DEALBOOK
Business/Financial Desk; SECTB
LightSquared Files Bankruptcy Exit Plan

By RACHEL ABRAMS
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7
English

The wireless communications company LightSquared may have a path out of bankruptcy that lets its biggest shareholder, the billionaire hedge fund manager Philip Falcone, retain some of the control he has sought.

Lawyers for LightSquared filed documents in a New York bankruptcy court late Tuesday, outlining a plan to bring in at least $1.25 billion in new equity and $2.75 billion in loans. The plan is backed by Fortress Investment Group, Harbinger Capital Partners, JPMorgan Chase and Melody Capital Partners.

The move caps a tumultuous year for LightSquared. The company has been at the center of a continued feud between Mr. Falcone, who runs Harbinger, and Charles Ergen, the satellite television mogul and the chairman of Dish Network.

Mr. Falcone and Mr. Ergen have spent months jockeying for LightSquared after it filed for bankruptcy last year. LightSquared began an auction process that drew a $2.2 billion bid from Dish in the summer. Harbinger later sued, claiming that Mr. Ergen had been surreptitiously buying the company's debt in a separate bid for control. Harbinger contended that the move circumvented stipulations in LightSquared's agreements that prevented a competitor, like Dish, from buying its debt.

The suit also accused Mr. Ergen of making a ''lowball, bad-faith bid'' for LightSquared's wireless spectrum through a Dish subsidiary. The accusations came against a backdrop of a larger industry scramble to acquire spectrum -- a limited yet vital resource for telecommunications companies to run wireless networks.

LightSquared canceled its auction plans after it received no competing bids, but Mr. Ergen's bid is set to remain in effect until mid-February.

A federal bankruptcy judge, Shelley C. Chapman, will review the proposed financing plan.

LightSquared's bankruptcy filing came after the Federal Communications Commission forbade the company from creating a 4G LTE network, which the regulator feared would interfere with GPS navigation. Those plans would have transformed LightSquared into a broadband network that could compete with major players including AT&T and Verizon.

As part of the arrangement, Melody Capital has agreed to lend LightSquared $285 million until it can put its larger capital plan in place.

The latest financing plans are also contingent upon approval by the F.C.C.

A representative for LightSquared declined to comment. Harbinger did not respond to requests for comment.

This is a more complete version of the story than the one that appeared in print.

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Corrections

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English

The Deal Professor column on Wednesday, about Charles W. Ergen's pursuit of LightSquared, the broadband wireless company, referred incorrectly to the ownership of SoundPoint Capital Management, a hedge fund that had a role in acquiring LightSquared's debt. SoundPoint Capital Management is owned by Stephen J. Ketchum and other partners, not by Mr. Ergen. (SoundPoint had arranged for the LightSquared debt to be bought by SP Special Opportunities L.L.C., which is wholly owned by Mr. Ergen.)

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The New York Times

DEALBOOK
Business/Financial Desk; SECTB
Battling in Gray Areas of Law in a Bid to Control a Rival

By STEVEN M. DAVIDOFF
1,418 words
4 December 2013
The New York Times
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6
English

CORRECTION APPENDEDIn Charles W. Ergen's war for LightSquared, the fiercest fight involves a legal loophole.

It had started all so brightly for LightSquared, the broadband wireless company controlled by Philip Falcone's hedge fund, Harbinger Capital Partners. LightSquared was created, its website says, to ''unleash the boundless opportunity of wireless broadband connectivity for all'' by beaming from satellites fourth-generation wireless Internet access across America. By sidestepping the need to lay expensive cable, LightSquared sought to reach previously untapped rural areas, providing full access to the Internet. Billions were invested to achieve a goal that even the president has endorsed.

The government, however, did not fully cooperate. LightSquared faltered when the Federal Communications Commission determined that the company's satellite signals interfered with the Global Positioning System. Unable to secure an F.C.C. license to operate, LightSquared filed for bankruptcy in May 2012.

As the company teetered, Mr. Ergen and his satellite television company, Dish Network, pounced, having noticed a flaw in LightSquared's debt documents. The documents were written to prevent a ''direct competitor'' of the company from acquiring its debt. This meant that Dish could not buy up the debt, but whoever controlled the debt would be in prime position to acquire the company if LightSquared filed for bankruptcy.

So Mr. Ergen, a former poker player, had a hedge fund, Sound Point Capital Management, arrange for a second company he owns to acquire roughly $1 billion worth of LightSquared's $1.75 billion in outstanding debt. Let's pause here to note that Mr. Ergen is not only the chief executive of Dish, but he has his own private investment vehicle.

Mr. Ergen's purchase led to Dish making a $2.2 billion bid for LightSquared's assets, one that appears poised to succeed.

Not only are Harbinger and LightSquared fuming over this series of events, but so are some of Dish's shareholders.

Harbinger is mad because Dish's bid frustrated its own attempts to maintain control of LightSquared in the bankruptcy proceedings. Harbinger had proposed a plan that would have paid off all of LightSquared's debt but kept Harbinger in control. But Mr. Ergen has enough debt to block that plan and push instead for an auction of the company's assets.

Harbinger sued Mr. Ergen and Dish over the bond purchases in August, a case that was dismissed by a bankruptcy court, and Harbinger refiled this week. LightSquared is also seeking permission from the bankruptcy court to bring a suit on its own behalf. In a court filing, LightSquared contends that Mr. Ergen breached the debt agreement because the documents define a ''direct competitor'' to also be a subsidiary of a direct competitor. LightSquared is arguing that because Mr. Ergen controls both Dish and the hedge fund that bought the debt, the fund is a subsidiary of Dish.

Yet that argument stretches the plain meaning of a "subsidiary" -- a company owned or controlled by a holding company -- language that is not in the document. So LightSquared's claims against Mr. Ergen are tenuous at best.

The case with Dish's shareholders is more complicated.

If Dish acquires LightSquared, Mr. Ergen will profit in the hundreds of millions from his bond bet. This seems to be a clear conflict, and is why some of Dish's shareholders are unhappy. Any takeover has its risks, and these will be borne by the shareholders, while Mr. Ergen will be rewarded regardless. (He is, to be sure, Dish's largest shareholder, owning roughly 53 percent of the company.)

Typically, when this kind of situation arises, the company's board would set up a special committee of independent directors to handle the bidding. And Dish's board initially did this, appointing its only two independent directors to form a special committee. The two did what special committees do, and hired independent advisers and considered a bid for LightSquared.

But once the independent directors recommended a bid, a funny thing happened. The rest of the directors voted to disband the special committee and took control of the bid process.

Dish, however, did not publicly disclose to its shareholders that the special committee had conditioned its approval of the LightSquared bid on continuing to monitor the proceedings. Not only that, but the special committee also conditioned its approval on examining how Mr. Ergen's profit from the sale of LightSquared would be divvied up between him and Dish. Upon the board's vote to disband the special committee, one of the two committee members resigned.

At a hearing last week, a Nevada court refused to exclude Mr. Ergen from Dish's bidding for LightSquared and re-establish the special committee. Under Nevada corporate law, a special committee is not even required, which is not the case in Delaware, where most companies are incorporated. Nevada also gives executives much wider latitude to engage in transactions that conflict with their interests as officers of their company.

The Nevada judge, Elizabeth Gonzalez, refused to find that Mr. Ergen had done anything wrong in Dish's decision to bid for LightSquared. She instead stated that excluding Mr. Ergen from the bidding would "harm" Dish itself by depriving it of its most experienced director in its consideration of a bid for LightSquared.

On Tuesday, the auction was postponed to Dec. 10, delaying Dish's bid to acquire LightSquared's assets. And the bankruptcy court still has to approve the sale to Dish. In part, this will depend on whether the court finds that Dish acted in good faith in making this purchase.

One has to marvel at Mr. Ergen. Indeed, in an email to an executive at an affiliate, EchoStar, that was disclosed in litigation, one person wrote that "watching Charlie in action is fascinating if not truly awesome. He has boxed everyone in." Mr. Ergen has both profited and arranged for Dish to get the prize. Mr. Ergen has also shown what a great poker player he is, pushing boundaries and taking advantage of every gray area in the law.

If the bankruptcy court approves the sale, there will still be more litigation, although the conflict issue will then loom larger than ever. Will Mr. Ergen share with Dish his hundreds of millions in profits from this deal? Or are they even his to share? After all, if Mr. Ergen had bought LightSquared himself, his profit would not yet have crystallized. He'd have to take on the business of actually turning around LightSquared. But now he will be paid for the bonds, while Dish and all its shareholders get the risk.

If Mr. Ergen decides to keep the money, Nevada's pro-executive laws may very well let him. Mr. Ergen may even be justified in keeping these profits because he took the risk of buying LightSquared's debt and Dish may have lost out on acquiring a valuable asset had he not acted. Then again, Mr. Ergen most likely bought this debt knowing that Dish was likely to bid. After all, Mr. Ergen runs the company. In the next round of shareholder litigation that may occur if Dish succeeds in buying LightSquared, this will be the claim the shareholders pursue.

Even if they lose, Mr. Ergen's detractors, including some Dish shareholders, may still argue that just because it is legal doesn't always make it right. Whatever the outcome, Mr. Ergen has once again shown that sometimes money and smarts can run circles around the letter if not the spirit of the law.

This is a more complete version of the story than the one that appeared in print.

