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NEW YORK POST

a daily newspaper of general circulation printed and published in the English language, in the County of New York, State of New York; that advertisement hereto annexed has been regularly published in the said "New York Post" once, on the

28 day of November 2003

also once, on the 5, 12, 19 day of December 2003

Sworn to before me this 23 day of

December, 2003

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Book review is all in the family

IT may stop short of a conspiracy theory, but the familial ties of a Washington Post book reviewer has one Kennedy author crying foul.

The reviewer under fire is **Matthew Dallek**, the son of **Robert Dallek**, author of "An Unfinished Life: John F. Kennedy 1917-1963."

The elder Dallek's book, which hit in May, was not reviewed — but in last Sunday's book section of the Washington Post, the younger Dallek reviewed four of the latest offerings on Kennedy.

Thomas Maier, author of "The Kennedys: America's Emerald Kings," one of the four books reviewed, said the connection between father and son should have been enough to disqualify the younger Dallek.

"It's unethical," fumed Maier of the younger Dallek review. "It's Book Review 101: Thou shalt not assign a book to be reviewed by the son whose father has written a book on the same topic. I think someone was asleep at the wheel."

In his review, the younger Dallek takes Maier to task for one of the headline news-breaking scoops in the book — that Jacqueline Kennedy told a priest to pray for her death and that she had contemplated suicide after the assassination of her husband, President John F. Kennedy, on Nov. 22, 1963.

Maier shoots back that the elder Dallek's book had a sensationalistic take on one of Kennedy's secret flings with a White House intern identified in the book only as "Mimi."

"It's an attempt to bury dad's competition," claims Maier, a Newsday investigative reporter who has written earlier bios on **S.I. Newhouse Jr.** and Dr. Benjamin Spock.

Marie Arana, editor of the Book World section at the Washington Post, said she had "absolutely no qualms" about assigning the review to Matthew Dallek.

She attributes Maier's objections essentially to sour grapes. "It's not unusual for someone who has received a less-than-glowing review to be upset."

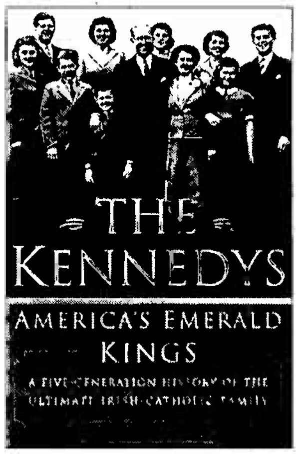
But she said it was "preposterous" to assume that the father's book colored the son's thinking in the review of the most recent batch of Kennedy books.

Asked why the connection between the two Dalleks was not mentioned in the biographical note at the end of Matthew's review, Arana said, "I don't think it is anything anyone needs to know. It's in the public record . . . I don't think having published a book about the Kennedys means your son is ineligible to review other books about the Kennedys," she said.

Matthew Dallek "is not a spokesman or a clone of his father," she insisted.

Counters Maier, "Maybe I should have my son review Robert Dallek's next book for the Washington Post."

He said he has raised his objections with the Washington Post ombudsman.



'THE KENNEDYS'
Maier book.

■

In a sign of the new nastiness in the men's magazine category, Conde Nast and GQ Editor-in-Chief **Jim Nelson** are threatening to withhold payment from writer **Jim Thornton**, who is jumping from the magazine to Men's Health as a columnist next year.

The problem, according to a GQ spokesman, is that Thornton has already started writing for the competition, which is a definite no-no under terms of his GQ contract, which doesn't expire until the end of December.

The company may withhold its final monthly paycheck from Thornton, who said it amounts to a little over $7,000.

"We're considering all our options," said GQ spokeswoman **Lisa Dallos**.

"Not getting it would not kill me, but it would make for a kind of 'Grinchy' Christmas," said Thornton.

GQ editor Nelson was upset when Thornton's article about taking up swimming in midlife appeared in Best Life, a new Men's Health spin-off that hit this week with a cover date of "Winter 2004."

Thornton's contract bars him from writing for Esquire, Men's Journal, Men's Health "or any other competitive men's magazine" without the express written approval of the editor in chief, according to terms of the agreement.

Thornton said he had pitched the idea about a swimming story to GQ but they had passed. He asked his immediate editor at the magazine if it was OK to write it for Best Life instead.

"I was given a verbal OK," Thornton insisted. And he added that since GQ was not planning to renew his contract, he felt he could not wait.

"When they wouldn't tell me what my fate was, I felt I had to start lining up new work for the future," he said.

Thornton's soon-to-be new boss, Men's Health editor **David Zinczenko**, adds, "Ironically, Jim's first column in Men's Health is about the effects of financial stress on a man's health. Isn't it great that Nelson is giving him some more fodder to write about?"

In a bid to settle the dispute, Thornton has offered to use his final paycheck as a stake in a 1,000-yard freestyle swimming race against Nelson — winner take all.

■ *Please send e-mail to: kkelly@nypost.com*

PPR has 20 names in Gucci sweepstakes

PARIS — The head of Artemis, the holding company for French retail giant Pinault Printemps Redoute, said PPR had identified about 20 potential candidates to replace Domenico de Sole at the helm of its Gucci fashion house.

De Sole and star Gucci designer Tom Ford rocked the fashion world earlier this month by announcing they would resign in April 2004. That has increased uncertainty for owner PPR, which is spending more than seven billion euros to get the Gucci brand.

Artemis Chairman Francois-Henri Pinault, part of a committee headed by PPR Chairman Serge Weinberg that is scouting for new managers, told French monthly L'Expansion that the committee had identified a number of replacements for De Sole.

"We have drawn up a list of 20 possible candidates and are in the process of contacting them," Pinault told l'Expansion.

"Tom Ford has assured us he will stay for the autumn-winter 2004 collections, so we will not announce the names of his successors before then," he added.

Weinberg has said the group is seeking two creative chiefs, one for Gucci and one for its Yves Saint Laurent subsidiary.

Reuters

Business

BUSINESS BRIEFS

No charge

Billionaire Francois Pinault will pay a $221 million fine in exchange for U.S. prosecutors dropping criminal charges against executives at his holding company, Artemis SA, says Paris-based newspaper Les Echos. The charges stem from Artemis' purchase of junk bonds of California's insurer Executive Life.

