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Bank of America is at the Crossroads (Again)

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COVER IMAGE: The Bank of America Corporate Center is an 871 ft (265 m) skyscraper in Uptown Charlotte, North Carolina. When completed in 1992, it became and still is the tallest building in North Carolina as well as the tallest building between Philadelphia and Atlanta, Georgia; it is 60 stories high. It is the 90th tallest building in the world. Designed by Argentine architect César Pelli and HKS Architects, it is the 26th tallest building in the United States and is the most widely known building in the Charlotte skyline.

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Herbalife Speaks for Itself as Ackman and Loeb Duke it out

Kathleen Wailes
Originally Published on Seekingalpha.com

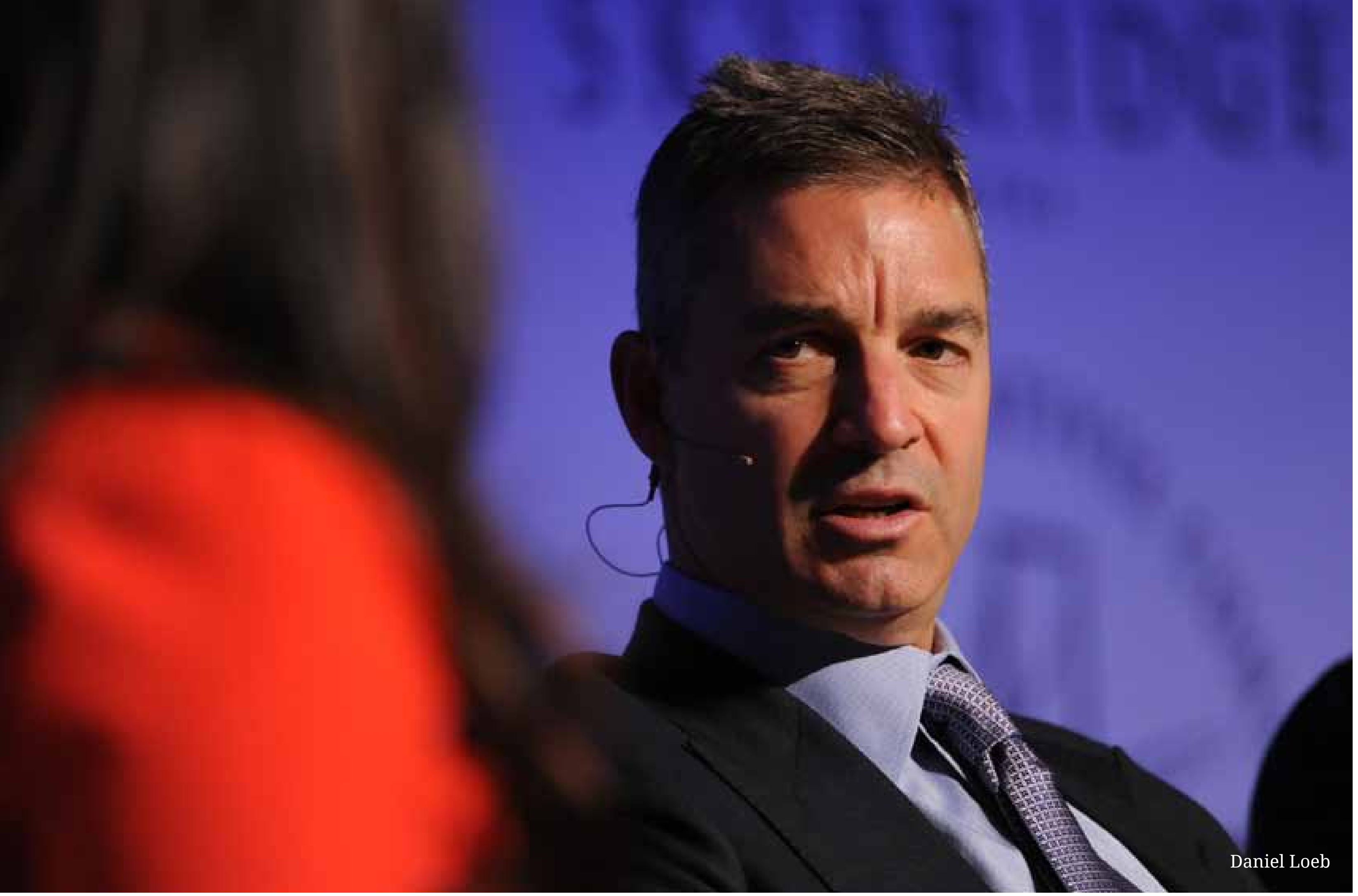
It's a clash of Wall Street titans unlike any we've seen. On one side is hedge fund manager William Ackman, who contends that global nutrition company Herbalife (HLF) is "the best-managed pyramid scheme in the history of the world." Last month, he publicly disclosed his views and a $1 billion bet—in the form of a short sale of more than 20 million shares—on the company's impending demise. If he turns out to be right, the gambit could be just what he needs to revive a reputation damaged in recent years by questionable gambles on Target (TGT), J.C. Penney (JCP), and the Hong Kong dollar.