Correction: December 5, 2013, Thursday

This article has been revised to reflect the following correction: The Deal Professor column on Wednesday, about Charles W. Ergen's pursuit of LightSquared, the broadband wireless company, referred incorrectly to the ownership of SoundPoint Capital Management, a hedge fund that had a role in acquiring LightSquared's debt. SoundPoint Capital Management is owned by Stephen J. Ketchum and other partners, not by Mr. Ergen. (SoundPoint had arranged for the LightSquared debt to be bought by SP Special Opportunities L.L.C., which is wholly owned by Mr. Ergen.)

Steven M. Davidoff is a professor of law and finance at Ohio State University. His columns can be found at nytimes.com/dealbook. Follow @StevenDavidoff on Twitter.

DRAWING (DRAWING BY HARRY CAMPBELL)

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The New York Times

DEALBOOK
Business/Financial Desk; SECTB
Legal Side Effect in Admission to S.E.C.

By ALEXANDRA STEVENSON and BEN PROTESS
903 words
8 October 2013
The New York Times
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3
English

Updated, 8:26 p.m. | When Philip A. Falcone admitted committing "multiple acts of misconduct" in a settlement this summer with the Securities and Exchange Commission, the hedge fund billionaire appeared to put his legal woes to rest.

But that admission, a rarity given the S.E.C.'s longstanding policy of allowing defendants to "neither admit nor deny" wrongdoing, has given rise to a fresh set of problems for both Mr. Falcone and the commission.

On Monday, New York's top financial regulator used the admission to punish Mr. Falcone in an unrelated case, imposing a seven-year ban on the billionaire from controlling insurance companies licensed in New York. Mr. Falcone was also barred from serving as an officer or director of Fidelity and Guaranty Life Insurance, which is owned by the Harbinger Group, the publicly traded company that Mr. Falcone runs. Under New York state law, regulators can prevent someone from overseeing insurance companies if the person demonstrates "untrustworthiness."

For Mr. Falcone, who has no day-to-day involvement with the insurer, the fallout is limited. And in an interview on Monday, his first since the settlement, he played down the implications.

"It's very frustrating but it is what it is," said Mr. Falcone, a 51-year-old money manager. "I don't need to knock my head against a wall."

But the action by the New York regulator, Benjamin M. Lawsky, could cause headaches for the S.E.C., potentially creating a precedent that undermines its campaign to extract admissions of wrongdoing from Wall Street. With the prospect that such admissions could come back to haunt defendants in other cases, legal experts say, there could be a chilling effect on the banks and hedge funds that regulators seek to punish. Investors might also use the admissions to bolster civil lawsuits.

"This is the event that is going to stick in the craw of every defense lawyer," said Thomas A. Sporkin, who spent nearly 20 years in the S.E.C's enforcement unit until last year, when he moved to the law firm Buckley Sandler.

Rather than settle, Mr. Sporkin said, defendants might be more inclined to take a case to trial, straining S.E.C. resources and imperiling the agency's chance at a victory.

The S.E.C. declined to comment on Monday, but as recently as last week, it said it welcomed a courtroom fight.

"We will demand admissions, and if the defendant isn't prepared to agree, we will litigate at trial," Andrew J. Ceresney, the co-head of the S.E.C.'s enforcement unit said at a legal conference.

The deal with Mr. Falcone on Aug. 19 underscored this approach. The regulator sued Mr. Falcone in 2012, accusing him of borrowing $133 million from his hedge fund to pay his taxes, manipulating bond markets, and favoring certain investor requests for redemption over others.

Mr. Falcone agreed to a settlement in May 2013 that did not require an admission of wrongdoing. But in an unexpected turn of events this summer, the commission overturned the original settlement and changed its policy of allowing defendants to "neither admit nor deny" wrongdoing.

As part of the new settlement and admission of wrongdoing, Mr. Falcone was barred from the securities industry for five years.

In the speech last week, Mr. Ceresney argued that admissions were important for holding defendants accountable and providing catharsis to the investing public. He noted that the shift had already begun to ''bear fruit,'' citing a recent action admission from JPMorgan Chase, which acknowledged violations of securities laws over its $6 billion trading loss in London last year, and the settlement with Mr. Falcone.

Mr. Lawsky's action came nearly two months after the S.E.C.'s deal with Mr. Falcone.

''It is vital to ensure that those who operate insurance companies will always put retirees and policyholders first and act with the utmost integrity,'' Mr. Lawsky said in a statement. Citing the admission, and relying on an obscure state law, Mr. Lawsky said that Mr. Falcone failed to meet those criteria. Mr. Lawsky was likely to review the settlement, even in absence of an admission.

Mr. Lawsky's office added that the S.E.C. had anticipated that Mr. Falcone's settlement ''may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organization, licensing boards, and other regulatory organizations.''

It appeared that some consequences have already materialized.

As part of the action against Mr. Falcone, employees at his hedge fund, Harbinger Capital, were also prohibited from controlling an insurance company licensed in New York. And ahead of that ban, two Harbinger Capital employees -- Robin Roger, general counsel and co-chief operating officer at Harbinger Capital, and Keith M. Hladek, chief financial officer -- stepped down from Fidelity's board.

In a statement on Monday, a spokesman for the Harbinger Group said that it ''takes its obligations with regulators very seriously and we look forward to continuing to manage Fidelity and Guaranty Life for the long term.''

This is a more complete version of the story than the one that appeared in print.

Philip A. Falcone, chief of the Harbinger Group. A New York regulator blocked him from controlling insurance companies. (PHOTOGRAPH BY STEVE MARCUS/REUTERS)

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The New York Times

DEALBOOK
Business/Financial Desk; SECTB

An Admission Of Wrongdoing As S.E.C. Takes A Harder Line

By ALEXANDRA STEVENSON; Ben Protess contributed reporting.
1,141 words
20 August 2013
The New York Times
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1
English

CORRECTION APPENDEDWall Street's regulator sent a message on Monday that it was now taking a more aggressive stance on securities settlements as it extracted its first admission of wrongdoing under a new policy.

The regulator, the Securities and Exchange Commission, said that the hedge fund manager Philip A. Falcone had agreed to admit wrongdoing and to be banned from the securities industry for at least five years to settle market manipulation accusations. As part of the settlement, he and his fund, Harbinger Capital Partners, must also pay more than $18 million.

The deal comes a month after the commission had in a rare move overruled its own enforcement staff to reject a settlement struck with Mr. Falcone and Harbinger.

That original agreement had called for a two-year ban from raising new capital and no admission of wrongdoing. It also did not include an injunction against committing fraud in the future -- language common to nearly every single securities settlement.

The original settlement terms had irritated the S.E.C.'s new chairwoman, Mary Jo White, people briefed on the matter said, and frustrated many others within the agency who saw that deal as too lax.

The new, tougher terms reflect a wider policy change that Ms. White outlined this year, aiming to shift the burden of admission of guilt onto the defendant, overturning a longstanding policy of allowing defendants to ''neither admit nor deny'' wrongdoing.

The agreement on Monday sets a potential precedent for the regulator, which is busy with investigations involving JPMorgan Chase and the hedge fund SAC Capital Advisors.

While going after a hedge fund manager is different than pressing a giant bank, the agency is said to be to seeking an admission of wrongdoing from JPMorgan in a settlement over a multibillion-dollar trading loss last at a bank unit in London, in an episode known as the London Whale.

''This is evidence of a tougher policy,'' John C. Coffee, a securities law professor at Columbia University, said about Monday's settlement. ''This is a case where the S.E.C. should have been greatly embarrassed by original settlement.''

Mr. Falcone was accused in June 2012 of manipulating the market by improperly using $113 million in fund assets to pay his own taxes and to favor some customer redemption requests secretly over others, among other things. His actions ''read like the final exam in a graduate school course in how to operate a hedge fund unlawfully,'' federal regulators said at the time.

In the settlement, Mr. Falcone agreed that he had acted ''recklessly'' with regard to several market transactions, including granting favorable redemption and liquidity terms to big investors, and trying to manipulate bond markets.

The total penalty amount is unchanged at $18 million. Mr. Falcone will have to pay $4 million of the amount personally, and he is liable for additional disgorgement payments of as much as $7.5 million.

Mr. Falcone will be prohibited from raising any new capital for his hedge fund, but will be allowed to meet redemption requirements; this means he can liquidate the funds. Harbinger Capital has just under $3 billion in assets under management. Mr. Falcone will also be able to continue as an officer of a public company.

For Mr. Falcone, who is currently engaged in two battles over LightSquared, a broadband company in bankruptcy he is fighting to maintain control over, the settlement appeared to be a positive turn of events. Several weeks ago, Mr. Falcone lodged complaints against the satellite television mogul Charles W. Ergen and a hedge fund, accusing them of conspiring to surreptitiously buy up LightSquared's debt.

He later filed a suit against a number of GPS companies and lobbying groups accusing them of preventing LightSquared from operating a key 4G network.

Andrew Ceresney, co-director of the S.E.C.'s enforcement unit, said on Monday, ''Falcone and Harbinger engaged in serious misconduct that harmed investors, and their admissions leave no doubt that they violated the federal securities laws.''

He continued, ''Falcone must now pay a heavy price for his misconduct by surrendering millions of dollars and being barred from the hedge fund industry.''

Mr. Falcone put on a brave face, saying he was ''pleased that we were able to reach a settlement to resolve these matters with the S.E.C.''

