

THE WAR AT HOME

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A recent lead article in the *Wall Street Journal*, "Companies Say Backdating Used in Days After 9/11" (March 7, 2007) was an obvious attempt to pluck at the readers' heartstrings. In my case, it worked.

The article reads, in part, "...the nation's stock markets were closed from Sept. 11 to Sept. 14. When they reopened the following week, the Dow Jones Industrial Average skidded more than 14%, in the worst full week for the blue-chip average since Germany invaded France in May 1940. Scores of companies rushed to grant options during the market's trough... some companies said it was pure happenstance, while others said it was intended to help motivate executives through the difficult period. But until recently none had admitted the award dates reflected improper backdating."

The notion that corporate executives would take personal advantage of a national disaster is outrageous. It is especially disheartening to think that these same business leaders were decrying acts of aggression against our country while performing underhanded acts of financial aggression against their own investors.

And it is also discouraging to read that, with the clock ticking on the statute of limitations, SEC Chairman Cox continues to suffer with the conundrum of what parties have been damaged by options backdating and what, if any, penalty should be assessed against the companies involved ("Options Fines: A Hard Call," *Wall Street Journal*, March 8, 2007). If the company is fined, is it fair that the proceeds – or the legal costs to sue management in hope of recovering the fine -- will come out of the shareholder's pocket?

As a shareholder, I can't imagine why I should be fined for the actions of company managers who engage in fraudulent activities, regardless of how well my personal investment may have performed. But guess what! A stock's performance is not dependent on exorbitant executive compensation, even though executives would have us believe it were.

The equally weighted total return from October 31, 2001 to December 29, 2006 of the nine companies whose managers performed this act of aggression* was **59.16%**. Sounds good, until you compare it to the Russell 2000 return of **96.71%** for the same period and discover these companies' average performance was well below the market return. As usual, only management – and not investors -- benefited from the fraudulent behavior.

Why is all this so important? Let's look at some numbers.

- ✓ Options-related restatements for Broadcom will exceed **\$1 billion**. (*"Options impact was more than expected," MarketWatch.com, 12/20/06*)

- ✓ The figure for UnitedHealth Group is **\$1.13 billion**. (*"UnitedHealth Books Take Options Hit," The Wall Street Journal, 3/7/07*)

- ✓ Post-9/11 backdating at KLA-Tencor increased the executives' profit on their option shares by over **\$12 million**. (*NYSSCPA.org, 3/7/07*)
- ✓ An investigation of backdating by Take-Two's board led to a **criminal conviction** of founder and former CEO Ryan Brant. (*"Take-Two: If Icahn is selling..."*, *MarketWatch.com, 3/12/07*)
- ✓ In his settlement agreement with the SEC, Ryan Brant agreed to repay **\$4.1 million** in "ill-gotten gains" from backdating manipulations. Other executives who benefited refused to participate in the internal investigation. (*"Take-Two founder settles federal options charges," MarketWatch.com, 2/14/07*)
- ✓ Former KLA-Tencor CEO Kenneth Schroeder, who was dismissed after the company took a **\$370 million** hit in 2006 over backdating, "contests the company's right" to terminate his employment and cancel his \$20 million in options. The company has had to form a special litigation panel to deal with the lawsuits. (*"KLA-Tencor books \$370M charge over stock options," Marketwatch.com, 1/29/07*)
- ✓ Former UnitedHealth CEO William McGuire's options were valued at **\$1.5 billion** shortly before he resigned. (*"UnitedHealth's McGuire to leave as CEO"*, *MarketWatch.com, 10/16/06*)
- ✓ An investigation of UnitedHealth showed that roughly **85% of the total options issued** since 1994 had been backdated. In some cases the practice resulted in individuals being awarded options with grant dates earlier than their start dates. (*"Report of Wilmer Cutler Pickering Hale and Dorr LLP to the Special Committee of the Board of Directors of UnitedHealth Group, Inc."*)

Let's urge the SEC to penalize the individuals who committed the crime, not the shareholders who were uninformed victims of their actions. And let's hope Mr. Cox doesn't drag his feet past the five-year statute of limitations on securities fraud.

**The nine companies known to have backdated in the fall of 2001 are Affiliated Computer (ACS), Broadcom (BRCM), Brocade (BRCD), Corinthian Colleges (COCO), KLA-Tencor (KLAC), Monster Worldwide (MNST), Progress Software (PRGS), Take-Two Interactive (TTWO), and UnitedHealth (UNH).*

