SF bulletin

By Stephen Barlas, Lance A. Thompson, Kathy Williams

GOVERNMENT

International Resource Payment Info in 8-Ks a Source of Contention

By Stephen Barlas

Talk about semantics. What's the difference between "furnishing" a report to the Securities & Exchange Commission (SEC) and "filing" a report? Senator Carl Levin (D.-Mich.), chair of the Permanent Subcommittee on Investigations, which is a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs, thinks there's a difference in those two terms when applied to the Dodd-Frank Wall Street Reform and Consumer Protection Act requirement that all resource extraction issuers disclose on Form 8-K their payments made to the U.S. or a foreign government related to the commercial development of oil, natural gas, or minerals. The SEC has proposed that issuers furnish that report rather than file it with the Commission. "This wording is critical," Levin explains, "because furnished reports do not have to meet the same high standards as filed reports, and their disclosure obligations can be enforced only by the SEC rather than by a private right of action."

Levin is crossing swords with the corporate community, including, among others, Patrick T. Mulva, vice president and controller of ExxonMobil. Mulva supports *furnished* reports. Levin and Mulva also differ over which payments need to be reported on the 8-K. Levin says payments should include those required to be made for use of roads or airports. Mulva says payments made by companies for infrastructure improvements shouldn't be included.

Mulva says reportable costs should include, but not be limited to, acreage acquisition, exploration studies, seismic data acquisition, exploration drilling, reservoir engineering studies, facilities engineering design studies, commercial evaluation studies, development drilling, facilities construction, production operations, and abandonment.

The SEC initially said that the reports in the 8-K didn't have to be audited. "We fully support keeping these disclosures outside the audited financial statements, but recommend the disclosures be kept separate from these existing annual fiscal year report forms," Mulva says. But Karin Lissakers, director, Revenue Watch Institute, is pushing the SEC to require auditing of the reports. The Extractive Industries Transparency Initiative (EITI) requires that payment data reported through EITI first be subject to audit. "Final rules under Section 13(q) that would allow for the reporting of unaudited data would move in the opposite direction, given the fact that one of the six basic criteria of EITI implementation is that reported payment data be audited," Lissakers states.

GOVERNMENT

Corporate Costs for Commercial Derivative Use Still Up in the Air

Gary Gensler, chairman, U.S. Commodity Futures Trading Commission (CFTC), said many of the right things about the shape of upcoming derivatives rules when he appeared before the House Financial Services Committee in February. But he didn't say *all* the right things. Gensler was there to talk about the CFTC's proposed rule dictating what costs nonfinancial companies could be on the hook for when they use swaps to cushion their financial risks. The Dodd-Frank law requires swaps to be traded on open exchanges, with counterparties paying

continued on p. 28

BOOKS

Serving on a Nonprofit Board

Participation on a nonprofit board can be very spiritually and emotionally rewarding and provides the opportunity to contribute to something you believe in order to positively change society. With many nonprofit organizations trying to run their operations like a for-profit business, it would be logical to assume that the tools, practices, and experiences you developed during a successful career of for-profit work could be applied to work as a board member for a nonprofit organization. But there are several deep differences in important areas, and failure to understand them may cause new board members to stumble.

In *Joining a Nonprofit Board: What You Need to Know*, Marc Epstein and Warren McFarlan show how individuals with successful business experience can appreciate the differences that nonprofits have and leverage their business experience to make a major contribution. The result is an in-depth guide full of useful information for individuals on their journey of nonprofit board service.

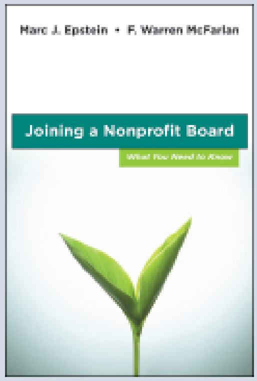
The heart of a nonprofit board's role is building and monitoring the organization's mission. Financial skills are critical to provide and manage the resources to accomplish the mission. The particular challenges of a nonprofit board include those related to size, skills, composition, types of committees, philanthropy, and the relationship of a nonexecutive board chair to the CEO—all of which are very different from the corporate world.

In discussing the life cycle of a trustee, the authors help explain how to find the answers to several important questions, such as:

- Should I accept the invitation to join this nonprofit board or seek another board?
- What should I do before my first meeting?
- What are the key things to do in my first two years on the board?
- What should I do to effectively manage my career as a trustee?
- How should I gracefully go about transitioning off the board?

