

National Association of the State Boards of Accountancy

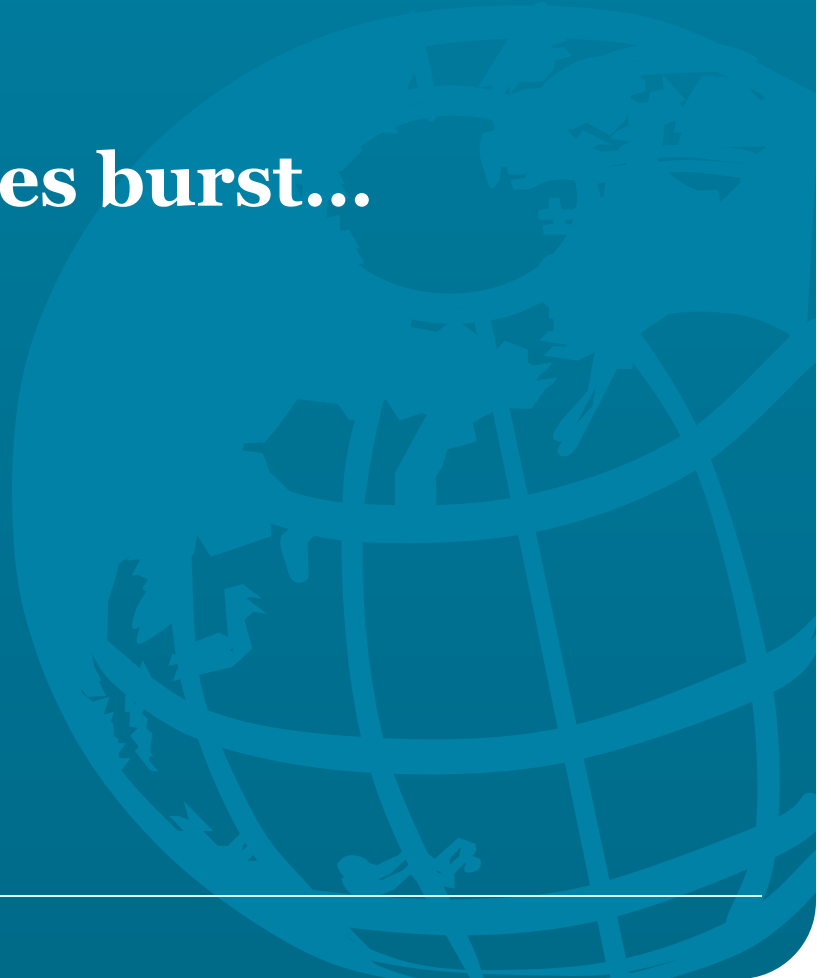
*An Overview of the Interrelationship
Between Ethics and Compliance*



October 25, 2011

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

When bubbles burst...



Post-Tech Bubble


- Enron
 - Tyco
 - Adelphia
 - Xerox
 - Rite-Aid
 - Martha Stewart
 - ImClone
 - Aurora Foods
 - Computer Associates
 - WorldCom
 - Accounting
 - Wall St.
 - 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
 - United Nations
- 

Settlements

(DPAs and Federal Monitors)

- HCA (\$1.7B)
 - AIG (\$1.6B)
 - Royal Ahold (\$1.1B)
 - Fannie Mae (\$400M)
 - Time Warner-AOL (\$510M)
 - KPMG (\$465M)
 - Adelphia (\$715M)
 - Tyco (\$750M)
 - Prudential (\$600M)
 - CA (\$225M)
 - Marsh McLennan (\$850M)
- 

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***
- 

In Response?

- Sarbanes-Oxley Act (“SOX” - 2002)
- Thompson (2003) + McNulty (2006)
- Revisions to Federal Sentencing Guidelines
-ethics and corporate culture (2004)
- NYSE + Nasdaq

Sarbanes-Oxley Act

- CEO/CFO financial certifications
- Loan prohibitions
- Bonus forfeiture
- Blackout trading restrictions
- Internal control certifications
- Codes of ethics
- Whistleblower provisions

Audit committee

(Section 301) - Must establish procedures for:

- receipt, retention + treatment of accounting issues;
- confidential + anonymous tips regarding questionable accounting.

