



# Trends, Tips and Lessons Learned

September 2006

## In This Issue

Pretexting

Hedge Funds - Sun, Sand  
and Taxes?

India - How The East was Won

**Trends:** Critical Investment  
Decisions Often Warrant Critical  
Intelligence Gathering

Sarbanes Oxley-The Costs Are High,  
Yet More Comply

## Letter from the President

In light of recent current events, many of which are highlighted in this edition of our newsletter, we remind our readers that everything in business is not black and white. As a leading source of business intelligence, **Corporate Resolutions** aims to minimize your financial and reputational risks by providing comprehensive business and financial investigations. We clear up the gray areas so you don't have to.

Kenneth S. Springer  
President

## Pretexting

In our last few newsletters we have informed you of a growing trend in our industry of companies vetting both prospective and current board members. Many times, the trends that we bring to your attention do not become relevant to the public until the mainstream media outlets report on the most recent corporate scandal. Although the scope of this newest case of corporate misdoing has yet to be played out, the Hewlett Packard scandal should be taken seriously.

Last week, details began to emerge about the techniques used by third-party investigators hired by HP executives and their outside counsel to identify leaks within the company's board of directors. Hewlett Packard has acknowledged that pretexting, which is the practice of falsely claiming the identity of another person to obtain personal records to include private phone records, was used by a private investigator hired by the company. Although the company has acknowledged its use in the probe, HP claims that they had no prior knowledge of these activities. Pretexting is illegal in the state of California where Hewlett Packard is headquartered.

About ten years ago it became clear to many in our industry that pretexting to obtain personal records of individuals was clearly a gray area. As such, when conducting corporate fact gathering it is important to be able to think outside the box. Whenever conducting internal inquiries it is a good rule of thumb to be retained by outside counsel who can oversee the objective and methodology of the investigation as well as designate who will be privy to the information that is obtained. Years ago, lawyers did not want to know how private investigators got results, so long as they got them. Nowadays, these rules no longer apply.

(Continued on next page)



CORPORATE RESOLUTIONS INC

New York • Boston • London

## Trends, Tips and Lessons Learned

September 2006

Some investigative techniques often relied upon to obtain information similar to that which the HP board members had hoped to gather include surveillance, computer imaging, direct interviews and simply requesting the person's cooperation by permitting the investigator to review their personal records. Those who refuse to cooperate could potentially be dismissed for cause.

**Corporate Resolutions** has conducted thousands of successful inquiries relying only on our research and investigative strategies, all of which are in compliance with state and federal laws. We are a trusted and reliable resource for due diligence, background checks, corporate investigations and competitive intelligence.

### Sun, Sand and Taxes?

For most Americans, laws aimed to stop money laundering are often viewed as appropriate measures used to prevent illegal money transfers by drug dealers and terrorists. Yet, these anti-money laundering (AML) efforts have taken on a new meaning and a new target: hedge funds and their off shore tax havens.

Many experts in Washington claim that these tax havens, most commonly found in the Cayman Islands, cost the U.S. government an astounding \$70 billion in lost tax revenue each year. In response, the Senate Sub-Committee on Investigations is looking to stiffen penalties and enforce tougher provisions to the U.S. Treasury's current Anti-Money Laundering laws.

A report released on August 1st by the sub-committee suggests new rules that would require fund managers to have knowledge of the names and identities of their customers. This report names the Quellos Group and both the Maverick and Ranger Funds as part of the case requiring hedge funds to identify their clients as well as making the fund responsible for filing a report on any suspicious activities, the specifics of which were not made clear. Currently, investors who invest in off-shore funds are not required to attach their name to fund documents.

In 2003, the U.S. Treasury put forward a proposal that required managers to implement an Anti Money Laundering program to include an AML compliance officer as well as other precautionary measures such as employee compliance training, but these mandates were never finalized.

**Corporate Resolutions** offers AML compliance consulting for hedge funds, portfolio companies, financial institutions and others.



# Trends, Tips and Lessons Learned

September 2006

## How The East Was Won

Four major private equity firms are very close to opening their offices in India. Three of these private equity firms are based in the U.S. (Jefferies, Matrix and Richie Capital) and the fourth is based in Switzerland (BTS). Although there has been a recent slowdown in the emerging markets, this lull seems to have had little or no effect on foreign banks and private equity firms, especially those focusing on mid-cap companies, as these are.