Nobel effort

Kohlberg,Kravis Roberts & Co. may team with CFSB to bid around $3 billion for Dynamit Nobel, founded by the inventor of dynamite who also created the Nobel Prize.

Verizon sues

Verizon Communications added new accusations against rival ATX Communications in its court fight to collect a $40 million bill, saying ATX inflated revenue to meet forecasts. ATX denied the charge, calling it "without merit."

Vivendi losses

Vivendi Universal, owners of the world's largest music company, may report that third-quarter losses are much lower, analysts say. The loss could drop to $221 million from $1.4 billion a year earlier. Vivendi reports results Dec. 2.

Ad buyers

Mutual fund FMR and its European sister Fidelity International have boosted their stake to 10.1 percent in Havas, the French ad conglomerate. FMR owns 7.75 million shares, or 2.54 percent; Fidelity owns 22.81 million shares, or 7.47 percent.

World trades

The dollar rose against the euro for the first time in three days, after European officials said the global economy could suffer if the greenback lingers at $1.20. The buck strengthened to $1.19 vs. the euro. Oil in overseas trading rose 23 cents a barrel to $28.70.

Sources: Bloomberg, AP, Reuters, N.Y. Post

SHOPPING SLUMP

A slow retail kickoff could yield big discounts

By SUZANNE KAPNER

The number of people expected to shop today, on the official start to the holiday season, could be the lowest since 1997, according to some projections — raising the possibility that retailers will once again be forced to slash prices on seasonal merchandise.

Retailers have said so far that they plan to avoid the deep discounting of Christmases past.

And encouraged by a recent pickup in same-store sales growth and leaner store inventories, some analysts predict a very merry season indeed. Among them are Deloitte & Touche, which forecasts a 6.5 percent to 7 percent rise in sales, and the National Retail Federation, which expects a 5.7 percent increase.

Other observers are less sanguine, however, pointing to higher consumer debt and other economic factors that could keep a lid on spending.

Citing deterioration in real wage growth, a Goldman Sachs report published this week suggested that personal consumption expenditures would be unlikely to exceed 3 percent growth until the middle of next year.

And the Consumer Federation of America recently published the results of a survey that found a growing number of people were concerned with their level of debt. One-third of those questioned said they planned to spend less this holiday season than last year — compared with 21 percent who said so a year ago — mainly because they want to pay off debt.

"Retailers are trying their best to hold the line on holiday discounts," said Karl Bjornson of Kurt Salmon Associates, which predicts a 3.5 percent to 4 percent rise in holiday sales. "But they are going to end up discounting more than they say they will."

Today is known to retailers as "Black Friday" — a name that dates back to the 19th century, when retailers kept ledgers in black and red ink.

The Friday after Thanksgiving was traditionally the day they switched from red to black, earning their first profit for the year.

Today, with most retailers generally earning about a quarter of their profit in November and December, Black Friday is no longer as important as it once was.

It's not even the busiest shopping day of the season anymore — having forfeited the spot about six years ago to the Saturday before Christmas, according to the International Council of Shopping Centers.

Even so, Black Friday still remains an important barometer of consumer spending and can set the tone for the rest of the season.

If sales for the day fail to live up to expectations, a rash of deep discounting is almost certain to follow, analysts said.

"Retailers are playing a game of chicken," said Steven Speewak of Retail Forward. "They want to see if consumers blink first."

Should predictions made by Bain & Co. turn out to be right, retailers could wind up doing the blinking. Only 30 percent of consumers surveyed by the consulting firm said they would shop the day after Thanksgiving, down from 46 percent who said they would a year ago, setting the stage for the fewest Black Friday shoppers since 1997.

Retailers have only themselves to blame for a shift in spending toward the end of the season, because they have trained shoppers to wait until the last minute to get the best prices, analysts said.

The Bain survey found that those unwilling to shop on Black Friday said it was "too early to get the real deals."

Could be ugly

Some retail analysts see a seasonal bummer ahead.

Among the forecasts:

- Bain & Co.: Only 30% of consumers said they would shop the day after Thanksgiving, down from 46% in 2002.
- Consumer Federation of America: 33% of those surveyed said they planned to spend less than last year.
- Goldman Sachs: Personal spending won't top 3% growth until the middle of next year.
- National Retail Federation: Holiday sales to rise 5.7% this year.
- Deloitte & Touche: Holiday sales to rise 6.5% to 7%.

Shoppers hit the stores on Black Friday last year.

Global trade war averted by eleventh-hour truce

By PAUL THARP

The world's economic powers declared a last-minute truce yesterday to a looming trade war that would disrupt the global sale of everything from Florida oranges to French wine.

The Thanksgiving Day settlement came just four days before an all-out trade war was set to erupt across three continents.

The conflict centers on President Bush's controversial tariffs he imposed on imported steel in 2002 to protect steelmakers in states such as Ohio, Pennsylvania and West Virginia. Each of those states is key in next year's presidential election.

The tariffs, however, are illegal in global trade, according to a ruling by the World Trade Organization's courts.

It ordered Bush to end his tariff blockades to foreigners or face sanctions on more than $2.3 billion in U.S. goods sold abroad.

One of the major targets for sanctions — which would make the products impossibly expensive — was Florida's citrus industry.

The Bush family needs Florida's political power for the 2004 campaign.

Trade experts said that Bush probably blinked and is considering lifting the steel tariffs in the next two weeks.

The world's industrial nations had all lined up against the Bush tariffs — including Japan, China, the European Union, South Korea, Brazil, Norway and Switzerland.

Those nations were ready to vote on Monday to approve an automatic trigger of the trade war, with each nation in line to impose stiff sanctions of their own against U.S. goods. Japan has been targeting American apples, mainly from Washington State.

Some of the retaliatory sanctions by the trading partners would hike prices on certain U.S. goods sold overseas by more than 30 percent.

With the global economy still struggling for a recovery, a trade war could have done serious damage to the comeback, experts said.

The White House asked its trade partners to delay their vote on the trade war until Dec. 10.

Trade lawyers said Bush apparently asked for the delay because he intends to drop the tariffs.

