context of defendants' statement and Sterling's warnings about the increasingly and rapidly declining economy and its adverse impact on Sterling's business," they say in a supporting memo.

The defendants also note that neither Gilkey nor Byrne sold any of their own Sterling stock during the class period.

"It would have been irrational for defendants to hold onto their shares and even increase their holdings and suffer enormous losses had they been engaged in false accounting or fraud," the memo says.

Sterling shares allegedly reached a class-period high of $14.72 in October 2008.

In October 2009 the Federal Deposit Insurance Corp. issued a consent order directing Sterling to "cease and desist" from engaging in "unsafe and unsound banking practices" and requiring the bank to raise $300 million in capital.

In December 2009 Nasdaq threatened to delist Sterling because its stock has fallen below the dollar-per-share listing threshold.

Sterling Financial operates Sterling Savings Bank, the largest commercial bank in Washington. It also operates Golf Savings Bank, which has headquarters in Mountlake Terrace, Wash. WJ

Attorneys:
Defendants: Barry M. Kaplan, Douglas W. Greene and Britton F. Davis, Wilson Sonsini Goodrich & Rosati, Seattle; Gregory L Watts, Wilson Sonsini Goodrich & Rosati, Palo Alto, Calif.

Related Court Document:
Memo supporting dismissal: 2010 WL 3452017

© 2010 Thomson Reuters

Fertilizer firm's ex-president not liable for alleged contamination

The former president of a fertilizer company is not personally liable for alleged nearby groundwater pollution because there is no evidence he knew about the contamination, a Wisconsin appeals court has ruled, affirming summary judgment.

Lea et al. v. Growmark Inc. et al., No. 2009AP2339, 2010 WL 3033883 (Wis. Ct. App. Aug. 5, 2010).

The Court of Appeals additionally affirmed partial summary judgment for Growmark Inc., which allegedly helped operate the facility beginning in 1990.

Plaintiffs Robert and Shawn Lea own about 153 acres near Amherst Junction, Wis. In 2003 they discovered the groundwater under their property was contaminated with harmful chemicals.

The Leas claimed the source of contamination was a fertilizer facility initially owned by Pavelski Enterprises and later FS Cooperative, which partnered with Growmark. In 2006 Growmark purchased the facility from FS Cooperative.

The Leas filed suit in the Portage County Circuit Court against all three companies and Pavelski Enterprises' former sole shareholder and president, Richard Pavelski, claiming negligence and nuisance. The plaintiffs sought compensation for the decrease in their property's value and cleanup costs.

Growmark received seven spill reports from the state Department of Natural Resources between 1991 and 2007 mentioning the pesticide endosulfan, the herbicide atrazine and other chemicals, the Leas said; two reports noted some "soil contamination."

A Growmark engineer repeatedly observed piles of fertilizer on the plant's cement floor, the Leas said, but the company did not change its operations.

The couple said Richard Pavelski was personally liable for the contamination because he oversaw the facility's day-to-day operations and received a violation notice from the state Department of Agriculture in 1988.

The letter cited the need for certain vents in pesticide containers and better security; inadequacies in the facility's recordkeeping and written response plan; and cracks in a secondary containment wall, the opinion said.

A former employee also claimed Pavelski observed fertilizer spills and dust coming from the mixing towers, the Leas said.

Pavelski sought summary judgment, denying he was personally involved in the alleged contamination. He said he worked in the office and was responsible for government relations, purchasing and finance.

Pavelski Enterprises had an operations manager and a sales manager, Pavelski said, adding he did not hold either position.

The Circuit Court granted summary judgment to Pavelski and partial summary judgment to Growmark for the period between 1990 and 2006 when Growmark was in partnership with FS Cooperative.

The Leas appealed.

Judge Paul Lundsten, writing for the appellate panel, said the Leas failed to prove that the Department of Agriculture letter or Pavelski's alleged observations put him on notice of groundwater contamination.

The letter did not say there was contamination at the plant, much less groundwater pollution near the Leas' property, the judge said.

Pavelski did not have day-to-day managerial duties, Judge Lundsten added.

Regarding the claims against Growmark, the judge rejected the Leas' assertion that the company, as a joint operator of the facility with FS Cooperative, negligently failed to address contamination issues after receiving the environmental reports.

The plaintiffs did not link Growmark's alleged actions or inactions to their groundwater contamination, Judge Lundsten said.

The trial court had denied summary judgment as to Growmark's alleged contamination for the period after it purchased the facility from FS Cooperative in 2006, and the appeals court did not address those claims. WJ

Related Court Document:
Opinion: 2010 WL 3033883

 © 2010 Thomson Reuters

SEC chief Mary Schapiro REUTERS/Christinne Muschi

LEGISLATION/REGULATIONS

SEC requires firms to put investor nominees on proxy materials

New Securities and Exchange Commission rules on director nominations and company proxy statements make it easier for shareholder activists to oust directors who overpay executives or block lucrative merger offers.

