

Modellazione processi e compliance normativa

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Libro di riferimento per queste slides

Compliance Management for Public, Private, or Nonprofit
Organizations

Michael G. Silverman




McGraw Hill 2008

Cosa hanno in comune questi nomi?

WorldCom, Enron, Adelphia, Healthsouth, the American Red Cross, United Way, Tyco, Fannie Mae, Boeing, Citigroup, Global Crossing, and Arthur Andersen, Parmalat, Banca popolare italiana, BCCI, Morgan Stanley, Libor...

THE LARGEST BANKRUPTCIES

(1980 - PRESENT)

COMPANY	BANKRUPTCY DATE	TOTAL ASSETS PRE-BANKRUPTCY
 WORLDCOM.	7/21/02	\$103,914,000,000
 ENRON *	12/2/01	\$63,392,000,000
 CONSECO.	12/18/02	\$61,392,000,000
 TEXACO	4/12/87	\$35,892,000,000
Financial Corp. of America	9/9/88	\$33,864,000,000

* THE ENRON ASSETS WERE TAKEN FROM THE 10-Q FILES ON 11/19/01.

SOURCE: BANKRUPTCY DATA.COM

...With **starting salaries for compliance officers rising 3.5** percent each year since 2011. **Compliance professionals in banks or broker-dealers** with a couple of years of experience often make \$65,000 to **\$85,000**; five to 10 years of experience can command a base salary of up to **\$150,000** per year.

JP Morgan Chase...planned to add 3,000 employees in the compliance function, even after adding 7,000 such employees in 2013.

Julie Di Mauro, Compliance Complete (Thomson Reuters
Accelus, December 3, 2014)

- Corso anomalo interdisciplinare
- Informatica e non diritto, ma non solo
- Varie parti
- Interventi di specialisti
- Relazione con parte su Modellazione Processi e Diritto
- Prospettiva diversa sul diritto
- Fonti del diritto
- Interpretazione e principi dietro le norme

- Oggetto: corporation
- Stakeholder: board members, company, executives, employees, stockholders, suppliers, customers, and the community in which the organization operates.

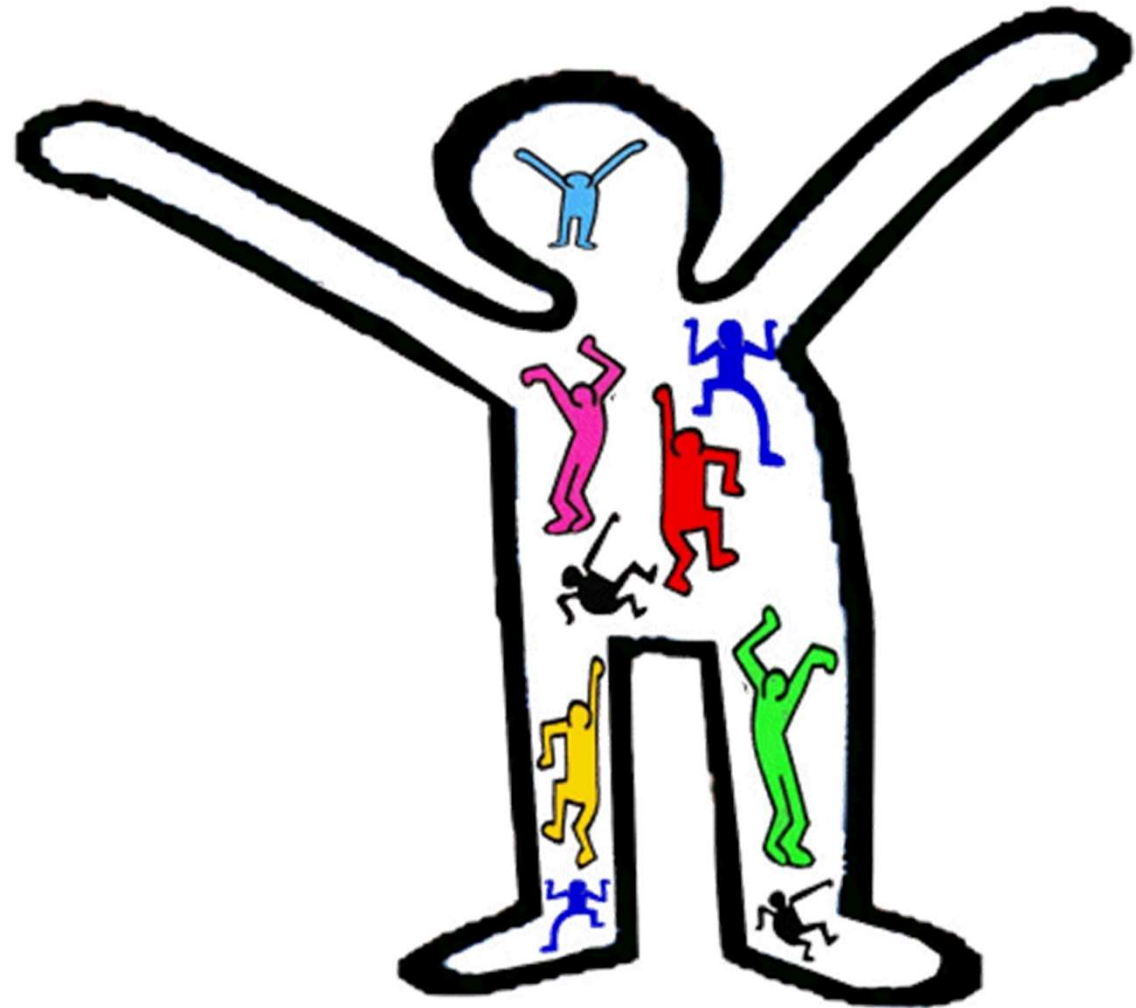
Fonti del diritto

Interpretazione delle norme

John Searle: The construction of social reality

The Building Blocks of Social Reality how can it be a completely objective fact that the bits of paper in my pocket are money, if something is money only because we believe it is money? And what is the role of language in constituting such facts? To give you a feel for the complexity of the problem, I want to begin by considering the metaphysics of ordinary social relations . Consider a simple scene like the following. I go into a café in Paris and sit in a chair at a table. The waiter comes and I utter a fragment of a French sentence. I say, "un demi, Munich, à pression , s'il vovs plait." The waiter brings the beer and I drink it. I leave some money on the table and leave. An innocent scene, but its metaphysical complexity is truly staggering, and its complexity would have taken Kant's breath away if he had ever bothered to think about such things. Notice that we cannot capture the features of the description I have just given in the language of physics and chemistry. There is no physical-chemical description adequate to define "restaurant," "waiter," "sentence of French," "money," or even "chair" and "table," even though all restaurants, waiters, sentences of French, money, and chairs and tables are physical phenomena. Notice, furthermore, that the scene as described has a huge, invisible ontology: the waiter did not actually own the beer he gave me, but he is employed by the restaurant, which owned it. The restaurant is required to post a list of the prices of all the boissons, and even if I never see such a list, I am required to pay only the listed price. The owner of the restaurant is licensed by the French government to operate it. As such, he is subject to a thousand rules and regulations I know nothing about. I am entitled to be there in the first place only because I am a citizen of the United States, the bearer of a valid passport, and I have entered France legally. Kant did not bother to think about such things because in his era philosophers were obsessed with knowledge. Much later, for a brief, glorious moment, they were obsessed with language. Now this philosopher at least is obsessed with certain general structural features of human culture.

Persona
giuridica?





George Lakoff: Metaphors we live by

<https://www.youtube.com/watch?v=Eu-9rpJITY8>

WARNING

**— NO —
TRESPASSING**

**VIOLATORS
WILL BE SHOT
SURVIVORS
WILL BE SHOT
AGAIN**

Oggetto: corporation

- The corporation
- <https://www.youtube.com/watch?v=zpQYsk-8dWg>
- If the corporation were a person, would that person be a psychopath?
- <https://www.economist.com/business/2004/05/06/the-lunatic-you-work-for>



the Corporation
a film by Mark Achbar, Jennifer Abbott & Joel Bakan

- Capacità giuridica: ha poteri, diritti, doveri
- Proprietà dei mezzi di produzione
- Assumere dipendenti
- Know how
- Proprietà di più persone
- Shareholder (azionisti, soci): beneficiari dei ricavi, investimento
- Successione perpetua
- Manager

Under the law, there **are three actors in corporations**

Under the law, there **are three actors in corporations: directors, employees, and shareholders.**

- Directors provide the **oversight and stewardship over all corporate assets**, both human and otherwise.
- **Employees do the day-to-day work** of managing the corporation's **resources and assets.**
- **Shareholders provide the money in the form of risk capital and share risk equal to their investments**

The Corporation. In **1794**, **Stewart Kyd** created a definition of the corporation that is still valid today: “**a collection of many individuals united into one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual.**”

The notion of the **modern corporation** came into being in the aftermath of the stock market crash of **1929** and the Great Depression of the 1930s that started in the United States but quickly **spread** to Europe and eventually to most of the world. The **scars of these two events** have influenced all following generations and laid **the foundations for government regulations and corporate governance**. The pioneering work of **Adolf Augustus Berle and Gardiner C. Means**, **The Modern Corporation and Private Property** (Macmillan, 1932), continues to influence current thinking

- “The property owner who invests in a modern corporation so far surrenders his wealth to those in control of the corporation that he has exchanged the position of independent owner for one in which he may become merely recipient of the wages of capital... [Such owners] have surrendered the right that the corporation should be operated in their sole interest...” [2]“the owners most emphatically will not be served by a profit seeking controlling group”. [3]

THE MODERN
CORPORATION
AND PRIVATE
PROPERTY

This book has been a landmark since its
publication in 1919. For 100 years,
it has been a classic of American
economic thought.

BY ADOLF A. BERLE, JR.
AND GARDNER E. MEANS

- “The economic power in the hands of the few persons who control a giant corporation is a tremendous force which can harm or benefit a multitude of individuals, affect whole districts, shift the currents of trade, bring ruin to one community and prosperity to another. The organizations which they control have passed far beyond the realm of private enterprise - they have become more nearly social institutions.”[\[14\]](#)

- “have we any justification for assumption that those in control of a modern corporation will also choose to operate it in the interests of the owners? The answer to this question will depend on the degree to which the self-interest of those in control may run parallel to the interests of ownership and, insofar as they differ, on the checks on the use of power which may be established by political, economic, or social conditions... If we are to assume that the desire for personal profit is the prime force motivating control, we must conclude that the interests of control are different from and often radically opposed to those of ownership; that the owners most emphatically will not be served by a profit-seeking controlling group.”

Dimensioni di una corporation:

- The **Corporation as a Legal Entity.**
- The **Corporation as an Economic Entity.**
- The **Corporation as an Accounting Entity**
- The **Corporation as a Cultural and Socially Responsible Entity.**

The Corporation as a Legal Entity. Corporations are given a **unique legal personality** under the law in **which shareholders own the corporation as a legal entity, but the corporation as the legal body owns the corporation's assets.** Under the law, **corporations have the same contractual rights as an individual** and are capable, like an individual, of **making contractual agreements**, buying and selling real estate, and engaging in **lawsuits**.

While the corporation **has its own existence** and personality under law, **it is only an abstraction and requires the actions of real people to operate.** Therefore corporate law **requires a board of directors to govern the organization**, who **delegate operational control to professional managers**, typically under a **chief executive officer (CEO)**. In some cases the CEO is also the **chairman** of the board of directors.

A corporation is an **artificial legal entity**, known as a **juristic person**

- Ability to **access the courts** (i.e., the right to initiate lawsuits and be the **subject** of lawsuits)
- Ability to **hold assets separately from its members' assets** (i.e., the right to a common treasury)
- **Ability to hire and fire** employees (i.e., the right to engage agents)
- Ability to **enter into contracts** (i.e., the right to a common seal)
- Ability to **govern the corporation's internal affairs** (i.e., and the right to **make bylaws**)
- Ability to **transfer shares** without impacting the existing corporation
- Ability to **maintain a perpetual succession** regardless of the withdrawal or removal of any of its members
- Ability to **limit the liability of stakeholders**

The **Corporation as an Economic Entity**. The corporation is also an **economic enterprise that exists to make profits**, which are, in turn, ultimately **shared with shareholders as dividends and rising stock prices**. This economic entity replaces a wide variety of **less efficient activities** in the marketplace that would be conducted by **individuals**. Corporations increase efficiency by acting as **independent holders of property rights** that create **contractual arrangements** with other parties. This greatly **reduces the costs and number of transactions** for all those involved—customers, suppliers, employees, owners, government agencies, and so on. The **separation of control and ownership**, while **improving efficiency**, does **mandate a governance framework to align corporate decisions with the corporation's economic capital and resources**.

The **Corporation as an Accounting Entity**. Corporations are also accounting entities. Accounting is the process by **which corporations identify, measure, and communicate information that impacts financial reporting**. It is used by stakeholders **to guide their judgment** as to the current state and future prospects of corporations. Many corporate governance issues **revolve around accounting-based information**.

The Corporation as a Cultural and Socially Responsible Entity.

Corporations are also cultural entities that often **transcend national and regional borders.**

As **global trade, politics, entertainment, media, the Internet,** and other cross-border activities expand, corporations take on more of a **cultural identity** that is bigger than their traditional **branding.**

Coke, Pepsi, Visa, Disney, Levi's, and IBM have been widely recognized **brands in every region of the world for decades,** and new names such as Apple/iPod, Yahoo!, and Google **have become cultural phenomena** that are growing in importance beyond traditional corporate branding.

The actions of these marquee global corporations are becoming **as important as the actions of any of their home governments in shaping our lives**, regardless of whether we are direct customers of their products. Consequently, the **governance of these corporations takes on major significance and may trump national government regulations and regulators in shaping our economic growth and stability**. the United States has lagged in many critical areas due to the resistance of the central/federal government.

Corporate America has now **embraced green as good business** and the socially responsible course of action—in spite of the lack of action on the federal government’s part. This is counter to the notion that government should lead and that corporations are too market-driven to take such socially responsible actions. **Toyota’s** visionary embracing of **hybrid** technology is one of the best examples.