Bush said in London last week that he was "reviewing the findings about the restructuring of our steel industry, and will make a timely decision."

People ponies up for pix

THE bidding wars are heating up once again, with People plunking down nearly $700,000 to win two high-stakes wars for photo rights.

One battle was for photos of **Gwyneth Paltrow** and boyfriend **Chris Martin** — who apparently had just gotten the news that they are expecting a baby.

People Managing Editor **Martha Nelson** is said to have paid $50,000 for the shots, handled by WireImage. The auction wrapped up Wednesday with People getting exclusive North American rights to the shots, which show Gwyneth beaming and her boyfriend hugging her and kissing her tummy.

The pictures are to be in next week's issue.

The same issue will carry the exclusive wedding photos of "Bachelorette" **Trista Rehn** and her intended **Ryan Sutter** — for which People is believed to have paid more than $600,000.

Larry Hackette, executive editor at People, said of the Gwyneth pictures: "These photos are fantastic. They're the best candid celebrity shots I've seen in awhile. She's beaming and he's stroking and kissing her stomach."

■

The Washington Post has wrapped up its search for a new gossip columnist to take over the "Reliable Source" column.

After looking inside and outside, the WashPost has handed the job to **Rick Leiby** — a 12-year veteran who most recently has been a war correspondent for the paper's Style section, from locales that included Iraq, Jerusalem, and the Gaza Strip.

The job has been open ever since Daily Snooze owner **Mort Zuckerman** lured **Lloyd Grove**, the previous "Source" columnist, to his circulation-challenged daily in a bid to inject more life into its pages.

Leiby — who is white — is a past winner of the National Association of Black Journalists award for feature writing.

The award honored a story written several years ago on the disparity in sentencing for suspects convicted of crack and powder cocaine possession.

"I don't know a lot about when I'll be starting, but I can confirm that I'll be doing it," said the investigative reporter, who has never been a columnist before.

"It is significantly different," he said.

■

Norman Pearlstine — the Time Inc. editor-in-chief who disbanded the staff of company in-house publication FYI in 2001 — is now having second thoughts.

He's telling friends that ditching the staff was "a mistake," and says it was done in the early days after the merger with AOL — when he was more inclined to listen to a wing of the company that wanted more digital products.

After the staff was dismissed, FYI was farmed out on a rotating monthly basis to various magazines in the company.

Now, although there's no clear time frame for the change, Pearlstine seems to have seen the error of his ways.

"I definitely want to bring it back with its own staff at some point," he said.

The current FYI, put together by the Business 2.0 staff, features the "101 Dumbest Moments in Time Inc history" — and puts the decision to can the dedicated FYI staff at No. 11.

■ *Please send e-mail to: kkelly@nypost.com*

New dis-sent on the Mouse House board

By TIM ARANGO

It didn't take long for Disney's newest board member to dis the company.

John Chen, who was appointed to Disney's board on Tuesday, criticized the company's corporate governance yesterday — the very issue that had prompted two high-profile resignations from the company's board earlier in the week.

"I was picked to Disney's board to help improve its independence," Chen said yesterday in an interview with Bloomberg News. "Disney's board independence isn't very good among the Dow 30."

Chen, the CEO of Sybase, took up one of the vacant seats on Disney's board after Roy Disney and Stanley Gold resigned earlier this week.

Both Gold and Disney have long been critics of Disney CEO Michael Eisner, and they used their resignations as an occasion to criticize management and call for Eisner's resignation.

The dissident former directors plan to launch a Web site this week, and will ratchet up their attacks on Eisner in the coming weeks and months. They also will try to convince shareholders that it is time for Eisner to leave, which could prompt a proxy fight.

Eisner has been criticized for not developing a succession plan and for bungling the lucrative relationships Disney has with Pixar Animation Studios and Miramax.

SEC hits Mutuals.com

By STEPHEN LYNCH

More illegal trading charges were filed yesterday by the Securities and Exchange Commission, this time against executives at a Dallas-based investment adviser.

Mutuals.com was accused in a civil complaint of cheating mutual-fund companies by engaging in marketing timing and late trading.

SEC investigators said the company "routinely received trading instructions from customers after 4 p.m. EST and executed those trades as if the trading instructions had been received prior to that closing time."

Stephen Cutler, director of the SEC's Division of Enforcement, said Mutuals.com covered its tracks by changing account numbers, using different identification numbers and encouraging clients to disguise their identities.

"The defendants used a whole host of methods to try to mask their illegal market timing and late trading," Cutler said in a statement.

The SEC charged Mutuals.com; two affiliated broker-dealers, Connely Dowd Management Inc. and MTT Fundcorp.; Mutuals.com's CEO, Richard Sapio; its president, Eric McDonald; and its compliance officer, Michele Leftwich. Mutuals.com officials declined to comment on the charges.

Garofalo in $1.5M IPO giveback

Former Metromedia Fiber Networks CEO Stephen Garofalo agreed to return $1.5 million in allegedly ill-gotten IPO gains to New York Attorney General Eliot Spitzer's office, settling a case the attorney general brought against him last year.

Spitzer charged Garofalo and four other telecom execs in September 2002 with spinning — accepting shares in hot initial public offerings from Salomon Smith Barney in exchange for lucrative banking business.

The practice was banned as part of a $1.4 billion settlement between federal and state regulators and Wall Street's major banks earlier this year.

About $1.1 million will be deposited in the Litigation Trust Fund, which was established with the approval of the bankruptcy court in the Southern District of New York and is suing to recoup investors' losses in Metromedia.

The remaining $400,000 will be given to two New York law schools to fund securities arbitration programs. Spitzer vowed to get back the money, in spite of the ban on the practice.

Jenny Anderson

'Non-nano' firm gains on its name

By STEPHEN LYNCH

Nanometrics is getting a big boost from its little name.

Stock market watchers are speculating that the company's skyrocketing share price stems from investor confusion. The Milpitas, Calif.-based company makes measurement tools for tiny items such as integrated circuits and isn't part of the hot nanotechnology industry.

But perhaps because of the company's ticker — NANO — its stock rose 33 percent in one week.

