streetwise

BY STEPHEN BARLAS, ROLAND MADISON, BOB RANDALL, CURT VERSCHOOR, KATHY WILLIAMS

[NEWS]

The Sarbanes-Oxley Act and Executive Certification Requirements | Kathy Williams, Editor

ALTHOUGH MOST OF THE PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002 are pretty clear, questions keep coming up about the executive certification requirements. To help answer these questions and clarify issues for boards, companies, and executives in the throes of compliance, Protiviti, an international internal audit and risk consulting firm, has published a booklet titled *Frequently Asked Questions Regarding the Sarbanes-Oxley Act Executive Certification Requirements.*

Here are some of the topics covered: detailing which companies and reports are subject to the requirements; defining disclosure controls and procedures; identifying internal controls over financial reporting; explaining the roles for certifying officers; implementing an internal audit process; describing the filing requirements with respect to Forms 10-K, 10-Q, and 8-K; and describing the disclosures with respect to a company's code of ethics.

Written in an easy-to-read question-and-answer format, the booklet is designed to discuss the provisions of the certification requirements but not provide legal analysis. For a free copy of the booklet, you can call (888) 556-7420 or visit www.protiviti.com for an electronic version. The company says it will update and expand the information as issues evolve concerning the Act.

What Do You Know about Abandoned Property?

Almost all companies have abandoned property that they must report to states annually. Examples are forgotten bank accounts; uncashed dividend, payroll, or vendor checks; unexchanged shares of stock; refunds due from insurance companies; customer deposits; and other intangible assets.

To make sure corporate executives, accountants, and attorneys are aware of the laws and reporting requirements, the National Abandoned Property Processing Corporation (NAPPCO) has published the fifth edition of *The Little Book About Abandoned Property*. The guide discusses the evolution of abandoned property laws, defines what constitutes abandoned property and gives lists of examples, describes how companies comply with the laws, and gives a list of state unclaimed property offices along with their addresses and phone numbers.

This current edition features a new section on owner reunification. Each year the states return about $500 million to the rightful owners, and this section describes those efforts. To help, NAPPCO and the states established

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ECONOMIC CENSUS

Last month more than five million American businesses should have received their 2002 Economic Census forms to fill out and return to the Census Bureau by February 12, 2003. Those who receive a form are required by law to comply.

The Economic Census is conducted every five years to get an accurate portrait of the economy from the local to the national level. It provides statistics and reports on hundreds of industries and data for states, counties, and places, which are published on the Census Bureau's website at www.census.gov.

In addition to the usual economic data, this year's census will be the first official measure of e-commerce for all industries and will provide the first information on leased employees. There's also new infor-

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CENSUS CONT'D

mation on changing business supply-chain functions and expanded information on purchased services and classes of customers.

Data covering calendar year 2002 will be collected and processed during 2003, and results will be released in early 2004. A toll-free help line—(800) 233-6136—is available from 8 a.m. to 8 p.m., EST, Monday through Friday.

For more information about the census, visit www.census.gov/econ2002. To see what the 1997 Economic Census found about your industry, visit www.census.gov/epcd/ec97/industry. ■

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MissingMoney.com, a national database that lets owners search for and claim lost assets turned over to the states. For a free copy of *The Little Book*, contact Jeremy Katz at (212) 806-6826, or visit www.nappco-ny.com. ■

We welcome all opinions on articles and departments published in Strategic Finance. *E-mail correspondence to Kathy Williams at kwilliams@imanet.org.*

[ETHICS]

Should Ethical Principles Apply Equally to All?

Curtis C. Verschoor, CMA, Editor

LARRY HANSEN ENTERED THE EMPLOYEES' LOCKER ROOM PRIOR TO THE starting time for his second shift at the northern Ohio plant of XYZ Manufacturing Co. He saw about a dozen of his co-workers just finishing the day shift. It seemed like an informal meeting was being held, and emotions were volatile. John Adams, the union steward, was trying to respond to complaints from several of the workers. Hansen took a seat nearby where he could listen to the discussion and get changed for his shift.

The gist of the discussion centered on an episode early in the day shift. Louis Brockington, a young journeyman machinist, had been fired by company management because he had been caught smoking a marijuana cigarette during a break from his work. "Brock" was being paid—considered "on the clock"—as well as being inside the factory. Since this was an obvious violation of the company's "drug free" and "no smoking" policy for all employees, he had been immediately dismissed. He was even forced to leave the plant with his street clothes and personal items in a bag packed by management. He wasn't even given the opportunity to be sure all personal items from his locker were included.