Bilioni di motivi come perchè di questo corso

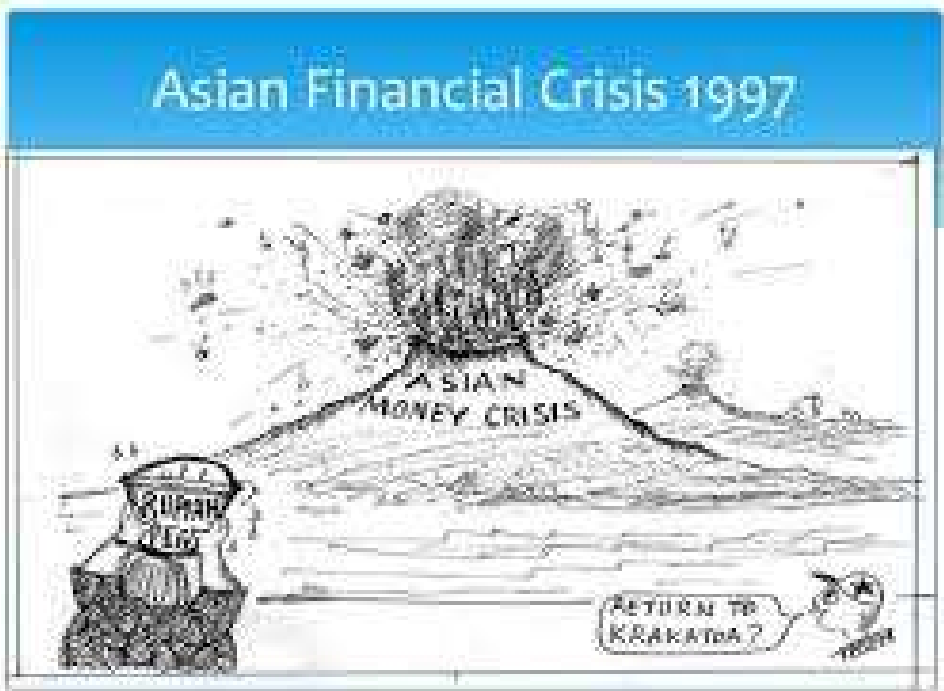
WorldCom, Enron, Adelphia, Healthsouth the American Red Cross,
United Way, Tyco, Fannie Mae, Boeing, Citigroup, Global Crossing, and
Arthur Andersen, Parmalat, Banca popolare italiana, BCCI, Morgan
Stanley,



U.S. Savings and Loan Crisis of 1986 to 1995

Over 1,000 savings and loan institutions were closed, holding over \$500 billion in assets and representing about half of the total number of savings and loans. Deregulation, changing market conditions, volatile interest rates, tax changes, and reduced regulatory capital have all been cited as causes of the crisis.

Losses totaled over \$80 billion, with public sector/taxpayer costs of \$75 billion and private sector costs of \$7 billion.



East Asian Crisis of 1997.

South Korea, Malaysia, Thailand, Indonesia, and the Philippines saw their economies severely hurt by the **flight of foreign capital after property assets collapsed.**

This was caused in part **by poor governance at a national and corporate level.**

Waste Management Scandal

Vol XCIII, No. 31

Friday, January 22, 2015

\$1.25

What is the company?



Waste Management Inc.

Waste Management Inc. is a corporation in North America that manages its waste management services through its subsidiaries and divisions. The company is a leading provider of waste management services in the United States.

Waste Management Inc. was founded in 1987, and is a publicly traded company. The company's headquarters are located in Atlanta, Georgia. The company's primary business is waste management services, including waste collection, recycling, and landfill operations.

What was the Scandal?

The scandal involved the company's financial reporting, which was found to be fraudulent. The company had been reporting inflated earnings and profits, which had led to a significant increase in its stock price. The scandal was uncovered in 2007, and the company was forced to restate its financial statements.

Who was involved?

The scandal involved several key executives of the company, including CEO Robert M. Whitt and CFO Robert M. Whitt. The company's board of directors was also involved in the scandal, as they were responsible for overseeing the company's financial reporting.

What were the outcomes?

The outcomes of the scandal included the company's financial restatement, the resignation of CEO Robert M. Whitt, and the resignation of CFO Robert M. Whitt. The company was also fined by the SEC for its fraudulent financial reporting.

How did the scandal affect the company and investors?

The scandal had a significant impact on the company and its investors. The company's stock price fell sharply, and the company's reputation was severely damaged. Investors who had purchased the company's stock at a high price were left with significant losses.

How was the Scandal Documented?

The scandal was documented through various sources, including SEC filings, news reports, and internal company documents. The SEC's investigation into the company's financial reporting was a key factor in the scandal's exposure.

How did the Scandal affect the company and investors?

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What GAAP principles were violated?

The company violated several GAAP principles, including the principle of accuracy and the principle of transparency. The company had been reporting inflated earnings and profits, which was a clear violation of the principle of accuracy.

What is Waste Management Inc. Now?

Waste Management Inc. is now a publicly traded company that has been restructured. The company's focus is on waste management services, and it has a strong reputation in the industry. The company's stock price has recovered significantly since the scandal.

What Did?

The company's focus is on waste management services, and it has a strong reputation in the industry. The company's stock price has recovered significantly since the scandal.

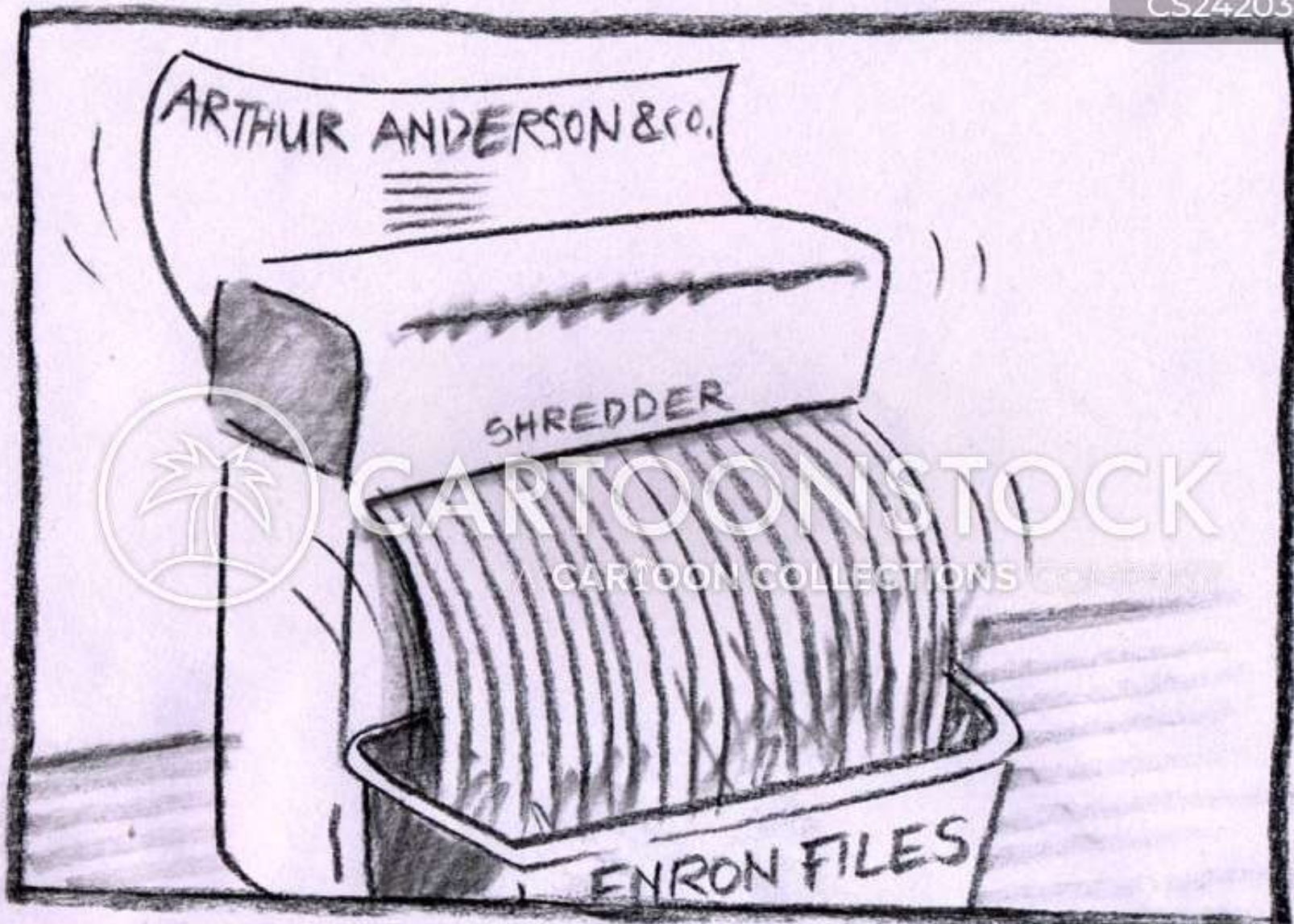


Waste Management Scandal (1998)

- Company: Houston-based publicly traded waste management company
- What happened: Reported **\$1.7 billion in fake earnings**.
- Main players: Founder/**CEO**/Chairman Dean L. Buntrock and other top executives; **Arthur Andersen Company (auditors)**
- How they did it: The company allegedly **falsely increased** the depreciation time length for their property, plant and equipment on the balance sheets.
- **How they got caught:** A **new CEO** and management team went through the books.
- Penalties: Settled a shareholder class-action suit for **\$457 million**. SEC fined Arthur Andersen \$7 million.
- Fun fact: After the scandal, new CEO A. Maurice Meyers set up an **anonymous company hotline** where employees could report dishonest or improper behavior.

I SEE FROM
YOUR RESUMÉ,
YOU SPENT
FIVE YEARS WITH
ARTHUR ANDERSEN™





CARTOONSTOCK

CARTOON COLLECTIONS



" THAT IS MY NAME, BUT I'M NOT THE ARTHUR ANDERSEN."





THE POWER GRID



Enron Scandal (2001)

- Company: Houston-based commodities, energy and service corporation
- What happened: Shareholders lost **\$74 billion**, thousands of employees and investors lost their **retirement** accounts, and many employees lost their **jobs**.
- Main players: **CEO** Jeff Skilling and former CEO Ken Lay.
- How they did it: Kept huge **debts off balance sheets**.
- How they got caught: Turned in by internal **whistleblower** Sherron Watkins; high stock prices fueled external suspicions.
- Penalties: Lay died before serving time; Skilling got **24 years** in prison. The company filed for **bankruptcy**. **Arthur Andersen** was found guilty of fudging Enron's accounts.
- Fun fact: Fortune Magazine named Enron "America's Most Innovative Company" 6 years in a row prior to the scandal.

NIENTE
E PIU' PERICOLOSO
DELLA VERITA'



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THE
FIVES
The Free Lance-Star
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Crooked accounting puts WorldCom on brink

In a statement Tuesday, WorldCom said its board of directors had found \$3.8 billion was wrongly listed on its books as capital expenses in 2001 and 2002. That means WorldCom may have actually lost millions of dollars when it reported profits.

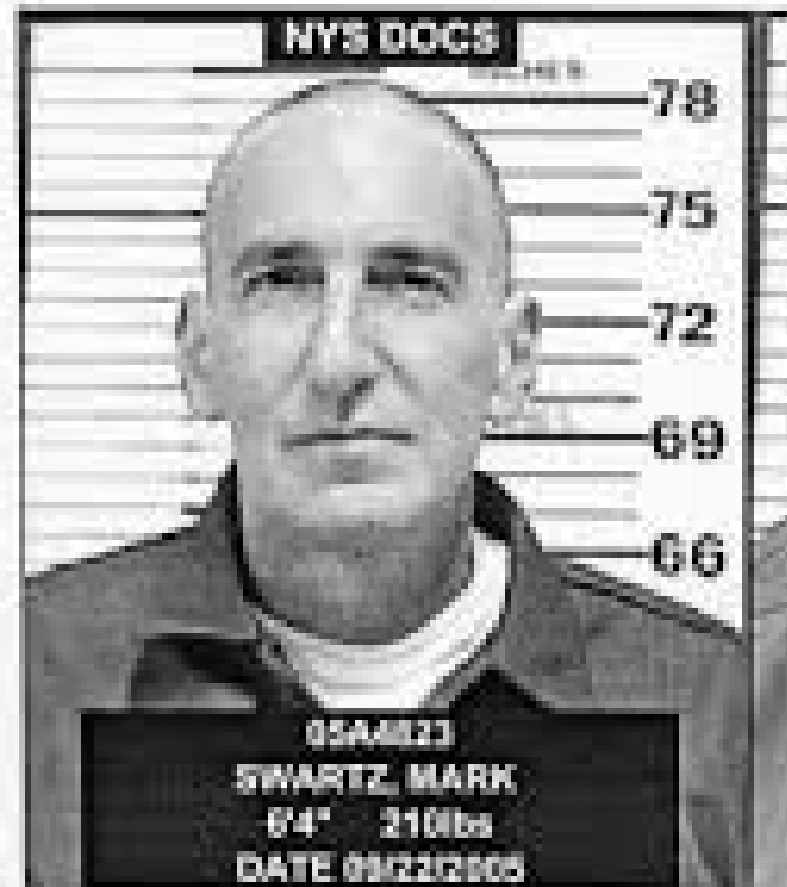
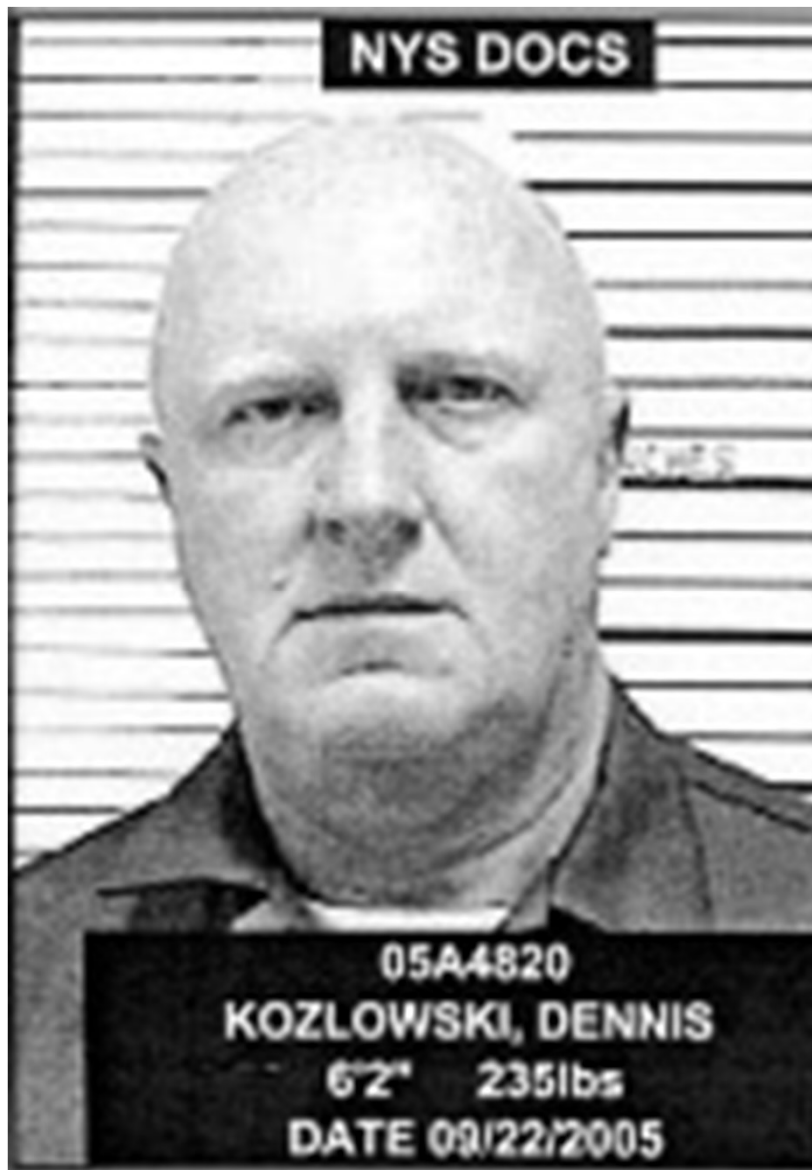
Stock price



WorldCom Scandal (2002)

- Company: Telecommunications company; now MCI, Inc.
- What happened: **Inflated assets** by as much as **\$11 billion**, leading to 30,000 lost **jobs** and **\$180 billion** in losses for investors.
- Main player: **CEO** Bernie Ebbers
- How he did it: **Underreported line costs** by capitalizing rather than expensing and **inflated revenues** with **fake accounting entries**.
- How he got caught: WorldCom's **internal auditing** department uncovered \$3.8 billion of fraud.
- Penalties: CFO was fired, controller resigned, and the company filed for **bankruptcy**. Ebbers sentenced to **25 years** for fraud, conspiracy and filing false documents with regulators.
- Fun fact: Within weeks of the scandal, Congress passed the **Sarbanes-Oxley Act**, introducing the most sweeping set of new business regulations since the 1930s.





