How to Hire the Right Financial Advisor

ABI Webinar

December 11, 2013

Panelists

Dan Dooley *MorrisAnderson*

Greg Hays *Hays Consulting*

Allen Soong *Deloitte CRG*

Ivan Lehon *Ernst & Young*

Teri Stratton *Piper Jaffray & Co.*

Types of Financial Advisors or FAs

- Small accounting firms
  - Reporting and accounting
- Pure Financial advisory firms
  - Cash control and financial projections
- Turnaround consulting firms
  - Officer role, operations and change agent
- Investment banking firms
  - Transaction execution
  - Sale, refinance, capital raises
- Trustee, Examiner, Receiver
  - Fiduciary for court appointments

Why a Financial Advisor?

- Resources
- Experience and expertise
- Credibility
- Calming effect
- Return on Investment

Financial Advisor Needed- The Warning Signals

- Lender has lost trust in management
- Lender and/or suppliers are hostile toward company
- Company is bleeding cash and has no clear turnaround plan
- Numbers and facts are not viewed the same by Company and its lender
- Tough economic negotiations with creditors are required

Introducing a Financial Advisor

- Company's survivor is at stake:
  - Owner could face major economic and personal loss
  - Employees could lose their jobs
  - Customers, suppliers and lenders could lose money

- Need to make a tough decisions to improve odds of avoiding a business melt down

- Need objective 3rd party to assess situation, provide options, give recommendations and be advocate for company

- Be Direct: "I have seen owners lose businesses because they had to try to handle this distressed company solo. So here is a list of FA's I want you to interview."

Matching A Financial Advisor to a Distressed Company

- Industry experience
- Success in similar situations
- Likely credibility with lender and creditors
- Right personality to work with parties involved

Good Questions and Evaluation of FAs

- Can FA clearly communicate successes in similar situations?
- Will FA listen?
- Will FA be willing to push and challenge both the company and the lender?
- Will the FA be an effective advocate for the company?
- Will the FA have the strength to honestly tell me what I need to hear and not just what I want to hear?

Making a FA Selection

- Call references and ask tough questions
- Involve counsel in interview process
- Hire the best person and not the cheapest rate or the one you liked the most

Affording a FA

- FA fees are hourly or day rates (except Investment Bankers) FAs don't often extend credit
- Assessment and plans are an investment
- Implementation is where FAs usually generate cash and become self funding
- Hard to put a price on a company's survival

Defining the Role of the CRO: The Strategic and Tactical Benefits of a Seasoned Professional

Citation: ABI Journal, Vol. XXIV, No. 7, p. 46, September 2005

Journal Article:

Chief Restructuring Officer (a.k.a. CRO):

A corporate turnaround leader having financial, operational and management expertise, skilled in the complex and painstaking process of crafting consensus among all stakeholders around a common outcome.

Over the last 20 years, the position of chief restructuring officer has emerged onto the corporate landscape. Ask any three people what a CRO is and what he or she does and you are likely to get three different answers. Because there is no consensus in the definition, we often find that there is confusion about the role by many stakeholders. This misunderstanding is a common frustration among professionals working with troubled or underperforming companies. We know that outcomes could be improved if the key constituents confronted the issues quickly and, if necessary, sought out a CRO for help before it is too late.

The intent of this article is to define the role by discussing the strategic as well as the tactical benefits that an experienced CRO brings to a crisis situation, and offer concrete examples to illustrate these points. In doing so, it will become clear that in today's environment of heightened scrutiny of management decisions the use of a skilled, seasoned CRO during times of transition can mean better outcomes for all stakeholders.

The Strategic Value of a CRO

When a company's financial resources are dwindling, delays and missteps in reacting to a corporate crisis trigger a domino effect: Falling revenue and weakening cash flow worsen liquidity, exacerbate supply-chain problems and increase employee turnover. The symptoms are common and quickly become life-threatening for the organization. If management lacks the resources and depth to adequately handle the problem, the board should consider the use of a CRO. Addressing all of these symptoms, plus outside stakeholder activism, hedge fund debt-holders, global competition and business deterioration, requires special skills and a boatload of experience.

Having an experienced business expert in the form of a CRO who can hit the ground running in a crisis to provide strategic guidance coupled with tactical hands-on support to management is critical to achieving a successful outcome. Since turnarounds often come with a host of financial and operational issues, having a CRO to handle the significant extra workload makes sense. Additionally, the CRO brings the major benefit of insulating the CEO and the management team from many of the pressures of the reorganization process so they can focus on the important job of running the company on a day-to-day basis.