On the other side is his good friend and investing equal Daniel Loeb, who calls Mr. Ackman's allegations "preposterous." He sees promise in Herbalife's "compounding" sales model, and disclosed on Wednesday the acquisition of more than 8 percent of the company. Whether he sees a long-term or quick-hit opportunity remains to be seen. But regardless of his intentions, Mr. Loeb has done a great deal to at least cast aspersions on Mr. Ackman's claims that the company is teetering on the edge of disaster.

In fact, investors were so encouraged by news of Mr. Loeb's position that they drove a 7.54 percent increase in share price before trading was halted by a single stock circuit breaker. Of course, such a pop represents something of a double-edged sword for Herbalife, as it could support rumors that Mr. Loeb is only seeking a short-term investment win. But at the same time, it cannot be ignored that Herbalife shares have been steadily recovering since Mr. Ackman first disclosed his position last month - rising from a low of just over $25 a share to just under $40 when trading closed last week. Mr. Loeb may see that trend continuing in the long term and may be basing his strategy on that assertion. Unfortunately for Herbalife and the investing public, only time will reveal Mr. Loeb's true motives.

And as if all of this wasn't enough to create a Wall Street drama of Shakespearean proportions, the U.S. Securities and Exchange Commission (SEC) is now reportedly entering the fray with an investigation into Herbalife. Exactly what the SEC is looking into also remains shrouded in mystery, as the inquiry is ongoing. We do know that the U.S. Federal Trade Commission (FTC) has examined sales practices similar to those utilized by Herbalife, and that the company has never been found to have engaged in wrongdoing. This may just be a case of a story becoming so substantial that the SEC feels it has to do something. Or, the Commission may feel that there is fire where Mr. Ackman sees smoke—and that it can find fault where other regulators have failed to do so in the past.

With so many questions swirling around the company and the media spotlight firmly affixed on its future, about the only thing certain on Wednesday was the need for Herbalife to take back control of its own narrative—and do so quickly. With a high-powered activist taking aim and SEC's interest piqued, the company



Daniel Loeb

could not be content to sit back and simply let Mr. Loeb's investment speak for itself.

Mr. Loeb's disclosure transformed the market into the most captive audience the company will likely ever enjoy. As such, Herbalife needed to aggressively articulate its side of the story in order to capitalize on its best opportunity to ensure that perceptions are not swayed by what it calls the "misinformation" being circulated by Mr. Ackerman.

To the Herbalife's credit, that is precisely what it did Thursday morning during a special meeting with investors in New York City. Just hours after what Herbalife CEO Michael Johnson called an "incredible and unusual" opportunity to address a wide array of analysts, investors, and media, CNN Money issued the headline, "Herbalife comes out swinging"—and swing it did.

In response to Mr. Ackman's claims that the company's nutrition clubs —or networks of distributors in 85 countries who sell products directly to consumers while also recruiting new distributors from whom they get a share of the profits - are nothing more than pyramid schemes, Mr. Johnson opened the meeting with a strong statement on the strength of the connection between the company and the people its business depends on for sales, saying that, "If you really want to know us, find an Herbalife independent distributor."

"The company rightly recognized an unprecedented opportunity to extoll its virtues to an expansive and captive audience—and it seized the day. "

In response to Mr. Ackman's claims that Herbalife, as a nutrition company, doesn't put enough resources into Research and Development, numerous executives pointed out the company spent $44 million on science and technology last year. Similar rebuttals, rooted in hard numbers wherever possible, were issued to nearly every allegation Mr. Ackman has levied.

And by 10 am Thursday morning, the mantra being echoed across numerous media outlets was Mr. Johnson's assertion that, "We are confident that you will see that we're a legitimate company with legitimate customers." At the meeting's close, Herbalife's share price had climbed higher than it has in a month to $42.99.

As of this writing, Herbalife shares have dipped after Thursday morning's excitement - but that shouldn't be read as an indictment of Herbalife's strategy in this battle of perception. The company rightly recognized an unprecedented opportunity to extol its virtues to an expansive and captive audience—and it seized the day. Rather than let the market draw its own conclusions from Daniel Loeb's capital infusion, it clearly laid out the reasons why Mr. Loeb would see the company as such a strong investment.

Before all is said and done, Thursday morning's performance may very well deserve a great deal of the credit should Mr. Loeb's presumed predictions turn out to be more reliable than Mr. Ackman's. In the meantime, investors should hold their positions, but avoid new investments in Herbalife. The tantalizing possibility of a large short position that has to be covered if Ackman is wrong, along with Loeb's assertions of a much higher value, does not offset the uncertainty of an SEC investigation and the possibility of continued reputational issues as negative information surfaces.

Disclosure: I have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours. I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it. I have no business relationship with any company whose stock is mentioned in this article.

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LANCE ARMSTRONG:
Coming Clean Won't Be Enough

Gene Grabowski
Originally Published on LEVICK Daily

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If Lance Armstrong is truly considering coming clean about his alleged use of performance enhancing drugs (PEDs), the benefits of doing so won't amount to much unless he understands that there is more to repentance than confession.

Just like the athletes and celebrities who have risen from the reputational ashes before him, Mr. Armstrong needs to be seen as taking full responsibility and paying a price for his sins. After denying the charges for so long, and doing so despite a mountain of evidence to the contrary, a simple admission of guilt won't get the job done. A comeback of this nature isn't a sprint; it's a marathon—and Mr. Armstrong can't afford any missteps along the way.