''I believe putting these issues behind me now is the best course of action for me and our investors,'' he said. ''It will allow me to continue to focus on my permanent capital vehicles and maximizing the value of LightSquared for all stakeholders.''

The settlement must be approved by the United States District Court in Manhattan.

The shift in S.E.C. policy to seek admission of wrongdoing comes after longstanding criticism that the agency was too soft on large organizations at the heart of the financial crisis.

Previous cases against JPMorgan, Bank of America, Citigroup and Goldman Sachs were settled without any admission of wrongdoing.

Critics of the S.E.C.'s new policy have argued that companies will refuse to settle cases if they are required to admit wrongdoing. This would lead to more trials and overburden the S.E.C.'s strained resources, critics say, possibly leading to fewer enforcement actions.

A federal judge in Manhattan, Jed S. Rakoff, has been a vocal critic of settlements that allow defendants to neither ''admit nor deny,'' and has called the policy as ''a stew of confusion and hypocrisy unworthy of such a proud agency as the S.E.C.''

''The defendant is free to proclaim that he has never remotely admitted the terrible wrongs alleged by the S.E.C.; but, by gosh, he had better be careful not to deny them either (though, as one would expect, his supporters feel no such compunction),'' he wrote.

This is a more complete version of the story than the one that appeared in print.

Correction: August 23, 2013, Friday

This article has been revised to reflect the following correction: An article on Tuesday about a revised settlement between the hedge fund manager Philip A. Falcone and the Securities and Exchange Commission referred incorrectly to the $18 million penalty that Mr. Falcone, his hedge fund and affiliated funds will have to pay. Mr. Falcone is required to pay $4 million and is liable for additional disgorgement payments of as much as $7.5 million; he is not required to pay more of the penalty out of his own pocket than had been stipulated in an earlier agreement with the regulator.

Philip Falcone (B1); Philip A. Falcone, chief of Harbinger Capital Partners, will be banned from the securities industry for at least five years. (PHOTOGRAPH BY JESSICA RINALDI/REUTERS) (B2)

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The New York Times

DEALBOOK
Business/Financial Desk; SECTB
Tycoon Opens New Front In Bid To Save Lightsquared

By ALEXANDRA STEVENSON
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10 August 2013
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2
English

The hedge fund billionaire Philip A. Falcone is in a litigious mood.

Just three days after suing the satellite television mogul Charles W. Ergen and another hedge fund in a last-ditch attempt to maintain control of LightSquared, the bankrupt wireless broadband company he owns, Mr. Falcone has turned his focus on the GPS industry.

On Friday, Mr. Falcone's hedge fund, Harbinger Capital, and its subsidiaries sued Deere & Company, Garmin International and Trimble Navigation, along with two GPS industry lobby groups, accusing them of preventing LightSquared from operating a crucial 4G network.

The case, filed in the Federal District Court for the Southern District of New York, is littered with technical jargon and is the latest in a series of lawsuits that has given Mr. Falcone a reputation as a tycoon itching for a fight as he struggles to maintain control of LightSquared.

During a pretrial meeting on Thursday for Harbinger's complaint against Mr. Ergen, which was filed in bankruptcy court, Judge Shelley C. Chapman said she was ''struggling with parsing this through'' as a row of lawyers representing a long list of plaintiffs stood before her.

In that case, Mr. Falcone contends that Mr. Ergen, the chairman of both Dish and EchoStar, and the hedge fund Sound Point surreptitiously acquired LightSquared's debt to try to seize control of the company. The suit was prompted in part by a $2.2 billion bid for LightSquared's assets from L-Band Acquisition, a subsidiary of Dish, which is named as a defendant.

The lawsuit on Friday is not directly related, but the outcome will help determine LightSquared's fate. The company has been trying to build a broadband network to compete with the likes of AT&T and Verizon, but its plans were thwarted in February 2012 when the Federal Communications Commission rejected a license it needed to begin operating the network.

The suit turns on the contention that Deere, Garmin and Trimble Navigation did not disclose problems with their own GPS equipment and instead blamed LightSquared for interfering with their GPS systems during a crucial testing period.

LightSquared has been battling the GPS industry, which argues that LightSquared's network transmitters would interfere with other GPS equipment using the same band of spectrum. It is not the first time that LightSquared has publicly lashed out at the GPS industry. Last year, before the F.C.C. blocked the operating license, LightSquared executives accused the industry of manipulating crucial tests that produced negative results.

The lawsuit against Deere, Garmin and Trimble Navigation contends that lobbying from the GPS industry and the resulting F.C.C. decision to deny LightSquared a license helped to precipitate LightSquared's bankruptcy in May 2012. The two GPS industry groups named in the lawsuit are the Coalition to Save Our GPS and the United States GPS Industry Council.

Mr. Falcone and Harbinger say they have poured billions of dollars into testing and building the network and are seeking damages of at least $1.9 billion.

Trimble Navigation called the lawsuit "lacking in merit."

"The responsibility for Harbinger's losses rests squarely with Harbinger," Jim Kirkland, Trimble's vice president and general counsel, said in a statement.

Representatives for Deere, Garmin and the two lobbying groups could not be reached for comment.

No stranger to controversy, Mr. Falcone is also battling the Securities and Exchange Commission on civil accusations that he took a loan from Harbinger Capital to pay a tax bill. Earlier this year Mr. Falcone said he had reached a settlement with the S.E.C. to pay an $18 million fine. The S.E.C. last month overruled the decision, adding another later of uncertainty to Mr. Falcone's future business activities.

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This is a more complete version of the story than the one that appeared in print.

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The New York Times

DEALBOOK
Business/Financial Desk; SECTB
Hedge Fund Manager And S.E.C. Reach Deal

By BEN PROTESS
1,517 words
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The New York Times
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1
English

12:24 a.m. | Updated

When federal regulators sued the high-flying money manager Philip A. Falcone last summer, they claimed his actions ''read like the final exam in a graduate school course in how to operate a hedge fund unlawfully.''

By Thursday, the agency appeared to be softening its tone.

Nearly a year after the Securities and Exchange Commission accused him of manipulating the market, using hedge fund assets to pay his own taxes and ''secretly'' favoring select customers at the expense of others, Mr. Falcone disclosed in a public filing that he had ''reached an agreement in principle'' to settle the two cases with the agency. The S.E.C. also struck a deal with Harbinger Capital Partners, Mr. Falcone's flagship hedge fund.

The settlement, which came after a federal judge in New York questioned aspects of the cases, would be a moral victory of sorts for Mr. Falcone, who has stubbornly resisted a deal for more than a year. It might also reignite concerns that the S.E.C.'s results sometimes fall short of its ambitions.

The S.E.C.'s punishment of Mr. Falcone appeared steep, if only because it spelled an end to his long career as a hedge fund wizard. Mr. Falcone, who made a fortune betting against the subprime mortgage market in 2007, has agreed to at least a two-year ban from raising new capital, a death knell for a hedge fund manager. He must also ''take all actions reasonably necessary to expeditiously'' return money to investors who are fleeing the fund, according to the public filing on Thursday.

But with the exodus of capital, and a wireless venture that he bankrolled in bankruptcy, Mr. Falcone's hedge fund was already resigned to its fate. And the fine print of the S.E.C. deal suggests that Mr. Falcone, who is not required to admit or deny the agency's accusations, could escape relatively unscathed.

''The settlement, itself, would change very little in Falcone's life,'' said Erik Gordon, a professor of law and of business at the University of Michigan.

For one, the deal comes with an $18 million penalty from the S.E.C. -- a rounding error to a hedge fund billionaire. Mr. Falcone will personally pay $4 million of the penalty, according to people briefed on the matter, while the fund's management company will pay the rest. One of the people briefed on the matter noted that $18 million was higher than what Mr. Falcone initially offered to pay and was a substantial sum given that the hedge fund's investors did not suffer any financial harm.

Still, the two-year ban comes with a loophole. According to the people briefed on the matter, the ban does not apply to the nine investment advisers that Mr. Falcone runs through Harbinger Capital. The S.E.C. granted the carve-out, the people said, so Mr. Falcone could unwind the hedge fund without harming investors by selling off pieces at fire-sale prices.

More important, perhaps, Mr. Falcone can retain his control of the Harbinger Group, a publicly traded conglomerate that he uses to make a broad array of investments. In recent years, Mr. Falcone has started to emerge as something of a private equity investor, taking varied stakes in the insurance business and consumer goods industry, including the company that produces the George Foreman grill. That business remains largely unaffected by the S.E.C. deal.

The settlement, the people said, is also notable for something that it did not include: a common provision that prohibits defendants from committing future violations with fraudulent intent.

The lack of a so-called fraud injunction, an unusual victory for the target of an S.E.C. action, is a reminder of broader concerns about the toughness of the agency. During the tenure of Robert Khuzami, the former enforcement chief of the S.E.C. who filed major cases against Wall Street firms, the agency came under scrutiny for not leveling bigger fines. He notably butted heads with a federal judge in New York, Jed S. Rakoff, who in 2010 called the agency's $150 million settlement with Bank of America over lax public disclosures ''half-baked justice at best.''

Now that the S.E.C. is in transition under a new chairwoman, Mary Jo White, the agency is vowing once again to strike a hard line against financial fraud.

An S.E.C. spokesman declined to discuss the terms of the settlement with Mr. Falcone, given that approval of the agency's commissioners is still required. Mr. Falcone's lawyer, Matthew S. Dontzin, also declined to comment.