Sex - MALE Race - WHITE Hair - BLACK

NYS

Tyco Scandal (2002)

- Company: New Jersey-based blue-chip Swiss security systems.
- What happened: CEO and CFO stole \$150 million and inflated company income by **\$500 million**.
- Main players: **CEO** Dennis Kozlowski and former CFO Mark Swartz.
- How they did it: Siphoned money through **unapproved loans** and **fraudulent stock sales**. Money was **smuggled out** of company disguised as executive bonuses or benefits.
- How they got caught: **SEC** and Manhattan D.A. investigations uncovered questionable accounting practices, including large loans made to Kozlowski that were then forgiven.
- Penalties: Kozlowski and Swartz were sentenced to **8-25 years in prison**. A class-action lawsuit forced Tyco to **pay \$2.92 billion** to investors.
- Fun fact: At the height of the scandal Kozlowski threw a \$2 million birthday party for his wife on a Mediterranean island, complete with a Jimmy Buffet performance.



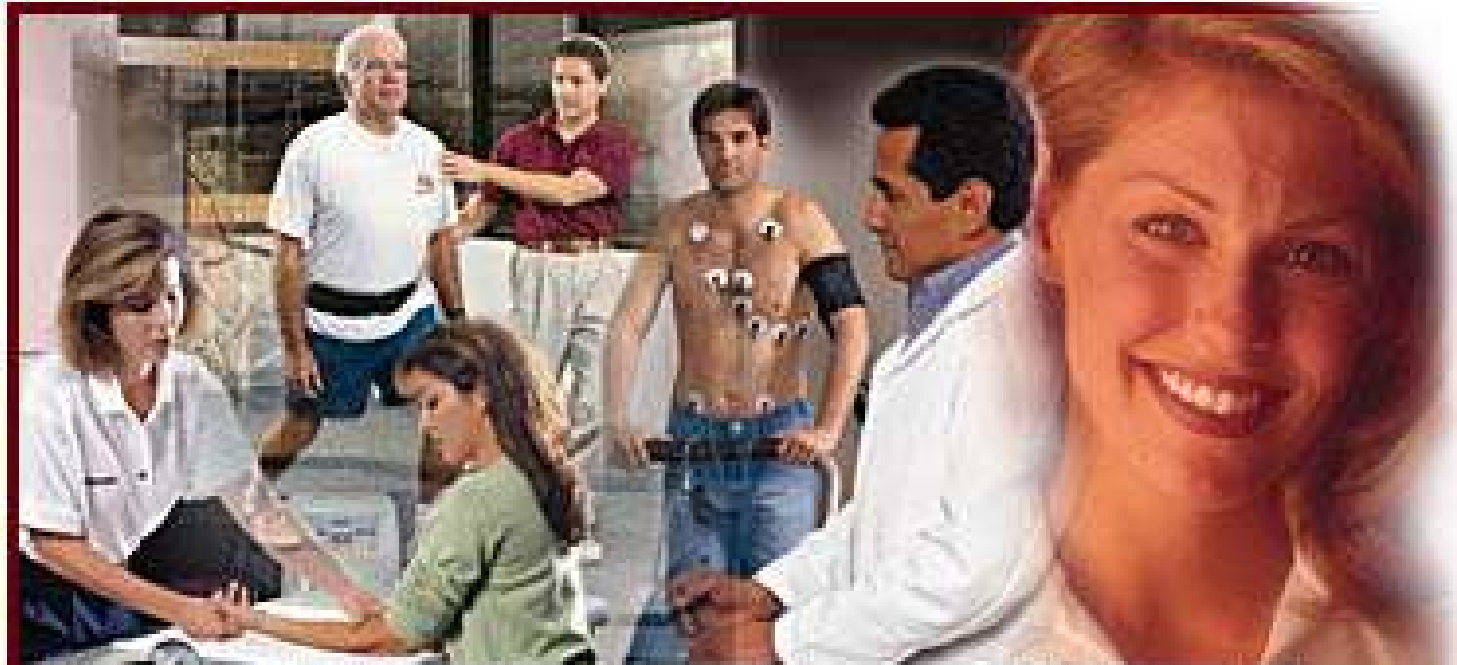
U.S. SECURITIES AND
EXCHANGE COMMISSION



FOCUSING ON MAIN STREET

The SEC's focus on Main Street investors reflects the fact that American households own \$29 trillion worth of equities — more than 58 percent of the U.S. equity market — either directly or indirectly through mutual funds, retirement accounts and other investments.





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The Healthcare Company of the 21st Century

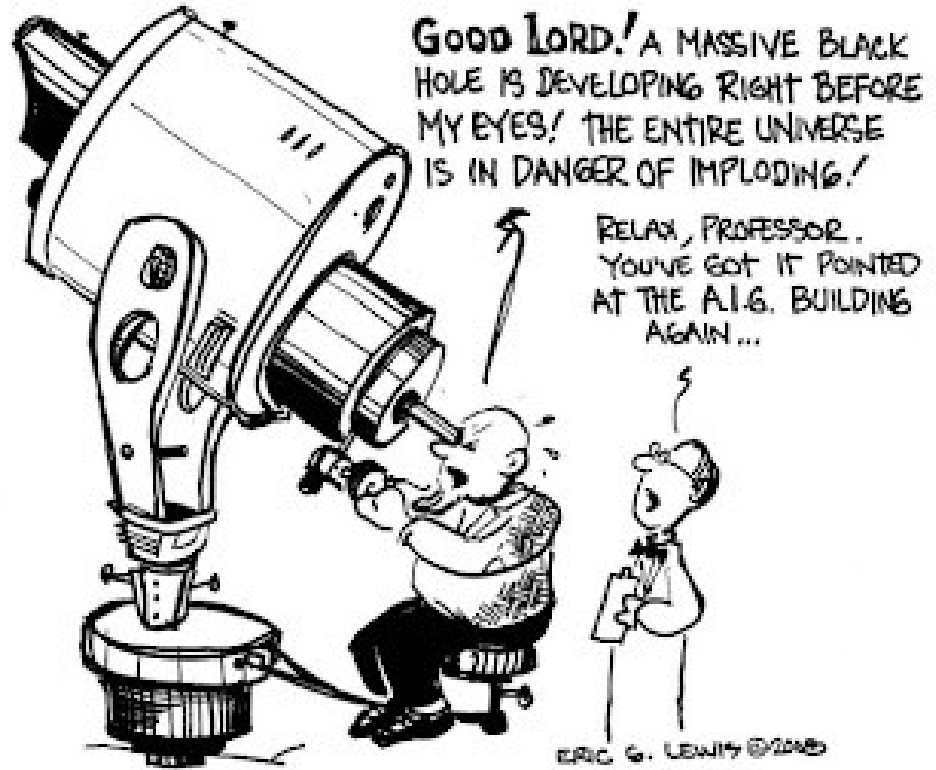
HealthSouth Scandal (2003)

- Company: Largest publicly traded health care company in the U.S.
- What happened: Earnings **numbers** were allegedly **inflated \$1.4 billion** to meet stockholder expectations.
- Main player: **CEO** Richard Scrushy.
- How he did it: Allegedly **told underlings to make up numbers** and transactions from 1996-2003.
- How he got caught: **Sold \$75 million in stock** a day before the company posted a huge loss, triggering **SEC** suspicions.
- Penalties: Scrushy was acquitted of all 36 counts of accounting fraud, but convicted of **bribing** the governor of Alabama, leading to a **7-year** prison sentence.
- Fun fact: Scrushy now works as a motivational speaker and maintains his innocence.



Freddie Mac (2003)

- Company: **Federally** backed mortgage-financing giant.
- What happened: **\$5 billion** in earnings were misstated.
- Main players: **President**/COO David Glenn, Chairman/**CEO** Leland Brendsel, ex-CFO Vaughn Clarke, former senior VPs Robert Dean and Nazir Dossani.
- How they did it: Intentionally **misstated** and understated **earnings** on the books.
- How they got caught: An **SEC** investigation.
- Penalties: **\$125 million in fines** and the **firing** of Glenn, Clarke and Brendsel.
- Fun fact: 1 year later, the other federally backed mortgage financing company, **Fannie Mae**, was caught in an equally stunning accounting scandal.



American International Group (AIG) Scandal (2005)

- Company: Multinational insurance corporation.
- What happened: Massive **accounting fraud** to the tune of **\$3.9 billion** was alleged, along with bid-rigging and **stock price manipulation**.
- Main player: **CEO** Hank Greenberg.
- How he did it: Allegedly booked **loans as revenue**, steered clients to insurers with whom AIG had payoff agreements, and **told traders to inflate AIG stock price**.
- How he got caught: **SEC** regulator investigations, possibly tipped off by a **whistleblower**.
- Penalties: Settled with the SEC for \$10 million in 2003 and **\$1.64 billion** in 2006, with a Louisiana pension fund for \$115 million, and with 3 Ohio pension funds for \$725 million. Greenberg was **fired**, but has faced **no criminal charges**.
- Fun fact: After posting the **largest** quarterly corporate **loss** in history in 2008 (\$61.7 billion) and getting **bailed out with taxpayer dollars**, AIG execs rewarded themselves with over \$165 million in bonuses.



Max 18C, min 5C

Tuesday September 16 2008 timesonline.co.uk No 69430

Lehman collapse sends shockwave round world

Shares and oil prices plunge, thousands lose jobs

Barry Duncan Economics Editor

Signs of a global financial meltdown were yesterday as the world's biggest markets plunged into turmoil.

Investors were left reeling as the abrupt demise of the Lehman Brothers investment bank sparked the latest shake-up on Wall Street in New York.

Another of US capitalism's biggest institutions, Merrill Lynch, is to be acquired by Bank of America in a \$180 billion takeover to save it from collapse.

Shares fell as fear spread through the financial system. Central banks announced urgent measures amid concerns the world economy was entering a dangerous new phase. The Bank of England injected £5 billion of emergency lending into money markets.

5,000 Lehman staff in Britain

are now unquestionably in the worst financial crisis since the start of the Depression'

by **Barry Duncan**, page 24

article page 2

by **Barry Duncan**, page 5

Dow Jones industrial average was down 300 points, or 2.6 per cent. Sentiment was also bolstered by steep falls in oil prices, which dropped by more than \$5 a barrel to \$96, closing under \$100 for the first time in six months and raising hopes that cheaper fuel would ease economic stresses on Western nations.

However, by close of trading the Dow had fallen by more than 500 points — its biggest one-day drop since the reopening after the September 11 attacks — as concerns mounted over the world's largest insurer. Shares in American International Group (AIG), which sponsors Manchester United, fell by 45 per cent after it made an unprecedented approach to the US Federal Reserve for \$40 billion in emergency funding.

Last night the Fed asked Goldman Sachs and J.P. Morgan Chase, two of Wall Street's remaining big banks, to head a \$75 billion emergency package to keep AIG afloat.

As central banks battled to stabilise the system, the Fed eased its rules for emergency lending further. It announced that it would accept company shares in return for crisis loans for the first time. In Frankfurt, the European Central Bank injected €30 billion in emergency funds into eurozone markets.

A group of ten global banks also attempted to foster calm among investors.





Lehman Brothers Scandal (2008)

- Company: Global financial services firm.
- What happened: Hid over **\$50 billion in loans disguised as sales**.
- Main players: Lehman **executives** and the company's **auditors**, Ernst & Young.
- How they did it: Allegedly sold **toxic assets to Cayman Island banks** with the understanding that they would be bought back eventually. Created the impression Lehman had **\$50 billion more cash** and \$50 billion less in toxic assets than it really did.
- How they got caught: Went **bankrupt**.
- Penalties: Forced into the **largest bankruptcy in U.S. history**. **SEC didn't prosecute** due to **lack of evidence**.
- Fun fact: In 2007 Lehman Brothers was ranked the #1 "Most Admired Securities Firm" by Fortune Magazine.



