

Senior Management & Board Level Oversight of Anti-Corruption Governance

Today's Ethics and Compliance Environment: What Directors Need to Know



April 17, 2012

*Keith T. Darcy, Executive Director
Ethics & Compliance Officer Association (ECO)*

When bubbles burst...



Enron Era

- Enron
- Tyco
- Adelphia
- Xerox
- Rite-Aid
- Martha Stewart
- ImClone
- Computer Associates
- WorldCom
- Accounting
- Wall St. analysts
- Mutual Funds
- Insurance
- Hospitals
- Pharmaceuticals
- Brokers
- Fannie Mae
- Freddie Mac


Not Uniquely American

- Mannesmann
 - ELF
 - Royal Dutch Shell
 - VW
 - ABB
 - France Telecom
 - ABN-Ambro
 - Heidelberg Cement
 - Royal Ahold
 - Bank of Italy
 - Parmalat
 - Samsung
 - Bank of China
 - Livedoor
 - Hyundai
 - Nikko Cordial
 - *Nortel*
 - United Nations
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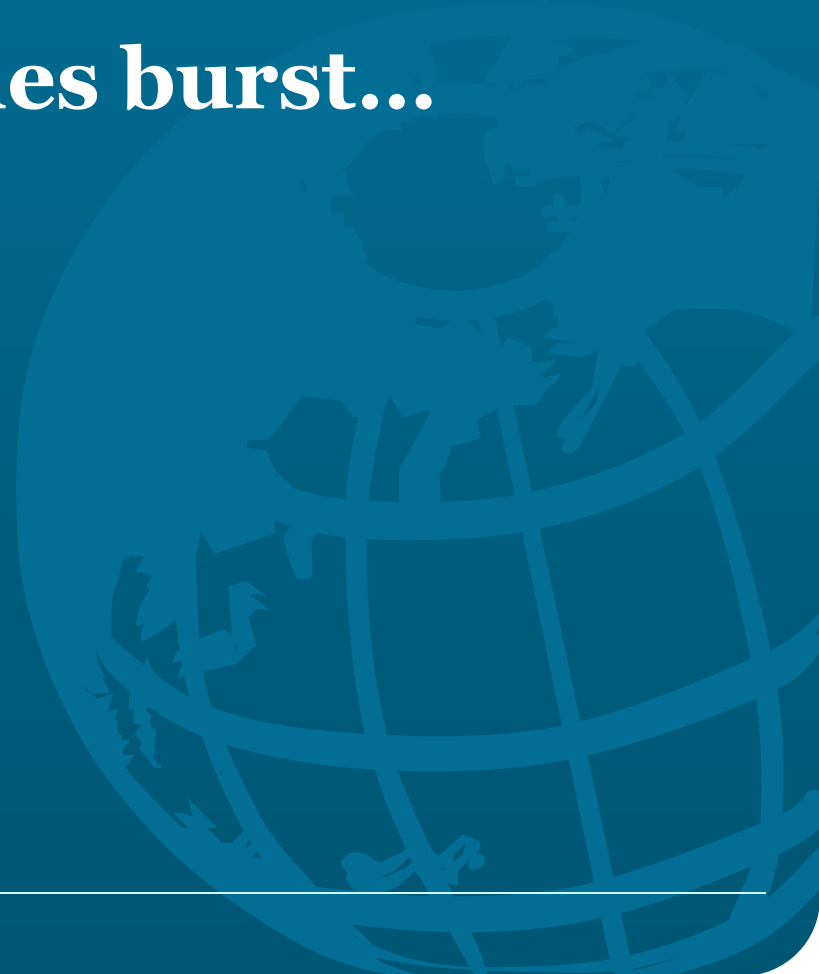
Lessons Learned