Given the significant participation that's expected for board members, it's essential to fully understand and believe in the mission of the organization before deciding to serve. The requirements are usually substantial in terms of your time, talent, and resources as you become personally invested in the organization to better ensure its success. As a result, service on nonprofit boards can be extremely rewarding.

Most nonprofits rely heavily on philanthropy for major financial support. Board members are expected to serve as both philanthropist and fundraiser. In some cases, expectations for capital gifts, annual giving, and participation in fundraising events are so high that many people can't afford to consider being a trustee. A very important part of the role of the board member is participation as a contributor and often as a solicitor of prospects and general advocate of the development function.



The process of leaving a board is sometimes very difficult and should be planned for from the very beginning. Often, as part of the last year or two on the board, membership on the governance committee can be an important part of the disengagement process. Helping the nonprofit to think through its future board needs by actively participating in building the future board has been very effective in helping people gracefully step off the board while continuing to engage the organization in other ways.

With *Joining a Nonprofit Board: What You Need to Know*, Epstein and McFarlan provide insight into the expectations of nonprofit board members, creating a comprehensive guide to help you be a stronger contributor. Included are "Questions the Trustee Should Ask," real-world nonprofit examples, a reading list for Board Members, and case studies available from the Harvard Business School.—Lance A. Thompson, Thompson Management Consulting Services, LLC, lancephx@aol.com

SF bulletin

continued from p. 26

margin and other fees except where nonfinancial companies are using those swaps to "hedge or mitigate commercial risk." In those instances, nonfinancial companies qualify for the "end-user" exemption. Gensler made it clear that end-users shouldn't pay margin costs. That was the good news. He also added that clearing and margin requirements should apply on a prospective basis only as to transactions entered into after the rules take effect. But Gensler didn't get deeper into the weeds of the proposed rule, which contains some ambiguous language that end-user corporations have been concerned about. Marco Kuepfer, vice president and treasurer, Philip Morris International, Inc. (PMI), says that the company might not be able to take advantage of the end-user exemption if the CFTC rules that its Philip Morris Finance SA (PMF) isn't the kind of "affiliate" acting as an "agent" that also qualifies for the end-user exemption. "PMI is concerned that swap transactions entered into by PMF and other wholly-owned treasury subsidiaries of large nonfinancial companies, with their affiliates on the one hand and traditional swap dealers on the other, will not be considered 'hedging or mitigating commercial risk' under the proposed rules." Gensler didn't address that specific situation during his testimony.

Craig Reiners, director of commodity risk management for MillerCoors, was at the House hearing to represent the Coalition for Derivatives End-Users, a group of trade associations that includes the Business Roundtable and U.S. Chamber of Commerce. Reiners said the definition of "hedging or mitigating commercial risk" should be interpreted broadly enough to encompass all possible types of end-user hedging, including, but not limited to: interest rate risk; currency risk; credit risk; equity price risk; risks arising from the purchase, ownership, production, storage, sale, financing, or transportation of commodities; and risk of changes to margins from input, processing, output, quality, and time differences.

The CFTC is supposed to issue final rules on the end-user exemption no later than July 1, 2011—360 days after passage of Dodd-Frank—but the law doesn't say at what point the CFTC must implement the swap clearinghouse requirement.

LETTERS

Eloquently Written Article

Thank you to Betsy R. Gullickson for sharing such an eloquently written Best Practices in the October 2010 issue of *Strategic Finance*. I really enjoyed reading her article, and now I can't wait to purchase her book, *On the High Wire: How to Survive Being Promoted*. As a young professional, I feel like I struggle with trying to maintain a work/life balance. It was nice to be able to connect to her observations and have the opportunity to reflect about my own situation and experiences.

—Amy Oglesby

A Gem

Curt Verschoor's article (March 2011) addressing the EY/Lehman Bros. situation is a gem and hopefully can be distributed widely. That issue was addressed a couple of months ago in *Strategic Finance* magazine from a financial reporting perspective, and the author of that article sort of reported the controversy and threw up his hands with the attitude of "nobody knows." I think Curt hit it on the head and suggested that it smells and in substance it makes no sense.

—Lee Nicholas

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

We also invite you to post your opinions and questions at *LinkUp IMA*.
Log in and go to the *Strategic Finance* discussion forum at: http://linkupima.com/resources/aa2cf5f90c/summary to start a discussion or post a question.