CHRISTIAN
BALE
STEVE
CARELL
RYAN
GOSLING
BRAD
PITT



AN ADAM MCKAY FILM

THE **BIG** SHORT

THIS IS A TRUE STORY



FROM THE AUTHOR OF
'MONEYBALL'
AND
'THE BLIND SIDE'



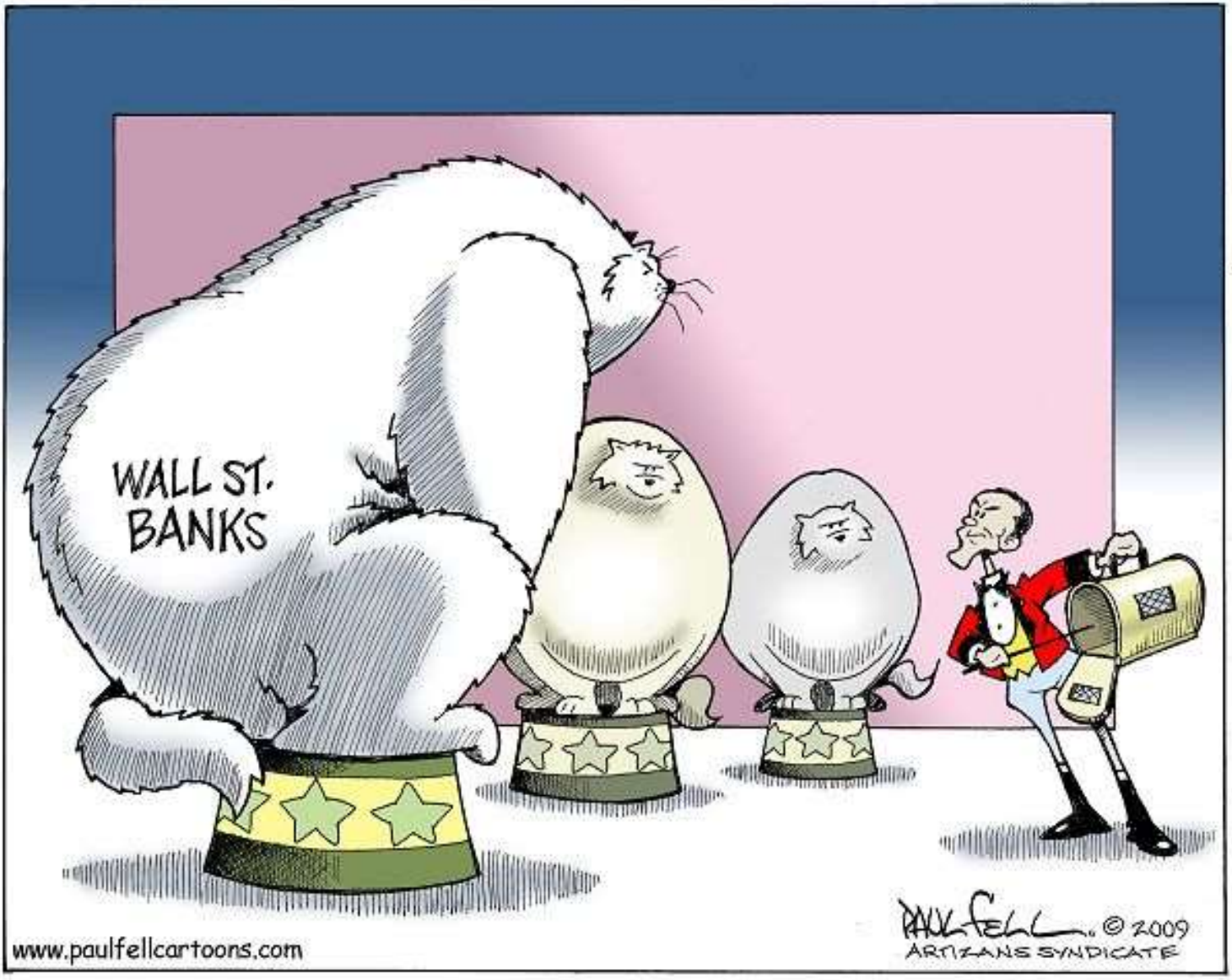
Bernie Madoff Scandal (2008)

- Company: Bernard L. Madoff Investment Securities LLC was a Wall Street investment firm founded by Madoff.
- What happened: Tricked investors out of **\$64.8 billion** through the **largest Ponzi scheme** in history.
- Main players: Bernie Madoff, his **accountant**, David Frierling, and Frank DiPascalli.
- How they did it: **Investors were paid returns out of their own money** or that of other investors rather than from profits.
- How they got caught: Madoff told his **sons** about his scheme and they reported him to the **SEC**. He was arrested the next day.
- Penalties: **150 years** in prison for Madoff + **\$170 billion restitution**. Prison time for Frierling and DiPascalli.
- Fun fact: Madoff's fraud was revealed just months after the **2008 U.S. financial** collapse.



Satyam Scandal (2009)

- Company: Indian IT services and back-office accounting firm.
- What happened: Falsely **boosted revenue by \$1.5 billion**.
- Main player: Founder/**Chairman** Ramalinga Raju.
- How he did it: **Falsified revenues**, margins and cash balances to the tune of 50 billion rupees.
- How he got caught: **Admitted the fraud in a letter** to the company's **board** of directors.
- Penalties: Raju and his brother charged with breach of trust, conspiracy, cheating and falsification of records. **Released** after the Central Bureau of Investigation failed to file charges on time.
- Fun fact: In 2011 Ramalinga Raju's wife published a book of his existentialist, free-verse poetry.



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THE WORLD OF
HIGH FINANCE
and BANKING

HEADS, I WIN
TAILS, YOU LOSE...



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Rate Fixing 2014: Liborgate

One of the **systemic** failings to emerge from the post-2008 analysis has been the **scale of rate fixing across several financial centres, including London, Singapore, Hong Kong, and Shanghai**, both during the GFC and afterwards. The revelations show the level of **cynical manipulation of the system for the advantage of individual banks**, first to disguise vulnerabilities during the 2008 crisis, and later for competitive advantage. The effects across the system are **incalculable** because so many institutions and consumers have been affected. It seems **compliance** was again **unable** or **unwilling** to identify or address this systematic misuse of a lightly regulated part of the system. It is possible that regulators knew about the possibility of **fixing—the leaked emails of Barclay’s workers certainly suggest that it was common knowledge among traders—but compliance seemed impotent**. In 2014, five banks were **fined by FCA for fixing foreign** exchange rates:

1. Citibank NA: £225,575,000 (\$358 million)
2. HSBC Bank Plc: £216,363,000 (\$343 million)
3. JPMorgan Chase Bank NA: £222,166,000 (\$352 million)

Barclays Bank trader in New York to submitter:

“Hi Guys, We got a big position in 3m libor for the next 3 days. Can we please keep the libor fixing at 5.39 for the next few days. It would really help. We do not want it to fix any higher than that. Tks a lot.”

... e ancora ...

Fannie Mae paid **\$400** million in fines to the SEC; its losses total \$10.6 billion, shareholder losses total \$30 billion, 44 of 55 executives were out, and 29 may be forced to return bonuses (called the Democratic Party scandal due to close ties). Former Refco CEO Phillip Bennett was accused of hiding \$430 million in debt in a post-SOX scandal.

Grant Thornton is being sued over its **auditing** of the Refco initial public offering (IPO), which occurred in August 2005.

Adelphia. In June 2005, John and Timothy Rigas were sentenced to 15 and 20 years in prison, respectively, for their role in looting the cable giant. The scandal drove Adelphia into bankruptcy.

In March **2005**, **Time Warner**, the world's **largest media company**, agreed to pay \$300 million to settle **federal fraud charges for overstating its Internet subscribers and revenues**, leading to an August 2006 restatement of **\$584 million in advertising revenues**.

EU Scandals of 2001–2003. **The Italian dairy giant Parmalat** filed for bankruptcy in December 2003 after collapsing under about **\$18.1 billion of debt** and is **suing Citigroup, Bank of America, and former auditors Grant Thornton and Deloitte & Touche**.

Ahold, the world's third largest **food** distributor, **lost two-thirds of its stock value in the EU's largest scandal**. The scandal stemmed from **accounting irregularities** from a U.S. subsidiary, which **overstated its income by \$880 million** in 2001 and 2002.

- **Securities and Exchange Commission/National Association of Securities Dealers (SEC/NASD) and New York Stock Exchange (NYSE)**. **Fines of \$8.5 million** were levied against **five brokerage firms** for failure to preserve e-mail communications.

- **Credit Suisse First Boston**. **Criminal** charges were brought against CSFB investment banker Frank Quattrone for allegedly **telling people to “clean up” files after learning about an investigation**.

... e ancora ...

Riggs Bank. The Albritton family lost control of Riggs Bank after various scandals and fines of \$25 million.

Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, JPMorgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, **agreed to a \$1.4 billion settlement** covering their actions to defraud investors.

BCCI. **The Bank of Credit and Commerce International (BCCI)** scandal resulted in the Bank of England being **sued by creditors for £1 billion (\$1.8 billion)**.

Morgan Stanley. Morgan Stanley paid a **\$50 million fine** to settle allegations that it inappropriately **steered customers into select mutual funds in exchange for secret commissions** as regulators targeted the industry's controversial fee regime.

Morgan Stanley. Morgan Stanley was ordered to **pay billionaire financier Ron Perelman more than \$1.4 billion in damages over the 1998 sale of his Coleman camping-gear company to Sunbeam.**

Prudential Financial. Prudential and a subsidiary agreed to **pay \$600 million** in penalties to resolve government allegations of deceptive market timing in the trading of mutual funds.

China Construction Bank. Chairman Zhang Enzhao pleaded guilty to bribery and faces life in prison.

Banca Popolare Italiana. **Consolidation of the banking sector in Italy has been spurred since a scandal involving BPI and others led to the resignation of Antonio Fazio.**

U.S. Stock Option Backdating Scandal of 2005–2006. Over 100 U.S. companies have been implicated in **cheating on the dates that stock options were granted**. It took some **astute mathematicians to demonstrate** that it was **statistically impossible** that options **were always granted at the lowest levels for a given period**. Several executives have been indicted, and several more have been forced to resign and repay their option gains. The Wall Street Journal estimates **2,000 U.S. companies** may be drawn in.

Silicon Valley is such a target of the investigations that the Federal Bureau of Investigation (FBI) has set up a temporary office in the area. Law firms are gearing up to handle the cases and looking to make a fortune in the process.

... e ancora...

Wells Fargo e gli account falsi Apriamo questa breve rassegna sugli scandali bancari USA con uno che in questi giorni sta pericolosamente tornando alla ribalta. Sono 3 miliardi di dollari quelli che Wells Fargo ha ricevuto in dono tra multe e risarcimenti pochi giorni fa e ancora non è finito. Aver creato addirittura dal 202 al 2016 milioni di conti correnti falsi in più per i loro ignari clienti. Carte di credito, assegni, bancomat doppi e non necessari che questi hanno scoperto di possedere quasi per caso, mentre continuavano a pagarne il prezzo. Lo scandalo dei conti doppi ha portato al taglio di 265.000 dipendenti coinvolti e alle dimissioni del CEO John Stumpf. Lo scandalo della Wells Fargo però ha fatto nascere il sospetto che anche altri istituti potessero fare la medesima cosa. Per questo le norme in termini di sicurezza e la richiesta del riconoscimento al momento dell'apertura sono aumentate, sarà sufficiente?

US Bancorp e il crimine più tradizionale per una banca Nel febbraio 2018, US Bancorp ha pagato un totale di 613 milioni di dollari a seguito dell'accordo con il Dipartimento di Giustizia, inclusi 453 milioni in fondi confiscati e multe alla Federal Reserve, al Dipartimento del Tesoro e all'Ufficio del Controllore della Valuta. Lo scandalo che l'ha coinvolta, uno dei più tradizionali per una banca: riciclaggio di denaro. Il Dipartimento di Giustizia ha affermato che il programma antiriciclaggio della banca ha perso un numero considerevole di transazioni sospette tra il 2009 e il 2014. Gli avvisi di monitoraggio erano tarati non tanto sulla pericolosità delle transazioni, ma sul personale al lavoro. Nonostante i vertici fossero stati avvisati di questa grave carenza e di vincoli più sottili niente è stato poi fatto aggravando così la situazione e facendo schizzare la multa.

Citigroup non fa bene i compiti La Bank of England ha multato la banca americana Citigroup con un record di 56 milioni di dollari (44 milioni di pound). Lo scandalo in questo caso consiste nella presentazione di informazioni normative incomplete e inesatte tra il 2014 e il 2018 sulla reale posizione finanziaria della banca. Citi non ha rispettato gli standard normativi e di trasparenza previsti nel periodo nascondendo problemi che erano "di natura grave e diffusa" e non mettendo in campo i giusti livelli di governance per poter fronteggiare e assolvere documenti e azioni necessarie per la salvaguardia della stabilità finanziaria.. Non fornendo un quadro della situazione chiaro e preciso è stata per questo multata, nonostante durante l'intero periodo avesse il capitale per far fronte ad eventuali crolli, ciò non è stato sufficiente e la ghigliottina inglese ha colpito. La multa doveva essere ancora più salata pari a circa 72 milioni di dollari, ma si è arrivati ad un accordo.

Insider trading Sembra essere una lunga storia d'amore quella tra le banche e l'insider trading. Negli ultimi mesi è venuto alla ribalta lo scandalo che ha visto coinvolto un executive di Goldman Sachs che insieme ad altri 5 colleghi hanno collezionato oltre 40 capi di accusa. Ancora non del tutto quantificati i milioni che sono stati intascati dai 6 e non si parla solo di soldi, ma anche di beni di lusso a riprova che la creatività criminale si lega a volte ad una immancabile dose di raffinatezza. Centro dello scandalo sono state anche la banca d'investimento Moelis e il gruppo di investment banking e private equity Centerview Partners.

Lo scandalo malese Di nuovo Goldman Sachs, ma non solo. Tra i nostri scandali bancari USA questo è di certo il più succoso. Lo scandalo malese è uno dei più grandi di questi ultimi anni e uno ancora dei più torbidi. Scoppiato nel 2018 riguarda il fondo 1MDB, il fondo doveva essere un fondo creato al fine di finanziare attività per la creazione di infrastrutture in Malesia. Basquiat e altri nomi noti hanno finanziato il fondo che poi però si è rivelato essere un fondo perduto. Mai nessun intervento a favore del povero Paese, ma intanto con quei soldi si finanziavano film, lo stesso The Wolf of Wall Street, acquisto di opere d'arte come un Picasso andato a Leonardo Di Caprio, un pianoforte a Miranda Kerr entrambi "finanziatori". Yacht, gioielli e tantissime altre spese che hanno portato all'appropriamento indebito di una somma pari a 4,5 miliardi di dollari. Svariati milioni sono stati poi spesi durante gli anni di attività del fondo aperto nel 2008. E sempre Goldman emetteva obbligazioni fino a 6,5 miliardi per finanziare il fondo e guadagnando puliti, puliti 593 miliardi dalle sole commissioni di emissione. Nello scandalo sono coinvolti oltre all'istituto e altri nomi dello spettacolo anche importanti fondi stranieri e il partito che fino al 2018 è stato al governo della Malesia. Il partito di governo dovrà pagare 10,5 miliardi di dollari per ripagare i debiti del fondo e il processo non è ancora finito

Goldman sta patteggiando con il nuovo governo malese per una sanzione che dovrebbe essere tra i 2 e 3 miliardi di dollari. Intanto a riprova di quanto detto in apertura l'istituto ha cominciato dallo scorso anno a mettere da parte 1,92 miliardi. I profitti del gruppo ne hanno risentito del 24%. Ma quel che è peggio e che come sempre ci sconforta è che questi grandi istituti e i corrotti si butteranno tutto alle spalle mentre il popolo malese ne subirà le ripercussioni. Sono stati cancellati ben due grandi interventi strutturali e il deficit è stato improvvisamente portato a causa dello scandalo dal 2,8 a 3,7% che è uno stato già debole è pesantissimo.