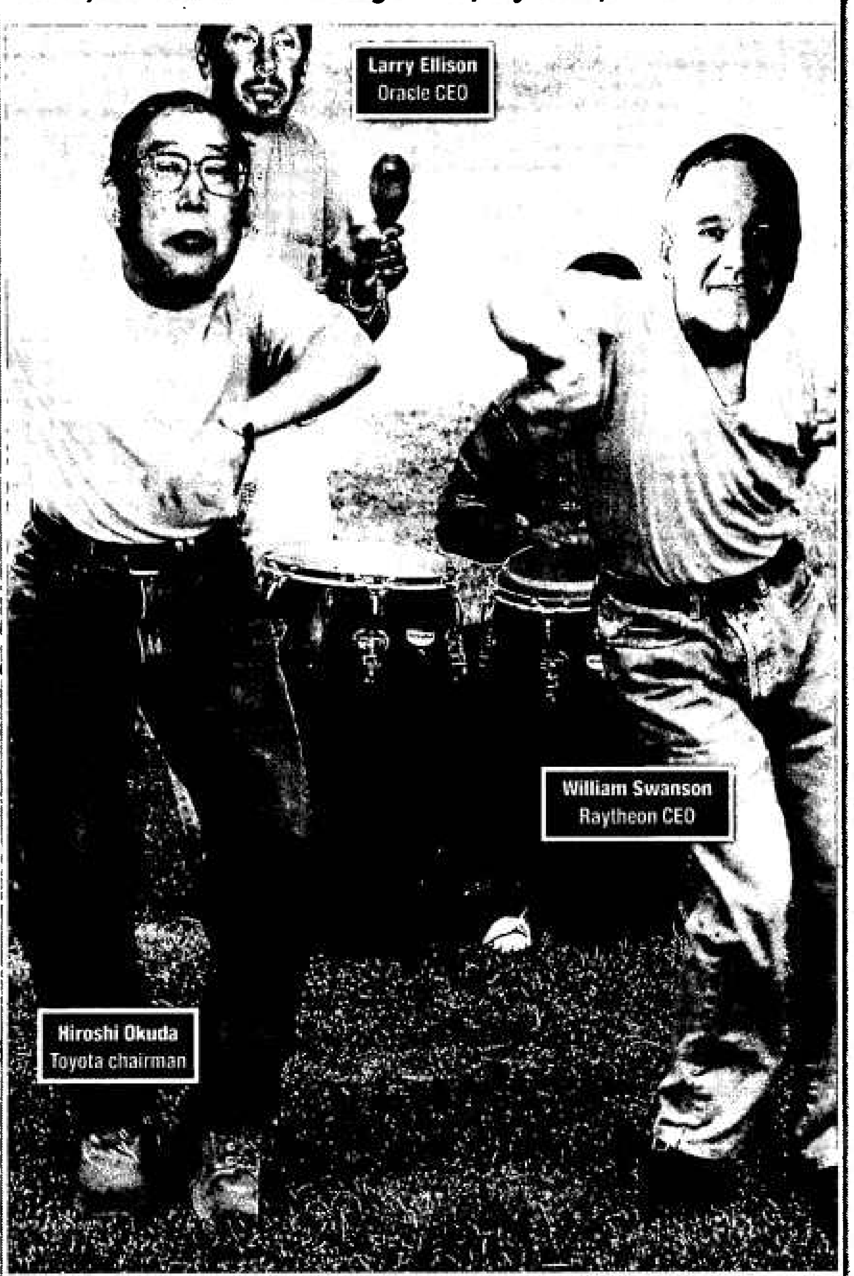
Some investors may have confused Nanometrics with Nanogen, an actual nanotechology firm, which announced this week that it had won a U.S. patent. Nanogen's stock rose 52 percent.

General interest in nanotechnology may have fueled Nanometrics throughout the fall. Its share price doubled from about $8 in the first week of September.

When the stock topped $16, Vice President Roger Ingalls Jr. sold about 44 percent of his shares, earning about $112,000.

Getting rhythm

Top corporations are turning to the power of music to motivate execs, who now are mastering drums, keyboard, maraca and bells.



N.Y. Post photo composite

Fortune 500 tunes into bang-the-drum therapy

By PAUL THARP

Corporations are boosting employee productivity and reducing sick days by getting workers to march to the same drummer — literally.

A novel program underway at several big firms — including Toyota, Unilever, Raytheon and Oracle — hauls in drums to the office so that workers can take an hour a week to beat on them alongside their bosses and co-workers.

Also included in the musical free-for-all are hand bells, maracas and keyboards.

"The musical experience causes the boundaries to disappear between managers and employees," said the program's inventor, Dr. Barry Bittman, a neurologist and head of the Mind-Body Wellness Center, Meadville, Pa.

"It becomes a level playing field, so to speak — and it's a safe experience for building trust at the most basic levels."

The workplace musical workout has produced startling results, he says. Absenteeism drops sharply because the musical experience relieves stress and boosts the body's immune system, says Bittman.

Burn-out was virtually eliminated and job turnover was drastically reduced at several of the locations where the program has been underway.

He says Toyota's drumming has had enough success at keeping workers happy and punching the clock on time, it has installed its own dedicated "drum room" at California locations.

What makes the program work is that employees are compelled to participate in the once-a-week hourly events for six weeks.

"Many employees are very negative about doing it and resist. But after they are cajoled into participating, they show remarkable changes.

"In almost every case, the obstinate, the troublemakers and withdrawn employees were brought into the fold and solidified the whole group."

Bittman said the rise of consolidations and mergers in corporate America have added stress to workers, and hampered work skills.

The $11,000 program brings in all the musical instruments and a trainer to conduct the workplace ensembles, and leaves behind the drums and a trained in-house person to keep running the show.

He cited new studies saying that 85 percent of employees want to change jobs when the economy improves.

"That's going to be a huge cost of as much as $30,000 to $60,000 to find a replacement employee," he said.

IRS EYES EXECS' NON-CASH PERKS

By JENNY ANDERSON

Greedy CEOs, beware!

The IRS is training its green eyeshades on obvious excesses of executive pay, making non-cash fringe benefits — such as execs' use of corporate jets, swank housing, and beefed-up retirement packages — part of their regular audit process.

The agency will be taking a closer look at deferred compensation, stock options and golden parachutes.

