



Uncle Sam as Inside Trader as the SEC Turns 75

The SEC is 75 years old. That's right, the Securities Act of 1933, passed on May 27, 1933 under Congress' power to regulate interstate commerce, resulted in the creation of this ubiquitous government agency 75 years ago. The SEC's 2008 Annual Report states that, in the aftermath of the credit crisis it is working to "restore trust." We thought it had been running the show for 75 years so how was trust ever lost in the first place? The report also says that the Commission is "closing regulatory gaps." We thought that's what Sarbanes-Oxley did. What gaps could possibly be left to close? We can endlessly debate the effectiveness of the SEC and the possibility of other (or no) regulatory regimes. But Milton Friedman made a point when he said that encouraging inside trading will get accurate and current information to the market quickest, ensuring a more efficient market. We are now faced with the possibility that the government itself may turn into the biggest inside trader of all time. After all, who knows most about what is going to happen to our financial sector or auto industry than the principal owner, your Uncle Sam? With the fox guarding the henhouse, who's guarding the fox? We propose that all federal employees and contractors be prohibited from trading in any stocks in which the government has an interest of 5% or more. Now, that might actually restore a bit of confidence.

California WARNing

The Federal Worker Adjustment and Retraining Notification Act (WARN) supposedly protects employees of most companies employing 100 or more employees by prohibiting mass layoffs unless 60 days notice is provided. Of course federal, state, and local governments are exempted in order to keep them nimble enough to fire people whenever they feel like it. Unfortunately, many more states are now picking up the mantle for employers of fewer than 100 people. The current economic condition is not helping things as unemployment mounts. California joined the bandwagon in 2003 with a law covering companies with 75 or more employees. These state additions are creating a patchwork playing field on which any of several refs can blow their whistle at any time. Many of these employee size requirements do not specify when a company needs to be the requisite size (in California if you employ 75 people or have employed 75 people within the past 12 months you are covered). New York is the latest mini-WARN adoptee with a law set to take effect February 1. Soon employers may react like those in France and refuse to hire in the first place.

Government as Customer (redux)

Our item last issue about the bloom fading from the government-as-customer rose, solicited some nostalgic panic in one of the Buzz's friends. He recounts a start-up that had many eggs in the government basket. They were a small water testing and environmental testing company that made the mistake of relying on the US Government as a major customer. One would think that the government would be a good credit risk, particularly a branch of the Department of Defense. This company had a contract with DoD to do testing of ground water at the Rocky Flats nuclear facility. But when 9/11 came along, the government was so paralyzed that it couldn't remember to pay its bills for services rendered under the contract for several months. Apparently the same ardor used by the IRS to make us pay was found wanting when the creditor shoe was on the other foot. The feds represented about 35% of this tiny company's revenues at the time. "The bureaucrats in charge figured it was OK because, who knows, they were the government and we weren't? The pressure on our cash flow put us under. I would counsel small businesses to beware..."

BizBuzz Jazzz 🎵🎵

Electronic Proxies

We are about to enter proxy season again, as companies prepare reports of their glowing results from 2008. Last year was the first year in which companies could legally dispense with printing and mailing paper proxies. It turns out that shareholders did not complain too much, many companies chose e-proxies, and those that did basically saved no money. Many saw no savings, many paid more to their proxy service providers and, not surprisingly, many plan on changing service providers this year.

Res Ipsa Loquitur

Birthdays

Today is the birth date of several people each of whom might have an interesting take on our current experience:

1. Wolfgang Amadeus Mozart would be 252. He would probably revel in the almost universal availability of music and might or might not condone the actions of the music industry in suing illegal down loaders.
2. Lewis Carroll, English author of *Through the Looking-Glass* would be 176 and might feel as if he was in one of his novels.
3. Edward Smith would be 158. The English captain of the Titanic might have enjoyed the movie but would certainly lament his own fame.
4. William Randolph Hearst would be 100 and would be innovating our dying newspapers the same way he innovated them 75 years ago.
5. Actress Donna Reed would be 87 and doing just great, thanks.
6. John G. Roberts, Supreme Court Justice, is 53 and taking ginkgo biloba and enrolled in a memory class.

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