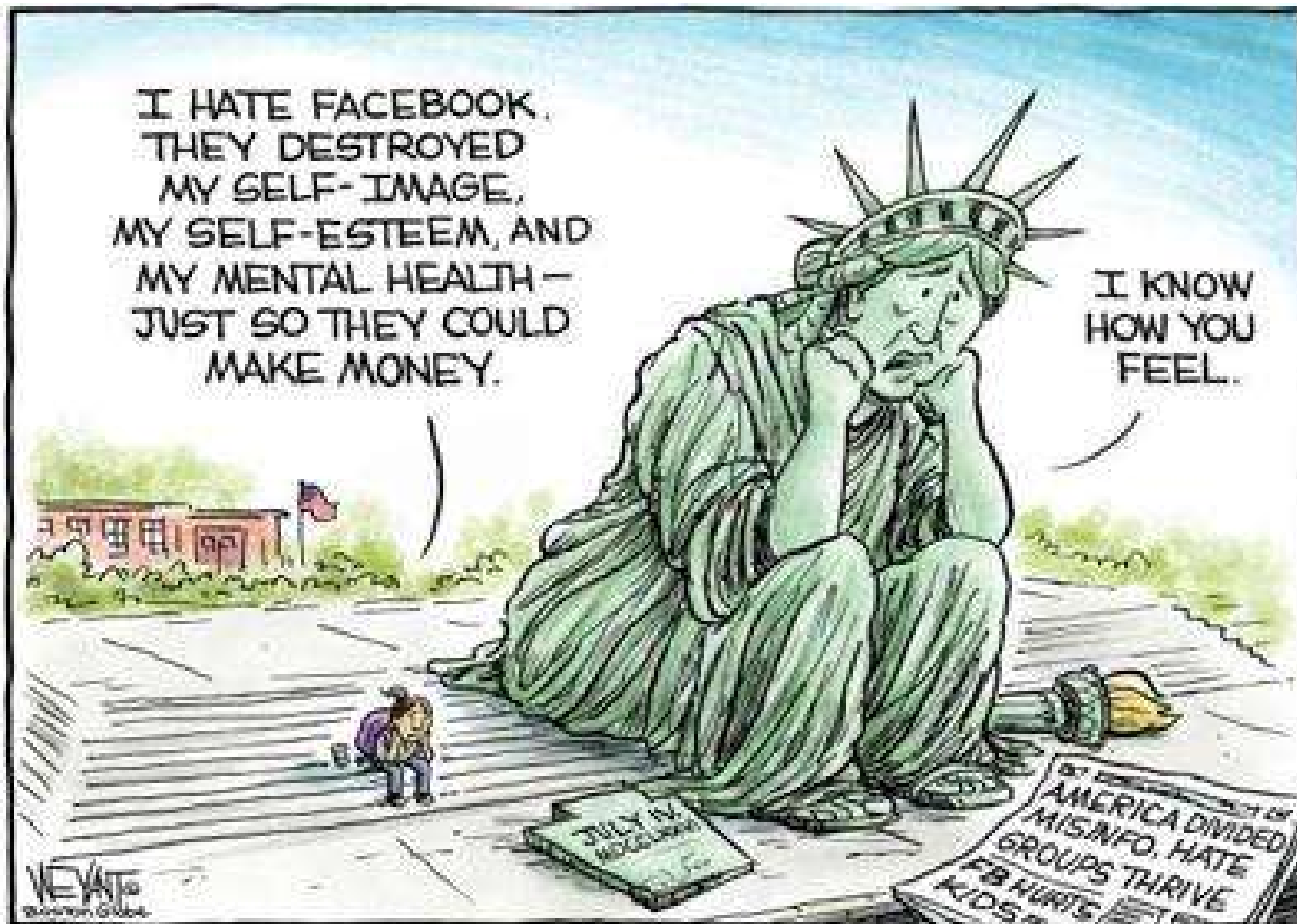
... e ancora

- **Deutsche Bank, Wirecard, Grenke, BaFin *Bundesanstalt für Finanzdienstleistungsaufsicht***



I HATE FACEBOOK,
THEY DESTROYED
MY SELF-IMAGE,
MY SELF-ESTEEM, AND
MY MENTAL HEALTH—
JUST SO THEY COULD
MAKE MONEY.

I KNOW
HOW YOU
FEEL.



- **1982 Banco Ambrosiano**, crisi da intreccio tra poteri più o meno forti e più o meno occulti (la famigerata P2) e da imbarazzanti vicinanze con la finanza vaticana. Soltanto un mese prima dell'esplosione finale, le autorità avevano autorizzato la quotazione in borsa delle azioni del Banco. Memorabile per senso dello Stato l'intervento del cattolico Andreotta (allora Ministro del Tesoro) a difesa delle ragioni italiane nei confronti del Vaticano. Il costo del fallimento fu di alcune migliaia di miliardi di lire, risolto grazie alla fusione con la ricca Banca Cattolica del Veneto.
- **1987 Cassa di Risparmio di Prato**, banca locale con finanziamenti concentrati nel tessile, fu gestita a lungo da banchieri legati alla politica. Finanziò speculazioni e accrebbe i propri rischi in misura sproporzionata. Fu il primo intervento del Fondo di Tutela dei Depositi, appena costituito ai sensi di legge e ne assorbì in un sol colpo le disponibilità raccolte presso il sistema.
- **1992 Montedison**, crisi finanziaria del maggiore gruppo chimico privato, con perdite stimate in 30.000 miliardi di lire. Si rifletté sugli equilibri della Banca Commerciale Italiana, al cui conto economico i ricavi provenienti da quella relazione di affari pesavano per il 15% del totale.
- **Era sempre il 1992 quando la Cassa di Risparmio di Venezia**, la più antica d'Italia fondata nel 1822, andava in default per una serie di previsioni errate sui cambi (preceduta dall'abnorme sviluppo dei crediti in valuta senza pretendere la copertura del rischio di cambio da parte dei prestatitori, gran parte dei quali con la svalutazione della lira divennero insolventi). La dimensione delle perdite, da un lato, chiamò a raccolta le consorelle venete, dall'altro, fece da detonatore alla crisi di altre casse di risparmio e degli istituti di credito speciale della regione. Quel che rimase confluì gradualmente nel gruppo Intesa alla fine di un complicato processo di assorbimento protrattosi fino al 2014.
- A poca distanza di tempo, seguirà l'ondata più virulenta, che spazzerà quasi per intero il **sistema delle banche venete**, alcune eredi di istituzioni risalenti all'epoca napoleonica, altre alle prime istituzioni bancarie del cattolicesimo sociale di fine Ottocento. A ricordarne gli antichi fasti rimangono i meravigliosi palazzi sul Canal Grande oggi adibiti ad alberghi di lusso, le ville palladiane e i parchi adagiati sui colli trevigiani, prestigiose sedi ora semivuote e i jet personali dei top manager usati per inseguire i sogni di espansione verso l'Europa dell'Est e che si fatica a rottamare, ora che per coprire le distanze tra Vicenza e Montebelluna basta la bicicletta (vedi infra).
- **1995 e seguenti Casse di Risparmio meridionali** (operanti in Puglia, Campania, Calabria, Sicilia). Furono generate da relazioni clientelari, concentrazione del credito, rapporti con la politica. Sono state aggregate in banche più solide, come Cariplo, poi confluita in Banca Intesa.
- **1995 Banco di Napoli**, originata dagli stessi fattori di crisi, dopo la fine degli interventi pubblici all'economia meridionale tramite la Cassa del Mezzogiorno, costò 12.000 miliardi di lire, con intervento pubblico a mezzo del cosiddetto Decreto Sindona. Assieme alle crisi avanti descritte, determinò la scomparsa del sistema bancario meridionale.
- **1998 Bipop di Brescia**, uno dei tanti casi ricollegabile al fenomeno dell'uomo solo al comando. Gli esempi si sono replicati in un crescendo che arriva fino agli ultimi inquietanti episodi di mala gestio nelle banche di molte regioni d'Italia.
- **2002 Collocamento di prodotti bancari tossici** denominati My way e Four you da parte del Monte dei Paschi di Siena e sue controllate. Lo scandalo costrinse alle dimissioni il vertice della banca e al rimborso di molti risparmiatori traditi. Le gesta della Banca 121, partecipata pugliese del Monte, sono ancora citate dagli addetti ai lavori come esempio di truffa finanziaria.
- **2003 Cirio, Parmalat e titoli di stato argentini**. Le banche lucrarono commissioni collocando questi titoli senza avvertimenti particolari circa i relativi rischi nei confronti di sottoscrittori del tutto impreparati. Alcuni di questi titoli figurarono, anzi, fino all'ultimo tra quelli privi di rischio indicati dall'ABI.
- **2006 Banca Italease** era la più grande banca italiana specializzata nel leasing immobiliare. Fu anche essa vittima della concentrazione di potere nelle mani di un solo uomo e di affari con i "furbetti del quartierino", già noti per altre scorribande bancarie. La Banca è stato un boccone amaro da digerire da parte del Banco Popolare, che l'ha definitivamente incorporata nel 2015.
- **2006 Banca popolare italiana** (già Popolare di Lodi assorbita dal Banco popolare) affidata alle virtù taumaturgiche del banchiere Fiorani. Si accreditava nella difesa della italianità di banche diventate appetibili da parte di banchieri francesi, olandesi e spagnoli. La difesa, organizzata picarescamente, fallì, portando alle dimissioni il Governatore della Banca d'Italia, che aveva ingenuamente creduto in lui. In quella fase, passò di mano la proprietà di BNL, una delle più importanti istituzioni della storia bancaria italiana del Novecento e, pochi anni prima, tra le prime 10 banche del mondo.
- **2008 Monte dei Paschi**, la più grave e la più lunga crisi bancaria, ancora aperta. Ha finora assorbito risorse per 30 mld, imponendo alla fine l'ingresso nel capitale dello Stato come socio di maggioranza. Sono ancora in corso i confronti con la Commissione europea e la Bce sulle modalità del salvataggio. La causa, ben nota, fu l'azzardato acquisto di Banca Antonveneta, avendo ottenuto l'autorizzazione delle autorità di controllo pur in assenza di due diligence. Quando, nel 2011, erano già in piena evidenza gli effetti deleteri dell'acquisizione, lasciò interdetti la nomina del maggiore responsabile a Presidente dell'ABI. Le vicende giudiziarie sono in corso.
- **2011 Crisi finanziarie di Alitalia e Ilva**, ancora aperte; debiti verso le banche richiederanno la garanzia dello stato.
- **2012 Carige**, decima banca per dimensione del sistema, compresa tra quelle significant secondo la normativa europea di vigilanza. Scandali legati al rapporto tra banca e assicurazione e al lungo dominio del suo storico esponente sono le cause di una crisi da superare mediante un cospicuo aumento di capitale, ancora in via di quantificazione.
- **2015 Banca Etruria, Banca Marche, Cassa di risparmio di Ferrara, Carichiati**, banche del territorio in risoluzione secondo la nuova normativa europea. Cause: mala gestio, ingerenze politiche, conflitti di interesse, strapotere nelle mani di pochi, operazioni creditizie non coerenti con le caratteristiche di banca locale. Acquisite per un euro da due grandi banche popolari. Costi per il sistema e la collettività: più o meno 5 miliardi.
- **2013/2017 crisi di tutte le ex casse di risparmio delle quattro province abruzzesi**, fino alle più recenti Casse di risparmio di Cesena, di Rimini e di San Miniato; per le cause vedi sopra. Aggregate o da aggregare in gruppi di maggiori dimensioni.
- **2014-presente Banca Popolare di Vicenza e Veneto banca**, anch'esse tra le prime 15 banche italiane sistemiche, secondo la classificazione dell'Unione bancaria. Cresciute in misura abnorme, per le velleità dei loro esponenti più noti, richiederà l'intervento pubblico di ricapitalizzazione a titolo precauzionale, per integrare gli apporti, non sufficienti, del Fondo Atlante, in vista della loro fusione. Gravissime le perdite per gli azionisti. Se questi ultimi non accetteranno una proposta di transazione comportante perdite per l'85 per cento del valore dei titoli, rinunciando nel contempo alle cause giudiziarie, ne verrà sancita l'insolvenza e il ricorso al bail-in, con il presumibile coinvolgimento di obbligazionisti e depositanti.
- **2014 e seguenti crisi di numerose banche di credito cooperativo**, di dimensioni importanti per la categoria, operanti nel nord e nel centro Italia. Hanno richiesti onerosi interventi da parte del Fondo di Garanzia dei Depositanti e di quello temporaneo previsto dalla legge di riforma del settore, per evitare impatti diretti sul risparmiatore. Si è in attesa della costituzione di gruppi bancari cooperativi, per rafforzare la stabilità complessiva del sistema.
- **2017 Ricapitalizzazione indispensabile di Unicredit**, da parte di fondi di investimento esteri per 13 mld di euro, per abbattere l'enorme quantità di crediti anomali.

	Risparmiatori coinvolti	Perdite in euro	Anno
Banca Popolare di Vicenza	118.994	8.750.000.000	2015/2016
Veneto Banca	87.502	6.500.000.000	2015/2016
Carife, Carichieti, Banca Marche, Banca Etruria	12.500	431.000.000	2015/2016
Lehman Brothers	100.000	3.200.000.000	2008
Finmatica	25.000	350.000.000	2004
Finmek	13.850	250.000.000	2004
Cerruti Finance- Fin.Part- Olcese	28.500	800.000.000	2004
La Veggia Finance	8.300	300.000.000	2004
Parmalat	110.000	6.500.000.000	2003
Giacomelli	6.500	300.000.000	2003
My Way – For You	190.000	2.850.000.000	2003
Cirio	35.000	1.200.000.000	2002
Bond Argentina	440.000	2.500.000.000	2001
Bipop-Carire	73.500	10.000.000.000	2001
Totale	1.249.646	43.931.000.000	

Chi ci guadagna: voi avvocati

Secondo Moody's dal 2008 al 2018 la parcella per le spese legali è stata di 273 miliardi di dollari e sta per crescere.

