



TRENDS, TIPS AND LESSONS LEARNED

APRIL 2010

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Trends

At a distressed investments conference, we spoke about some of the common themes that we have witnessed:

- Fraud is your biggest risk
- Management is your key asset
- Don't fall in love with a deal until you've done your legal, financial and people due diligence

In the News

Ken Springer was a featured guest on BloombergTV's "Taking Stock" segment on March 24, 2010

Ken Springer was quoted in an article in Bloomberg regarding Hassan Nemazee on March 22, 2010

Ken Springer was a speaker at the Distressed & Turnaround Investment Forum in March 2010

Upcoming Events

Ken Springer will be speaking at ACG South Florida (Miami) on April 15, 2010

Ken Springer will be speaking at ACG Intergrowth 2010 (May 4-6, 2010). Corporate Resolutions Inc. is one of the sponsors of Intergrowth, and Ken Springer will be speaking on two different panels: Private Equity Due Diligence and the Need for Business Investigations and Taking it to the Next Level: Mitigating Deal Risk Through Best In-Class Diligence and Integration.

Letter from the President

Greetings!

Most of us feel like we survived a brutal winter; blizzards on the landscape of our lawns and our balance sheets. But, this Spring 2010 seems to be changing the colors we need: in climate and in deal flow. As more deals come your way it is easy to get excited with the prospect of new business. Please don't forget the basics. Background checks are a critical component to your due diligence process and empower you with the necessary knowledge to give you comfort when moving ahead with your deals. Be vigilant about your due diligence. Wishing you all the best.

Kenneth S. Springer, President
Corporate Resolutions Inc.

Flock Funding: What Happens When Investors Follow the Flock and Go on Reputation and not Research

A Riddle: What do Hassan Nemazee and Bernie Madoff have in common?

Answer: Outfits designed by the Federal Bureau of Prisons ... and, Flock Funding.

In March, Hassan Nemazee pled guilty to bank and wire fraud. This was the culmination of a 12-year convoluted scam run by Nemazee in which he stole \$292 million from major financial institutions and investors. Like Madoff, Nemazee used his *appearance* as an honest and successful professional to convince investors that this was his *reality*. Investors fell prey to Nemazee's scam the same way investors were taken by Madoff. This is what we call "flock funding": investors went on reputation and not research (they followed the flock). The success of these and other frauds relied on investors' trust.

Nemazee, as a donor to many charities and a member of the intellectually elite Council on Foreign Relations, portrayed a lifestyle of success. Prior to his admission of guilt (and the investigation by authorities that led up to it), Nemazee was a major donor to Hillary Clinton, Barack Obama and other key political figures in the Democratic Party. He lived in Katonah, New York; owned a luxury apartment on the coveted Park Avenue in Manhattan; and drove around in expensive cars.

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We have already talked at length about what investors could have known about Madoff. And, similarly, when we looked at some of the publicly available information about Nemazee, we found there was significant information out there to suggest investors not do business with him. Specifically, we found numerous controversial media articles that discuss Nemazee's previous business dealings, specifically that he had two former business partners, and both relationships ended in lawsuits. These articles also mention that one of Nemazee's previous investment vehicles was hired by two large pension funds and later fired for poor performance. This information, and possibly more, would have been illuminated in a routine background check on Nemazee. Had we been hired to conduct this background check, we would have told you to look at the documents filed in these lawsuits, contact these former business associates of Nemazee's and talk to people at the pension funds to find out more about Nemazee and what happened in each of these situations. But, unfortunately, most investors did not follow these steps and were fleeced by yet another fraud.

We cannot stress this enough: do your homework. Do not follow the flock and invest with someone solely because of his/her reputation. Background checks are a vital component to the investment process; use them to your advantage.