Last year about \$2.3 billion was invested by private equity firms in Indian companies. This sum was comprised of 147 deals, compared to 68 deals in 2004 with a total of \$1.6 billion invested ([www.moneycontrol.com](http://www.moneycontrol.com)). In 2006 these numbers are expected to increase dramatically.

Skeptics should note however that financial behemoth Blackstone allocated approximately \$1 billion to India last year alone, but to date has only disbursed roughly \$50 million, indicating that the market may be overvalued and/or too saturated.

**Corporate Resolutions** has a network of investigators in India who are skilled at conducting inquiries in this arena that will provide you with a better sense of the climate in which you plan to conduct business. Please contact us if you would like to learn more about our international services.

## Trends

### Critical Investment Decisions Often Warrant Critical Intelligence Gathering

**Corporate Resolutions Inc.** is frequently called upon by private equity firms, hedge funds, lenders and others to assist in developing information on management teams and companies before an acquisition. In recent months, our competitive intelligence team has been repeatedly called on to gather information, develop sources and analyze documents to assist law firms, hedge funds and a variety of other clients in gaining a competitive edge on various facets affecting the market. Some techniques utilized include:

- Conduct focused research on the company - both current and historical for problematic patterns
- Develop intelligence on key employees regarding their "other" interests, which may impact their ability to focus
- Identify relevant law suits involving the company, which might provide insight as to business practices, insurance/compensation claims, revenue or net profit, change of accountants and more
- Identify, locate and interview key former employees who may be in a position to provide relevant facts
- Review 8K's and other filings as to the departure of board members, vendors and others for possible debriefing
- Obtain facts regarding regulatory scrutiny in an effort to identify the ultimate target of the inquiry
- Gather facts regarding recent acquisitions, layoffs and other initiatives
- Obtain information about bidding on government contracts or regulatory filings, which might provide insight into financial information
- Monitor relevant publications/associations
- Conduct site visits and more.

For more information on our competitive intelligence team or to learn how your company can benefit from this service, please feel free to contact us at 212-691-3800.



## Trends, Tips and Lessons Learned

September 2006

### Sarbanes Oxley-The Costs Are High, Yet More Comply (and they don't even have to)

Beneficial is not usually a word associated with the complexity of complying with Sarbanes Oxley. Although most companies still find SOX onerous and expensive, an article in the *Wall Street Journal* on August 14, 2006 stated that "an increasing number of closely held companies are complying with parts of the corporate reform law—even though they don't have to." So what exactly are the benefits of an act otherwise viewed as costly and unnecessary - especially for small companies that are not by law required to comply?

It seems that for companies looking to eventually go public, woo investors, make acquisitions or simply please directors or third parties, the benefits outweigh the costs. Along with making a business run more efficiently, SOX garners praise and value from outside investors, lenders and government agencies. The latter group has a long standing history of giving contracts to companies that have strong internal controls, preparing them for auditing. Ryan LaFond, an assistant professor at MIT was quoted in the *Wall Street Journal* article as saying that there is also a financial incentive for private companies to comply with some parts of the law - internal controls can help raise money at lower costs. Many banks and lenders, like Wells Fargo, do take these controls into consideration when granting loans although they are not a prerequisite for doing so.

Perhaps the most important yet unforeseen benefit in complying with parts of the reform law are that it provides peace of mind, gives employees a sense of trust in company management, and makes the company more appealing to any firm who is considering making a bid or merging with a regulatory-minded company.

Many times establishing a code of ethics, creating an employee handbook of policies and procedures, appointing a compliance officer or implementing a whistleblower hotline has proven to be beneficial and reassuring to a company's human capital, an important asset that is many times forgotten.

In a merger or acquisition, softer issues like human and intellectual capital, quality of management, culture and overall reputation are often overlooked and more often than not it is those issues that cause post acquisition problems. When personnel and work place culture issues are included in the due diligence process along with compliance checks and balances, it is less likely that managers and subordinate employees will resign. The results are beneficial to all parties involved - priceless in business terms.

To assist our private equity clients in identifying these issues during their due diligence process, **Corporate Resolutions** offers a one day risk assessment of a target portfolio company that reviews the physical security, computer security and internal control environment to identify any potential issues/problems that may exist. We also speak with employees as part of the review to gain a better understanding of their concerns and to potentially field complaints relating to fraud or mismanagement.

Post acquisition, **Corporate Resolutions** can assist with creating and implementing a code of ethics, perform more in-depth physical and computer security reviews, prepare policies and procedures and put into operation an "Ethics/Whistleblower" hotline.