Morale

The collapse of **Enron and WorldCom**, and the ensuing scandals and **collapses of other corporations such as Arthur Andersen, Global Crossing, Adelphia, HealthSouth, and Tyco**, demonstrated the **weakness of corporate oversight, rating agencies, audit firms, and business press.**

The resulting losses impacted **millions of investors and several thousand employees**. The perceptions of **white-collar crimes** changed dramatically, with demands for and the realization of **jail** terms that were on a par with sentences of **drug** dealers, rapists, and murderers

"high risk, complex financial products; **undisclosed conflicts of interest; the failure of regulators, the credit rating agencies,** and the **market** itself to **rein in** the excesses of Wall Street."

The Financial Crisis Inquiry Commission concluded that the financial crisis was avoidable and was caused by "widespread failures in **financial regulation and supervision**", "dramatic failures of **corporate governance and risk management** at many systemically important financial institutions", "a combination of excessive borrowing, risky investments, and **lack of transparency**" by financial institutions, ill preparation and **inconsistent action by government** that "added to the uncertainty and panic", a "**systemic breakdown in accountability and ethics**", "collapsing mortgage-lending standards and the mortgage securitization pipeline", **deregulation** of over-the-counter derivatives, especially credit default swaps, and "the failures of credit rating agencies" to **correctly price risk**

Passive and ineffectual governing bodies, failure to understand risk, inadequate internal controls, inattention to compliance issues, excessive greed, accounting failures, conflicts of interest, and corporate cultures that were indifferent to unethical conduct were the hallmarks of many organizations.

These failures, and the subsequent criminal indictments, fines, and penalties, involved some of the most prominent organizations in the United States.



Corporate Governance

Corporate governance addresses **the processes, systems, and controls by which organizations, both public and private, operate.**

The Latin origin of the word governance denotes **steering**, and governance typically includes **the exercise of legal and regulatory authority** and the **use of institutional resources** to manage organizations

Corporate governance is the process by which an organization defends the interests of the stakeholders, which can include board members, company executives, employees, stockholders, suppliers, customers, and the community in which the organization operates.

Governance refers to the relationship between those who govern and those who are governed. On a political level it is the relationship between the **government and its citizens** and includes three requirements: (1) to know the present state, (2) to know where it needs to go, and (3) to know how it is progressing in the.

It also involves three areas of **decision making**: who is governing, who is being governed, and what resources/assets are to be deployed in the process.

COMMONLY ACCEPTED PRINCIPLES OF CORPORATE GOVERNANCE

Regardless of the national **jurisdiction** and local conditions, there are some **principles** and issues of corporate governance that have been widely embraced over the years.

Rights and Fair Treatment of Shareholders. Companies need to listen to **shareholder** concerns and respect their **rights**. This includes open and two-way **communication** and **shareholders' involvement** in general board meetings.

Boards need skilled and focused members possessing a range of experience and expertise.

A healthy mix of **independent members** with strong **credentials** and internal members with company **expertise** is essential. It is best if **the chairman of the board and the CEO positions** are held by different people—a sound **check and balance**.

Ethical and Professional Behavior. Companies need a **culture of compliance and ethics**, not just a **code of ethics**. This **flows down** from the board and executives through **a tone at the top** and is reinforced through **actions**, not just words.

Financial Transparency and Disclosure. Companies need strong and **well documented processes and controls to consistently provide full transparency** in financial reporting. Results need to follow **accepted norms and best practices** and **be audited by independent** internal and external experts. Internal and external auditors must be **qualified** and strong enough **to provide brutally frank assessments without the fear of retaliation.**

It is also necessary to defend and encourage internal **whistle-blowers**, who often are the best means to uncover errors and fraud in financial reporting.

Internal Controls. Internal controls are a key component to all regimens to improve corporate governance in general, to **reduce risks, and** specifically to provide **consistent financial transparency.** Debates over the scope of internal controls have raged for decades, but most agree that **internal controls** that impact financial reporting fall within the scope of **corporate governance.** Some argue that policies, procedures, training, and whistle-blower protection impact internal controls as well. The Committee of Sponsoring Organizations (COSO) framework originally **issued in 1992** and updated in 2004 is often the framework of choice for **internal controls management.**

The quantification and prioritization of **risks** are key to successful internal **controls** in that higher control activities are deployed for areas with the highest potential financial **impact**, the greatest **likeliness**, and the highest level of **difficulty in detection.**

On July 22, 2003, Richard Thornburgh, the former U.S. attorney general who had been appointed bankruptcy examiner for the failed telecommunications company WorldCom, testified before the U.S. Senate Committee on Judiciary:

I believe that WorldCom's conferral of practically unlimited discretion upon Messrs. Ebbers [former WorldCom **CEO**] and Sullivan [former WorldCom **CFO**], combined **with passive acceptance of management's proposals by the Board of Directors**, and a culture that diminished the importance of internal checks, forward-looking planning and meaningful debate or analysis formed the basis for the Company's descent into bankruptcy. In many significant respects, WorldCom appears to have represented the **polar opposite of model corporate governance** practices during the relevant period. . . . **A culture and internal processes that discourage or implicitly forbid scrutiny and detailed questioning can be a breeding ground for fraudulent misdeeds.**

Stakeholders

Barbara Tuchman (1984) in her sobering history **The March of Folly: From Troy to Vietnam** recounts a series of disastrous misadventures that followed in the footsteps of ignoring the interests of, and information held by, key stakeholders. She concludes 'Three outstanding attitudes – **obliviousness to the growing disaffection of constituents, primacy of self-aggrandizement, and the illusion of invulnerable status** – are persistent aspects of folly'.

The story continues with **Paul Nutt's Why Decisions Fail** (2002), a careful analysis of **400 strategic decisions**. Nutt finds that half of the decisions 'failed' – that is they were not implemented, only partially implemented or otherwise produced poor results – in large part because **decision makers failed to attend to interests and information held by key stakeholders**.

Failure to attend to the information and concerns of stakeholders clearly is a kind of flaw in thinking or action that too often and too predictably leads to poor performance, outright failure or even disaster.

Stakeholder analyses are now arguably more important than ever because of the **increasingly interconnected nature of the world**. Choose any public problem –economic development, poor educational performance, natural resources management, crime, AIDS, global warming, terrorism – **and it is clear that ‘the problem’ encompasses or affects numerous people, groups and organizations. In this sharedpower world, no one is fully in charge; no organization ‘contains’ the problem** (Kettl 2002). Instead many individuals, groups and organizations are involved or affected.

Fashioning effective leadership and governance of policy domains becomes in large part the effective management of stakeholder relationships an era when networks of stakeholders are becoming at least as important, if not more important, than markets and hierarchies (Powell 1990), even if those networks are **often ‘operating in the shadow of hierarchy’ (Hanf and Scharpf 1978), or ‘in the shadow of markets’**

Stakeholders

R. Edward Freeman, in the now classic text *Strategic Management: A Stakeholder Approach* (1984), defined a **stakeholder** as **'any group or individual who can affect or is affected by the achievement of the organization's objectives'** (1984: 46). Typical definitions of stakeholder from the **public and nonprofit sector** literatures include the following variants:

All parties who **will be affected by or will affect [the organization's] strategy'** (Nutt and Backoff 1992: 439). . 'Any person group or organization **that can place a claim on** the organization's attention, resources, or output, or **is affected by that output'** (Bryson 1995: 27). 'People or small groups with **the power to respond to, negotiate with, and change the strategic future of the organization'** (Eden and Ackermann 1998: 117).

'Those individuals or groups who depend on the organization to fulfill their own goals and on whom, in turn, the organization depends' (Johnson and Scholes 2002: 206).

Typical approaches **to democracy and social justice**, in which the interests of the **nominally powerless** must be given weigh this literature concurs in the **need for stakeholder support to create and sustain winning coalitions** (Riker 1962, 1986; Baumgartner and Jones 1993), and to **ensure long-term viability of organizations** (Eden and Ackermann 1998; Abramson and Kamensky 2001; Bryson et al. 2001), as well as **policies, plans and programs** (Bryson and Crosby 1992; Baumgartner and Jones 1993; Roberts and King 1996; Jacobs and Shapiro 2000; van Schendelen 2002).

Key stakeholders must be satisfied, at least minimally, or public policies, organizations, communities or even countries and civilizations will fail



U.S. Secret Service • Pixabay • S Pakhrin / Flickr / CC BY 2.0

Events of this kind are **not uncommon**. The United States has experienced periodic **waves of organizational wrongdoing** and legislative reaction. In the **1970s**, scandals related to some American companies' practice of **bribing** foreign government officials to obtain business led to the passage of **the Foreign Corruption Practices Act**. In the late 1980s and early 1990s, the **Federal Deposit Insurance Corporation** had to spend **\$100 billion** in **deposit guarantees for failing savings and loan associations and other financial institutions, many of which collapsed because of poor management, greed, and incompetence**. Those scandals led to the passage of the Federal **Deposit Insurance Corporation Improvement Act**, **which tightened financial institutions' internal controls** (and which would later serve as a **model for the Sarbanes-Oxley legislation**), and the creation of the **Resolution Trust Corporation** to manage the **failed savings and loan institutions**.

The events of the late 1990s and early 2000s, however, went beyond these earlier incidents

- Moreover, the **collapse** of companies such as WorldCom and Enron **affected** not only their **employees and suppliers**, but the voluminous number of **individual, state, municipal, and 401(k) pension plans** that had **invested** in these companies. While Congress and the states passed **regulatory legislation** to address the situation, as they had done in previous cases of wrongdoing, what was unique about the events of the past decade has been the **extraordinary amount of public and government attention** **focused on the issues of compliance and ethics**. The concern was focused not only on corrective regulatory legislation or enhanced sanctions, but, equally important, on the issues of **accountability, ethics, and responsibility in organizational management**

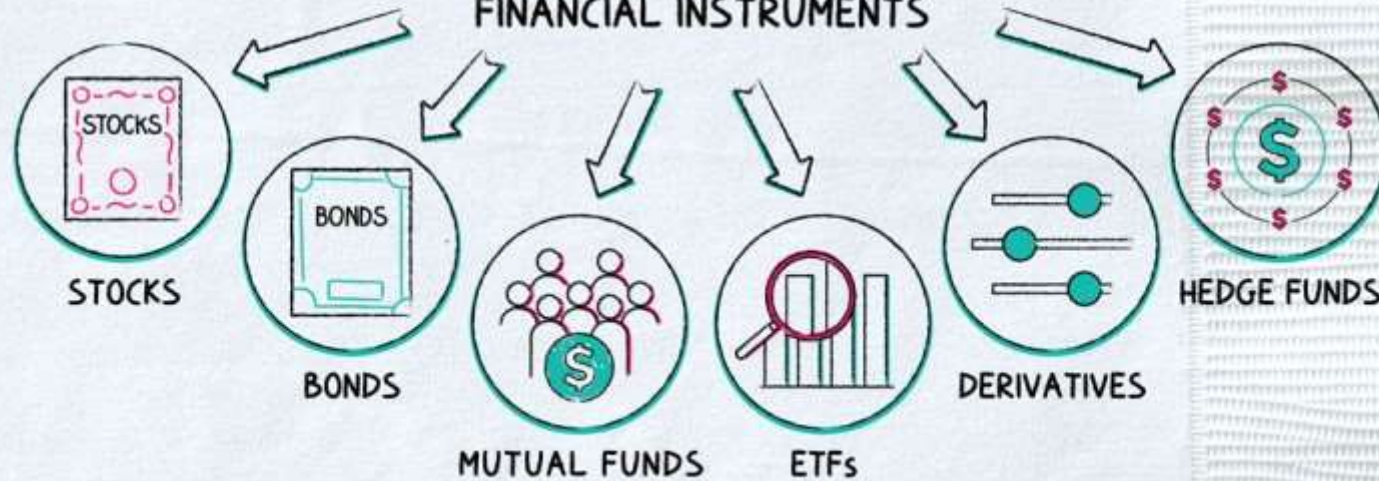
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SECURITY

The **evolution** of legal and regulatory **compliance** as a growing force in organizational life has been the result of numerous forces: judicial, legislative, economic, societal, and technological. While discrete activities to comply with legal and regulatory requirements were a longstanding fixture of many organizations (e.g., audit, legal, human resources, security, internal control, and financial control functions), their **codification** into specific compliance **programs** with a defined identity, organizational charter, and staff and endorsed by government actions is a relatively new phenomenon

SECURITIES

WHAT

FINANCIAL INSTRUMENTS



Similarly, the Securities and Exchange Commission (SEC) has taken a very public stance in promoting compliance initiatives. SEC Commissioner Cynthia A. Glassman, in an October 17, **2003**, speech to financial executives, vividly stated her views on compliance:

If your goal is to get as much money as possible in the door today—even if it leaves shortly thereafter in the form of fines and litigation settlements—then you may be tempted to look the other way. I respectfully suggest that firms that cut corners on compliance jeopardize the long-term profitability—and ultimately viability—of the firm. A company’s reputation is a valuable asset, and in the securities industry it is a firm’s most valuable asset. Failure to safeguard this reputational asset with first-rate governance and compliance procedures is a serious failure in strategic thinking. Remember that although there are a lot of business risks inherent in running a securities firm, regulatory risk—which is manageable—probably poses the single greatest potential doomsday scenario, capable of shutting the doors of even the most prestigious firm forever.

An early **catalyst for focusing attention on compliance was judicial activity at both the state and federal levels of government**. The 1990s and into the twenty-first century witnessed a significant **change** in corporate governance and its impact on compliance. **Boards of directors and senior management of organizations** came to have **an affirmative duty to implement internal corporate compliance programs to detect and prevent criminal misconduct by the organization's employees and its agents, and then to monitor those programs to be sure that they were working properly**.

These developments can be seen in the advent of the **Federal Sentencing Guidelines for Organizations** in **1991** and a number of judicial decisions. November 1, 1991, U.S.

A Compliance Prototype

A prototype of an organizational compliance program is the **Defense Industry Initiative on Business Ethics and Conduct** (DII). The DII was created in October **1986**. The initiative was in response to the Packard Commission, which was created in July 1985 by President Reagan after a series of well publicized **defense procurement scandals**. The commission, in its June 1986 report, *A Quest for Excellence*, called for defense contractors **to “assume responsibility for improved self-governance to assure the integrity of the contracting process.** Corporate **managers must take bold and constructive steps** that will ensure the **integrity** of their on **contract performance. Systems that ensure compliance with pertinent regulations and contract requirements must be put in place so that violations do not occur.”** Among the commission’s recommendations were the need for defense organizations to **develop ethical standards of business conduct**, increase the effectiveness of **their internal controls**, and **enhance senior management oversight and employee training**.