Strategically, a CRO provides the board and management team these strengths:

- *Objectivity:* This is the single most important element that a CRO brings, as it helps him or her generate the trust needed to gain consensus with key stakeholders. Restructuring is contentious by nature, since all stakeholders must reset their economic expectations to some degree. The gaming between parties for relative advantage in the process is constant, creating frequent disagreement. However, without the support of the key stakeholders, the process will stagnate. A seasoned CRO brings an unbiased view of the economic options available to the organization and an assessment of these options that sets the groundwork for a consensual solution to the problem.
- *Authority and Accountability:* The CRO's priority is to focus the organization's attention on achieving results. To do so, he or she must have the authority to eliminate the impediments that stand in the way of the company's success. Having strong financial and operational skills are critical to assess the problems and, more importantly, develop the appropriate solutions. Equally important, the CRO must be willing to be held accountable for the outcome.
- *Flexibility:* The CRO may need to wear any number of corporate hats, simultaneously if necessary, to help overcome the immediate threats to the company. Often this multi-tasking is driven by the departure of key personnel. However, if the existing management team is intact and has sufficient depth, the CRO can focus

Issue

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exclusively on a narrower band of issues.
- *Urgency:* The CRO brings a daily sense of urgency to achievement of the restructuring goals. The CRO knows that speed and a sense of urgency are critical in a crisis situation when time is money. He or she is responsible for ensuring that proper levels of resources are identified in advance to implement the plan.

Case Study: Acterna

Taken as a whole, these qualities help the CRO bring all parties and their agendas together under the common goal of creating the best solution for everyone: the company and employees, the equity-holders and the debt-holders alike. An example that illustrates exactly how the objective perspective of the CRO can find the best solution to a problem—one that not everyone may see initially—and bring everyone together under a common goal is illustrated in the following example of Acterna, a billion dollar cable and telecommunications industry equipment supplier.

In the telecom downturn of 2002, capital expenditure spending dried up practically overnight, leaving Acterna with a debt load of almost $1 billion while revenue plunged by more than 50 percent. As covenants were breached, the secured parties pushed hard to divest Acterna's international operations to reduce their exposure. The board, recognizing that the future for the company was worsening daily, brought in a CRO to work side-by-side with the CEO and management.

With the existing management team in charge of the day-to-day operations, the CRO focused on developing a common vision of the company's future with all stakeholders. The decision to keep or sell the offshore businesses was a critical strategic choice in the case. The CRO's objectivity demonstrated to the stakeholders, through detailed analysis, that the company could obtain a better economic outcome if it remained a global supplier with restructured international operations. The turnaround plan required significant changes in the business, and the CRO would be responsible for implementation oversight. Based on this plan, the resulting consensual decision was to keep almost all of the international business intact. A §363 sale for a nonstrategic operation in the United States provided the needed additional liquidity.

The CRO immediately began implementation of a 100-day restructuring plan, focusing on short-term survival and long-term value for the company. The CRO and CEO jointly refocused the business priorities on liquidity improvement actions and maintaining control of over 30 nondomestic operations containing over half of the company's assets.

Results included negotiating a consensual reorganization plan that allowed the company to emerge from bankruptcy with nearly $1 billion less debt within five months. The turnaround plan was well executed, and the company generated liquidity in excess of the plan, resulting in a dividend to shareholders one year after the restructuring. The recent sale of Acterna to JD UniPhase at approximately seven times the stock value on emergence is a poignant example of the value the CRO brought to the process.

The CRO's Tactical Skills

An experienced CRO also provides value to a company in crisis on a tactical level, using his or her diplomatic skills, thick skin and calmness under pressure, as well as financial, operational and management expertise to drive to a positive outcome. He or she can be instrumental in tactical areas such as:

- *maintaining liquidity.* Accurately forecasting the liquidity needs of the company through a period of change is imperative to maintaining creditor support and necessary to address negotiations of the DIP and emergence financing. Proper planning of cash needs and tight execution against that plan creates improved odds of success for the turnaround.
- *managing the divestiture of excess assets.* When cash is tight, monitizing some excess assets that will not significantly reduce long-term value to the company might be necessary. Executing the sale fairly, quickly and efficiently can contribute greatly to the success of a turnaround.
- *maximizing the opportunity for change.* Businesses cannot endure serial restructurings; therefore, the company ought to look to all areas that can offer improvement while change is underway. An experienced CRO can quickly work across all company segments (both functionally and geographically) to uncover meaningful change opportunities.
- *coordinating the restructuring process to obtain efficiency of efforts.* Keeping the outside professional team focused on tasks and timetables drives the process to a successful conclusion at the lowest cost. If the company is attempting to refinance its existing debt, often the CRO is the lead professional on the road show to discuss the company's future.
- *improving employee morale.* Often overlooked, getting the company to refocus on the business of taking care of customers is an important piece of the success of any turnaround plan. Bringing in a professional to deal with the restructuring can help to reduce the anxiety common in the workforce during a turnaround.

Case Study: RCN

An example of how the CRO's tactical skills can improve a company's outcome is the recent case of RCN, a $600 million high-speed cable, Internet and telephone service provider.

This "triple play" provider had more than $1.6 billion of debt in breach of multiple loan covenants. The unsecured and secured debt-holders were at an impasse as to the future of the company, and liquidation was a strong possibility. Rumors were rampant that the company would have to file for bankruptcy protection, which led to low morale, declining sales and a general deterioration of the business. The board hired a new restructuring team, including a CRO.