Management informed union representatives of their action almost immediately and assured them that everything found in the locker belonging to Brockington was put into the bag he was given except for a small plastic bag, which had been stuffed into the toe of Brock's street shoes. The bag contained about half an ounce of the same substance Brockington had been found smoking. Management kept this item as "evidence" in case the union decided to formally protest Brock's rapid dismissal.

Many of the workers argued that management had violated Brockington's privacy by illegally searching an employee's locker without his permission and asked what was to prevent them from doing this to anyone working in the plant. Management would never think of searching the private areas of a manager's office. Also, Brock was a very popular worker who had a number of friends among nonmanagement employees. They also argued with the union steward that Brockington should have been given another chance.

Steward John Adams told the workers that, unfortunately, Brockington had been given a second chance by management. He had been caught doing the same thing three months earlier. Management quietly warned him at that time that a repetition of this misconduct would result in his dismissal. The company's "drug free" policy also required that the union representative be informed of such action in writing. Adams had received such a notice about Brockington's first disciplinary action and also notice of his dismissal when Brockington violated his "second chance."

After hearing even his union representative say that Brockington had been "treated fairly by management when he got a second chance," Larry Hansen could no longer keep silent. He walked into the middle of the group of workers and said loudly to John Adams, "It's too bad that Brock wasn't a member of management—because then he would have gotten a third, fourth, and even fifth chance if he needed it!"

Quickly, several of the men asked Hansen what he *continued on page 22*

[GOVERNMENT]

SEC Proposed New Regulation G on Non-GAAP Financials

Stephen Barlas, Editor

DAYS BEFORE CHAIRMAN HARVEY Pitt threw in the towel, the Securities & Exchange Commission (SEC) published another one of the proposed rules stemming from the Sarbanes-Oxley bill, the congressional legislation passed this summer aimed at tightening up corporate accounting and auditing. This particular proposed rule introduces a new Regulation G and affects public disclosure or release of material information that includes a "non-GAAP financial measure." That would be defined as a numerical measure of a company's financial performance that: (1) excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet, or statement of cash flows (or equivalent statements) of the issuer; or (2) includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented. Statistical and operating measures would not be covered. Regulation G would prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure, under the circumstances in which it is made, misleading. Regulation G would provide a limited exception for foreign private issuers.

SEC Addresses Off-Balance-Sheet Accounting

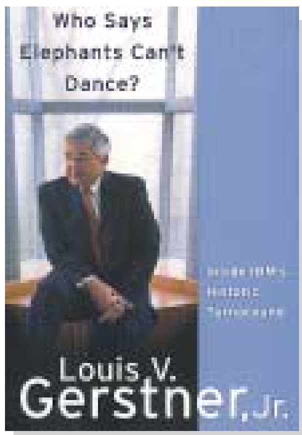
Actually, the SEC is stamping out new accounting proposals like links on a Sarbanes-Oxley sausage. Of course, one of the targets of the congressional accounting bill was Enron-style "off-balance sheet" accounting hijinks. The SEC's proposed rule would require a company to disclose in its annual and quarterly financial reports all material off-balance-sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the company with unconsolidated entities or other persons, which may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

These transactions and relationships would have to be disclosed in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) section of the company's disclosure documents. The SEC had addressed MD&A disclosure in January 2002, before Sarbanes-Oxley was passed. But that legislation forced the SEC to go beyond its January 2002 requirements, particularly by replacing the January 2002 disclosure trigger—if the transaction is "reasonably likely" to have a material effect on the company—with a lower threshold, if the likelihood of the transaction having a material effect on the company is more than "remote." ■

Resuscitating Big Blue

"WHO SAYS ELEPHANTS CAN'T DANCE?" NOT Louis V. Gerstner, Jr., who turned around a foundering IBM, one of the major technological companies in the world, and wrote a book with that title. In the nine tumultuous years as IBM's CEO, he turned the inbred Big Blue inside out, radically changing its strategy, marketing, services, and culture, positioning it as a major global player once again.

In clear, businesslike prose Gerstner describes his first major decision—deciding against the prevailing wisdom that said the way to save IBM was to break it up. Instead, he resolved to stop the bleeding and restructure the company: "[W]e threw out the investment bankers who were arranging IPOs of all the pieces of the enterprise. We threw out the accountants who were creating official financial statements required in order to sell off the individual components." The strategy, he determined, would focus on the customer. "Everything at IBM would begin with listening to our customers and delivering the performance they expected."