First and foremost, he needs to step to the podium—or Oprah's couch—ready to accept full culpability for his decision to dope. He can't point to a cycling culture rife with competitors seeking any and all avenues to a competitive advantage. He can't blame coaches or trainers who may have encouraged his illicit activity. He needs to affix the blame squarely on his own shoulders, admit that he was wrong, and apologize to everyone let down by his actions.

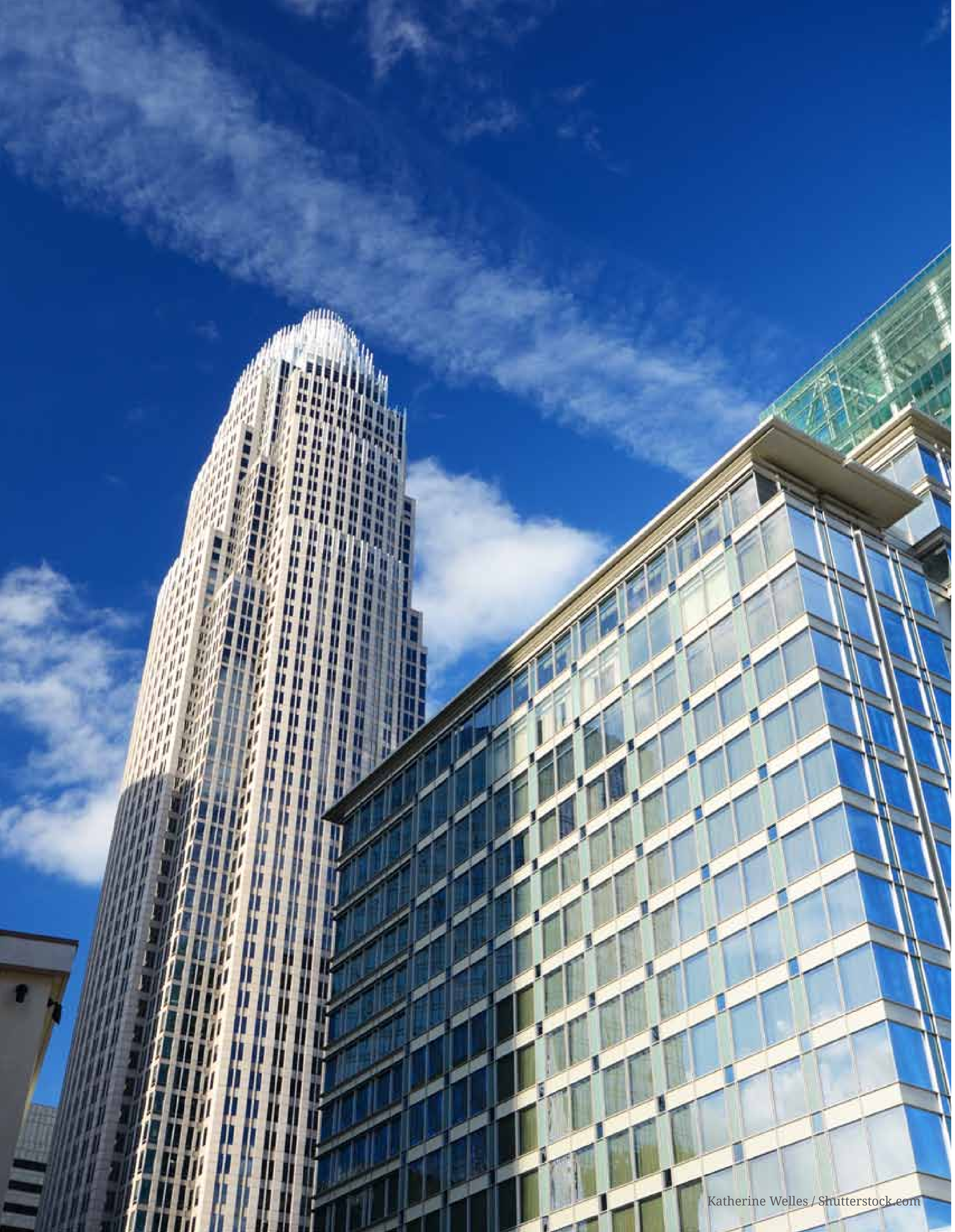
Second, Mr. Armstrong needs to go a step further by not only accepting responsibility for what he did; but for helping others avoid the same mistakes. He needs to cooperate with the U.S. Anti-Doping Agency and other authorities that might benefit from the insights he can share. He needs to talk to young athletes about the dangers of PEDs and even devote some of the $100 million he still has in the bank toward an awareness campaign that will help get his message across.

Third, and perhaps most important, Mr. Armstrong needs to be ready to make a sacrifice. It might be agreeing to give back several million dollars in Tour de France win bonuses he received from a Dallas promotions company. It might be coming to terms with the Sunday Times, which is suing Mr. Armstrong to recover $500,000 paid to him to settle a libel suit. And it might even mean a willingness to settle any perjury charges that might result from testimony—given under oath—that he never used PEDs.

Even if Mr. Armstrong takes on this herculean task and manages to win back public support, he likely won't win back the seven Tour de France titles stripped from him, the millions of dollars in endorsements he lost, or even a re turn to competitive cycling. Those cakes are all but baked. But that doesn't mean he can't once again become the inspirational figure whose examples of courage and strength meant so much to so many athletes, cancer survivors, and others touched by his legacy.