1. Irrational exuberance + uninhibited self-interest
 2. Arrogance
 3. Fraud
 4. Conflicts-of-interest
 5. Preferential treatment
 6. Accounting arbitrage
 7. Failure of independent auditors
 8. Failure of analysts
 9. Failure of rating agencies
 10. Failure of regulators
 11. ***Failure of board oversight***
 12. Culture of greed
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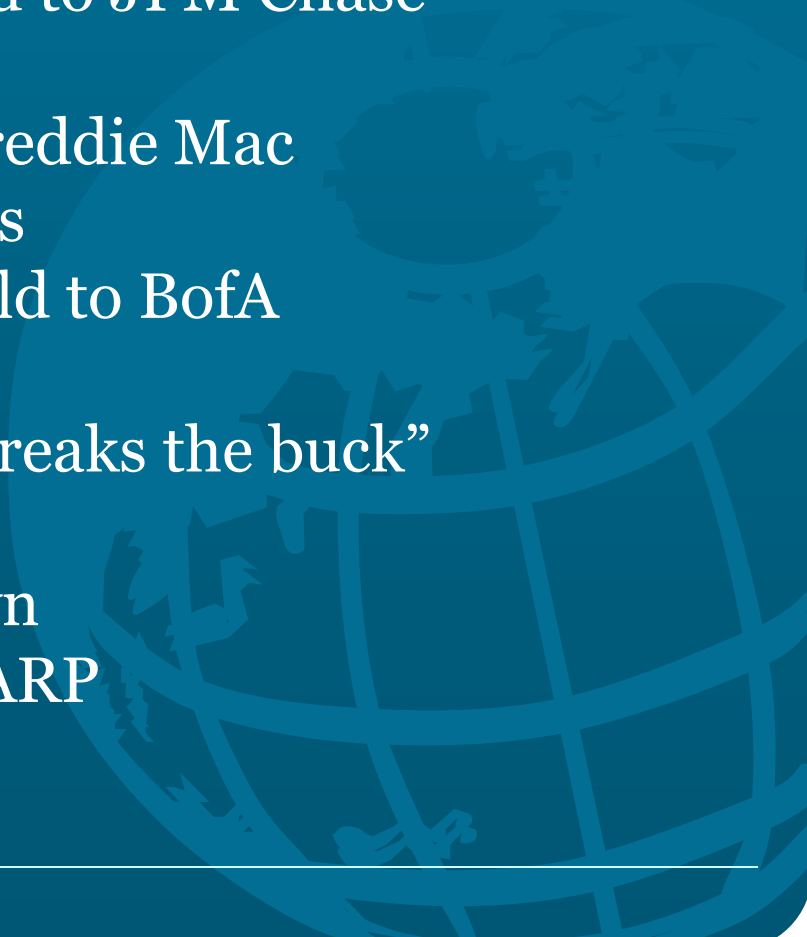
U.S. Response

- Federal Sentencing Guidelines (1991, 2004, 2010)
 - Sarbanes-Oxley Act of 2002
 - Thompson + McNulty Memos (DOJ)
 - NYSE and Nasdaq
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When bubbles burst...



The Great Recession



3/16/08	Bear Stearns sold to JPM Chase
7/11/08	IndyMac Bank
9/7/08	Fannie Mae & Freddie Mac
9/15/08	Lehman Brothers
9/16/08	Merrill Lynch sold to BofA
9/16/08	AIG
9/18/08	Reserve Fund “breaks the buck”
9/24/08	WAMU
9/29/08	TARP voted down
10/1/08	Senate passes TARP

When the tide goes out...?

Ponzi Schemes

- Bernard Madoff - \$65 billion

Fraud

- Satyam Computer - \$1 billion
- Stanford Financial Group - \$8 billion

Bribery and Corruption

- Siemens - \$1.6 billion settlement
- Halliburton - \$599 million
- BAE - \$400 million
- Daimler - \$185 million

Insider Trading

- Rajaratnum and Gupta

When the tide goes out....