Part of the problem, he discovered, was that IBM had been ignoring its customers and its competition, pushing hardware and software out the door with the implicit assumption that it was good for the customers. Indeed, its own in-house hardware and software left much to be desired. Because IBM was a major technology company, Gerstner expected to find the best internal IT systems in the world. Instead, he found that despite spending $4 billion a year on this line item, "The systems were antiquated and couldn't communicate with one another."

Accounting was a group effort with hundreds of staff focused on protecting departmental territories. "For example, huge staffs spent countless hours debating and managing transfer pricing terms between IBM units instead of facilitating a seamless transfer of products to customers."

IBM's culture was a major challenge for Gerstner. The buttoned-up, white-shirt-dark-suit-with-tie image of the company had started with its founder, Thomas Watson. Gerstner tied his dress code revision back to the original dictate of Watson: Respect your customers, and dress accordingly. In other words, dress according to the circumstance, whether at a customer's locale, in a lab, or with government and industry leaders.

Gerstner attacked the laid-back attitude at the company, decrying the lack of passion in the IBM culture. "We're getting our butts kicked in the marketplace. People are taking our business away. So I want us to start kicking some butts—namely, of our competitors." Further, "This competitive focus has to be visceral, not cerebral. It's got to be in our guts, not our heads. They're coming into our house and taking our children's and our grandchildren's college money. That's what they are doing." He doesn't stint on praise of the many IBM "heroes," including CFO Jerry York, who were instrumental in the revitalization of the giant.

Strategic Finance readers will especially be interested in how Gerstner changed IBM's compensation system. Unlike most of its competitors, stock options weren't a major part of its top executives' pay package. Gerstner changed that because he "wanted IBM'ers to think and act like long-term shareholders—to feel the pressure from the marketplace to deploy assets and forge strategies that create competitive advantage." But IBM executives weren't granted stock options unless they first bought IBM stock with their own money.

Published by Harper Business, *Who Says Elephants Can't Dance* is a mother lode of cogent advice and real-world experience on reviving a failing company and changing a culture. A valuable primer on corporate leadership, it is destined to be a classic on the bookshelves of business management literature.—*Bob Randall*

[ETHICS] *cont'd from p. 18*

meant by his remark. Hansen answered by asking, "Do you remember when we adopted this drug-free policy and put it in our work contract two years ago? Well, about a year later I found out from the executive day gate watchman that one of the VPs used to frequently come back from lunch loaded to the gills. His excuse was he was buying 'liquid lunches' for good customers. But you all know that drinking during working hours is also covered under our glorious 'no drugs' policy." The locker room got very quiet as Hansen continued.

"The guard tells me that after doing this for over three months, he doesn't see this VP for about three or four weeks. And then, one day he shows up but parks in a different space from where he had been assigned. Also, he stops going to lunch by himself. He always has some other big brass with him, and now he comes back stone cold sober within an hour of when he left. The word the guard got was that after management told him to clean up his act, the guy kept right on doing it. And when he was gone for nearly a month, they sent him some place to dry out. When he came back, they gave him a different job.

"Guess the VP got bumped down a little, but he sure didn't lose his job. And he got a lot more than just two chances! If you guys ask me, the blue collar men that make this place go don't get the same 'fair' treatment the bigwigs do under our 'no drugs' policy. If they screw up, they get special help, and they sure don't get fired!"

By the time Hansen had finished with his story about the company's VP, it was nearly time for the second shift to begin. "One thing," Hansen said to Adams, "the union sure ought to appeal this raw deal that Brock got. If we can't get the same treatment from management for our own members, what good is having this 'no drugs' agreement in our contract? They can go out and have a four-martini lunch and call it being sociable with a customer. What's wrong with us having the same rights? Let's put this on our agenda for next week's union meeting, and try to take care of Brock!" The group broke up with a loud round of "Yeah! Let's do that!"

QUESTIONS:

1. What do you see as the major lesson that should be learned from this case? Is alcoholic use during working hours with customers more or less detrimental to the company than substance smoking on the job? Do the privacy rights of employees preclude management from searching employee desks and lockers or reviewing employees' e-mail messages at will?
2. Do you believe this case illustrates a dual standard for ethical conduct? Should the same rules exist for workers at all levels within a company's structure, or do members of management deserve special treatment? Why or why not?
3. When the union brings Brockington's dismissal appeal to XYZ's management, how should management react if they sincerely desire an effective "drug free" program in their company and an ethics policy that all persons can live by?—*Roland Madison*

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