Through accountability, responsibility, and sacrifice, Mr. Armstrong has the chance to do precisely what Tiger Woods, Michael Vick, and numerous others have achieved before—but only if he understands that actions articulate a level of contrition that words simply cannot.

Gene Grabowski is an Executive Vice President at LEVICK and a contributing author to LEVICK Daily.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Bank of America — *is at* — the Crossroads

(Again)

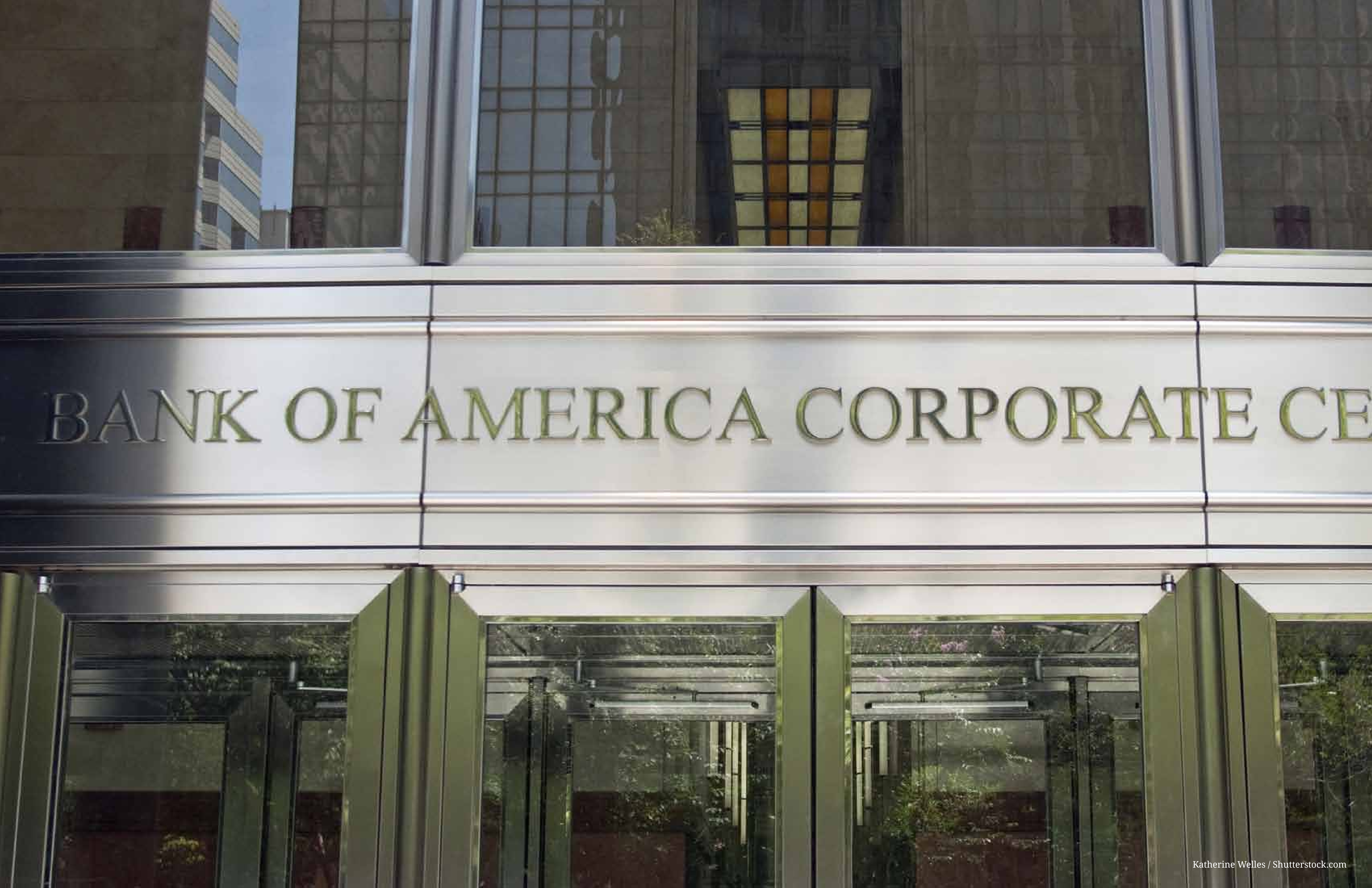
Richard S. Levick, Esq.
Originally Published on Forbes.com

B A nagging question looms amidst the long and tortured struggle of American banks to recover their reputations: Will it even be possible in our lifetimes for this industry to woo back its broader public audience, given the damage of the last five years and the persistently negative perceptions that now seem to have semi-permanently hardened?

Perhaps the question is moot. After all, what choice do the major banks have except to keep trying? Perhaps a more salient question has to do instead with the increments of recovery. How can the banks seize on ongoing events—legal, economic, political—to energize recovery in a strict business sense and to reverse the inexorable tide of public acrimony? Which events play to its long-term interests? Which are minefields in the Court of Public Opinion?