Allies on the Inside: A Look at the Insider Trading Scandals

As the Galleon case continues to unravel and more professionals are found guilty of insider trading, business associates and board members of companies implicated in this scheme are forced to wonder why they did not know what was going on. We read every day in the news that the insider-trading scheme was discovered through a complex investigation undertaken by authorities who nabbed the executives through wiretaps. But, what if your company had allies on the inside who knew something and alerted you to it? This is the principle behind our Ethics Hotline: let your own employees be your eyes and ears on the inside.

The Ethics Hotline is an ideal vehicle for employees, vendors and others to anonymously report any wrongdoing. Our hotline can be accessed through telephone, Internet portal and email and we, as an independent third-party, respond to and assess all complaints received. It is an easy way for you to protect yourself from internal fraud or inappropriate behavior (i.e. you will be apprised of any percolating problems before they become disasters) and also fosters a trust with your employees who know you care about their workplace experience by implementing this hotline. Also, the hotlines are Sarbanes Oxley compliant and appeals to investors as it provides transparency and serves as an internal system of checks and balances. Further, if hedge funds and others implement our Ethics Hotline through counsel, any information developed will potentially be protected under the attorney-client privilege.

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FCPA Your Way: This Impacts You If You Have a Presence Overseas

As more companies expand their global presence, so too has the government expanded its policing of the Foreign Corrupt Practices Act (FCPA) which prohibits bribery of foreign officials in exchange for business, among other things. In January 2010, UTStarcom agreed to pay a \$1.5 million fine to settle charges that the company's Chinese subsidiary had engaged in illegal bribes. In 2009, the Department of Justice arrested 22 individuals for violating FCPA rules and the case has been widely reported because the arrests relied on the work of undercover agents who had caught the individuals in wrongdoing. While the fate of these individuals is yet to be known one message is clear: the U.S. government is taking FCPA violations more seriously than ever before. As you have probably read (or heard) in media outlets, these are not isolated cases: Daimler AG recently settled charges it violated the FCPA and the Department of Justice is investigating Alcoa to determine whether the company engaged in bribery of foreign officials thus in violation of the FCPA.

Corporate Resolutions can assist you in the design and implementation of appropriate policies that adhere to FCPA rules, such as a Code of Ethics and a Compliance Program. These approaches are created to ensure you are not vulnerable to FCPA violations as well as the fines and negative media attention that go hand-in-hand with breaching covenants of the FCPA.

Portfolio Company or Piggy Bank?

Over the years, we have conducted numerous corporate investigations for boards of directors who needed assistance in resolving problems at portfolio companies. In a recent case, we determined a CEO used corporate funds and investors' monies to support his personal lavish lifestyle. As you will read, when we concluded our investigation, the extent of the CEO's abuse of power and money was quite egregious.

We were approached by board members of a portfolio company on the West Coast who sensed something was wrong and sought our help to determine what happened and to see if any fraud existed. For privilege purposes, we were retained through the outside counsel of the board.

Through a forensic review of the accounting documents available, interviews with former employees of the company and relevant intelligence gathering of public record documents and other sources, we confirmed the CEO had, indeed, engaged in fraud. Despite the fact that board members had previously reprimanded the CEO for such behavior, the CEO continued to use company funds to pay the mortgage on his current residence, purchase airfare for family members to travel to vacation spots, purchase a vacation home, restore family-owned automobiles, and purchase numerous other luxury personal items.

As part of our investigation we interviewed several former CFOs of the company (yes, there were *several*), who advised us that they followed the directions of the CEO for fear of losing their jobs. If a CFO questioned the CEO's maneuvers the CFO would be quickly terminated. Further, when confronted about these issues, the CEO provided a response that was simply unacceptable to the board.

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As an aside, the institutional investors did *not* conduct a background check on the CEO before they invested. Had they done so, they would have uncovered numerous problems involving the CEO including the fact that the CEO had previously served time in prison.

Ultimately, with the facts gleaned from our investigation, the board members suspended and ultimately terminated the CEO, although he still held numerous shares of the company. The shareholders met and in a formal vote decided in favor of the actions taken by the board of directors.



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