The settlement emerged after earlier attempts at a deal came up short. Mr. Falcone, the people briefed on the matter said, refused to settle last year as long as the S.E.C. insisted on applying an injunction against fraud, which would amount to something of a rebuke. In June, the S.E.C. held its ground, deciding to file its cases instead.

But then the S.E.C. received a warning sign from Judge Paul Crotty, who at a hearing in February declared that in one part of a case: ''I'm having difficulty seeing exactly where the wrong occurred here.''

Settlement talks, the people said, resumed just days later. This time, Mr. Falcone was willing to pay a larger sum. And the S.E.C. agreed to drop its bid to impose the fraud injunction. Agency officials, the people briefed on the matter said, decided that a fraud injunction in this case would be redundant. Mr. Falcone, the people said, will still have to settle charges that he committed fraud, and is prohibited from breaking the law.

The S.E.C. also decided to impose an independent monitor on the firm. But the agency agreed to pick the monitor, the people said, from a list of five people Mr. Falcone recommended.

''It appears to be a pragmatic resolution of a matter in which the judge expressed some doubt about the S.E.C.'s charges,'' said Stephen J. Crimmins, a partner at the law firm K&L Gates and a former enforcement official at the S.E.C.

For Mr. Falcone, the deal could close a painful chapter in his long Wall Street career.

There was a time when Mr. Falcone, who made his way from rural Minnesota to the Harvard hockey team, was seen as one of the savviest investors on Wall Street. His prescient bet against subprime mortgages made him the envy of the hedge fund world and led Harbinger's assets to soar near the top of the industry.

The success also thrust him and his wife, Lisa Maria, into the ranks of New York's moneyed elite. Their charitable donations, like a $10 million gift to the High Line in Manhattan, were overshadowed only by a flashy taste for fashion and real estate that made them the subject of tabloid fascination.

But Mr. Falcone's fortunes tumbled last year. A bet on LightSquared, an upstart wireless venture he sought to build from scratch, soured as the government blocked his effort to build a 4G network. A year ago, the company filed for bankruptcy, dealing a blow to Mr. Falcone, who once owned 96 percent of LightSquared's shares.

Then the S.E.C. came bearing down on him. In June, after settlement talks broke down, the agency filed two sets of civil fraud charges against Mr. Falcone.

In one case, it accused Mr. Falcone of cornering the market in a particular category of bonds. In a separate action, the S.E.C. accused Mr. Falcone of allowing three unidentified banks and investment firms -- Goldman Sachs, HSBC and Paamco, according to people briefed on the matter -- to withdraw money from his hedge fund when others could not.

The S.E.C. also took aim at Mr. Falcone for taking a $113.2 million loan from his fund to pay his own tax bill in 2009. He borrowed the money, the S.E.C. said, at a time when the fund had blocked investor redemptions and then kept the deal secret for five months.

The accusations led to an unsparing critique from the S.E.C.

''Not only are hedge fund managers expected to be savvy investors, they are supposed to serve the interests of their clients,'' Bruce Karpati, head of the S.E.C.'s asset management unit, said at the time. Mr. Karpati, who announced his departure from the agency on Thursday, then added: ''Here, in addition to raiding a fund for personal benefit and cutting secret deals with favored investors, Falcone then lied to investors about what he had done.''

This is a more complete version of the story than the one that appeared in print.

Though he faces an S.E.C. penalty, Philip Falcone can retain control of his Harbinger Group under the terms of a settlement. (PHOTOGRAPH BY JESSICA RINALDI/REUTERS) (B6)

Document NYTF000020130510e95a00059

The New York Times

Business/Financial Desk; SECTB
Dealbook Online

By EVELYN M. RUSLI, AZAM AHMED, STEVEN M. DAVIDOFF, MICHAEL J. de la MERCED and PETER LATTMAN
338 words
7 July 2011
The New York Times
NYTF
Late Edition - Final
4
English

SUN WORSHIPERS The mood was congenial as moguls converged on the 29th annual Allen & Company conference in Sun Valley, Idaho.

The retreat, which has given rise to its share of multibillion-dollar transactions, is attracting a bevy of deal makers. While deal chatter will most likely dominate many private conversations, serious merger talk was largely shelved on Tuesday night. Many executives were eager to discuss the schedule, which included a chat between Bill Gates, above, and Mark Zuckerberg, planned for Saturday. EVELYN M. RUSLI

TURBULENCE Philip A. Falcone is having a tough time keeping a lid on the comings and goings at his hedge fund, Harbinger Capital Partners.

The latest news, disclosed in a regulatory filing on Tuesday, notes the departure of the firm's chief operating officer, Peter A. Jensen, 46. The filing also announces the appointment of Omar M. Asali as acting president for another investment vehicle of Mr. Falcone's, the Harbinger Group. AZAM AHMED

PERCEPTION VS. REALITY Controversy arose from Silver Lake's refusal to allow former employees of Skype to exercise their options and profit from Skype's sale to Microsoft. Silver Lake has been called ''evil'' and ''greedy'' for its failure to follow Silicon Valley norms, which allow executives to exercise vested options even after they leave a private company.

As it turns out, the Deal Professor says, this isn't really Silicon Valley practice at all. STEVEN M. DAVIDOFF

POTENTIAL DEAL Kinetic Concepts, a maker of wound-healing technology, is seeking to sell itself for about $5 billion, people briefed on the matter said on Wednesday.

The company has held talks with several buyout firms, though the negotiations may still fall apart, said these people, who spoke on condition of anonymity. One of these firms is the Blackstone Group, one of these people added. MICHAEL J. de la MERCED and PETER LATTMAN

nytimes.com/dealbook

PHOTO

DRAWING

Document NYTF000020110707e7770008j

The New York Times

Business/Financial Desk; SECTB
A Brash Bettor Stumbles

By JULIE CRESWELL and AZAM AHMED
1,440 words
2 December 2010
The New York Times
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1
English

Shortly after noon on Nov. 14, a Russian-made rocket blasted off from Baikonur Cosmodrome, the Soviet-era launch site that catapulted Sputnik 1 into orbit.

The slim Proton Breeze M carried a commercial satellite called SkyTerra 1 and, with it, the ambitions of one of the world's richest hedge fund managers, Philip A. Falcone.

SkyTerra 1 will usher in a new era of 4G broadband communications, insists Mr. Falcone, who watched the launch via the Internet from his Upper East Side home -- alone.

''I didn't want my family to see my reaction in case things didn't go as planned,'' Mr. Falcone said.

But even as his satellite orbits overhead, Mr. Falcone seems to be losing altitude. Federal authorities are examining whether he used his giant hedge fund as a personal piggy bank to pay a personal income tax bill. They are also investigating whether his money management firm, Harbinger Capital Partners, gave preferential treatment to certain clients.

Alarmed by the investigations and uneasy about Mr. Falcone's 4G ambitions, investors like Goldman Sachs, the Blackstone Group and New York State's public pension fund have asked to withdraw money from Harbinger.

Meanwhile, Mr. Falcone has been selling investments. He has unloaded stakes in Citigroup and The New York Times Company and a $650 million investment in Inmarsat, a British satellite company.

All of this has led to speculation in the hedge fund community that Mr. Falcone and his firm are confronting a cash squeeze. If more investors withdraw money, the whispers go, Mr. Falcone could be in trouble.

Nonsense, said Mr. Falcone in an interview in his office. ''The last thing I'm thinking about in the morning is whether I have a cash-flow problem,'' he says.

Such assurances aside, the developments represent quite a turnabout for Mr. Falcone, who burst onto the scene three years ago after making a winning bet against the subprime mortgage market. He and his wife, Lisa Maria, promptly stormed New York society, ruffling some well-coiffed feathers along the way.

Throwing money around as only newly minted billionaires can, the Falcones bought a mountaintop villa in St. Barts and the Penthouse mansion of Bob Guccione on the Upper East Side. A leggy brunette who grew up in Spanish Harlem, Ms. Falcone turned heads with a Prada sensibility and her pet pig, Wilbur.

Amid the galas and charity auctions, the couple also stirred controversy by disregarding the unwritten rules of moneyed New York. Like the time Ms. Falcone, in an iridescent minidress, interrupted the speaker at a 2009 gala for New York's new High Line park and pledged to match a $10 million grant by Barry Diller and his wife, Diane Von Furstenberg.

''When she did the thing at the High Line, it put some noses out of joint,'' said David Patrick Columbia, the editor of newyorksocialdiary.com.

Slouched over a chair in a conference room at Harbinger's spartan Midtown offices this week, Mr. Falcone, 48, hardly looked worried. He wore a rumpled white shirt, opened two buttons down. Beaded bracelets, made by his two daughters, peaked out from his French cuffs.

''I'm not getting out of the hedge fund business. The business has been very good to me,'' Mr. Falcone insisted. ''We've gone through rough patches before and we'll go through them again.''

At the same time, however, Mr. Falcone spelled out a new, emerging vision for himself and his firm: He wants to build a public company that will protect him from the whims of flighty investors.

Through the Harbinger Group, a publicly traded company that once processed fish oils, Mr. Falcone plans to acquire numerous companies as long-term investments. He intends to transfer into this company his hedge fund's majority stake in Spectrum Brands, which makes the George Foreman grill.

''I do have a vision for this thing, and it will be a big part of my future,'' Mr. Falcone said.

