

## Guilt by Association

How the slightest hint of financial scandal can affect a career.

Lori Calabro, CFO Magazine

October 01, 2005

Looking back, Maria Markham Thompson considers herself lucky.

In 1998, Thompson signed on as CFO at Chapman Capital Management, a high-flying, Baltimore-based investment management firm run by Nathan A. Chapman Jr. At the time, founder Chapman was readying an initial public offering for a company called eChapman Inc. Before Chapman could take the site public, however, the dot-com bubble burst, and he could no longer sell the proposed flotation. The end came when he discovered that Thompson had given company lawyers working on the offering the requisite language for disclosure of a material event — a disclosure that Chapman had no intention of making. Soon after, Thompson quit.

It was a smart move. By June 2003, the scheme at Chapman Capital had completely unraveled, and officials at the Securities and Exchange Commission charged Chapman and several former company executives (including Thompson's successor) with fraud. Although Thompson had landed a job at MTB Investment Advisors Inc. before news of the scandal broke, she had to tell her managers at MTBIA about receiving an SEC subpoena covering her days at Chapman.

Thompson says her new employers were extremely understanding. "They believed in me," she recalls, "and for that I'm thankful." But Thompson thinks the fallout from the scandal may last longer than the seven-and-a-half-year jail term her onetime boss received for his crimes. (Chapman is currently appealing the conviction, which was handed down in August 2004.) "I managed to escape, but not without some cost," she says.

Indeed, the cost of signing on with the wrong employer can be substantial. In the past few years, the two major stock exchanges, the Department of Justice, and the SEC have dramatically stepped up their pursuit of financial wrongdoers. Between fiscal-year 2001 and 2004, for example, the SEC filed more than 2,200 enforcement actions. The commission sent out an even greater number of Wells notices.

While such actions tend to strike fear in the hearts of many executives, they also generate a fair amount of negative press for those on the receiving end. CFOs unlucky enough to get caught in this crossfire of accusations and bad publicity often find it difficult to undo the damage. Even the hint of scandal can tarnish a reputation built over decades. "[In the public market], blemishes are not tolerated," notes Peter Crist, chairman of executive-recruitment firm Crist Associates, based in Hinsdale, Illinois, adding that "guilt by association" is alive and well.

### Defending Your Livelihood

Crist is not exaggerating for effect. Experts say working at a company that's merely being investigated for possible misdeeds can taint a finance executive's reputation — no matter the ultimate finding. And having your name linked to the fraud, notes Derek M. Meisner, a partner with law firm Kirkpatrick & Lockhart Nicholson Graham LLP in Boston, "can be the death knell for a CFO's career."

In many instances, companies move quickly to distance themselves from any suggestion of wrongdoing. That distancing often means terminating or demoting executives even remotely associated with the fraud. Other times, executives are forced into making perceived admissions of guilt. How? The SEC seeks director and officer bars on a regular basis, says Meisner, and the resultant fear of never being allowed to work at a public company again can be a powerful inducement. Thus, Meisner says some executives end up settling charges they might otherwise contest "in order to preserve their livelihoods."

John E. Isselmann Jr., former general counsel at scandal-plagued Electro Scientific Industries Inc., was faced with such a choice. The SEC considered Isselmann a "gatekeeper" even though the agency admitted he neither participated in nor knew about the fraud allegedly committed by former CFO James Dooley and ex-controller James Lorenz III in late 2002. Isselmann settled the civil case, he says, "to get five years of my life back." But in addition to receiving an acknowledgment by the SEC that he did nothing intentionally or recklessly, Isselmann — and his defense attorney, Melinda Haag, a partner at Orrick, Herrington & Sutcliffe LLP — successfully fought the director and officer bar, which allowed him to continue practicing law. "I wouldn't have settled without it," he says.

But a settlement can be seen as a tacit admission of guilt. And even without a bar, executives with ties to tainted companies often find it difficult to secure employment. Recruiters say those executives should be prepared to lower their career expectations. "[For some time], they may end up working in the private sector or in some capacity they never imagined," warns Crist.

For many, a career change may even be a necessity — particularly since recruiters may be working against them. "We need to present candidates with instant credibility," grants John C. Wilson, founder of San Francisco-based financial executive search firm JC Wilson Associates. Consequently, recruiters are asking more questions about a person's associates, former bosses and companies — and even about résumé gaps. Any hint of a connection to fraud, says Wilson, and "the inclination is

to assume the person knew."

### **Multiple Impacts**

The toll from such thinking goes well beyond professional standing. Haag, who also defended Richard Hawkins, McKesson Corp.'s former CFO, in a highly publicized securities-fraud case, says the personal impact can be profound. In Hawkins's case, for example, the litigation dates back to 1999. And "although we're grateful that Rich has been exonerated, the court's decision can't give him back the past six years of his life," says Haag, who was former head of the white-collar-crime section of the U.S. Attorney's office in San Francisco.

It's not clear if the cloud ever dissipates. Isselmann, for example, has to be vigilant about any public mention he sees that incorrectly paints him as a participant in the fraud. At the same time, there are some sizable bills to pay. Isselmann had to pay \$50,000 to settle his case with the SEC. And as Thompson points out, the legal costs "take a toll." Although she was entitled to reimbursement of her legal fees from Chapman Capital, she had to sue to get the money.

If there's any good news here, it's that with time, some of the sting seems to lessen. "At some point, especially in an active market," Crist explains, "the skills of the individual will prevail and [he or she] will be allowed to reengage."

How soon that will be is uncertain. But going through these traumatic, life-changing episodes may actually strengthen an executive's skills. Thompson, for example, says the scandal at her former employer has made her even more vigilant about due diligence. "I was always careful about controls and compliance," she says. "But now I'm *really* careful."

*Lori Calabro is a deputy editor of CFO.*

---