- ❑ Novartis - \$422 million
- ❑ Pfizer - \$2.3 billion
- ❑ Glaxco - \$750 million
- ❑ Eli Lilly - \$1.4 billion
- ❑ Merck - \$950 million



U.S. Response

SEC

- Focus on FCPA , insider trading
- Risk and BOD governance disclosures (compensation; climate change; diversity; board qualifications)

DOJ

- Focus on fraud task forces, anti-trust

Congress

- FINREG (Dodd-Frank) + whistleblower bounty

Dodd-Frank

- Say on Pay – Advisory vote on compensation
- Executive Compensation Disclosures – CEO comp v. Ees
- Disclosure regarding EE and director hedging
- Clawback Provisions
- Proxy Access
- Disclosure regarding Chairman and CEO Structures
- Compensation Committee Independence

- Whistleblower Bounty***

Other Current Issues - Corruption

- “Ex-Head of Bank of Italy to Go on Trial”
- “Bahrain Kickback Investigation Widens”
- “Siemens Excluded from World Bank Contracts for Two Years”
- “Ex-Sinopec Corporate Chairman Sentenced to Death for Bribery”
- “China Executes 2 For Role in Tainted Milk Scandal”
- “Postmaster General in India Held for Corruption”
- “UN Cuts Back on Investigating Fraud”
- “Rio Tinto Employees Admits to Taking Bribes in China”
- “Alstom UK Directors Arrested in SFO Bribery Investigation”
- “Greece Condemned for Falsifying Data”
- “Nortel Will Liquidate Assets”
- “How German Companies Bribed Their Way to Greek deals”
- “Avon Bribery Probe”
- “BHP Billiton in US Anti-Corruption probe”
- “IKEA’s Top Russian Execs Sacked Over Suspected Bribery”
- “Russia Leads the World in Economic Crime”

Corruption

- ❑ “Niko Resources Bribed Bangladesh Minister”
- ❑ Canada’s Integrity Commissioner Retaliates Against Staff”
- ❑ Canada’s Worst Federal Employees”
- ❑ “A Wake Up Call for Canadian Auditors: Major Gaps Found in Their Audit of Chinese Firms”
- ❑ “Canada Industry Minister Broke Ethics Rules”
- ❑ “Canadian PM Shrugs Off Ethical Lapse”
- ❑ “Chief of SNC-Lavalin Steps Down After Inquiry: Mystery Payments Probed”
- ❑ “Canadian Boards Need a Facelift Says Governance Report”
- ❑ “Sino-Forest Corp. Says Its Chief Has Resigned Amid Probe”
- ❑ “Philip Services Exec Hit With 8 Year Jail Sentence”
- ❑ “Co-Founder of Portis Alternative Asset Management Pleads Guilty to Breach of Trust”
- ❑ “Telemarketing Exec Held in Largest Fraud Case of Its Kind: Canadian Competition Bureau”

Anti-Corruption Initiatives

- FCPA
 - United Nations Conventions Against Corruption
 - OECD Working Group – “Good Practice Guidance”
 - UK Anti-Bribery Law
 - G-20
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New Risks for the 21st Century

- WikiLeaks
 - Whistleblowing
 - Social Media
 - Hacking/Cyber crime
 - Transparency
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“New App Lets People to Check-In When Bribes Are Paid”

Wall Street Journal

5-17-11

“BRIBESPOT, a new app for android smartphones and soon for iPhones allows users to send in reports of bribes being taken.”



**“Transparency International Launches New
Whistleblower Hotline Called SPEAK UP”**

Irish Times

5-26-11

“China Launches Whistleblower Websites”

Sify.com India Ltd.
February 15, 2011



“I intend to take down an American Bank and expose an ecosystem of corruption”

Julian Assange
November 29, 2010

News Corp

“News of the World Hacking Scandal Exposed”

“Australian PM: Murdoch Has Questions to Answer”

“Wall Street Journal Head Resigns”

“Piers Morgan Denies Phone Hacking”

“Head of Scotland Yard Resigns”

“DOJ Preparing Subpoenas”