Many of these features would ultimately be incorporated into the Federal Sentencing Guidelines for Organizations.

Federal Sentencing Guidelines for Organizations

Sentencing Commission, an independent organization within the judicial branch of the U.S. government. 1991

These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a **structural foundation from which an organization may self-police** its own conduct through an effective compliance and ethics program.

The prevention and detection of criminal conduct, as facilitated by an effective compliance and ethics program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.

In brief, the FSGO require an organization to remedy the harm caused by its offense and to pay a monetary fine for the violation of federal law.

The fine is calculated by applying a multiplier based on a “culpability score” to the “base fine.” The **culpability score** is increased for factors such as the size of the organization, the number of years since any previous offense, violation of a previous order, and obstruction of justice. It is reduced by factors such as the **existence of organization programs** to prevent and detect noncompliance and the organization’s self-reporting of violations, cooperation with the regulators, and acceptance of responsibility. These culpability factors can be further mitigated by an organization’s having an effective internal compliance program.

The FSGO were significant for a number of reasons. From a public **policy perspective, they defined a model for good corporate citizenship and created incentives for companies to take crime-controlling actions. This was a **shift** from a **traditional mode of regulatory enforcement to a more interactive, “self-policing” approach.****

Moreover, the **organizations affected** by the FSGO spanned the full spectrum of the U.S. economy: **corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments, and non-profit organizations.**

November 2004 Amendments to the Federal Sentencing Guidelines for Organizations

November 2004 Amendments to the Federal Sentencing Guidelines for Organizations organizations must do if their programs are to be viewed as effective by the courts.

- The amendments expanded the **role and duties of boards of directors**, particularly directors' duties with regard to **effective corporate governance**. The amendments specify that boards of directors and senior executives must assume responsibility for the oversight and management of the organization's compliance and ethics programs.
- Organizations were required to promote “an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

The 2004 Amendments to the Federal Sentencing Guidelines for Organizations, with their **strong focus on organizational ethics and culture**, shifted “the paradigm of compliance programs away from an **exclusive rules-based approach toward a rules-and-values-based approach**,” Bowers et al. noted in their November 2004 report, Organizational Sentencing Guidelines: The New Paradigm for Effective Compliance and Ethics Programs.

As a result, **greater emphasis was placed on ethical awareness and training for all persons in an organization.**

Organizations were **required to conduct periodic compliance risk assessments** to identify potential areas of **vulnerability**. **The results of these analyses had to be considered in the design, implementation, and modification of all other aspects of a company’s compliance and ethics program— for instance, in its policy creation, training, and auditing activities.**

In **2005**, two **U.S. Supreme Court decisions** had potentially significant ramifications for the FSGO. In *United States v. Booker* and *United States v. Fanfan*, the court held that **federal judges could consider the Federal Sentencing Guidelines as only “advisory” in nature**. However, the **consensus** in the legal and compliance communities is that the FSGO **are still considered “best practices”** for organizational compliance and ethics programs, and their importance in determining an organization’s culpability has not been diminished.

SEC Leniency Guidelines. In 2001, the SEC issued its “Statement on the Relationship of **Cooperation** to Agency Enforcement Decisions” (also known as the Seaboard report), in which it cited **13 criteria** that it would use in considering **possible credit for “selfpolicing and self-reporting” for organizations with securities law issues.**

The Seaboard report lists several criteria that are applicable to an organization’s compliance and ethics program such as:

How did the company discover the issue?

How did the company handle the misconduct when it was discovered?

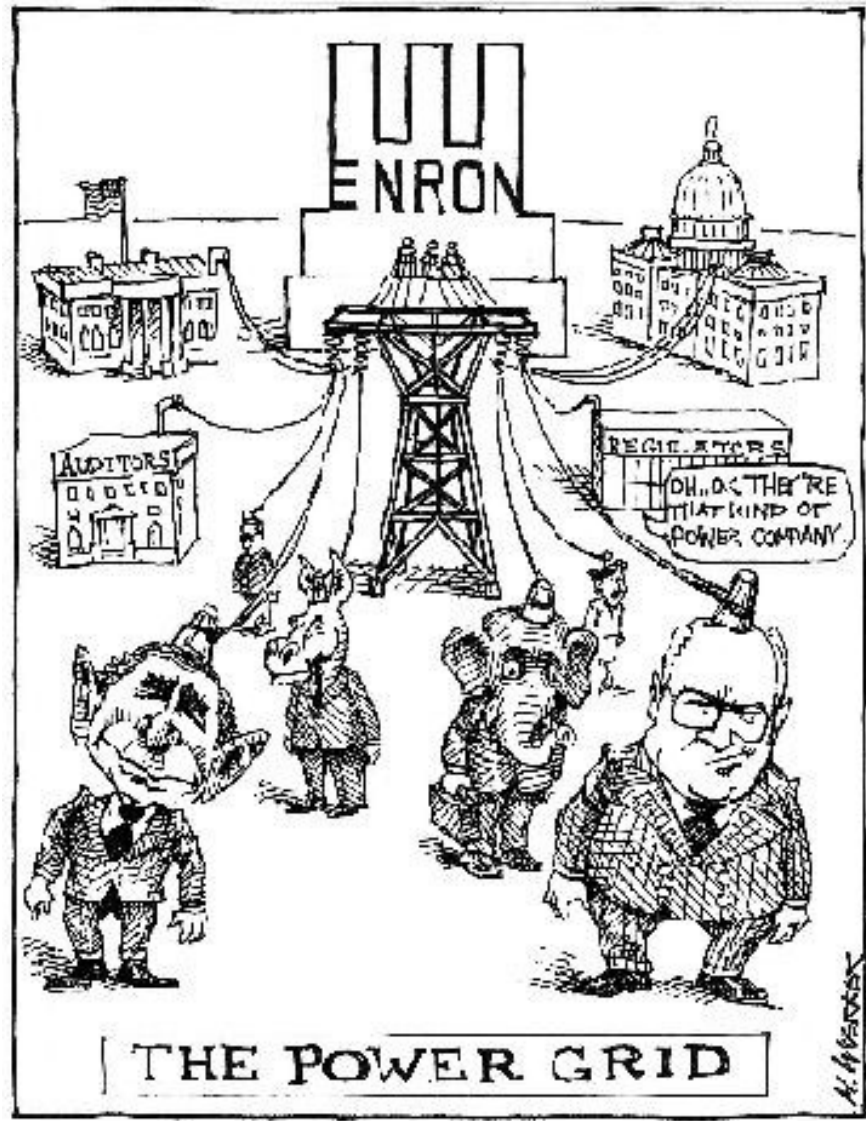
Did it take prompt action to stop the action and punish the wrongdoers?

What compliance procedures were in place to prevent the misconduct that has now been uncovered?

Did the company adopt more effective internal controls and procedures to prevent a recurrence?

The logo features the word "SOX" in a bold, dark blue, sans-serif font, centered within a white circle. The circle is surrounded by a thick, textured blue border that resembles a watercolor or ink splatter effect.

SOX

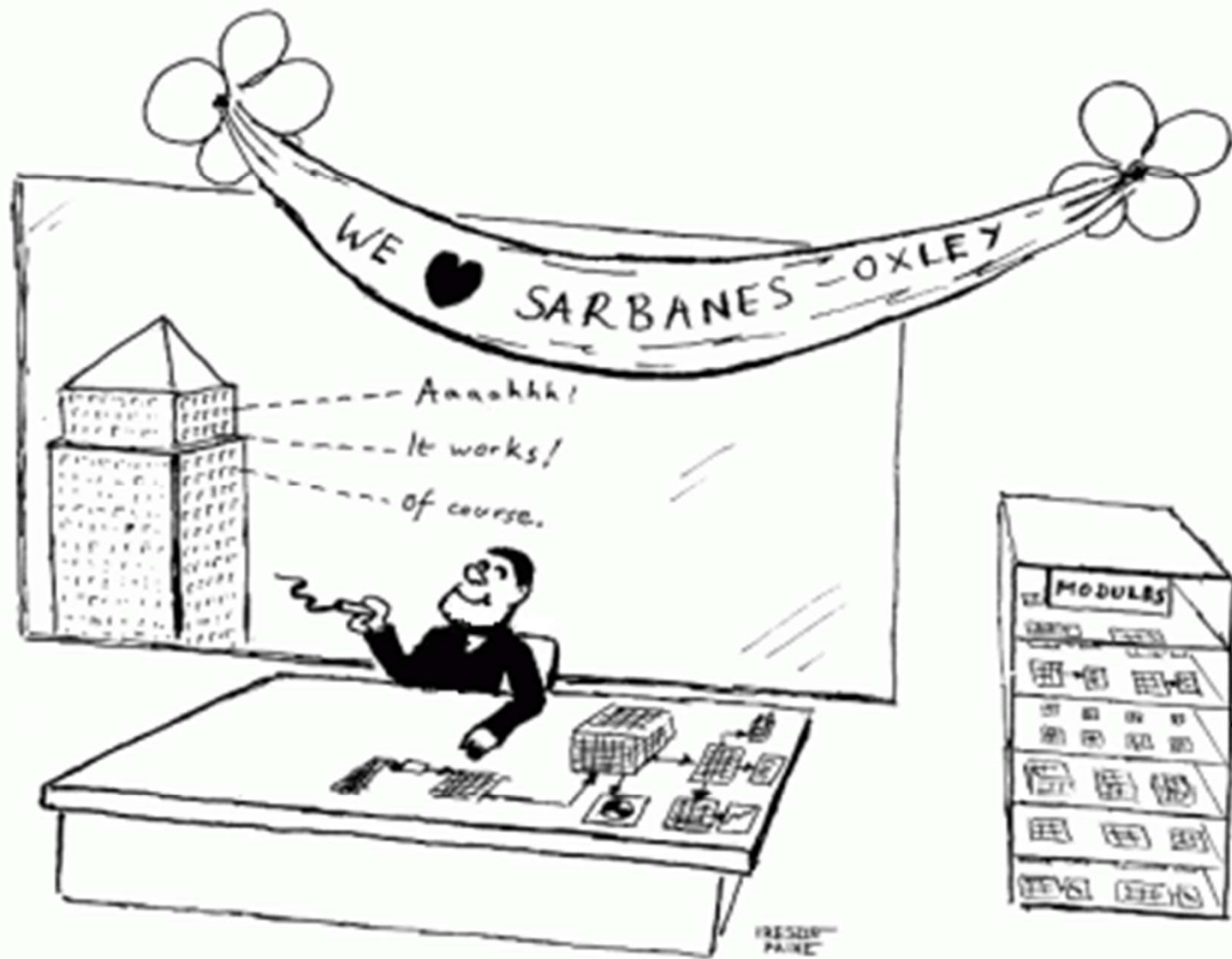


THE POWER GRID









Sarbanes-Oxley Act of 2002.

On **July 30, 2002**, Congress approved the **Public Company Accounting Reform and Investor Protection Act**, more commonly known by its short title, **the Sarbanes-Oxley Act of 2002**.

Reflecting the widespread **corporate governance failures** of major corporations in 2001 and 2002, Congress **passed** this legislation by overwhelming margins: it passed the House by a vote of **423-3** and the **Senate by 99-0**. Some have called Sarbanes-Oxley the **most significant (or onerous) business reform legislation since the enactment of the Securities Act of 1933**, the **Securities Exchange Act of 1934**, and the **Investment Company Act of 1940**.

The July 31, 2002, issue of the Cleveland Plain Dealer reported that President George **W. Bush** hailed Sarbanes-Oxley for making “**the most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt.**”

The law’s purpose is to rebuild public trust in America’s corporate sector. It requires **publicly traded companies to adhere to significant new governance standards** that broaden board members’ roles in **overseeing financial transactions and auditing procedures.**

The importance and impact of the Sarbanes-Oxley Act of 2002 cannot be underestimated. While the focus of the legislation is on publicly traded companies, its **scope**, power, and influence reverberate throughout the economy. For many corporate officials, “**compliance**” often translates into **meeting the requirements of Sarbanes-Oxley.**

Senior management responsibility is significantly **enhanced**. The legislation requires the organization's **chief executive officer and chief financial officer to certify not only the completeness and accuracy of the information contained in quarterly and annual finance reports,** but also the **effectiveness of the underlying internal controls** that generated the information. **Auditors** are not allowed to provide to a company, contemporaneously with **audit services, and nonaudit services** (e.g., management consulting, information system design, and internal accounting) specified in the statute or the regulations.

Sarbanes-Oxley and its implementing regulations require companies to **disclose whether they have adopted a code of ethics,** and if they have not done so, **why not**. The **code of ethics technically applies only to the organization's executive officer, principal financial officer, and principal accounting officer or persons performing similar functions.** However, many companies have used the **requirement to issue companywide codes of conduct applicable to all employees.**

The legislation obliges public companies to install an internal whistleblowing policy for employees and others to report accounting, internal control, and auditing problems, and establishes protections against retaliatory actions.

Finally, at the heart of Sarbanes-Oxley is Section 404. It mandates that a company assess its internal controls for financial reporting.

This has been a source of **great controversy because of the time and expense involved in conducting the analyses** (although in 2007, the Securities and Exchange Commission gave some relief to smaller organizations).

Since its passage, Sarbanes-Oxley's audit, director, and internal control requirements have set the standard for best practices for corporate governance and financial oversight even for organizations that are not significantly affected by the law. As we shall see, in organizations ranging from hospitals, museums, cooperative apartment buildings, universities, and charitable organizations to the government itself, Sarbanes-Oxley has left its governance and compliance imprint.

Titoli del SOX

Title I: Public Company Accounting Oversight Board. The act created this board, which is responsible for setting the standards and rules for audits, as well as monitoring and enforcing compliance with the law.

Title II: Auditor Independence. This section includes regulations intended to ensure that auditors are truly independent, including a requirement that firms providing the audit cannot provide any other services to the company they are auditing.

Title III: Corporate Responsibility. Corporate executives are individually and personally responsible for seeing that the company complies with SOX. Failure to comply can have personal penalties, not just penalties on the business.

Title IV: Enhanced Financial Disclosures. This section added a lot of new mandatory financial disclosures that public companies must comply with, including insider trading and off balance sheet transactions.

Title V: Analyst Conflict of Interest. This section was intended to boost investor confidence in securities analysts. Analysts must disclose if they have any potential conflicts of interest, whether it's holding shares of the company being analyzed or having the company as a client.

Titoli del SOX

Title VII: Studies and Reports. Details reports that the SEC or Comptroller General must perform.