And yet Harbinger is shrinking -- fast. At its apex in mid-2008, the firm controlled nearly $26 billion. Today, after a roller-coaster ride in the markets and withdrawals by investors, that figure has dwindled to around $8 billion. Its flagship fund is off 15 percent this year, but was up 45 percent in 2009 and down 27 percent in 2008.

Mr. Falcone's relationship with some of his investors began to sour in late 2008 when he told nervous investors that he would limit withdrawals to 70 percent of the request in cash and put other, hard-to-sell investments into a separate account that he has been slowly selling and giving the proceeds to investors. Today, that account is worth about $1 billion.

But while Mr. Falcone's investors had their money locked up in some of his funds, he found a way to clear that hurdle and free up cash to pay a personal income tax bill.

Investors in his Special Situations Fund have not had access to their money since Lehman Brothers went bankrupt in the fall of 2008. Lehman was the fund's broker and held its assets. The fund is being wound down and investors are receiving proceeds from the sales of securities.

But a little more than a year ago, Mr. Falcone took a $113 million personal loan from the fund, a move that was vetted by his lawyers, he said.

Mr. Falcone said a big chunk of his personal wealth is tied up in his own funds. ''It's not like I have $113 million in my checking account,'' he said, chuckling.

Still, Mr. Falcone said he might think twice about taking such a loan given the unwelcome attention the transaction has received.

''In 20/20 hindsight, I regret being in this position,'' he said, leaning forward on the sleek black conference table and clasping his hands together. ''This has not been a fun process.''

Regulators from the Securities and Exchange Commission and the United States attorney's office in Manhattan are asking whether Mr. Falcone disclosed the loan to investors quickly enough. The loan was disclosed in a letter to investors this spring.

Mr. Falcone declined to comment on any regulatory or legal inquiries into the loan, but a spokeswoman said the firm had received a broad subpoena for information and that it was cooperating.

Mr. Falcone was also mum on the existence of another personal loan, this one backed by his personal art collection for an undisclosed amount, according to a document filed with the New York Division of Corporations.

But the combination of the two loans raised more questions in the hedge fund world.

''One of the core tenets of due diligence is looking at how the manager handles his own money. With a fund this size and enormous personal wealth, why are you borrowing off an art collection?'' asked Brad Balter at Balter Capital Management, which specializes in hedge fund investing. Mr. Balter is not an investor in Harbinger.

Mr. Falcone's brash bet taking is also worrying some investors. About 40 percent, or $3 billion, of the $8 billion Mr. Falcone manages is concentrated on his wireless broadband bet, a venture called LightSquared.

Noting the broadband gamble dwarfs the subprime bet that made him famous, Mr. Falcone said the high concentration in the fund was partly because of investor redemptions and a rising valuation for LightSquared itself.

But Mr. Falcone insists LightSquared could be the solution to overloaded wireless networks -- and Harbinger's own recent troubles. He plans to build a satellite-and-terrestrial network that will stretch across the country, a high-risk move that analysts say might cost $5 billion to build and $2.5 billion a year to operate.

Mr. Falcone conceded that LightSquared is an unusual type of investment for a hedge fund but declined to say whether he would transfer his investment to his publicly traded Harbinger Group.

For a man who traffics in personal and professional excess, Mr. Falcone has adopted a rather grounded outlook on the ups and downs of hedge funds, including his own.

''You can't go through this business and think every day is going to be a winning day,'' he said.

''These periods are never fun.''

PHOTOS: Lisa Maria and Philip A. Falcone have been active in New York society, but also stirred controversy for disregarding the unwritten rules of the wealthy. (PHOTOGRAPH BY CLINT SPAULDING/PATRICKMCMULLAN.COM) (B1); Philip Falcone of Harbinger Capital testified to a House panel in 2008 on hedge fund regulation. (PHOTOGRAPH BY JONATHAN ERNST/REUTERS) (B6)

Document NYTF000020101202e6c20005d

The New York Times

Business/Financial Desk; SECTB
Prominent Hedge Fund Said to Face U.S. Inquiry

By AZAM AHMED and ANDREW ROSS SORKIN
601 words
13 November 2010
The New York Times
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3
English

Federal authorities have begun an inquiry into whether a prominent hedge fund gave an improper advantage to its founder and certain clients and whether disclosures were made in a timely fashion, according to a person who has been interviewed by regulators about the matter.

The Securities and Exchange Commission and the United States attorney's office in Manhattan are examining whether Philip A. Falcone, the founder of Harbinger Capital Partners, failed to inform investors quickly enough after taking a $113 million loan to pay off a personal tax bill last year.

Those authorities are also looking into whether certain investors were allowed to withdraw money from the fund at a time when others were not because the fund was under strain, according to the person, who was not authorized to speak on the matter and asked for anonymity.

In response, Mr. Falcone said in an interview on Friday that his loan, taken from the firm's Special Situations Fund, which had assets of $2.5 billion to $3 billion, was approved by lawyers at Sidley Austin.

He added that the loan was more than fully collateralized by his own stake in the fund.

The United States attorney's office declined to comment and S.E.C. officials could not immediately be reached for comment.

Mr. Falcone said that he and his advisers had considered redeeming money from the fund, but that he was advised against doing so because it would have placed a deferred tax burden on the fund's other investors.

He said he needed the loan to pay off a tax bill far higher than he or his tax planners had estimated.

''I typically keep all my money in the fund,'' he said ''I didn't have $100 million lying around.''

Mr. Falcone declined to comment on whether he had been contacted by the S.E.C. or the United States attorney's office. As for whether certain clients were allowed to pull their money from the fund before others, Mr. Falcone said: ''No client was given preferential treatment.''

The inquiry, which was first reported by The Wall Street Journal, comes as Mr. Falcone finds himself in a firestorm after key investor withdrawals from his flagship fund.

Those withdrawals have prompted some to question whether he would have to liquidate the Harbinger Capital Partners Fund, which owns about a 7 percent stake in The New York Times Company.

Mr. Falcone has dismissed those fears.

Goldman Sachs has asked to redeem its entire $120 million investment in the fund, Bloomberg News reported. Mr. Falcone said the firm was uncomfortable with his outsize position in telecommunications.

The New York State Common Retirement Fund has also asked to redeem $41 million of its investment, according to Bloomberg News.

The firm's main Harbinger Capital Partners fund has fared poorly this year, falling some 15 percent. Investors have also been upset that the vast majority of the assets are tied up in wireless communications investments.

The Blackstone Group has requested redemptions from Harbinger's credit fund, Mr. Falcone said.

Mr. Falcone, who founded Harbinger with $25 million in 2001, rose to prominence in the hedge fund industry by betting successfully against the mortgage market in 2007. Those trades made him $1.7 billion.

This is a more complete version of the story than the one that appeared in print.

PHOTO: Philip A. Falcone, founder of Harbinger Capital Partners, which is said to be under investigation by prosecutors. (PHOTOGRAPH BY KEVIN WOLF/ASSOCIATED PRESS)

Document NYTF000020101113e6bd00012

The New York Times

Business/Financial Desk; SECTB
Hedge Fund Pay Roars Back

By NELSON D. SCHWARTZ and LOUISE STORY
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1
English

The Lazarus-like recovery of the nation's big banks did not benefit just the bankers -- it also created huge paydays for hedge fund managers, including a record $4 billion gain in 2009 for one bold investor who bet big on the financial sector.

The manager, David Tepper, wagered that the government would not let the big banks fail, even as other investors fled financial shares amid fears that banks would collapse or be nationalized.

''We bet on the country's revival,'' Mr. Tepper, who describes his trading technique as a mix of deep analysis and common sense, said Wednesday in an interview. ''Those who keep their heads while others are panicking usually do well.''

That strategy handed Mr. Tepper, a plain-spoken Pittsburgh native who first made his name at Goldman Sachs, the top spot on the annual ranking of top earners in the hedge fund industry by AR: Absolute Return+Alpha magazine, which comes out Thursday.

His investors did not do badly, either -- Mr. Tepper's flagship fund gained more than 130 percent last year.

The runner-up in the ranking was George Soros, the Hungarian emigre who has become better known in recent years for supporting Democratic candidates and making political headlines than for picking stocks. His fund, Quantum Endowment, grew 29 percent in 2009, earning Mr. Soros $3.3 billion in fees and investment gains.

Hedge funds -- the elite, lightly regulated investment vehicles open to a restricted range of investors -- enjoyed a winning streak during the buyout boom that preceded the financial crisis in 2008. Then the bottom fell out of the industry, handing even top hedge funds double-digit percentage losses. In turn, the earnings of the top 25 fund managers in the 2008 survey tumbled 50 percent.

At the time, some market experts questioned whether the industry could continue to charge hefty fees -- a manager typically receives a substantial portion of the fund's annual appreciation -- for such uneven performance. After all, hedge funds were supposed to protect investors against market volatility, not subject them to it.

But in a startling comeback, top hedge fund managers rode the 2009 stock market rally to record gains, with the highest-paid 25 earning a collective $25.3 billion, according to the survey, beating the old 2007 high by a wide margin.

The minimum individual payout on the list was $350 million in 2009, a sign of how richly compensated top hedge fund managers have remained despite public outrage over the pay packages at big banks and brokerage firms.

Even so, big gains were not a constant among hedge funds last year. Many struggled to show gains, signaling a widening gulf between winners and losers, industry experts said.

''There are the haves and the have-nots,'' said Sandy Gross, managing partner of Pinetum Partners, an executive recruiter for hedge funds. ''These guys are the exceptions. You're talking about the top people at top firms.''