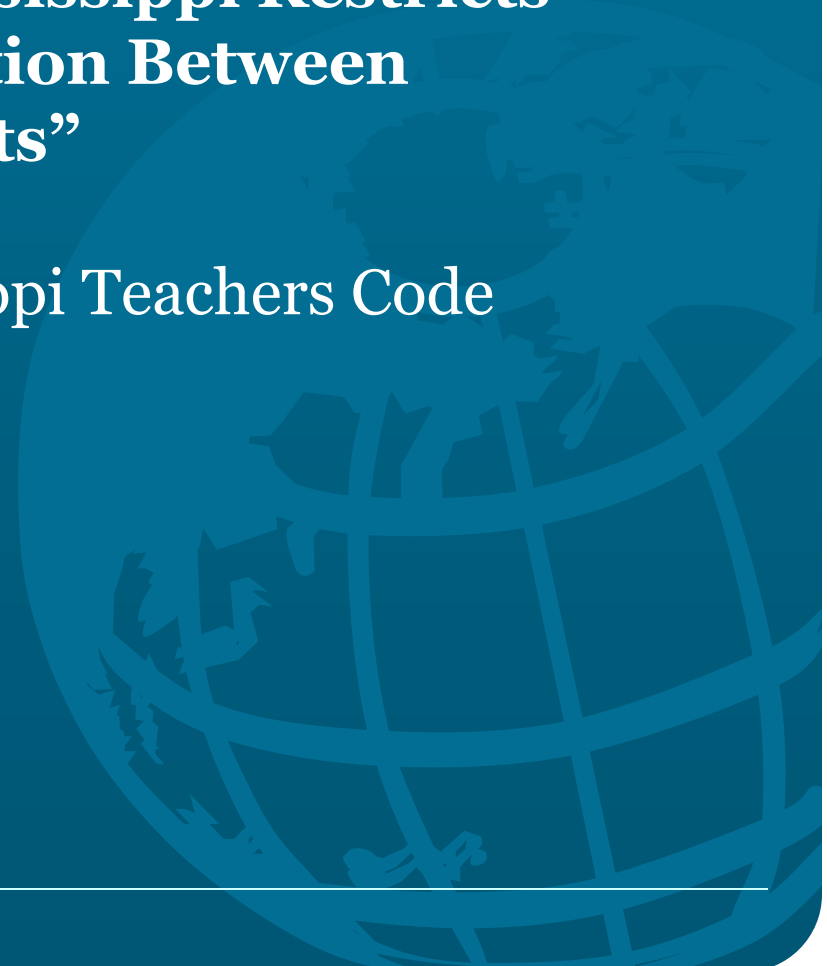
“PM Cameron Grilled by Parliament”

Cyber Threats

- “FBI Directors Warns of Growing Cyber Threat”
- “Internal Sabotage Security Risks Rising”
- “Mass Leak of Client Data Rattles Swiss Banking”
- “Social Media Use Puts Companies At Risk”
- “Unseen Security Risks Lurk in the Copy Room”
- “Data Breaches Are Heaviest At Hotels”
- “White House Focus on Nuclear Terrorism Gets Scrutiny”
- “Senators Seek Documents on Fort Hood Suspect”
- “Terror Attack on US Flight to Detroit Investigated”
- “Deloitte Poll: respondents Lack Confidence in Ability of Private Enterprises to Reduce the Occurrence of Cyber Crimes”

**“Code of Ethics in Mississippi Restricts
Social Media Interaction Between
Teachers and Students”**

Mississippi Teachers Code
8-9-11



“Facebook Hired Firm to Target Google on Privacy”

Wall Street Journal

5-13-11



“Online Monitoring of Jobs Candidates Raises Disturbing Questions”

Ethikos

8-10-11



Changing times...

“Twitter Revolution” launched the Arab Spring

- Tunisia
- Egypt
- Libya
- Yemen
- Syria
- Bahrain



Changing times...

74 year old farmer launched the Indian Summer

- Anna Hazare
- Lukpal bill



Changing times...