(Section 406) – Must:

- adopt code for financial officers, or explain why not

Thompson + McNulty

Thompson Memo (2003)

- Seriousness of the offense
- Pervasiveness of wrongdoing
- History of serious misconduct
- Timely and voluntary disclosure
- Existence and adequacy of compliance
- Corporate remedial actions
- Collateral consequences of conviction
- Adequacy of non-criminal remedies

McNulty Memo (2006)

- Adequacy of board oversight
- Did the board perform independent oversight, or merely “unquestioningly ratify officers’ recommendations?”

Federal Sentencing Guidelines

November 1, 1991

-Periodic risk assessments.

-There must be standards and procedures to prevent and detect criminal conduct.

-The board must be knowledgeable about and reasonably oversee the program.

-There must be a high-level person charged with oversight.

-That person must have appropriate authority and adequate resources and unfiltered access to the board.

-The firm must take reasonable steps to communicate and train...including the governing authority.

-Evaluate the effectiveness of the program.

Federal Sentencing Guidelines

Revised November 1, 2004

Precondition to an effective program:

“...promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

“A good corporate citizen must first and foremost operate ethically.”

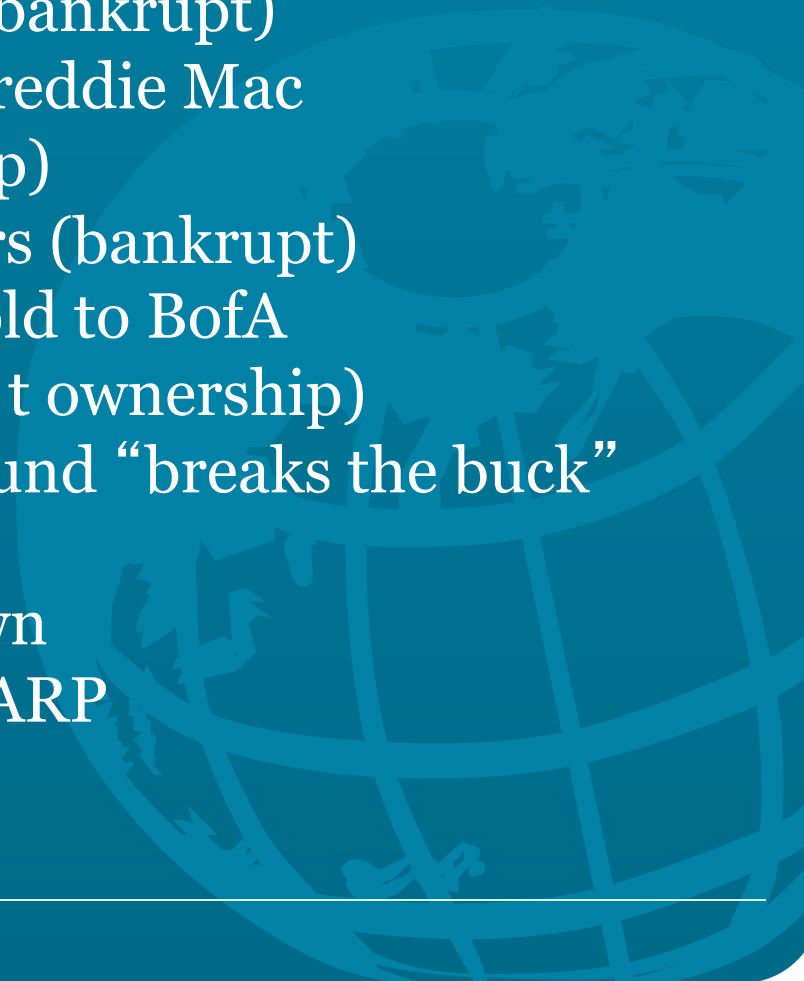
Judge Reuben Castillo, Vice Chairman

The Bubble Burst (again)

The Great Recession



The Meltdown



3/16/08	Bear Stearns sold to JPM Chase
7/11/08	IndyMac Bank (bankrupt)
9/7/08	Fannie Mae & Freddie Mac (gov' t ownership)
9/15/08	Lehman Brothers (bankrupt)
9/16/08	Merrill Lynch sold to BofA
9/16/08	AIG (77.9% gov' t ownership)
9/18/08	Money market 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...?

- Mark Deier, \$400 million
- Marcus Schrencker, \$100 million
- Arthur Nadel, \$300 million
- Joseph Forte, \$100 million
- Nicholas Cosmo, \$300 million
- Paul Greenwood, \$900 million
- Danny Pang, \$100 million
- Milowe Brost, \$400 million
- Bernard Madoff, \$65 billion**

“Am I a sociopath?”