The earnings figures reflect AR magazine's estimation of each money manager's portion of fees as well as the increased value of his personal stake in his fund.

For many of the top 25, the big personal gains in 2009 came after steep losses in 2008. Half of the top 10 managers in 2009 lost money the year before, including Mr. Tepper, whose flagship fund, Appaloosa Investment Fund I, dropped 27 percent in 2008.

Undaunted by that drop -- and by the bankruptcy and liquidation of Lehman Brothers -- Mr. Tepper loaded up on the preferred shares and bonds of the big banks in late 2008 and early 2009, correctly assuming that the government would not permit bigger institutions to fail.

It did not hurt that the Treasury Department was a fellow investor, buying preferred stock and warrants to help steady the faltering balance sheets of the banks. The government has since sold many of its bank stakes at a considerable profit.

Mr. Tepper, who manages about $12 billion for investors, also benefited from a successful investment in bonds of American International Group, the giant insurance company that was also rescued by the government.

In retrospect, investing in major banks might not seem so risky, but Jim McKee, a hedge fund researcher for the consulting firm Callan Associates, said it was a tougher call to make than simply buying up distressed mortgage bonds, which Mr. Tepper did in addition to buying bank debt.

At the time, Mr. McKee said, ''it was questionable whether the banks would be around. That was definitely a braver bet.''

Besides Mr. Tepper, the losers turned winners in 2009 included Steven Cohen (No. 5), Edward Lampert (No. 7), Kenneth Griffin, (No. 8) and Philip Falcone (No. 10).

Mr. Griffin enjoyed an especially sharp turnaround, earning $900 million as his flagship funds jumped 62 percent in 2009, compared with a 55 percent plunge in 2008.

A spokeswoman for Mr. Griffin declined to comment.

Three managers among the top 10 -- Mr. Soros (No. 2), James Simons (No. 3) and John Paulson (No. 4) -- were back-to-back winners, having profited during the lean times of 2008 as well as in the booming market of 2009.

Mr. Paulson attracted fame for betting against subprime mortgages at a time when many of his rivals had not even heard of the now notorious class of assets. That secured him the No. 1 spot in 2007, when he earned $3.7 billion, the biggest annual take for a hedge fund manager until Mr. Tepper eclipsed him last year.

Mr. Paulson was an especially adroit trader, making huge profits on bets against bank stocks in 2008 and then buying them back after they were beaten down.

A spokesman for Mr. Paulson said he was not available to comment.

This year it will probably be harder to achieve the kind of outsize returns enjoyed by Mr. Paulson in 2007 and Mr. Tepper in 2009, given the recent run-up in both stocks and bonds.

''Last year, there was a great opportunity in debt. It was very, very undervalued,'' said Carl C. Icahn, the legendary investor known for his aggressive corporate takeovers, who ranked No. 6 on the list with a personal gain of $1.3 billion. ''Today, it's fully valued. There are still great opportunities in bankrupt companies, but dealing with bankruptcies is an arcane art and much more complicated than simply buying distressed debt.''

Finding new opportunities is not the only challenge facing even the most successful hedge fund managers. In Congress, there is growing pressure to treat some earnings of hedge fund managers as income instead of capital gains, which are taxed at a lower rate.

Nevertheless, running a hedge fund will remain the best way for aspiring stock-pickers to make billions on Wall Street, even if they will have to hand over more of their profits to Uncle Sam.

''It's certainly not going to drive them to some other field,'' Mr. McKee said.

PHOTOS: David Tepper $4 billion: (2009 FEES AND CAPITAL GAINS) Appaloosa Management (PHOTOGRAPH BY JOHN HELLER/ASSOCIATED PRESS); George Soros $3.3 billion: Soros Fund Management (PHOTOGRAPH BY JIN LEE/BLOOMBERG); James Simons $2.5 billion: Renaissance Technologies (PHOTOGRAPH BY JIN LEE/BLOOMBERG); John Paulson $2.3 billion: Paulson &Co. (PHOTOGRAPH BY RICK MAIMANt/BLOOMBERG); Steve Cohen $1.4 billion: SAC Capital Advisors

(PHOTOGRAPH BY JENNY BOYLE/REUTERS); Carl Icahn $1.3 billion: Icahn Capital (PHOTOGRAPH BY CHAD BATKA FOR THE NEW YORK TIMES); Edward Lampert $1.3 billion: ESL Investments (PHOTOGRAPH BY CALE MEREGE/BLOOMBERG); Kenneth Griffin $900 million: Citadel Investment Group (PHOTOGRAPH BY JAMIE RECTOR/BLOOMBERG); John Arnold $900 million: Centaurus Advisors (PHOTOGRAPH BY J. SCOTT APPLEWHITE/ASSOCIATED PRESS); Philip Falcone $825 million: Harbinger Capital Partners (PHOTOGRAPH BY JONATHAN ERNST/REUTERS) (Source: AR: Absolute Return + Alpha)

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The New York Times

Business/Financial Desk; SECTB
Investor to Step Down From Times Co. Board

By RICHARD PEREZ-PENA
339 words
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The New York Times
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8
English

A leader of the investment team that bought a large stake in The New York Times Company two years ago, only to see it lose much of its value, will not seek re-election to the board, the company said Thursday.

In 2008, the company accepted the nomination of two directors named by the investment group, led by Harbinger Capital Partners, to avoid a proxy fight. The two, Scott Galloway, seen as the strategist of the bid to shake up the company, and James A. Kohlberg, were the first Times Company directors ever nominated by people outside the company.

Mr. Galloway will not seek re-election by shareholders in April, and the board will shrink to 13 people from 14, the company said. Mr. Kohlberg will seek re-election. Mr. Galloway declined to comment.

Another director, Daniel H. Cohen, is also stepping down. Mr. Cohen, a member of the family that controls the company through a special class of stock, is a first cousin of Arthur Sulzberger Jr., the company chairman.

To replace Mr. Cohen, the company nominated another family member, Carolyn D. Greenspon, 41, who would be the first member of the generation after Mr. Sulzberger and Mr. Cohen to serve on the board. She is a great-great-granddaughter of Adolph S. Ochs, the patriarch who bought The Times newspaper in 1896.

In late 2007 and early 2008, the Harbinger group bought about 28.5 million shares of the company's Class A stock, almost 20 percent of the total, saying that the company should sell off pieces and be more aggressive about making Internet acquisitions.

But the move coincided with an advertising slump that battered the stock price. From September through December of last year, the group sold more than 10.15 million shares, at an average price of about $8.46 a share, less than half what it had paid.

The stock closed Friday at $11.02 a share.

Document NYTF000020100220e62k0001r

The New York Times

Business/Financial Desk; SECTC
Times Company Elects Two Outsiders to Board

By STEPHANIE CLIFFORD
655 words
23 April 2008
The New York Times
NYTF
Late Edition - Final
4
English

Two investors who were part of a group that threatened a proxy battle against The New York Times Company were elected as directors at the company's annual meeting on Tuesday.

Arthur Sulzberger Jr., the chairman of the Times Company, also used the meeting to dismiss rumors about a possible sale. Newsweek and The New York Post reported on Monday that Mayor Michael R. Bloomberg of New York might be considering a purchase, a rumor that Mr. Sulzberger denied; Mr. Bloomberg denied the rumor on Monday.

''This company is not for sale,'' Mr. Sulzberger said. ''This company will continue to have the ownership it enjoys today.''

The two new directors, Scott Galloway and James A. Kohlberg, are affiliated with the investment funds Firebrand Partners and Kohlberg & Company, respectively.

Firebrand and another fund, Harbinger Capital Partners, bought more than 19 percent of the company's stock and in January proposed a slate of four directors, including Mr. Galloway and Mr. Kohlberg. The funds also outlined suggested changes, including selling The Boston Globe, some regional newspapers and perhaps the Times Company's new headquarters building. They advised a heavy investment in Internet properties.

The Harbinger-Firebrand group was threatening a proxy battle. Seeking to avoid that, representatives of the funds and executives from the Times Company had several conversations from March 7 to March 14, and on March 17 announced a deal. The board agreed to increase its size to 15 members from 13 and to support the nomination of Mr. Galloway and Mr. Kohlberg as nominees of Class A stock owners.

Mr. Sulzberger and his family, who own through a trust almost 90 percent of the company's Class B stock, which is not publicly traded, still control the majority of the board.

In response to one shareholder's question about the Times Company's resistance to the Harbinger-Firebrand group, Mr. Sulzberger said, ''I can assure you, we have no disagreement about the need for this to be a profitable company.''

At the meeting, Mr. Sulzberger outlined the Times Company's four-part turnaround strategy. The company's latest results, released last Thursday, showed a first-quarter net loss of $335,000, in contrast to a net profit of $23.9 million in the quarter a year earlier.

The strategy includes new print and online products, like an expansion of the T style magazines, which brought in revenue of $45 million in 2007, and cost-cutting, with a goal of reducing costs by $230 million by the end of 2009. The company also envisions a ''rebalance'' of assets, like the sale last year of the broadcast media group; investments in technology providers like Epsilen, which supports online teaching; and research and development, like adapting content for mobile devices and other products.

Janet L. Robinson, the chief executive, reviewed the quarter's financial results. Online revenue growth slowed to 11.6 percent for the quarter, compared with 21.6 percent in the period a year earlier. Ms. Robinson said the company was experimenting with different online advertising formats to attract advertisers.