It is in this context that Bank of America's $11.6 billion settlement with Fannie Mae over the collapse of distressed mortgages (mainly loans made by Countrywide Financial) is particularly interesting. B of A and its chief executive Brian Moynihan have couched this settlement, finalized this week, in terms of real progress because it significantly advances the bank's strategic retreat from the home mortgage lending business.

Last year, Bank of America made considerable operational strides in that direction when, having already severed ties to mortgage brokers, it closed down its correspondent mortgage business after failing to sell it.



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However, to complete its exit, Bank of America must also resolve all the legal and reputational liabilities incurred as a result of its Countrywide dalliance. B of A is no doubt hoping that great progress was made this week as the Fannie Mae deal ostensibly complements the bank's 2011 settlement with Freddie Mac. The twin accusers are now both propitiated, a dirty slate wiped clean, and a new day begun.

On Monday, Moynihan trumpeted this purportedly "significant step in resolving our remaining legacy mortgage issues, further streamlining and simplifying the company and reducing expenses over time."

Along with the Fannie and Freddie settlements, B of A may likewise be buoyed by the government's agreement (involving nine other banks), completed over the weekend and spearheaded by the Office of the Comptroller of the Currency, which finally ends the government's long and frustrating foreclosure practice review. Negotiations were tumultuous as the Federal Reserve reportedly demanded hundreds of millions in additional pay-outs by the banks.

But the Fed relented and this week the government ballyhooed the deal as providing "the greatest benefit to consumers...in a more timely manner than would have occurred under the review process." The regulators conceded that the review process wasn't providing relief to borrowers at all. The course of action that now results from this settlement is presumably more clearly driven by the immediate economic needs of American homeowners.

Maybe, but it's a dangerous communications strategy for both the regulators and the banks, as the agreement allows the mortgage companies themselves to distribute $3.3 billion to over four million homeowners. It is altogether to our point—about the dangers and opportunities presented by all ongoing agreements and resolutions—that this settlement was quickly perceived as putting the fox in charge of the proverbial henhouse. Criticism this week of the settlement has indeed been widespread and severe.

Negotiations were tumultuous as the Federal Reserve reportedly demanded hundreds of millions in additional pay-outs by the banks.

From a strictly business standpoint, these varied settlements may still be welcome milestones for Bank of America, as is the ongoing divestiture of non-performing mortgage-related assets. In particular, Bank of America sold the servicing rights on two million loans worth $306 billion to Nationstar Mortgage Holdings and the Newcastle Investment Corporation. These divestitures are well worth noting because they make total sense in the context of Moynihan's promise to "streamline and simplify." In fact, they encourage the view that, more than just making promises, Moynihan continues to make good on his commitment to redefine and achieve institutional goals.

It's all about credibility and cogency. If there are business needs that banks like B of A are ill-equipped to handle internally, it makes more sense for them to stick to their knitting. But it is not about shrinking their business as the field for renewed retail growth is already broad and deep, and may well get broader and deeper as the economy recovers.

So far so good—but closure on the reputational front is an equally essential piece of the overall puzzle, and such closure is not easily achieved for an institution that has a Countrywide looming in its recent past, especially while the effects of the economic downturn are still being felt by agonized homeowners.

Current media coverage certainly underscores the stumbling blocks ahead before Bank of America can pull itself free and clear of this quagmire. New obstacles have been raised, frustrating the bank's efforts to escape its lingering reputational liabilities and restore a modicum of marketplace confidence. For example, an October 2012 suit by the Justice Department, which charges that the bank was heavy on churning and light on quality control, could cost Bank of America another $1 billion.

So what does a business at such crossroads do? As we've often had occasion to discuss in this column, the best answer to an unfortunately inescapable legacy is a compelling vision of the future. Bank of America is still a brand name and will continue to be one in the years ahead. People want to believe it can soon be mighty again. The more persuasively its leaders talk—with as much specificity as possible—about what the bank will do for them in the future, the easier it is to forgive what it's done in the past, and to overlook current agreements that may seem inadequate.