B. Madoff to his therapist
New York Magazine 3/7/11

When the tide goes out...?

- ❑ Satyam Computer - \$1 Billion
 - ❑ Siemens - \$1.6 billion settlement
 - ❑ Halliburton - \$599 million
 - ❑ Stanford Financial Group - \$8B
 - ❑ Galleon Group - \$1B
 - ❑ BAE - \$400+ million
 - ❑ Daimler - \$185 million
- 

When the tide goes out...?

- ❑ “Operation Broken Trust” (>500 prosecutions)
- ❑ “Deutsche Bank pays \$554m to NYS for Tax Evasion”
- ❑ “BofA Pays \$150 million Re Muni Bid Rigging”
- ❑ “UBS Fined \$780 million in Tax Evasion”
- ❑ “Schwab Pays \$119 million to Settle”
- ❑ “FDIC Seeks \$2.5 Billion in Clawbacks”
- ❑ “BofA Pays \$150 Million to Settle Merrill Lynch”
- ❑ “SAC Ex-Manager Set to Plead Guilty”
- ❑ “European Regulators Investigate Banks for Credit Swaps”
- ❑ “HSBC Accused of Helping Mubarak Regime Land Deals”

When the tide goes out...?

- ❑ Pfizer - \$2.3 billion
 - ❑ GSK - \$750 million
 - ❑ Novartis - \$422.5 million
 - ❑ Eli Lilly - \$1.4 billion
- 

Other Issues - Fraud & Culture

“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.*”

Other Issues - Fraud & Culture

“Goldman Blasted for Conflicts of Interest”

cnbc
April 14, 2011

“A case study of recklessness and greed”

Other Issues - Accounting

“Deloitte & Touch Sued Over Taylor Bean Collapse”

“Ernst & Young to Face Disciplinary Hearing Over Role in Anglo Collapse”

“SEC Wrestles With China Over Accounting”

“Ex-E&Y’ s Partner Trading Conviction Upheld”

“Ex-D&T Partner’ s Wife Faces Prison in Insider Trading Case”

“PwC Investigated Over Satyam”

Behind the Headlines - Corruption

- “Four Sama Dubai Employees Are Held In Corruption Probe”
- “Ex-Head of Bank of Italy to Go on Trial”
- “Bahrain Kickback Investigation Widens”
- “Siemens Excluded from World Bank Contracts for Two Years”
- “Control Components Admits to Violating FCPA in 36 Countries”
- “Ex-Sinopec Corporate Chairman Sentenced to Death for Bribery”
- “China Executes 2 For Role in Tainted Milk Scandal”
- “Chevron Offers Evidence of Bribery Scheme in Ecuador Lawsuit”
- “Maybey & Johnson To Be Sentenced in Bribery Case”
- “Postmaster General in India Held for Corruption”
- “UN Cuts Back on Investigating Fraud”
- “Rio Tinto Employees Admits to Taking Bribes in China”
- “Nine British Companies in US Bribe Inquiry”
- “Alstom UK Directors Arrested in SFO Bribery Investigation”

Anti-Corruption

- Foreign Corrupt Practices Act
 - UN Convention Against Corruption
 - UN Global Compact
 - OECD Working Group – “Good Practice Guidance”
 - UK Bribery Bill
 - G-20
- 

In Response – U.S.

“Whistleblowing Now Just a Click Away”

Corporate Secretary

8-15-11

www.sec.gov/whistleblower

“SEC adopts final rules to implement Dodd-Frank provisions.”

New Risks for the 21st Century

WikiLeaks


Whistleblowing

Social Media

Hacking/Cyber crime

Transparency

Lessons of the Great Recession

1. Arrogance
 2. Fraud
 3. Conflicts-of-interest
 4. Preferential treatment
 5. Conspicuous consumption
 6. Failure of all the gatekeepers
 7. Culture of greed
- 

There has been a profound loss of trust in every part of society, including our:

- markets
 - financial institutions
 - organizations
 - government
 - leaders
- 

You can't legislate trust.



This is a defining moment!

The image features a blue background with a subtle globe graphic on the right side. A vertical line of fine, horizontal lines runs down the left edge. The text "This is a defining moment!" is centered in white, serif font.