Aside from fringe benefits, standard IRS audits will also target offshore employee leasing — a loophole that allows individuals to move to certain countries to avoid paying taxes — and family limited partnerships, another popular evasion tool, say tax experts.

"The IRS has all the cards in their favor to do this," said Brent Longnecker, president of Houston-based executive-compensation consultancy Longnecker & Associates. "Enron, Grasso, Adelphia, Tyco — those are all situations where executive pay was at the forefront."

The IRS action is a response to the growth in non-cash compensation in recent years, as well as to the fact that pay packages have become more "complex and more creative," said an IRS spokeswoman.

The IRS' search criteria are not based on an exec's total pay, but rather how different parts of the compensation package are accounted for.

CEO pay has come under increased scrutiny during the last few years of corporate scandal.

The ratio of the average CEO's pay to the average worker's in 1980 was 41:1, according to data compiled by the Conference Board and cited by New York Attorney General Eliot Spitzer earlier this week.

By 2002, that ratio had reached 411:1.

CEOs "began to view themselves as a company's sole shareholder," said Spitzer.

Former NYSE Chairman and CEO Dick Grasso amassed a retirement package of about $190 million in deferred compensation.

Former Tyco CEO Dennis Kozlowski, on trial for looting his company of almost $600 million, threw a decadent $1 million birthday gathering in Sardinia for his wife — on the company's tab.

Former General Electric chief Jack Welch had open charge accounts at some of the city's finest restaurants and a multimillion-dollar apartment in the Trump Tower.

Goldman eyes BPC lot for new headquarters

By LOIS WEISS

Goldman Sachs has its eye on Site 26 on Vesey Street in Battery Park City where it wants to construct a new 1.5 million-square-foot headquarters, sources told The Post.

On Wednesday the company said it is committed to remaining downtown and would relocate opposite the World Trade Center from its aging headquarters at 85 Broad St., which was developed with Met Life.

Larry Silverstein's 7 World Trade Center will have 1.7 million square feet opposite the north side of ground zero, while the still partially demolished and vacant 1.5 million-square-foot Deutsche Bank building at 130 Liberty is still embroiled in a court battle over its insurance money.

Brookfield Financial Properties — the successor to the original commercial developer, Olympia & York — has been fighting the Battery Park City Authority over the rights to develop Site 26.

AT&T VoIP will shake up telcos

By STEPHEN LYNCH

AT&T announced yesterday that it would offer voice-over-Internet services to its customers next year — a strategic shift that could alter the revenue model for the entire telecommunications industry.

Currently, AT&T pays [illegible]ards of $10 billion to [illegible] phone carriers to rout[illegible] calls. By using VoIP technology, AT&T avoids those fees and could pass on those savings to customers. Analysts expect a price war as the big cable companies such as Time Warner and other telephone companies enter the VoIP field.

"We can control the whole enterprise, soup to nuts," said Cathy Martine, senior vice president for VoIP. "That's not an inconsequential amount of money that we can reinvest in our business."

The changes are a few years off, however. AT&T and Time Warner won't roll out their VoIP services until next year, and, even then, only a small number of people are expected to adopt the digital technology initially.

During that time, the Federal Communications Commission is expected to deal with the issue of access fees, which could mitigate the cost savings, said Michael Weaver, managing director of analyst firm Fitch Ratings.

The fees paid by phone providers help subsidize rural phone service and emergency 911 lines. If more voice traffic shifts to Internet lines, "the FCC is going to take a look at this," Weaver said.

For customers, the effects of these technological changes will be subtle at first. Most VoIP plans use an unlimited calling plan for about $40 to $60 a month, though that usually requires customers to pay for high-speed Internet access, as well. The services use existing phones and jacks, though they require customers to hook small terminal adapters to the line.

AT&T stock closed down 26 cents to $19.62.

DAVID DORMAN
Dials for Dollars.

First-ever spam charges brought

Two North Carolina men were charged in Virginia with running one of the world's biggest spam operations in the first felony indictments ever brought in the U.S. against junk e-mail senders.

Virginia Attorney General Jerry Kilgore announced the indictments of Jeremy Jaynes, 29, who uses the alias Gaven Stubberfield, and Richard Rutowski, during a news conference at the Sterling, Virginia, headquarters of Time Warner's America Online, the world's largest Internet service provider.

"It is a classic step to try and take a bad guy and make an example of him and to turn him into a warning sign for others," said Jim Brelsford, partner at the Menlo Park, California, office of the Jones Day law firm, who advises clients including software and networking companies on spam-related issues. "It will have a deterrent effect, but it will happen over time."

The charges were the first brought under a new Virginia law that sets criminal penalties for sending fraudulent or deceptive spam through servers based in the state, such as those operated by AOL and WorldCom's UUNET unit. Curbing spam is a major demand by customers of America Online, Microsoft's MSN and other Internet service providers.

Federal legislation to ban unsolicited commercial e-mail and authorize the Federal Trade Commission to enforce a nationwide do-not-spam list passed Congress this week and is awaiting President Bush's signature. The bill, which would establish fines and prison terms, marks the federal government's first move to control spam.

Brelsford said government restrictions on spam are certain to be challenged as violations of senders' free-speech rights.

"They are regulating First Amendment speech and testing how far the government can go in regulating commercial speech," he said. "I do think some prosecutions are necessary, but you have to see if they get off or not. You can only hope Virginia picked the right guys to prosecute."

Jaynes, of Raleigh, North Carolina, ranks eighth on a list of the world's 10 largest spam operations compiled by the Registry of Known Spam Operations and posted at spamhaus.org, which tracks senders of unwanted e-mail peddling pornography, virility pills, cheap loans and other products. *Bloomberg*

Ex-Gillette exec in guilty plea for fraud

A former executive for Gillette Co., the world's largest razor maker, pleaded guilty to receiving close to $600,000 in kickbacks from suppliers in return for steering orders to them.

Gino Deluca, 47, former director of Gillette's Permanent Merchandising Systems Department, admitted to 11 counts of mail and wire fraud and two counts of subscribing to false tax returns, the U.S. Attorney in Boston said in a statement. Deluca will receive a prison sentence of 30 months to 37 months.