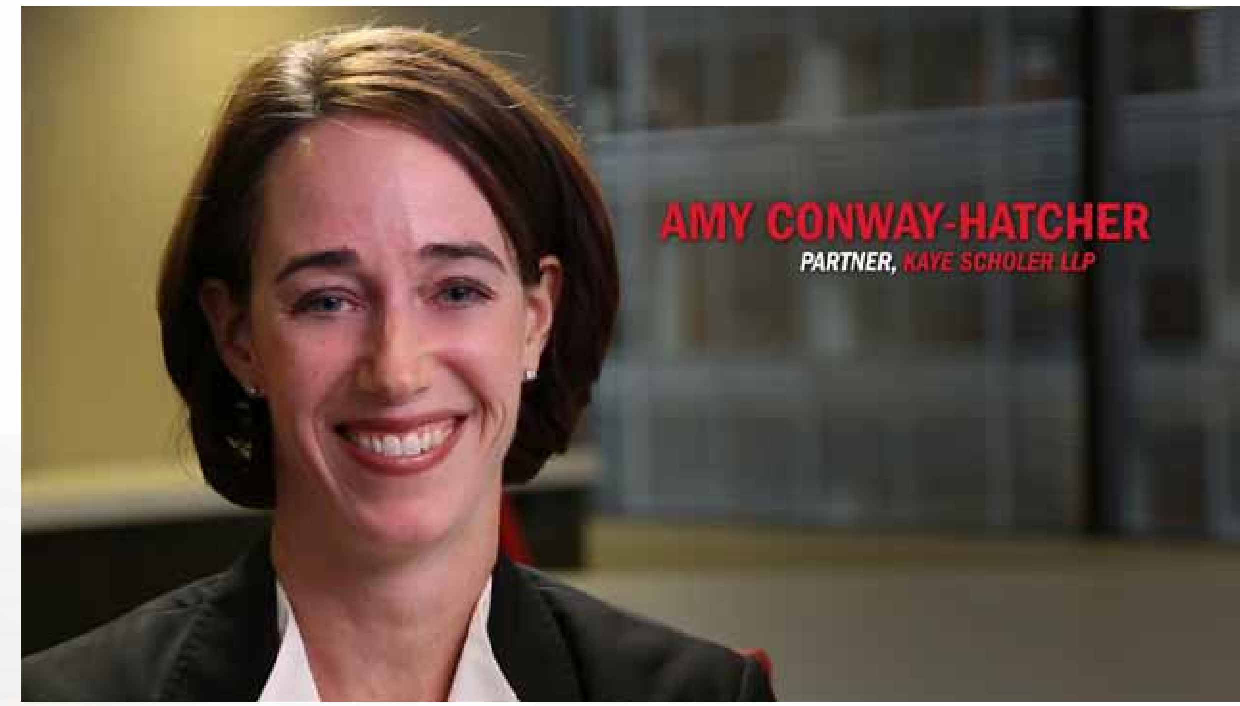
Moynihan and his colleagues have made a strong start in this direction with the divestitures of the last two years; by backing their vision of a new Bank of America with real action. That's welcome news for investors but the next critical step will be to convince beleaguered homeowners that their aspirations and the bank's are compatible.

That, to be sure, is the hardest step of all for any business.

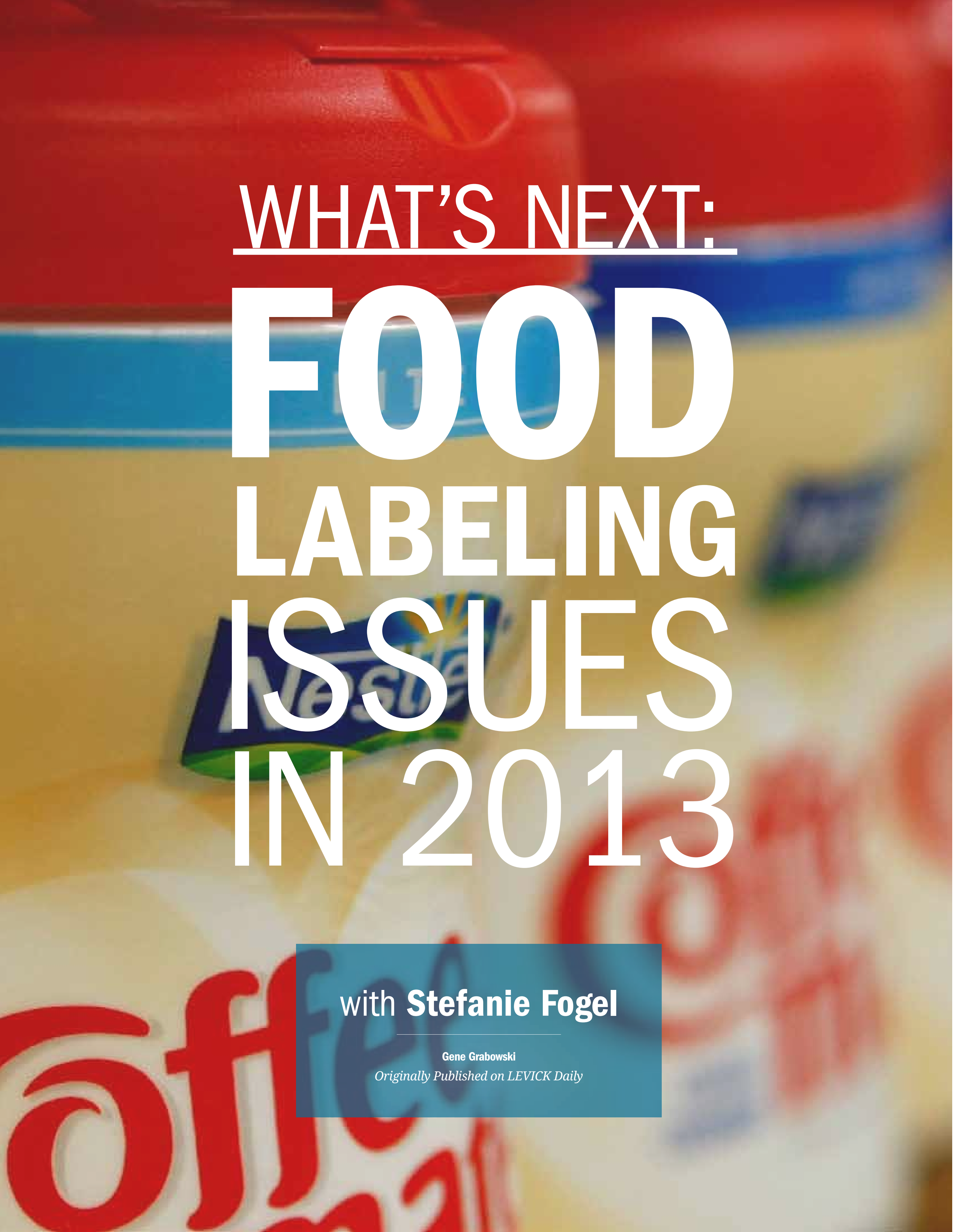
Richard S. Levick, Esq., President and CEO of LEVICK, represents countries and companies in the highest-stakes global communications matters—from the Wall Street crisis and the Gulf oil spill to Guantanamo Bay and the Catholic Church.