Last year, digital revenue accounted for 10 percent of the company's revenue, Ms. Robinson said, up from 8 percent the previous year and 6 percent in 2005.

She discussed several efforts on the digital-advertising front. The company is working with Google's AdSense and is testing text ads on its science, home and garden and dining sites, she said. The company's regional group has joined Yahoo's newspaper consortium, which sells ads across several companies' sites.

The company has also joined quadrantONE, a network that sells advertising space across sites owned by the Hearst Corporation, the Tribune Company and the Gannett Company, though The New York Times itself does not participate. Ms. Robinson said that the Times Company had invested $500 million in new media since 2005.

Document NYTF000020080423e44n0003w

The New York Times

MEDIA
Business/Financial Desk; SECTC
Times Company Agrees To 2 Outsiders on Its Board

By RICHARD PEREZ-PENA
902 words
18 March 2008
The New York Times
NYTF
Late Edition - Final
4
English

The New York Times Company has struck a deal with a pair of hedge funds that want to shake up the company, giving the funds two seats on the board in order to avoid a proxy fight, the two sides announced Monday.

The agreement with Harbinger Capital Partners and Firebrand Partners marks the first time since the Times Company went public in 1967 that it has accepted directors nominated by outsiders, Times Company executives said.

It also settles, for now, the most serious bid the company has faced to loosen the control of the chairman, Arthur Sulzberger Jr., and his family. The funds have amassed 19 percent of the company's common stock, which may be the largest stake any nonfamily shareholder has held in those four decades.

The new arrangement could make for some uncomfortable internal politics, but it is not clear that it will have any effect on the company's direction. A two-class stock structure gives the Sulzberger family undisputed control of a majority of the board, and the Harbinger-Firebrand group has said that it has no plan to challenge that control.

In a statement released by the company, Mr. Sulzberger said, ''Both the board and management welcome the perspectives and insights of our proposed new directors.''

In the same statement, Philip A. Falcone, senior managing director of Harbinger, said, ''Our nominees look forward to working with the other directors and management to build and deliver value for all shareholders.''

The hedge funds have argued that the company should sell many of its assets -- including, possibly, the headquarters building in Manhattan, The Boston Globe, some smaller newspapers and a minority stake in the Boston Red Sox -- and invest aggressively in Internet companies. But the funds have also been careful not to criticize management directly, and have said that once privy to inside information, they may have a different view of the company's strategy.

A person close to the funds' leaders said that the Harbinger-Firebrand team could have won a proxy fight, but that the effort would have been expensive and damaging to relations with management. He was given anonymity because he was not authorized to discuss their strategy.

What they want is ''a seat at the table,'' he said, and ''to understand the board and the management's thinking, and add expertise and horsepower to their thinking.''

Janet L. Robinson, the Times Company's chief executive, has said that the company was always open to asset sales and Internet purchases; it sold its television stations last year, and has bought a handful of online companies, including About.com, in the last three years. But she insists that the company must act prudently, not selling just to sell or buying just to buy.

Analysts have generally supported the company's recent strategy, though some would like to see deeper cost-cutting and have cast doubt on the hedge funds' proposals.

The funds had nominated candidates for all four seats elected by holders of Class A stock. Under the pact, the company agreed to nominate two of them -- Scott Galloway, a founder of Firebrand and the leading strategist of the hedge funds' bid, and James A. Kohlberg, chairman of Kohlberg & Company.

A Sulzberger family trust owns almost 90 percent of the company's Class B stock, which is not publicly traded, and has the sole power to vote on most of the board seats.

Under the truce with the hedge funds, the number of directors elected by Class B stock will rise to 10, from 9. The number of Class A directors will rise to 5, from 4. William E. Kennard, who was one of the company's original Class A director nominees, will instead become a Class B nominee.

The company also agreed to reimburse the hedge funds for out-of-pocket expenses in connection with the director nominations and related filings, up to $250,000.

Until now, the family and its allies on the board have effectively controlled the Class A election as well as the Class B.

But in recent years, a falling stock price, a sharp downturn for the newspaper industry and mounting shareholder discontent have relaxed that grip as never before. In 2006, 30 percent of Class A shareholders withheld their votes for directors, and last year, 42 percent did so. The major shareholder that led that campaign, Morgan Stanley Investment Management, gave up its attempts to force a change and sold its stake in the company.

Times Company stock, which peaked above $50 a share in 2002, has mostly traded between $15 and $20 since last October. That opened the door for the Harbinger-Firebrand partnership to buy more than twice as many shares as Morgan Stanley held.

The company reported earnings of $209 million on $3.2 billion in revenue last year. Like most major newspaper companies, its advertising revenue was sharply lower in 2007, and has continued to fall in 2008. The industry is suffering the twin blows of a long-term shift of readers and advertisers to the Internet and a downturn in the overall economy.

Times Company shares closed at $18.74 on Monday, up 24 cents from Friday's close.

PHOTOS: Scott Galloway, left, a founder of Firebrand Partners, and James Kohlberg, chairman of Kohlberg & Company.

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The New York Times

Business/Financial Desk; SECTC
New Challenge to Times Board: Dissidents With Large Stake

By RICHARD PEREZ-PENA
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1
English

Last year, The New York Times Company fended off a major investor who complained of poor decision-making and was bent on shaking up the company. This year, management is facing another challenge from dissident investors with similar criticisms.

But this one may not be so easy to rebuff.

Since late December, two hedge funds working together, Harbinger Capital Partners and Firebrand Partners, have amassed just over 19 percent of the common shares, giving them much more leverage than the leading dissident investor last year, Morgan Stanley Investment Management, which had 7.2 percent.

Unlike Morgan Stanley, Harbinger and Firebrand do not say that they want to eliminate the two-tier share structure that allows Arthur Sulzberger Jr., the chairman and publisher, and his family to control the company.

But they do want to elect board members who are not hand-picked by, and beholden to, the current management, led by Mr. Sulzberger and Janet L. Robinson, the chief executive. (Mr. Sulzberger and Ms. Robinson declined to be interviewed for this article.)

The funds are challenging the company's investment decisions, including its commitment to the struggling newspaper industry beyond the flagship New York Times. Like many analysts, they see The Boston Globe and a group of 15 local papers as a drain on the company, which should, they argue, be focused on extracting the greatest possible advantage from the Times brand.

The investors say they want the company to sell assets like those newspapers, a minority stake in the Boston Red Sox and the new corporate headquarters in Midtown Manhattan, using the proceeds to invest more aggressively in Internet companies.

Executives of the hedge funds would not state their criticism for publication, but a person close to them said: ''I think it's safe to say that the whole is less than the sum of its parts. It's not clear how a newspaper, a baseball team and Midtown real estate add value to one another.''

The nominating committee of the Times Company board has agreed to meet with the hedge funds' four nominees for directors to be elected by Class A shareholders, raising the possibility of a negotiated deal rather than a proxy fight. At last year's meeting, dissidents did not nominate a slate of directors, but in a sign of displeasure with the company's performance, investors withheld votes representing 42 percent of the Class A shares.

If Harbinger, which is part of the Harbert Management Corporation, and Firebrand persuade enough shareholders to vote with them, the Times Company could be faced with the uncomfortable prospect of having directors nominated by dissident shareholders on its board.

But the challenge provokes a larger question: What can the Times Company do to battle the industrywide downturn that has brought sharply reduced budgets, smaller newsrooms and the sale of newspapers across the country?

The company contends it has a strategy that is already paying off: deepen the news Web sites that already draw some of the heaviest traffic and advertising on the Internet, introduce glossy magazines that attract high-end advertisers, and shop judiciously for Internet acquisitions.

One by one, many of the old newspaper families -- the Chandlers who controlled Times Mirror, the Ridders of Knight Ridder and, most recently, the Bancroft family of Dow Jones -- have given up their companies, either through consolidation or outright sales. That leaves The Times as the largest paper in the country still controlled by a family that sees ownership as a public trust.

The industry endured one of the worst revenue declines on record in 2007, and 2008 is off to an even worse start. The Times Company recently reported that advertising revenue in January fell 9.8 percent from January 2007. The Times newspaper, a longtime holdout against downsizing, recently announced plans to reduce its news department of 1,332 people by 100 positions.

Cuts like that are hardly likely to persuade nervous investors who have watched the company's share price slide to less than $18 from more than $50 in 2002. Harbinger's long-term goals are unclear, and representatives of the funds declined to be interviewed.

People briefed on the funds' plans say that they want to remain involved with the Times Company for several years at least, help change its direction and build up its value. One such person said, ''A short-term investor doesn't run for board seats.''

To the hedge fund investors, the point is not that the company's assets are necessarily bad ones, but that they neither benefit the core business nor benefit from them, while tying up a lot of capital that could be better used in aggressively pursuing Internet opportunities.

''The company needs to exponentially increase or supercharge the growth of their Internet revenues,'' a person briefed on the funds' plans said. ''This is a great time to be sitting on cash and be looking for consumer Internet media companies,'' especially for a company with ''a fire hose of traffic they can spray on these assets.''

Many analysts, though, doubt that the Harbinger group's proposals make sense. ''We do not believe a radical near-term remake of the New York Times Company is likely nor do we believe it would translate into a dramatically improved valuation for the shares in the short term,'' Peter P. Appert of Goldman Sachs wrote in a recent investors' note.