Deluca was in charge of the promotion and display of Boston-based Gillette's grooming products, Duracell batteries and Braun oral care products at retailers from 1996 until he was fired in August 2002. An Isuzu Trooper and $225,000 wired to a Swiss bank account were among the kickbacks Deluca got from vendors Top Marketing, MGM Graphics, Interesting Display and Ideas, Inc., and Dascal and Associates.

The sentencing hearing, during which District Judge Douglas Woodlock can change the jail time, is set for March 16. George Garfinkle, attorney for Deluca, declined to comment. *Bloomberg*

Natural Golf gets $12.5M IPO

Natural Golf Corp., a golf instruction and equipment company, raised $12.5 million in an initial public offering.

Natural Golf sold 2.5 million shares at $5 each, compared with an anticipated price of $5 indicated in an SEC filing. Gilford Securities managed the sale, which fetched fees of $1 million.

Proceeds from the sale will be used to pay 5.7 million in debt, fund $4.5 million of advertising, advertise a new teaching facility and fund capital investment, the company said in the SEC filing.

Natural Golf, a Mount Prospect, Ill.-based company formed in 1990, produces and sells golf instructional videotapes, offers teaching and sells golf equipment. *Bloomberg*

$2 MILLION MAN: The rich and famous showed up to support New York Attorney General Eliot Spitzer, who is expected to run for governor. Rick Dembow

Fundraising for a fund crusader

By JENNY ANDERSON

More than 700 of New York's rich and famous flooded to Midtown yesterday to dump more than $2 million and heaps of praise on New York Attorney General **Eliot Spitzer**.

Miramax chief **Harvey Weinstein**, Cablevision CEO **Jim Dolan**, Yes Network boss **Leo Hindery** and actress **Bernadette Peters** were just a few of the big names to deliver the dollars to Spitzer's unannounced campaign coffers.

They and others showered the crusading attorney general with words of encouragement at a fundraiser headlined by former tennis hero **John McEnroe**.

"When it comes to integrity, there's no one better than Eliot Spitzer," said Weinstein. "He's leveled the playing field for small investors."

The event drew big names from New York finance, fashion, real estate, publishing, union and media circles.

Among them were some big name politicos: New York City Council Speaker **Peter Vallone**, City Councilman **Bill DiBlasio**, former Democratic mayoral candidate **Mark Green** and Service Employees International union kingpin **Dennis Rivera**.

Among some of the biggest donors to the day's event were: hedge fund giant **James Chanos**, president of $1 billion hedge fund Kynikos Associates; Titan Advisors fund-of-funds chief **George Fox** and **Jeff Berkowitz**, manager for the hedge fund Cramer Berkowitz (co-founded with Street.com's **Jim Cramer**); real estate mavens **Edward and Howard Milstein**; developer **Donald Trump**; class action attorney **Melvyn Weiss**; former New York Attorney General **Robert Abrams**; and developer **Stephen Green**, among others.

"He's doing God's work," said **Lloyd Constantine**, a former partner of Spitzer at Constantine & Partners and a sponsor of the event. "Wall Street's perception of him is that he is the law, and, at this point, he's the person they have to deal with."

Democratic politicians heaped on the praise. "He's not afraid to go after anyone or anything," said **Bill Mulrow**, former Democratic candidate for state comptroller and senior vice president at Gabelli Asset Management. "He brings sanity and legality to the table."

Others who did not attend weren't so generous. "I got that invitation," said one hedge fund investor. "I don't have any money because of everything he is doing."

Weiss, whose own work in pursuing financial fraud has been bolstered by Spitzer's prosecutorial zeal, was quick to point out that Spitzer's work has made him more than a few enemies on Wall Street.

"They hate him because he is poaching on their turf and they are used to great comfort with the SEC," said Weiss.

Spitzer would not confirm that he is running for governor, but few at the event doubted they were there for any other reason. Said Weiss: "Do I think he will run for governor? I have no doubt, but I also have no insight."

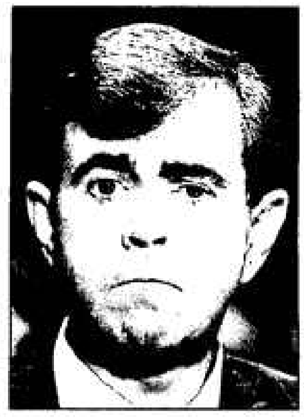
Standing in front of an enormous American flag, Spitzer said his office was committed to a simple ethic when it came to financial services: "Those who invest should be dealt with fairly."

He dismissed the notion that Wall Street might not support his political ambitions.

"The notion that the financial services community won't support someone who wants to clean up the market is wrong," he said. As to those who chose to support him, he said, "It's to their credit that they support the right efforts to clean things up."

PRUDENTIAL IS SUED BY MASS. FOR FUND FRAUD

By JENNY ANDERSON



WILLIAM GALVIN
Cites 'scheme.'

In another slap at Wall Street, Massachusetts regulators sued Prudential Securities for failing to supervise brokers who allegedly engaged in improper mutual-fund trading.

The civil complaint, filed by Secretary of the Commonwealth William Galvin, says that the firm's lack of supervision allowed a group of former brokers to "carry out a fraudulent scheme to enrich themselves and their offshore hedge fund clients."

The brokers engaged in short-term trading and late trading, two practices that are in the cross hairs of state and federal regulators.

Unlike previous mutual fund cases where brokers were charged with market timing in the firm's own fund's — a clear violation of the fund's fiduciary duty to its shareholders — the former Pru brokers allegedly found market timing and late trading situations for their own clients.

"We have not yet been served with the Massachusetts complaint and we will need time to study the allegations," said Prudential Financial spokesman Bob DeFillippo. "In addition, we have not seen the evidence that supports the allegations." He said the firm continued to cooperate with "all regulatory inquiries."

The action follows complaints filed last month by Galvin and the SEC alleging securities fraud against five former Boston brokers and two branch managers.

Prudential Financial sold Prudential Securities to Wachovia Securities in February 2003, maintaining a 38 percent stake in the combined entity.

The civil complaint says that between Jan. 30, 2001 and Aug. 23, 2003, the brokers — Martin Druffner, Justin Ficken and Skifter Ajro — entered more than 1,200 orders valued at about $162 million after the 4 p.m. close of the market. That same group created "at least" 62 different false identities for the accounts to mask their activities, the complaint alleges.