White Collar Enforcement *in* 2013

with Amy Conway-Hatcher



In this LEVICK Daily video interview, we discuss white collar regulation trends with Amy Conway-Hatcher, a partner in the law firm of Kaye Scholer LLP. While 2013 may not bring dramatic shifts in enforcement priorities, the advent of digital and social media has resulted in shrinking news cycles and a diminished window of opportunity for companies to control the narrative when problems arise.



WHAT'S NEXT: FOOD LABELING ISSUES IN 2013

with Stefanie Fogel

Gene Grabowski
Originally Published on LEVICK Daily

After a year that saw labeling issues come to the forefront of the food safety conversation, I sat down with DLA Piper trial lawyer Stefanie Fogel to get her take on how manufacturers, producers, and retailers can expect the debate to evolve in 2013.

Ms. Fogel is widely recognized as one of the nation's foremost authorities on food safety issues, representing national and multinational companies on matters of commercial litigation, product liability, and regulatory and code compliance. As a staunch industry advocate and a legal professional who has successfully defended numerous cases across the United States, she shared her insights on what's next for food labeling issues with LEVICK Daily.

What should the food and beverage industry infer from the fact that California's Proposition 37 failed last November? Did the vote discourage or further embolden activists seeking to impose more stringent labeling rules for products that contain genetically-enhanced ingredients?

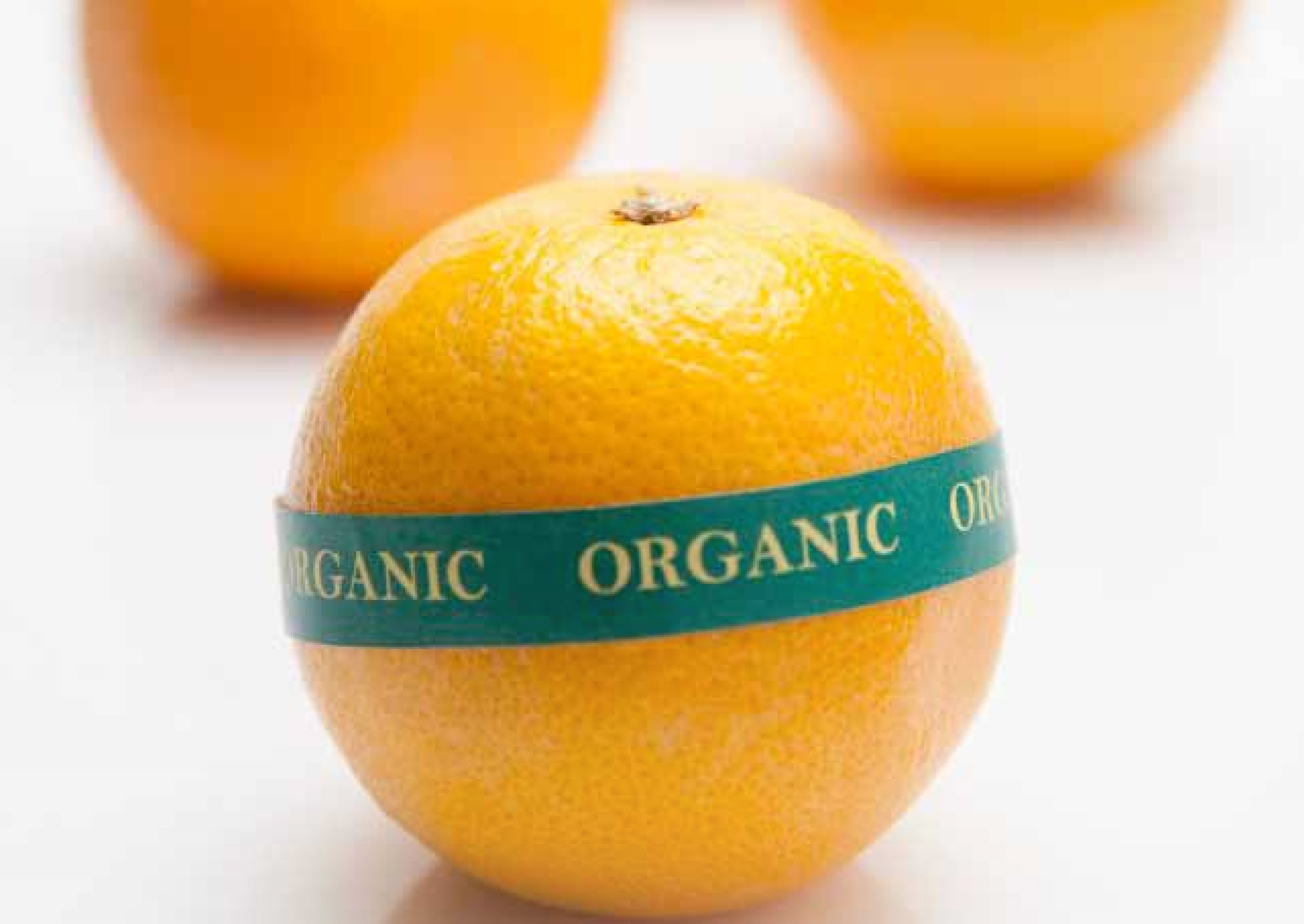
Stefanie Fogel: I think the fact that Prop 37 failed is not an indication that the issue is going away. In fact, the reality is quite the opposite. We're seeing a great deal of activity from a plaintiffs' bar that sees the potential for these issues to evolve into the next tobacco litigation—and they will continue to hammer on food manufacturers to provide the public with as much information as possible about the ingredients their products contain.