Title VIII: Corporate and Criminal Fraud Accountability. Specifies that anyone with a role in defrauding shareholders of public companies can be subject to fines and prison. Also makes it illegal to alter, conceal, or destroy records that could be relevant in an investigation.

Title IX: White Collar Crime Penalty Enhancement. This title is focused on increasing penalties for white collar crime. It encourages courts to have sentencing guidelines with harsh enough penalties to deter financial misconduct – in other words, to make sure that “crime doesn’t pay.”

Title X: Corporate Tax Returns. Specifies that the company CEO must be the one to sign the corporate tax return – and is therefore responsible for any misstatements to the IRS.

Title XI: Corporate Fraud Accountability. This title includes definitions of behavior that would constitute fraud, along with sentencing guidelines and penalties.

IT

- Modern corporations run on computers. Everything from recognizing revenue to tracking expenses to generating reports to internal and external communications all happens on a company's IT network. Therefore, a lot of the internal controls companies are required to have in place to verify the integrity of their financial reports have to do with the company's IT policies and controls. Who has access to data? Is data secure from tampering?

1. **Develop a plan.** Be very clear about the timeline of what information must be reported when. Have both short-term goals, for the current fiscal year, as well as long-term goals. As the company grows, it's important that processes and controls are updated and appropriate to the scale of the company.
2. **Select one or more frameworks to support SOX compliance.** There are several different organizations that have developed frameworks and models that companies can use in developing their [SOX internal controls](#) and compliance plan. The better-known ones are:
 1. COSO (The Committee of Sponsoring Organizations of the Treadway Commission). COSO was established by a group of five accounting and financial industry organizations to help companies improve their performance through improved internal controls and risk management. They developed an "Internal Control – Integrated Framework" that is a useful guide for developing effective internal controls.
 2. COBIT (Control Objectives for Information and Related Technologies). ISACA is an industry group focused on IT governance. They developed COBIT as a framework for IT governance looking at the different IT processes within a company, their inputs and outputs, objectives, etc.
 3. ITGI (The Information Technology Governance Institute). ITGI is another industry group that has developed a framework applicable to SOX compliance. ITGI uses COBIT and COSO, but it's more focused on security than it is on general compliance.
3. **Conduct a risk assessment.** It's important to understand which processes within the company are material to compliance and to proactively identify possible problem areas. Those potential problem areas should be addressed as the company develops its compliance plan.
4. **Assess entity level controls.** What controls are in place in different locations or divisions?
5. **Document existing processes.** Any of the company's financial reporting processes that are relevant for SOX should be documented so that the flow of information is clear, as well as the lines of responsibility for different organizations or staff members who may be involved in the process. Controls for the processes that could help protect against fraud or other financial risks should be specified.
6. **Assess IT Controls.** The security of the company's financial data will in large measure be a factor of the security of the company's IT infrastructure. Is the company's IT infrastructure safe from tampering? Most companies focus on protecting the IT infrastructure from outside threats such as hackers. However, the "trusted insider" can also be a major security risk, especially when it comes to the potential for financial fraud.
7. **Identify and evaluate any third-party providers.** Many companies outsource different financial reporting processes. Outsourcing doesn't get management off the hook for Sarbanes Oxley compliance. You have to make certain that any vendors also have adequate controls in place to protect the integrity of your financial information. Vendors are often evaluated on the basis of Service Organization Control (SOC) reports that are prepared by independent accounting firms. If no SOC is available, you will need to dedicate resources to evaluating the vendor yourself.
8. **Test the Internal Controls.** It's important to verify that the controls in place are actually effective. Key controls should be tested to make sure that they are working the way they are supposed to work.
9. **Evaluate deficiencies.** As deficiencies are noted in either the planning or testing process, they need to be evaluated to determine if they are significant or material. Senior management needs to be aware of any significant deficiencies. Any deficiencies that have a material effect on the company will need to be reported to the public in a 10-K.
10. **Communicate the results.** Since senior management is responsible for ensuring SOX compliance, they will want regular updates on the status of internal controls and compliance. The company's Audit Committee should also be kept in the loop.

Federal agencies have been increasingly active in providing compliance assistance and guidance to encourage organizations to self-police their operations. The range of federal activities has run from the extreme of **threatening suspension and disbarment** unless compliance programs are in place to offering proactive **advice and guidance on best compliance practices**. Federal agencies such as the **Environmental Protection Agency** (EPA) have created examples of **model compliance programs** and made them available through Internet sites and various publications. The EPA offers five different types of **economic models** to calculate compliance **costs**. The Internal Revenue Service has **promoted voluntary compliance** programs and established **amnesty periods for self-correcting violations** in areas ranging from taxes on restaurant tips to employee benefits regulations.

The government's threat of **suspension, disbarment, or prosecution** for companies that violate federal laws and regulations has been a powerful **force** in fostering the use of compliance programs. Increasingly, regulators and prosecutors have incorporated compliance-related provisions in deferred prosecution or corporate integrity agreements. In the health-care industry, for instance, H. Lowell Brown, in a 2001 study in the *Delaware Journal of Corporate Law*, noted: *The real catalysts for the wide spread adoption of health care compliance programs, however, have been **the [Department of Justice] and the [Office of the Inspector General of the Department of Health and Human Services]**. These agencies have recently **required all organizations settling health care fraud charges to adopt government-sponsored corporate integrity programs as part of the defendants' settlement agreements.***

*These government-imposed compliance programs usually require corporations **to commit substantial assets to compliance and involve government and private oversight.***

In 2003, the **New York State attorney general** and the **Securities and Exchange Commission** negotiated a settlement with Alliance Capital Management for a case involving the illegal practice of market timing. The total monetary value of the settlement was \$600 million. Alliance agreed to cut its fees to investors by 20 percent for at least five years and pay \$250 million in restitution to resolve charges that it permitted market timing. In addition to the monetary settlement, Alliance had to implement substantial governance and compliance changes to safeguard against future harm to its shareholders. **Among these changes were the creation of ethics and internal compliance committees, the installation of a company ombudsman, and the requirement that the company submit to an independent compliance review at least every other year.**

Variations in organizational compliance programs

Legislative, regulatory, and judicial **opinions do not specifically identify** the types of structure and organization that an organization must adopt.

Variations depend:

the degree and type of **regulatory** oversight,

an organization's **resources** and **risks** and the skills and experience of its staff,

the organization's relationship with its **stakeholders**, and the organization's

history.

The Organizational Context

An organization is the creation and **reflection of history, personalities, need, and opportunity**. Organizations are subject to the cyclonic **forces of law** and regulation, as well as to external and internal **stakeholder expectations**. An effective organization compliance program needs to **understand and manage within these dynamics**.

The Risk Environment Each organization **has its own unique legal, regulatory, operational, and reputational risks**. The organization's **strategic objectives**, its **risk tolerance**, and its **ability to manage risk** will help determine the need for a compliance program and the scope of that program.

Organizational History Each organization has its own particular **history**. Was it created by a merger, an acquisition, a divestiture, or a consolidation of different organizations? Was it the brainchild of an inspired leader or of a faceless investment entity? Was it created a hundred years ago or yesterday? Was it born of need, greed, or happenstance? These conditions will determine the organization's **values, ethics, image, brand, and public reputation**, which **contribute** to the need for and extent of a **compliance** program.

The Organizational Context

Organizational Structure A key variable in creating the compliance program is the **organization's structure**. Is it **decentralized** or centralized? What is the **decision-making** structure? Are operations concentrated in one **country** or geographic region, or are they dispersed **internationally**? How is the organization **staffed**: does it have full-time or part-time employees, independent contractors, or temporary employees? Is it **Web-based**? What functions of the organization are **outsourced**? What person(s) in the organization is currently **responsible for the audit, legal, risk management, compliance, human resources, and internal controls functions**?

Each of these factors will help to determine the scope and nature of the compliance program.

The Organizational Context

Key Players and Stakeholders Who are the **principal decision makers in the organization**, and what are their **attitudes**, experience, skills, and knowledge **with respect to compliance** and a compliance program? What are the **views of the board of directors**, senior management, risk management, legal and accounting staff, human resources, and internal control staff?

One comment that is often made by senior managers or board members has been, “**Why do we need a compliance program when compliance should be everyone’s business?**” What is the attitude of the general employee base? What has been the **history of the organization’s relationship with its regulators**, the media, nongovernmental organizations (NGOs), customers, and suppliers?

The Organization’s Values and Culture The organization’s **values and culture** will have a significant impact on the development of an effective compliance program. A major **contributory factor to this success** will be the extent to which the organization’s board of directors and senior management

- **Support and endorse** compliance and ethics
- Are willing to **provide the necessary resources** and commitment of time and effort to the compliance initiative
- **Publicly reinforce the ethos** of the organization

Endorsement

The **board** of directors and senior management must clearly and unequivocally **endorse** the **role, function, and administrative powers of the compliance program** and the chief compliance officer.

- The organization should make **every effort, where possible, to maintain the compliance program's independence, impartiality, and objectivity**. For instance, the compliance program should **not report to a revenue-generating business unit**.
- To ensure the compliance program's **access to senior management**, it is critical that the program **not** be administratively "**buried**" **within** the organization's bureaucracy. Some organizations, for example, follow a rule that **the chief compliance officer cannot be more than two staff levels down from the senior business manager**.
- The organization must recognize and acknowledge that **compliance and ethics are not the sole responsibility of one unit**.

Endorsement

The National Center for Preventive Law's *Corporate Compliance Principles* point out that the **board** of directors and senior management leadership “must **establish mechanisms** that hold all organizational directors, officers, employees and agents **accountable** for compliance in the course of **activities** that they initiate or oversee.”

While the organization's **compliance program** can bring attention to the issue of compliance and provide the **tools** and insight necessary to address compliance risks, **effective** **compliance** is ultimately the responsibility of the organization's line **managers**.

There should be **no gaps** in the organization's **oversight and control** of its key compliance **risks**. Each **organizational function** that has a **control or oversight responsibility**—e.g., legal, audit, internal control, financial control, risk, line management, human resources, and security—must **clearly understand** their roles and their areas of responsibility.

The board and management

The **board** should have a clear and realistic **understanding of the goals, policies, programs, standards, and processes** that the organization has established. It should be **prepared to hold management accountable to these standards**, while recognizing the reality **that no compliance program**, no matter how well designed and executed defend an organization against wrongdoing.

*Is there a clearly defined **individual** in the organization who has ultimate **responsibility** for the organization's compliance program? Is there is a clearly defined **compliance structure** in place, with lines of **accountability** clearly articulated and communicated?*

The organization's **directors** and senior managers must ensure that the organization has established **an effective compliance program** that, at a minimum, addresses the elements outlined in the Federal Sentencing Guidelines for Organizations. An **effective** compliance program requires that **an organization assign high-level individuals** who will have direct, overall **responsibility** for the compliance program and give them adequate **resources** and **authority** to ensure the program's implementation and effectiveness.

- *What is the role of the compliance program?* For many organizations, the **role of the compliance program has been primarily advisory or counseling.** However, over the past **decade**, compliance programs have **evolved** and have taken on a number of **operational responsibilities**, or, as one senior compliance officer termed them, “**assurance**” **activities**, such as monitoring and testing business operations.
- *White Paper on the Role of Compliance* (July 2005) says that a compliance program “performs an **advisory, monitoring and education role** to support **management’s supervisory responsibility** and its efforts to achieve compliance with government and self-regulatory organization (“SRO”) rules and regulations and firms policies.”

Autorità e risorse

- *What are the **powers and authority** of the chief compliance officer?*

The organization should **clearly** define the powers and authority of the CCO and the compliance program. The person designated as the **CCO** should have the **appropriate level of power and authority** to make the compliance program **effective**.

- *Has the organization committed an **adequate level of resources** to the compliance program?* The **board** of directors must **ensure** that management provides sufficient resources (**funds, staff, and time**) to maintain an **effective** compliance program.

Funzioni

- **Advisory/Counseling** The traditional primary function of modern compliance has been **advisory**. Working with the organization's **board** of directors, senior **management**, and senior managers of individual units, the compliance program **offers advice and guidance** on matters ranging from relationships with **regulators** and establishing **training protocols** to advising on **ethical** matters. One of the critical advisory functions of compliance units is their involvement in the **development of new products and services** to identify potential **risks** and **problems** and to provide solutions that allow the organization **to avoid legal or regulatory situations**.
- **Compliance Policies and Procedures** As the Federal Sentencing Guidelines for Organizations indicate, **establishing compliance policies and procedures** is a cornerstone of an effective compliance program. The organization's compliance policies and procedures articulate the organization's **rules and standards of behavior, organizational processes, oversight responsibilities, and consequences of noncompliance**.

Funzioni

- Communication The compliance program develops a **comprehensive communication program** that provides for **the flow of critical compliance- and ethics related information throughout the organization**. It routinely communicates to the organization's **employees, contractors, business partners**, and other key **stakeholders** its compliance and ethics **policies and practices, developments in law and regulation**, and other issues that are of major concern to the organization. Equally important, an effective organizational communication program provides for a mechanism through which **employees**, volunteers, agents, customers, and other persons can **provide information to the organization's senior management, board of directors, or compliance program** about any **instances** of suspected **wrongdoing** or unethical behavior.

Funzioni

- Ethical Issues The compliance program is actively involved in **developing the organization's code of conduct and policies** involving **standards of behavior** (e.g., conflicts of interest), as well as investigating and/or providing **advice and guidance involving issues of unethical behavior**.
- Training and Education The compliance program implements a comprehensive **training and education program** that informs and educates employees, including the senior **management** and directors of the organization, on key issues related to **compliance and ethical matters**.
- Monitoring Compliance **monitoring** is another important function of the compliance program. Working with the organization's **control and operating units**, the compliance program **ensures** that **monitoring or self-testing of key activities, programs, or processes** is **integrated into business operations**. The compliance program **reviews monitoring results** and works with organizational units to **address issues** and information that arise from monitoring activities.

Funzioni

- Risk Assessment and Internal Controls The compliance organization undertakes a proactive program to identify critical compliance risk areas (regulatory, reputational, compliance, and ethical) and to determine the effectiveness of the organization's internal control policies and procedures in managing these risks.
- Regulatory Relationships The compliance program plays an important role in maintaining **relationships** with the organization's **regulators** to ensure that there is an effective flow of communication between the two parties, ensure that regulatory inquiries are swiftly and appropriately handled, and ensure that the organization is aware of the regulators' current views on compliance requirements and priorities.
- Investigations In conjunction with the organization's legal and audit departments (or outside counsel), the compliance program undertakes **investigations** into alleged violations of legal and regulatory requirements, compliance policies and practices, or ethical conduct.