

*Riding the Enron Wave Without
Falling Off the Board: Strategies
for Compliance and Survival*



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Topics



- Tectonic shifts
- Survival strategies

Tectonic Shifts



- Retrospective regulation
- Piling on the CEO and CFO
- Explosion of chain-of-command
- Hat swaps in the courtroom
- Personalized exposure
- Today, cooked books; tomorrow, the world

Survival Strategies

- Ask yourself: “should I stay on this Board?”
 - Evaluate current risk/reward equation
 - Do you have time?
 - Analyze potential conflicts
 - Assess confidence in management to adjust to new requirements
- Embrace the new world
 - If you can’t accept your enhanced role enthusiastically, consider sitting out a few innings

Survival Strategies (cont.)

- Controls are the key
 - Accounting controls vs. disclosure controls
 - Consider an audit of your controls
 - Strengthen the internal-audit function
 - Direct reporting relationship to Audit Committee
 - Early warning system for Audit Committee
 - Build your own instead of outsourcing
 - Provide adequate staffing
 - Create viable internal channel for whistleblowers

Survival Strategies (cont.)

- Meaningful quarterly oversight
 - Interviews of key internal personnel
 - Controller
 - Head of credit & collections
 - Review of key metrics
 - Non-standard transactions
 - Manual journal entries
 - Write-offs, especially of receivables
 - Bases for reserve calculations
 - Probing discussions with outside auditors

Survival Strategies (cont.)

- Effective use of counsel
 - Private questioning of in-house and outside disclosure counsel
 - Processes that ensure meaningful, timely involvement by outside counsel
- Take notes
 - Borrow lessons from due diligence requirements in a public offering

Survival Strategies (cont.)

- Protect yourself with insurance
 - Become involved with company's D&O insurance decisions
 - Consider purchasing a PUP: Personal Umbrella Policy