The commission voted 3-2 Aug. 25 to amend federal proxy rules to "facilitate the effective exercise of shareholders' traditional state law rights to nominate and elect directors," according to an SEC release on the new rules.

It was one of the first new rules authorized by the recent sweeping financial reform law signed by President Obama in July.

The Dodd-Frank Wall Street Reform and Consumer Protection Act encouraged the SEC and other federal regulatory agencies to enact rules that would rein in directors of banks and corporations who approved inordinate fiscal risk-taking and executive compensation.

In an announcement of the new rules, SEC head Mary Schapiro said, "[L]ong-term significant shareholders should have a means of nominating candidates to the boards of the companies that they own — candidates that all shareholder-voters may then consider alongside those who are nominated by the incumbent board."

> "Long-term significant shareholders should have a means of nominating candidates to the boards of the companies that they own," SEC head Mary Schapiro said.

The new rules set nationwide standards that generally allow shareholders who have held at least 3 percent of the company's stock for at least three years to add their director nominees and corporate government proposals to the firm's proxy materials

Previously, shareholders had to foot the bill for sending out separate proxy materials in order to get their nominees and proposals in front of the stockholders.

"[T]he company's proxy materials offer the best, readily available tool for ensuring that the nominees of long-term and significant shareholders are presented to the electorate in a way that facilitates shareholders' traditional state law voting and nomination rights," Schapiro said.

In some circumstances, the new rules trump procedures that shareholder activists say make it too cumbersome and costly for dissident investors to campaign for their nominees and proposals.

The new rules also allow dissident shareholders to propose the election of director nominees between annual meetings.

Until the rule change, shareholders could only nominate candidates at annual meetings, which was often too late to challenge key corporate decisions. WJ

© 2010 Thomson Reuters

PRODUCT LIABILITY/CONSPIRACY

Former Spectranetics execs indicted for conspiracy

Federal authorities have accused three former executives of Colorado-based Spectranetics Corp. and an outside sales associate of conspiring to import and sell unapproved medical devices.

United States v. Schulte et al., No. 1:10-cr-455, indictment filed (D. Colo. Aug. 26, 2010).

The 12-count indictment filed in the U.S. District Court for the District of Colorado says the defendants conspired to import medical devices and parts from Japan and Germany from January 2004 to October 2008.

It says that they did so while lying to U.S. customs officials about the contents and value of the shipments and then marketed the goods, without Food and Drug Administration approval, to surgeons to clear plaque-clogged arteries.

Former Spectranetics CEO George J. Schulte is named in all 12 counts and faces a maximum fine of $1.7 million and 91 years in jail if convicted on each charge.

Obinna "Larry" Adighije and Trung Pham, both former high-ranking Spectranetics officers, were indicted on charges of conspiracy, "receipt of merchandise brought into the U.S. contrary to law," and three other counts related to importing and selling "adulterated and misbranded" medical devices.

Adighije, a former Spectranetics vice president, and Pham a former business development manager, could each be fined as much as $950,000 and jailed for 34 years for their roles in the scheme.

Hernan Ricaurte, who represented BAC, a Florida firm contracted by Spectranetics to distribute its line of laser-equipped catheters, faces up to $790,000 in fines and 57 years in jail.

The indictment says the disputed Spectranetics products were adulterated and misbranded because they were neither approved by the FDA nor exempted from the need for agency certification.

It also alleges that the defendants not only promoted the medical devices for unauthorized uses, but also hid their conduct from Spectranetics' own internal investigators and those from the FDA and the Department of Homeland Security.

In 2009 Spectranetics agreed to pay $5 million in a civil settlement to resolve a Justice Department investigation into the company's actions. WJ

Attorneys:
Plaintiff: acting U.S. Attorney David Gaouette and Assistant U.S. Attorney Jaime A. Pena, Denver

Related Court Documents:
Indictment: 2010 WL 3445925
Schulte criminal information: 2010 WL 3445921
Adighije criminal information: 2010 WL 3445922
Pham criminal information: 2010 WL 3445923
Ricaurte criminal information: 2010 WL 3445924

NEWS IN BRIEF

SEC CHARGES IDAHO FIRM, EXECS WITH SECURITIES FRAUD

In a complaint filed in Idaho federal court, the Securities and Exchange Commission alleges Boise-based educational products maker PCS Edventures.com Inc., CEO Anthony A. Maher and former CFO Shannon M. Stith issued false public statements regarding a purported $7 million contract with its distributor, PCS Middle East. The statements were false because they failed to mention the contract was not valid and that payment was contingent on PCS Middle East first obtaining funds from the government of Saudi Arabia, the suit says. Neither PCS nor PCS Middle East had a contract with Saudi Arabia, the SEC charges. The agency is seeking an injunction, fines, and an order barring Maher and Stith from serving as officers or directors of public companies.

