



# TRENDS, TIPS AND LESSONS LEARNED

JANUARY 2010

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### Greetings!

Increasingly, clients are relying on us to provide our investigative perspective when problematic issues arise either during the course of our background checks or from disclosures made by management beforehand. We are asked to examine and evaluate these problems, such as questionable previous business practices or sensitive personal issues. With our professional investigative approach, we assess whether these issues will impact your deal. This is just another example of ways in which we continue to serve as investigative consultants for you.

**Kenneth S. Springer, President  
Corporate Resolutions Inc.**

## Building a Better Mousetrap for Investors

Investment advisors, pension funds, and others are striving to build a better mousetrap to demonstrate to investors that they have the necessary processes in place to ensure another Madoff-type situation will not occur. No longer can you rely on desktop research alone or mere "check the box" research. As such, we recommend the five following Best Practices:

### **Review Lawsuits and Regulatory Actions**

1. Review lawsuits and regulatory actions to see what really happened. Just because a suit is closed does not mean someone was guilty or not guilty. Oftentimes people settle cases for business purposes, so it's important to see the facts that led up to it and how it got resolved and, more importantly, to independently verify what was told to you. Oftentimes in regulatory actions people know six to nine months in advance that they are going to be disciplined by a regulator. Someone who says they just learned they are going to be disciplined with a "slap on the wrist" is probably lacking candor.

### **Interview the CEO/Manager**

2. Oftentimes when conducting our background checks, we identify discrepancies, controversies, reputational issues, or patterns of lawsuits, it is important to interview the CEO/manager to obtain his or her explanation of the facts and to document what was said. This is not done in an accusatory way, but rather to have a document that shows the issues were addressed in case they surface again. Having us interview the management team allows you to avoid the awkward situation of confronting your potential business partner and gives us the ability to apply our expert interviewing skills and delicately broach the topics with the person.



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### ***Contact Former Employees***

3. Our experience in conducting background checks for almost twenty years is that contacting former employees is the most underrated valuable resource. Former employees of a firm are often knowledgeable about internal policies or practices at a company that can impact the success of your deal. Part of what we do in our investigative reports is to identify former employees and bring them to your attention to suggest that you have us contact them.

### ***Ongoing Monitoring***

4. After you invest money in a fund or a portfolio company, ongoing monitoring becomes a crucial part of your asset management. Daily alerts of any news regarding the company and/or management team, monitoring blogs or information on the Internet, and annual background check updates of management teams, as circumstances often change, can be a good way to keep a pulse on a company.

### ***Whistleblower Ethics Hotline***

5. A whistleblower ethics hotline is a great tool for investors so that employees and others have a vehicle to anonymously report fraud and/or unethical behavior. Investors clearly believe that implementing a whistleblower hotline is a great system of checks and balances. The best way for a hedge fund to sign up for this would be to have the hedge fund sign up through their outside counsel so that any communication received via the hotline is privileged and confidential and is relayed immediately to counsel. We then vet the complaints with counsel to resolve the issue and/or determine the veracity of the allegation. In the event there is some potentially damaging information that regulators will need to be aware of, it is advantageous for the outside counsel of the hedge fund to bring it to the regulator's attention as opposed to the alternative.

## **Operational Risk Assessments/Integrity Audits**

Will Rogers is quoted as saying "common sense ain't that common." In challenging financial times, it is crucial to apply your common sense to your business practices and focus on assessing risks and implementing the proper policy changes to increase performance, avoid fraud and contain problems.

In examining your operations, you should take into account external factors (competition, legislation, credit, etc.); internal factors (personnel, products, services, costs) and available information (does your company have the information needed, when needed, in the form necessary and on a timely basis to make informed decisions)?

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Based on the results of your assessment, you should create a “risk inventory” that weighs your present practices. Your risk balance sheet will then expose any obvious changes that need to occur, such as management improvement, diverting risk to a third party, or altering insurance policies.

This common sense approach to understanding the risks that your business faces in the current environment can assist you in developing action steps to meet those issues head on. Corporate Resolutions offers operational risk reviews and security integrity audit services that can assess your business risks and make recommendations for improvement. Whether you are a local community bank with several branch locations, a company with manufacturing plants throughout the world, or a national restaurant chain, we have a network of resources in place to assist you.

Please contact [Don Klaskin](#) to learn more about this service.

### Recent Corporate Investigations

During the past 12 months, we have been engaged to conduct investigations on behalf of two clients who had been defrauded by long-standing and trusted employees. The current economic crisis had caused a steep drop in revenue at both companies and they were faced with having to bolster their cash position by liquidating assets that they believed were in company investment and bank accounts. Although the money was reflected on their books, when they went to redeem their investment, they found that it was no longer there.

As the saying goes “desperate people do desperate things” and our investigation determined that the employees of these two firms had engaged in the fraud because they had found themselves in severe financial difficulties. The assets at one of the companies had been stolen by an employee who had been with them for over 15 years. In both cases the employees were entrusted by management to handle many of the company's financial affairs.

In each instance the fraud was initiated during an economic upturn and each company's earnings had increased year after year. The frauds started out small and when the initial stolen monies went unnoticed, the amounts embezzled increased. Neither employee used the stolen money to pay off their debts but rather used the funds to purchase luxury items. Once we conducted our investigation, our clients allowed us to interview the perpetrators to determine why they engaged in these acts. In both instances, when the employees were interviewed, they admitted they had no idea how much money they had actually stolen.

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As part of our investigation we conducted numerous interviews of employees at both companies and determined that if there had been a segregation of duties of each of the employees involved in the fraud, they would not have been able to keep the fraud going for as long as they had. Placing too much trust in the hands of one individual, no matter how long they have been employed only serves to create a greater opportunity for that individual to take advantage of the situation. In both instances the victim companies did not have any insurance coverage that could have helped in minimizing their losses. These are just two examples of the types of fraud that we have seen in the last year. But these frauds illuminate the need for companies to have a clear set of checks and balances among employees, conduct background checks on new hires and to implement proper operational and security measures to ensure a company is not vulnerable to such situations in the future.



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