

SFbulletin

By Stephen Barlas, Dallan Christensen, Richard Torian



Obama Administration Establishes Corporate Fraud Task Force

By Stephen Barlas, Editor

The new corporate financial fraud task force announced in November by the Obama administration is the latest reform response to last fall's financial meltdown. This new task force replaces an earlier one set up within the Justice Department by President George W. Bush in the aftermath of the Enron debacle. This Obama task force is different—and expanded—in two key ways. First, President Obama issued an Executive Order creating the task force. That action underlines the President's apparent commitment to get this latest incarnation moving forward with significant actions. Second, there are representatives from nearly every federal agency sitting on the task force. "I don't expect there to be an upsurge of new cases," says Barry R. Goldsmith, a partner in the Washington, D.C., office of Gibson, Dunn & Crutcher LLP and cochair of the firm's Securities Enforcement Practice Group. "What I do expect is better coordination among regulators and prosecutors, and those who find themselves subject to inquiry will likely have to deal with multiple—and sometimes duplicative—government investigations at the same time."

So far, the Securities & Exchange Commission (SEC), which has responsibility for bringing civil corporate fraud cases, has hewed closely to some Bush administration enforcement policies and, in a few notable cases, expanded enforcement beyond where the Bush folks were willing to go. The most oft-cited action in the latter category is the SEC's filing of a lawsuit in July—using a

murky Sarbanes-Oxley Act Section 304 provision—seeking a \$4 million clawback from Maynard Jenkins, the former CEO of CSK Auto Corporation, an auto-parts company that had previously settled with the SEC on charges of accounting fraud after restating three years' worth of financial statements. The SEC is seeking that \$4 million clawback even though it admits Jenkins himself did nothing wrong.

Tom Gorman, a partner at Porter Wright in Washington, D.C., and cochair of the American Bar Association's White Collar Crime Securities Section, suggests that corporate financial types "carefully analyze and update SOX procedures to ensure that from the top down the company is following best practices, which can be an important line of defense in any government investigation. This is particularly true in view of the harsh approach the SEC is using in cases like SEC v. Jenkins. While best practice procedures may not be a defense to such an action, they do provide a basis for argument in the Wells process and perhaps later in court."



FASB Reform Goes Down in Flames

The latest attempt to fire up the Financial Accounting Standards Board (FASB) has fallen apart. Rep. Ed Perlmutter (D.-Colo.), a member of the House Financial Services Committee, had threatened to offer his Federal Accounting Oversight Board Act of 2009 (H.R. 1349) as an amendment to the Financial Stability Improvement Act (H.R. 3996) that the House Financial Services Committee was scheduled to pass in December. But he never offered his amendment, which would have removed

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from the SEC oversight authority for the FASB and given it to a new federal board run by five cabinet department secretaries and chaired by the chair of the Federal Reserve Board. The FAOB (Federal Accounting Oversight Board) wouldn't have replaced the FASB but would have superseded it in some way. Instead, Perlmutter offered a watered-down version—waterlogged may be a more apt description—of his bill that, according to his spokeswoman, Leslie Oliver, allows the risk regulatory council created in the Financial Stability Improvement Act to offer guidance to the SEC on threats/risks to financial systems. The Stability Act creates a Financial Services Oversight Council to monitor systemic risks in the economy. The Council would ostensibly prevent meltdowns such as last fall's dramatic unraveling of key industry stalwarts such as AIG, Lehman Brothers, and many others. The Senate version of the Stability Act, called the Restoring American Financial Stability Act of 2009, has no FASB component, nor any threatened.

Salome J. Tinker, CPA, director, accounting & financial

reporting, Association for Financial Professionals (AFP), says her group opposed the Perlmutter bill because it created an accounting standards oversight board stacked with banking regulators. She adds that the FASB has apparently been chastened by the financial meltdown and appears to be acting more quickly to get standards out. But she notes that with convergence on the horizon and the International Accounting Standards Board (IASB) jockeying with the FASB to become the global standards setter, the FASB has plenty of incentive outside Congressional prodding to improve its performance.