“Occupy Targets Banks, Corporate Campaign Spending”

- New York
- London
- Ontario
- Dublin
- Geneva
- Halifax
- Zurich
- Berlin
- Sydney
- Kuala Lumpur
- Bogota
- Brussels
- Paris
- Hong Kong
- Tel Aviv
- Rome
- Cape Town
- Mexico City

Other Headlines on Reputation Risks



Reputation Risks

- ❑ “U.S. Targets Insider Culture: Ex-Goldman Director Gupta Indicted
- ❑ “News Corp Attorney Noted Hacking Culture in 2008”
- ❑ “Congressional Review Notes a Culture of Compartmentalization at Fukushima”
- ❑ “Culture of Complacency at BP”
- ❑ “Culture Kills: The Legacy of Massey Energy”
- ❑ “Goldman Sachs: A Culture of Recklessness and Greed”
- ❑ “Culture Was Corrupt at Olympus”
- ❑ “Closed Corporate Culture Blown Open”
- ❑ “Toyota: Secretive Culture”
- ❑ “TEPCO: Culture of Compartmentalization”
- ❑ “Korea Crippled by Culture of Corruption”

Fraud

“Goldman Sachs Charged with Fraud”

Financial Times

April 17, 2010

“The whole building is about to collapse anytime now...Only potential survivor, the fabulous Fab...standing in the middle of all these complex, highly-leveraged, exotic trades he created.”

“Anyway, not feeling too guilty about this, the real purpose of my job is to make capital markets more efficient and ultimately provide the U.S. consumer with more efficient ways to leverage and finance himself, so there is a humble, noble and ethical reason for my job; *amazing how good I am at convincing myself.*”

“Why I Am Leaving Goldman Sachs”

Greg Smith, March 14, 2012

“...culture...revolved around teamwork, integrity, a spirit of humility, and always doing right by our clients.”

“...the environment is now as toxic and destructive as I have ever seen it.”

“...not one single minute is spent asking questions about how we can help our clients. It’s purely about how we can make the most money off them.”

“managing directors refer to their clients as “muppets.”

“Even after the S.E.C., Fabulous Fab, Abacus, God’s work, Carl Levin, Vampire Squids? ...Integrity?”

“I hope this is a wake up call to the board of directors.”

“SEC Examiners Enter U.S. Boardrooms to Gauge Compliance”

Reuters

April 4, 2012

“The agency intends to have direct discussions with the firm’s board about regulatory issues board members and senior management pay attention to, and how they are navigating them.”

“...to assess a firm’s culture of compliance...”

“The SEC will expect to look at the firm’s budgets, the hiring and firing...”

“The culture of compliance is an elusive concept and a real challenge, but it has a hige impact on how ethically companies perform...”

Carlo di Florio, Dir., SEC Office of Compliance Examinations

Court Cases

1996 -- Caremark Decision

2005 -- Enron and WorldCom Settlements

2005 -- Disney Decision (Business judgment)

2006 -- Stone v. Ritter



“Trustees of Columbia University to Pay \$995,000 to Settle Alleged Medicare Fraud” (False Claims)

Dow Jones News Service

10/5/11

“\$10.5 Million May End Class Action Suit Colonial Officers, Directors Agree to Settle”

Gannett

9/29/11


“Three Former Directors at Body Armor Settles SEC Charges for \$1.6 Million”

SEC Release

11/10/11

Increasingly the SEC will seek civil money penalties against directors

Director Fiduciary Obligations

- Duty of care**
 - Duty of loyalty**
 - Duty of good faith**
 - Business judgment**
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Rand Report

May 2010

- ❑ “Director responsibilities for E&C oversight...are broadly hampered by a lack of training and awareness on the part of many outside directors.”
- ❑ “...directors need to gather insights on the firm’s ethical culture and...processes.”
- ❑ “The chief ethics and compliance officer, properly positioned and empowered, can serve as a major conduit to the board on ethics and compliance issues.”

You can't legislate trust.

Either self-regulate, or...?