The former brokers have previously denied any wrongdoing, arguing their supervisors approved the trades. Ficken's attorney, Willis Riccio, could not be reached for comment. State and federal regulators are investigating hedge funds, mutual fu[illegible] and broker dealers as [illegible] of a massive review of m[illegible]tual fund trading practices.

The once pristine $7.1 trillion industry has been under a dark cloud as daily reports of improper behavior at the country's leading firms, including Putnam Investments, Invesco and Pilgrim Baxter, have emerged.

Nasdaq's Greifeld blames SEC's inaction

Nasdaq Stock Market Inc. Chief Executive Officer Robert Greifeld criticized the Securities and Exchange Commission for failing to act on the marketplace's three-year-old application to become an exchange.

Greifeld, who took over the Nasdaq in May, said his frustration was heightened by the SEC's imminent approval of governance changes proposed last month for the New York Stock Exchange by its interim chairman John Reed.

"Our exchange application should be put more as a front-burner issue," Greifeld said in the interview. The application was filed in November 2000. "We are concerned our exchange application has been floating around for three years and New York's proposal gets approved in three weeks."

The Nasdaq cannot become independent of its majority shareholder, the National Association of Securities Dealers, until it gets exchange status. *Bloomberg*

M'soft staff sells options

Microsoft Corp., the world's biggest software maker, said 51 percent of eligible employees opted to sell their stock options to J.P. Morgan Chase & Co.

A total of 344.6 million, or 55 percent, of 621.4 million eligible shares were sold, the company said in a filing with the SEC. Microsoft, based in Redmond, Washington, has stopped paying workers with stock options and gave employees a one-time chance to sell unprofitab[illegible] options. *Bloomberg*

Cash-strapped KB cuts payments to toymakers

By SUZANNE KAPNER

KB Toys, a chain of 1,300 stores with an estimated $2 billion in annual sales, has stopped paying some suppliers in an attempt to conserve cash, two people familiar with the situation said.

The move is highly unusual, given that late December is typically when manufacturers begin collecting money for toys shipped to retailers earlier in the season, these people said.

The current holiday shopping season has been especially brutal for smaller toy chains, which have been forced to compete with the deep discounts offered by Wal-Mart and other cut-price retailers.

FAO Inc., which owns the FAO Schwarz chain, among other toy retailers, filed for bankruptcy protection earlier this month and is liquidating inventory and auctioning assets.

"Wal-Mart has been really cut-throat on pricing," said Chris Byrne, a toy industry consultant. "People are buying based on price."

KB, controlled by private equity firm Bain Capital, is considering several options to better compete against toy giants, a source said. One possibility is to forgo branded toys that can be found at most toy retailers in favor of private-label products made exclusively for its stores, this person said.

KB has also stopped selling video games in hundreds of its stores — although it's unclear whether that move is a result of the curtailed payments.

John Reilly, a KB spokesman, did not return three calls seeking comment. A Bain spokesman declined to comment.

KB, which is privately held and does not disclose financial information, still has about $100 million available on its credit line, sources said.

Nevertheless, KB executives remain nervous about a downturn in sales. The decision to withhold payments to some suppliers was made to ensure the company would have enough cash on hand to meet lease payments and employee payroll obligations, these people said.

That strategy could backfire by making manufacturers less willing to ship merchandise on credit in the future, these people continued.

KB, based in Pittsfield, Mass., got its start in 1922 when two brothers opened a confectionery business that later became a toy retailer. Bain Capital, in conjunction with the company's management, bought KB from Consolidated Stores in December 2000 for an estimated $305 million.

Boeing was lax on ethics, panel says

CHICAGO — Boeing Co.'s top managers have not done enough to strengthen ethics, according to an outside report released yesterday by the world's largest aerospace company, which is being dogged by legal, ethical and possibly even criminal headaches.

The report predated what the company said was the ethics-related firing last month of two former top executives and the resignation of Chief Executive Phil Condit. It was prepared for Boeing's board by a team of lawyers led by former U.S. Sen. Warren Rudman.

The report is likely to have extremely limited impact pending ongoing investigations of alleged Boeing contracting abuses by various agencies. *Reuters*

Imax is looking for Harry Potter magic

By STEPHEN LYNCH

Imax Corp. is betting that "Harry Potter" can help it conjure a comeback.

The third film in the boy wizard series, "Harry Potter and the Prisoner of Azkaban," will open on some Imax screens at the same time it hits regular theaters in June.

It is the second simultaneous opening, after "The Matrix Revolutions," for the recovering big-screen chain.

High debts and declining interest in Imax's core science and spectacle films hurt the company a few years ago. In 2001, it laid off workers, restructured its operations and considered buyout offers.

Imax had success with a large-screen version of "Star Wars: Episode 1 — Attack of the Clones," which was shown six months after its opening date, but expects to earn even more money with simultaneous releases.

"Matrix Revolutions" earned $3 million on 48 Imax screens in its first five days in theaters.

Movie studios and Imax benefit from the $2.50 or higher premium they put on large-screen ticket sales.

Investors are excited about Imax's new strategy, but the company still has not reached its goal of showing four to six blockbusters annually.

And it's missed out on what will probably be the season's biggest hit, "The Lord of the Rings: The Return of the King."

"It would have been great to get 'Lord of the Rings,'" said Richard Gelfond, co-chief executive of Imax. "But we're going to find more event-type films like 'Harry Potter' in 2004."

"This is the second film we've done with Warner Bros., and we're more in sync," he said.

Yesterday, Imax stock closed up 72 cents to $7.87 a share.

Jeffries, Broadview deal near

By ERICA COPULSKY

Jefferies & Co., a New York-based investment bank, is near a deal to acquire technology advisory boutique Broadview International LLC, sources familiar with the matter told The Post.

Jefferies is finalizing an agreement to purchase Fort Lee, N.J.-based Broadview. Although the proposed deal is in the late stages of negotiations, it could still fall apart, sources warned. However, if talks proceed on track, a deal could be announced as early as today.

Terms could not be determined at press time. Representatives for Jefferies and Broadview could not be reached for comment.