GOVERNMENT



Audit Attestation for Smaller Companies Delayed Again

The SEC pushed back by six months the requirement that smaller public companies file an auditor's attestation report on the company's internal controls. This is the latest delay of the requirement included in Section 404 of the Sarbanes-Oxley Act of 2002 (SOX). Large companies—accelerated filers in the SEC argot—had to comply as of June 15, 2004. The previous delay for smaller companies—those with market capitalizations below \$75 million—set the compliance deadline at December 15, 2009. Now that has been pushed back to fiscal years ending on or after June 15, 2010. Will this be the last delay? No one knows. There's still some significant support in Congress to get rid of the requirement entirely for small companies. The House Financial Services Committee has included an amendment sponsored by Rep. Carolyn Maloney (D.-N.Y.) in its broader Investor Protection Act of 2009. The bill, which passed the Financial Services Committee in October, is aimed at tightening up regulation of stockbrokers, dealers, and investment advisors. The Maloney amendment requires a study of the costs of small business compliance with Section 404 and delays the auditor attestation report for a year beyond the June 15, 2010, set in October by the SEC. **SF**

LETTERS



Interesting and Useful

Many thanks for publishing the article "Lessons for and from the World's Tiniest Businesses" in the November 2009 issue.

I had the opportunity to spend two weeks on a small island (Simbo Island) in The Solomon Islands last May and June. I was there with a small church group, and my focus was on helping the Simboans jump-start their economic development.

The article was really interesting and useful to me, and I learned a lot from it. And, because of the article's content, I have sent a copy to folks in The Solomon Islands.

I will hopefully have a chance to use some of the article's information as I continue to work (via e-mail) with Simbo Island to increase their economic development.

Richard Torian, CMA

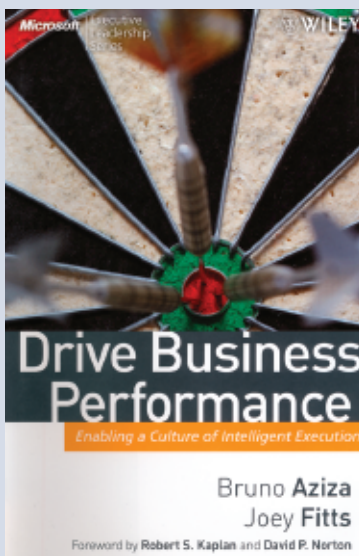


Driving a Culture of Performance

Companies face increasing difficulties implementing business strategy successfully. Global workforces, disruptive technologies, and macroeconomic upheaval are only some of the factors making today's business analysis extremely difficult. Businesses also face an explosion of data, making it even more difficult to provide meaningful information to decision makers. In *Drive Business Performance*, authors Bruno Aziza and Joey Fitts provide a well-crafted roadmap for any business looking to improve how it analyzes and plans its business operations.

Aziza and Fitts present a three-step framework that businesses should follow when implementing or improving performance management systems: monitor, analyze, and plan. The authors look to extend the teachings of Robert Kaplan and David Norton's *The Balanced Scorecard* into an implementation plan for all employees to access the information needed for decisions, detailing a six-stage process that businesses can use to build performance management capabilities:

- ◆ **Increase visibility** by developing consistent data and aligning execution.
- ◆ **Move beyond gut feel** to drive data-based decisions instead of decisions based on individual intuition.
- ◆ **Plan for success** by turning the planning process from a resource-intensive academic exercise into an efficient, accurate forecast of future events.
- ◆ **Execute on strategy** to deliver



results compared to plan, and develop a culture of trust and accountability.

- ◆ **Power to compete** by incorporating external market factors into the planning process and adjusting planning for these factors.

- ◆ **Create a culture of performance** based on shared accountability, adaptability to changing conditions, and the value of information as a prized asset.

Many business executives will find their own companies within one of these steps.

Aziza and Fitts provide two key insights: The first is that performance management isn't the sole function of business analysts. They repeatedly challenge the common perception that companies must hire large numbers of analysts to filter information for management, contending instead that a well-designed performance management system will allow all users to extract

information in the format desired. The second insight is that businesses must be able to "smart-filter" and "cross-filter" information to improve decision making. For example, most business analysis systems provide static filters that dictate how users will ultimately see their company's data. This type of filtering may be efficient, but it may not deliver the necessary information to users. If users are able to design custom filters and have the ability to move across information categories (i.e., review sales from Europe if they are a North American manager), the users can identify the information needed more efficiently.

Aziza and Fitts include many examples of dashboards and scorecards to illustrate their concepts as well as questions at the end of each chapter covering the framework to help you determine where your business stands within that section. I recommend answering these questions before reading the chapters because you'll understand your current position and more readily apply the insights from each chapter.

For businesses looking for a well-crafted resource to implement the performance management ideas popularized by Kaplan and Norton, *Drive Business Performance* offers a very good balance of theoretical, practical, and framework-driven concepts to develop a new culture of performance.—Dallon Christensen, CMA, CFM, CPA.CITP, dallonc@firststepconcepts.com