

Subject: Re: Conduct etc
Date: Thursday, May 24, 2007 14:43
From: Mira <mira.makar@btinternet.com>
To: Cameron Scott <c.scott@frc-aidb.org.uk>
Conversation: Conduct etc

Dear Mr Scott

Many thanks for your note. I have found the name of the lady I originally spoke to, it is Carol Page.

The specifics

You asked in your letter about allegations that were made. The allegations that were made by various persons in January 2005 were that there existed the Risk Indicators consistent with fraudulent conduct, that required investigating. Further there was conduct indicative of cover up by various persons including third parties.

This is to be distinguished from hard evidence that someone has run off with the family silver; I am not aware that anyone made this allegation.

The principles

The exam question in this case was about getting to the underlying records; if you happen to be the SFO you can issue a Section 2 notice, if you are not you are obliged to go to Court to get access to records and to rely on the integrity and moral fortitude of third parties (lawyer/auditors/financial advisers), and self regulation. You are disadvantaged if the corporate wallet is controlled by others and ditto third party communications; if a director you continue bound by both confidentiality and statutory, regulatory and common law duties to account, approve, and notify. If the Board is set aside in making these third party communications and you cannot get to the underlying records because lawyers are being paid to stop you, you cannot put information into the board because you do not have it.

A further barricade arises once any of the Third Parties has taken one step which is wrong, they themselves are caught up and are immediately in a position of conflict as between their duty of care to the company and their defence of themselves; if only the company can take action against them, they have a vested business interest in supporting the incumbents. Resigning has risk because you cannot control what happens and it is often done that people do not resign in order to manage their risk more effectively.

The consequences are that you can have conditions of financial uncertainty ie an auditor "should" give a disclaimer of opinion but does not because they failed to do it (for whatever reason) at the right time; the broker receives verbal representations that he should wait for the audit report so the uncertainty does not get reported; and the solicitor relies on being "under instructions", also beyond the point of no return.

There is no practical and effective remedy; and certainly not if you happen not to be a brand name with a lot of money to support you. That is why people (directors) resign. I have much sympathy with the view of DTI staff that "self regulation" does not work and cannot work by definition; integrity of conduct and moral fortitude cannot be policed. Breaches of professional rules and the criminal law falls into a different category beyond negligence. It would be of great concern to the firm concerned if they thought their partners/directors were involved and this provides an incentive to the individual to try to ensure no one knows, especially if the reputational

harm is beyond contemplation because of the involvement of senior staff.

I make these observations as a matter of sadness and not cynically because that is not my personality. When we visited UKLA shortly after the 2005 prelims were issued (the Board saw no financial numbers that year only the summary ones in the prelims and voted "based on the work of the auditors" who were present but not answering questions) they said they would feed back results and the circumstances that I was a director were helpful. In fact they posted their letter to the Company Secretary and it was withheld from the Board. It was therefore impossible to comment on or correct anything they had been told.

Both UKLA and the DTI were very courteous, respectful, sympathetic and believed me. UKLA were brushed off by the other side with the benefit of the Corporate wallet. DTI were interested in evidence of PERSONAL GAIN and MISCHIEF and HIGH PROBABILITY. Risk Indicators and uncertainty are not their territory until the company goes down and they consider striking off the directors. Both are also cost driven; a small public company is not cost effective to investigate. There is unlikely to be an outcry if it goes under.

The reason I rang you.

This was to log an interest in the isoft matter to the extent the investigation and findings are public. This was to learn how you carry out your work, who sees a complaint, whether it gets to the person complained about, what is public what is not and whether all communications and evidence are discloseable in action ie what is the legal status of the investigation and is anything privileged. I need this understanding to work out how to approach the possibility of a request to you to enquire; my concern, as I mentioned, is that taking anything I say and showing it to someone who invents a fob off is both futile and wearing. I lived in those conditions for 10 months of 2005 when I was compelled by s389B of the old Act and FSMA 2000 to do these things. Accounting publicly for matters of conduct is different and a correct thing to do. I would be interested in the latter not the former.

ICAEW has been supporting me technically and in matters of conduct for the last 2 years and I think it would feel uncomfortable complaining to them since my thinking including re ethics has been developed with the benefit of their experience and input.

In regard to the reason for my call, I look forward to hearing from you. I am walking distance from your office and would not be averse to coffee in the Waldorf or thereabouts, there are usually quiet corners during the day.

With thanks for your time and interest.

Kind regards

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