As Americans consume more genetically-modified ingredients and import more food products from around the world, there will only be more opportunities for activists and the plaintiffs' bar to demand levels of transparency that create significant burdens for manufacturers while accomplishing little to nothing in terms of safety. They want to see the U.S. Food and Drug Administration (FDA) treat food with the same levels of scrutiny traditionally reserved drugs. Depending on how successful their efforts are, we may see the FDA Inspector General get involved before long. If that happens, the largely cooperative working relationship between industry and regulators could become more contentious.

What impact has all of this had on public attitudes about food labeling issues?

Stefanie Fogel: Right now, the public's reaction can best be described as diverse. Some are concerned about the fact that they might not know what's in the foods they are eating. Others better understand the benefits of genetically-modified foods and accept that they have been safety consumed in the U.S. for years. The high-profile debates surrounding energy drinks, Greek yogurt, and what the term "natural" really means have had some impact on consumer attitudes—and as more products come under the same scrutiny, there may be a corresponding rise in consumer anxiety.

As such, this isn't an issue that industry can simply ignore and hope will go away. It's up



to food companies themselves to engage the public and clearly lay out the reasons why they should feel adequately protected by the rules currently in place.

How do you see the private sector initiating that dialogue? Are there other steps companies will—or should—take in 2013 to ensure that consumer confidence isn't eroded any further?

Stefanie Fogel: First and foremost, I think that we will see more companies taking steps to insulate themselves from litigation. They want the public to understand that the food on its tables is perfectly safe and promotes good health. They also understand that uncertainty is their worst enemy—and, as such, the more clarity they can bring to these issues, the better.

So, I think that we will see the industry come together to identify the vagaries of current rules and labeling practices and work to clearly define what certain marketing terms really mean. By establishing standards and sticking to them, companies will provide themselves with the cover they need—both in the courtroom and the Court of Public Opinion.

Gene Grabowski is an Executive Vice President at LEVICK and a contributing author to LEVICK Daily.

BLOGS *worth following*

THOUGHT LEADERS

Amber Naslund
brasstackthinking.com
Amber Naslund is a coauthor of The Now Revolution. The book discusses the impact of the social web and how businesses need to "adapt to the new era of instantaneous business."

Brian Halligan
hubspot.com/company/management/brian-halligan
HubSpot CEO and Founder.

Chris Brogan
Chrisbrogan.com
Chris Brogan is an American author, journalist, marketing consultant, and frequent speaker about social media marketing.

David Meerman Scott
davidmeermanscott.com
David Meerman Scott is an American online marketing strategist, and author of several books on marketing, most notably The New Rules of Marketing and PR with over 250,000 copies in print in more than 25 languages.

Guy Kawasaki
guykawasaki.com
Guy Kawasaki is a Silicon Valley venture capitalist, bestselling author, and Apple Fellow. He was one of the Apple employees originally responsible for marketing the Macintosh in 1984.

Jay Baer
jaybaer.com
Jay Baer is coauthor of, "The Now Revolution: 7 Shifts to Make Your Business Faster, Smarter and More Social."

Rachel Botsman
rachelbotsman.com
Rachel Botsman is a social innovator who writes, consults and speaks on the power of collaboration and sharing through network technologies.

Seth Godin
sethgodin.typepad.com
Seth Godin is an American entrepreneur, author and public speaker. Godin popularized the topic of permission marketing.

INDUSTRY BLOGS

Holmes Report
holmesreport.com
A source of news, knowledge, and career information for public relations professionals.

NACD Blog
blog.nacdonline.org
The National Association of Corporate Directors (NACD) blog provides insight on corporate governanceand leading board practices.

PR Week
prweekus.com
PRWeek is a vital part of the PR and communications industries in the US, providing timely news, reviews, profiles, techniques, and ground-breaking research.

PR Daily News
prdaily.com
PR Daily provides public relations professionals, social media specialists and marketing communicators with a daily news feed.

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ARTICLES

Christian Science Monitor | JANUARY 9, 2013
Ohio Town, Reeling from Rape Case, Sets Up Website. Can it Influence Coverage?

American Bankers Association | JANUARY 9, 2013
ABA Insurance Risk Management Annual Forum

Associated Press | JANUARY 5, 2013
Confess? Armstrong May Not Have Much to Gain

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