Broadview is seen as an ideal fit for Jefferies, a New York-based trading firm that has been actively expanding its investment banking capabilities and has no real presence in Silicon Valley. Broadview generally targets deals in the $100 million or less range — the sweet spot for Jefferies, which focuses on the middle market.

Broadview, like many of its tech banking peers, has experienced a painful reversal of fortunes in recent years. At the height of the tech craze in the late 1990s, the high-flying firm couldn't grow fast enough. But since the tech stock bubble burst in early 2000, Broadview has suffered through the prolonged market drought in its core industry.

After a deal to be acquired by UBS fell through, Broadview was forced to cut its staff in half in the last few years — from 300 employees during the market peak in 2001 to about 150.

So far this year, it has advised on nearly 30 merger deals worth $1.2 billion.

Spitzer probing Security Trust

BOSTON — New York Attorney General Eliot Spitzer has convened a grand jury to investigate allegations of illegal mutual fund trading at Security Trust Co. that cost its customers millions of dollars, sources familiar with the matter said yesterday. The grand jury, meeting in secret, is hearing evidence and may consider handing up criminal indictments. A spokeswoman for Spitzer's office declined to comment on the matter.

Reuters

BLACK CAN'T SELL

Hollinger board won't let ousted CEO off hook

Business EXCLUSIVE

By TIM ARANGO

Executives at troubled newspaper empire Hollinger International plan to block any attempt by ousted CEO Conrad Black to sell his controlling stake in the company, The Post has learned.

Hollinger International executives have indicated the company would sue for an injunction should Black try to sell his controlling stake, which is held by his Toronto-based holding company Hollinger Inc., according to sources familiar with the matter.

Since stepping down as CEO of Hollinger International last month, Black has held talks with numerous parties about selling his stake in Hollinger Inc., which owns about 30 percent of the equity and 72 percent of the board vote in Hollinger International.

Some of the parties involved in the talks have been Daily News Chairman Mort Zuckerman, financier Nelson Peltz and buyout shop Hicks Muse Tate & Furst.

Any transaction involving Hollinger Inc. would be complicated, given the ongoing financial scandal. Hollinger Inc.'s stake in Hollinger International is worth roughly $400 million, but a buyer would have to take on roughly $250 million in liabilities — including $120 million of bonds that would come due with a change in ownership.

When Black stepped down as chairman, he agreed to work in the interest of all shareholders, and since news emerged that he had been holding talks about selling his own stake, minority shareholders have voiced concerns.

CONRAD BLACK
Hands are tied.

In a Dec. 9 letter to Gordon Paris, who replaced Black as CEO, investment firm Tweedy Browne wrote: "Conrad's continued disregard for Hollinger International shareholders is in conflict with the agreement you, the board and Conrad reached ... Any transaction involving Hollinger Inc. alone is to the detriment of Hollinger International shareholders, as it would transfer control of our company in a transaction not open to all shareholders."

Tweedy Browne has been instrumental in bringing to light many of the alleged financial shenanigans at Hollinger International that led to Black's ouster.

Black and some of his top deputies were forced to resign after the board of directors found they took some $32 million in payments that were either unauthorized or not properly disclosed.

Black, the company and its KPMG auditors are under investigation by the Securities and Exchange Commission and have been subpoenaed.

As first reported this week in The Post, the scandal has also attracted the attention of the Chicago office of the FBI and U.S. attorney for the northern district of Illinois, raising the possibility that Black could eventually face criminal charges.

It is believed Black could be in violation of the Sarbanes-Oxley Act, which holds executives criminally liable for approving false financial statements.

Hollinger International operates The London Daily Telegraph, the Chicago Sun-Times and Jerusalem Post, among other newspapers.

The company has hired investment bank Lazard to seek a possible buyer.

Kerkorian, Time Warner in MGM talks - again

By ERICA COPULSKY and TIM ARANGO

Kirk Kerkorian, the octogenarian billionaire who has sold and bought back Metro-Goldwyn-Mayer twice before, may soon flip the Lion once again.

MGM is in early-stage talks with media giant Time Warner about a potential sale of the legendary movie studio, sources familiar with the situation said.

Such a deal would give Time Warner, the world's biggest media company, title to one of Hollywood's most valuable film libraries.

Discussions are in preliminary stages, and no deal is imminent, sources warned.

"There have been talks at a senior level, with no bankers involved," said one source. Talks have not yet focused on any of the details, such as structure or price.

Representatives from Time Warner and MGM declined comment, citing firm policy.

Shares of Los Angeles-based MGM soared 5 percent to $17.05, up 80 cents on the New York Stock Exchange. Time Warner's stock closed at $17.87, up 33 cents.

MGM's stock price implies the studio has a market capitalization of $4.2 billion. But the stock price may be artificially inflated by the ongoing tender offer by MGM, which is offering to buy back 10 million shares for up to $18 a share.

Bankers say the stock price isn't an indication of the company's true value, given the ongoing tender process. "The true value is in the library, which is worth less."

MGM has long been considered a desirable takeover candidate — at the right price— for most of the major entertainment companies. That's mainly because of its prized library of more than 4,000 feature film titles — including the "Pink Panther," "Rocky" and "James Bond" series — and more than 10,000 TV episodes. Industry analysts estimate the library generates more than $300 million in cash flow for MGM.

MGM's library would be a logical fit for Time Warner, which has indicated in recent weeks that it was looking to buy assets that would expand Warner Bros.' already vast film library.

Warner distributed MGM's home video titles until four years ago when MGM paid Warner more than $200 million to get out of the contract.

By acquiring MGM, Time Warner will increase the size of its own library by adding Hollywood's largest and most modern library to its own sizable stable of titles. It could also achieve hundreds of millions in cost savings by closing MGM's new production business.

Reel deal

Bloomberg

Kirk Kerkorian
MGM boss

Halle Berry in MGM's "Die Another Day"

Time Warner, fresh from paying down debt, is in merger talks with MGM.

Name: Metro-Goldwyn-Mayer

Majority owner: Kirk Kerkorian

HQ: Santa Monica, Calif.

Chairman: Alex Yemenidjian

2002 sales: $1.7 billion

Units: MGM Studios, United Artists, Orion Pictures

Crown jewel: Film library valued at more than $4B