Times Company executives and some analysts argue that the company and its newspapers are making the transition to the Internet better than rivals. Since Ms. Robinson became chief executive in 2004, the company has made the kinds of Internet investments the hedge funds propose -- among these the purchase of About.com, a profitable information and advice site -- but it has moved more cautiously than Harbinger and Firebrand would like.

John Janedis, a Wachovia Capital Markets analyst, took a cautious view. ''I think any company needs to be careful not to be bigger on the Internet just to be bigger on the Internet,'' he said, because online businesses carry high prices and many fail. ''It would be difficult to find any kind of transforming acquisition.''

What the Sulzberger family thinks is not clear. People who know the family say that, unlike the Bancrofts or the Chandlers, they have remained unusually tight-knit and devoted to the company. Nor is there any hint that Mr. Sulzberger or Ms. Robinson has lost the confidence of the board or the family, which owns almost 90 percent of the Class B stock. That stake gives the family sole power in electing 9 of the 13 directors, though its holdings total only about 19 percent of the company's overall shares -- roughly the same as the Harbinger group.

But a few things have puzzled some investors, like the company's moves to expand its television holdings, only to sell all of them a few years later, or the 2002 purchases of the stake in the Red Sox and a New England cable sports channel.

In a struggle for shareholder support before the April 22 annual meeting, the Times Company management may be troubled by a memory of past missteps. Many critics point to the $2.7 billion spent to buy back shares at high prices from 1998 to 2004.

There is also a question of the funds' interest in a long-run commitment. Harbinger is better known for buying stakes in distressed properties and looking for ways to revamp them, quickly increasing the stock price and creating opportunities to sell at a profit. That has led some analysts to speculate that the hedge funds are hoping for a deal to take the company private or for a sale of the company -- something Mr. Sulzberger has ruled out and theanalysts say is very unlikely.

While Harbinger has put up most of the money for the hedge funds' big purchases of Times Company stock, the chief strategist behind their bid is Scott Galloway, founder of Firebrand, who is also one of their director nominees. He also has a marketing consulting firm and teaches marketing at the Stern School of Business at New York University.

Mr. Galloway, 43, is a tall, animated man with a gift for self-promotion, associates say, and he has experience in proxy fights, mostly with troubled companies, with mixed results. After founding Red Envelope, an Internet gift retailer, in the 1990s, he lost his board seat in a power struggle, then regained it several years later. In recent years, the company has struggled.

Working with Harbinger in 2006, he secured a seat on the board of the computer maker Gateway, with much the same argument he has made about The Times -- that it had a valuable but underexploited brand name. Gateway continued to flag and in 2007 agreed to be bought by Acer.

In its approach to The Times, Harbinger has hired a proxy solicitation firm, but several investors said they had not heard directly from the hedge funds. Two big investors, who insisted on anonymity to avoid alienating either side, said they had doubts about both camps and had not decided how to vote, but that given the poor performance of the stock, they had to listen seriously to Harbinger and Firebrand.

''They've got a good shot,'' Mr. Janedis said of the hedge funds. ''The question is, do the institutional shareholders feel more comfortable with Harbinger or not?''

PHOTOS: The new Times headquarters in Midtown Manhattan.(PHOTOGRAPH BY RICHARD PERRY/THE NEW YORK TIMES)(pg. C1); At a Times building ceremony, from left, Charles E. Schumer, Michael R. Bloomberg, the architect Renzo Piano, the developer Bruce C. Ratner, Michael Golden and Arthur Sulzberger Jr.(PHOTOGRAPH BY MICHELLE V. AGINS/THE NEW YORK TIMES)(pg. C8)

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The New York Times

Business/Financial Desk; SECTC
Two Funds Raise Their Stake In Times Company to 19%

By RICHARD PEREZ-PENA
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7
English

Two hedge funds trying to elect a dissident slate to the board of The New York Times Company amassed 19.03 percent of the company's common stock before last week's deadline for gaining voting power at the annual meeting, according to a report filed Monday.

That rivals the holdings of the Times Company's chairman, Arthur Sulzberger Jr., and his family, who have effectively controlled the selection of directors. A two-tiered stock structure gives the family unfettered control of 9 of the 13 board seats; what the hedge funds are fighting for is control of the other four.

The funds, Harbinger Capital Partners and Firebrand Partners, contend that the company is not taking full advantage of its potential value. They take the position that the Times Company should sell assets; focus on the flagship newspaper, The New York Times; and invest more in Internet operations. But the funds have also said that they do not intend to challenge the two-tiered stock structure or the control of the company by the Sulzbergers.

The company's assets include About.com, The International Herald Tribune, The Boston Globe, a string of smaller newspapers, majority ownership of a new high-rise headquarters building in Manhattan, and a minority stake in the Boston Red Sox.

The company can try to strike a deal with the hedge funds and split the four seats, or face a full-fledged proxy fight for all four -- a fight that it might lose.

Last week, the company nominated a slate of four directors for election by Class A shareholders and sent letters to shareholders urging them not to return proxy cards from Harbinger and Firebrand. But it insisted that the slate was preliminary and that it was still considering the candidates of the hedge funds.

''Members of our nominating and governance committee plan to meet with each of the four Harbinger nominees, either by phone or in person,'' said Catherine Mathis, a spokeswoman for the Times Company. She said that the company has not yet contacted those four candidates.

A person briefed on the funds' plans said of the Times' Company's attitude toward the dissident candidates, ''The question is, Is this just them going through the motions or are they serious?''

Harbinger and Firebrand revealed in a federal filing that in just a few weeks of heavy buying, they had accumulated more than 27.2 million shares, an investment of about $500 million. They stated that they owned 19.03 percent of the Class A shares. The Class A shares are more than 99 percent of the shares outstanding but have less voting power than the much smaller number of Class B shares.

In proxy material filed last week, the company said that the Sulzberger family owns about 19 percent of all shares, A or B. That includes a family trust that holds almost 90 percent of the Class B shares, which are not available to the general public, and have the sole power to vote on 9 of the 13 board seats.

The company set a record date of Feb. 22, meaning that only the owners of record as of last Friday will be allowed to vote shares at the April 22 annual meeting.

The last major dissenting shareholder, Morgan Stanley Investment Management, did not propose independent directors but did call for elimination of the dual stock, and asked shareholders to withhold their votes. Last year, 42 percent of shares were withheld, but Morgan Stanley then sold its 7.2 percent stake in the company.

Times Company shares rose 56 cents Monday, to $19.59; the hedge funds' filing was reported after regular trading ended.

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The New York Times

Business/Financial Desk; SECTC
Fund Seeks Board Seats at Times Co.

By RICHARD PEREZ-PENA and MICHAEL J. de la MERCED
592 words
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8
English

An Alabama-based hedge fund gave notice Friday that it would try to elect directors to The New York Times Company board, a day after the same hedge fund gave similar notice to another newspaper company, Media General.

The hedge fund, Harbinger Capital Partners, a part of the Harbert Management Corporation, controls less than 5 percent of Times Company stock, a level that would require a declaration to federal regulators. It has accumulated control of more than 18 percent of Media General stock.

Even if it was successful in electing a slate of directors, Harbinger would not be able to take control of the board without an about-face by the controlling family at each company.

At the Times Company, the Sulzberger family owns the great majority of the Class B stock, which elects 9 of the 13 directors. The Bryan family, longtime owners of Media General, holds a similar position. Both families have stated that they do not intend to sell or to abandon the two-class arrangement that preserves their control.

In a statement, Arthur Sulzberger Jr., chairman of the Times Company, said, ''We have a strong and independent board, but our board's nominating and governance committee will review the nominations and make a recommendation to our shareholders in due course.''

Times Company stock, which traded as high as $53 in 2002, closed Friday at $14.66. The company remains profitable -- through three quarters of last year, it reported net income of $155.7 million, or $1.08 a share -- but like the entire industry, it has been hurt by falling advertising revenue.

In addition to The New York Times, the company owns The Boston Globe, The International Herald Tribune and 15 other newspapers, and a number of Web sites, including About.com.

Media General's stock, which topped $72 in 2004, closed Friday at $19.06. Through three quarters of 2007, it reported $1.1 million in net income, or 5 cents a share.

The company publishes The Tampa Tribune, The Richmond Times-Dispatch, and The Winston-Salem Journal, along with 22 smaller daily newspapers and more than 150 other small publications. It also owns 23 network-affiliated television stations.

Harbinger's strategy is to invest in distressed assets, placing it in a class of investors sometimes known as vulture funds. The investments it has made in the last two years include Bally Total Fitness; United States Steel; Salton, the seller of George Foreman grills; and Gateway.

Last November, Harbinger and several other hedge funds injected $2.55 billion into Delphi, a car parts maker then operating in bankruptcy protection. Delphi said Friday that it had court approval for its reorganization.

A Harbinger spokesman said Friday that the fund would not comment on its investments, leaving its intentions toward the newspaper companies unclear. A Times Company executive said the company had never met with anyone from Harbinger.

Harbinger acquired a 9 percent stake in Media General in mid-2007, and more than doubled that recently. Marshall N. Morton, chief executive of Media General, said in an interview that his company had tried to contact

Harbinger several times since the summer, ''but they haven't returned any of our calls,'' leading him to conclude that the fund's move was hostile.

Plunging stock prices have made newspaper companies attractive takeover targets; in just the last two years, Knight Ridder, Dow Jones and the Tribune Company have changed hands.

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