Securities and Exchange Commission v. PCS Edventures.com Inc. et al., No. 10-CV-433, complaint filed (D. Idaho Aug. 26, 2010).

Related Court Document:
Complaint: 2010 WL 3452016

SUIT SAYS 'TOP UP' CLAUSE LETS SUITOR IN BACK DOOR

Shareholder Robert Dobbs claims the directors of ICx Technologies have breached their duty by agreeing to an unfair and improperly structured merger with a subsidiary of Flir Systems for $7.55 per share. In addition to an underpriced tender offer, the directors wrongly agreed to a "top up" option that allows Flir to buy new, cheap ICx shares, the suit says. When Flir owns 90 percent of ICx, it will force out the remaining public shareholders, Dobbs says. The suit names CEO Colin Cumming, Board Chairman Hans Kobler and five directors as defendants. Dobbs charges Flir and subsidiary Indicator Merger Sub aided and abetted the board's breach of duty concerning the offer and the top-up. He asks the court to stop the tender offer, top-up and buyout.

Dobbs v. ICx Technologies Inc. et al., No. 5769, complaint filed (Del. Ch. Aug. 27, 2010).

SUIT CHALLENGES STOCK-SWAP MERGER OF MINING COMPANIES

In a class-action complaint, the Oklahoma Firefighters Pension & Retirement System is seeking to represent the minority shareholders of Southern Copper Corp. in opposition to an allegedly unfair stock-swap merger offer from American Mining Corp. and its Mexican parent, Grupo Mexico. The transaction is procedurally unfair and is the culmination of a decade of self-dealing between the overlapping boards of AMC and Southern Copper, the suit says. The plaintiff seeks an injunction preventing the deal and an order that the defendants, Southern Copper Chairman German Larrea Mota-Velasco, CEO Oscar Gonzalez Rocha and 11 directors, breached their duty and are unfit to properly evaluate the company's worth.

Oklahoma Firefighters Pension & Retirement System et al. v. Mota-Velasco et al., No. 5729, complaint filed (Del. Ch. Aug. 16, 2010).

© 2010 Thomson Reuters

CASE AND DOCUMENT INDEX

Barker-Homek v. Abu Dhabi National Energy Co. PJSC aka TAQA et al., No. 13448, *complaint filed* (E.D. Mich. Aug. 27, 2010) 1
Document Section A 19

City of Roseville Employees' Retirement System v. Sterling Financial Corp. et al., No. 09-CV-368, *memo supporting dismissal filed* (E.D. Wash. Aug. 30, 2010).. 11

Dobbs v. ICx Technologies Inc. et al., No. 5769, *complaint filed* (Del. Ch. Aug. 27, 2010) 14

In re ACS Shareholder Litigation, No. 4940, *settlement approved* (Del. Ch. Aug. 24, 2010)..9

In re Dollar Thrifty Shareholder Litigation, No. 5458, *hearing held* (Del. Ch. Aug. 27, 2010) 10

In re VeriFone Holdings Shareholder Derivative Litigation, No. 07-6347, 2010 WL 3385055 (N.D. Cal. Aug. 26, 2010)..7
Document Section B..34

Kahn v. Termeer et al., No. 10-3067, *complaint filed* (Mass. Super. Ct., Middlesex County Aug. 17, 2010) 6

King v. VeriFone Systems Inc., No. 330-2010, *answering brief filed* (Del. July 19, 2010)..8

Lea et al. v. Growmark Inc. et al., No. 2009AP2339, 2010 WL 3033883 (Wis. Ct. App. Aug. 5, 2010).. 12

Oklahoma Firefighters Pension & Retirement System et al. v. Mota-Velasco et al., No. 5729, *complaint filed* (Del. Ch. Aug. 16, 2010) 14

Securities and Exchange Commission v. PCS Edventures.com Inc. et al., No. 10-CV-433, *complaint filed* (D. Idaho Aug. 26, 2010) 14

United States v. Schulte et al., No. 1:10-cr-455, *indictment filed* (D. Colo. Aug. 26, 2010).. 14

Reproduction Authorization

Authorization to photocopy items for internal or personal use, or the internal or personal use by specific clients, is granted by Andrews Publications for libraries or other users registered with the Copyright Clearance Center (CCC) for a fee to be paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923; 978-750-8400; www.copyright.com.

© 2010 Thomson Reuters