With the company unsure of its ability to continue meeting its cash needs, the CRO quickly established a credible 13-week liquidity plan with tight controls on cash. The business plan was revisited, leading to a credible restructuring plan that included cost improvements at all levels and areas of the business. The plan refocused the business operations on the fundamentals of efficiency and cost, improving the company's liquidity position and improving asset utilization. This plan provided sufficient comfort to the secured parties that RCN had the necessary resources to allow time to restructure and refinance the company.

The CRO focused his efforts on the restructuring process, including refinancing of the existing secured debt, acquiring the remaining 50 percent share of a critical subsidiary, developing a consensual reorganization plan and implementing cost-reduction actions.

The result was a relatively quick reorganization within six months. Upon emergence, the balance sheet carried $1.2 billion less debt, and the remaining $450 million of debt was refinanced with appropriate terms and maturity for the company.

In summary, the CRO is a professional well-versed in the strategic and tactical skills necessary to fix an ailing company or return an underperforming company to top performance. The CRO can build consensus between stakeholders while simultaneously driving a company's restructuring process to a conclusion in a timely manner. This job is not for the faint of heart. It requires considerable experience, communication skills and the ability to engender trust from all stakeholders.

When a company finds itself in the early stages of a problem—be it financial, operational or managerial—this is the ideal time to consider the help of a CRO.

Footnotes

[1] Tony Horvat is director of the New York office of AlixPartners LLC and has more than 20 years of hands-on business leadership experience with an extensive background in bringing consensus and focus to the divergent interests in complex and contentious restructurings both domestically and overseas. His background includes operational reorganizations and cost reductions, strategic repositioning including divestures and acquisitions, and financial reporting. Return to article

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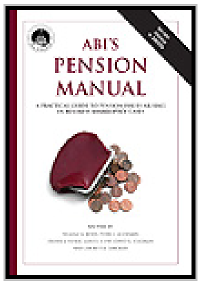

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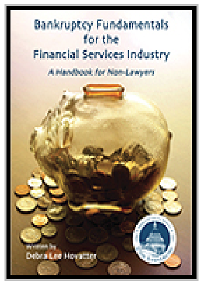

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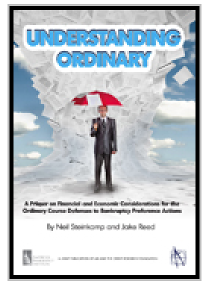

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Restructuring Advisor vs. Interim Manager: Making the Right Decision

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There's no shortage of different types of financial and operational experts available to help a troubled company, including crisis managers, restructuring advisors, bankruptcy accountants, investment bankers and turnaround consultants. With all of these experts ready to serve, it can be a challenge for attorneys to advise their clients about which type of advisors are best suited for their particular situation.

Alan D. Holtz

This article explores the role of the restructuring advisor and how it differs from that of an interim manager (sometimes referred to as a crisis manager) and highlights the considerations that must be made when choosing one type of expert versus another. The article does not discuss the role of an investment banker or legal counsel in a restructuring transaction, but it is important to note that restructuring advisors and interim managers work in very close coordination with both advisors in most restructuring situations.

The Restructuring Advisor

Restructuring advisors provide a wide range of services. These services—moving along the continuum from operational to financial support—can be focused on revenue enhancement, cost reduction, business planning, working capital and liquidity management, balance sheet deleveraging and—at its most extreme—bankruptcy support. The range of services is depicted in Figure A.

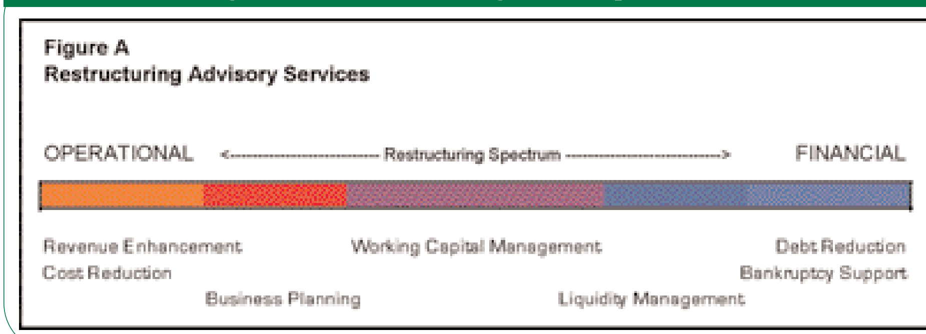
About the Authors

Alan Holtz is a managing director at AlixPartners with 20 years of experience advising boards, management teams and investors in complex restructuring situations.

Effective restructuring advisors are well-versed and experienced in many or all of the areas depicted in Figure A. They are strategic thinkers, able to learn quickly, put facts into perspective, and draw the right conclusions. Most important, the advisor must be a coach to the company's leadership team, able to assist them in completing an operational and/or financial restructuring, and inspire them to rebuild stakeholder confidence. While possessing strong leadership skills, the best advisors are comfortable allowing their clients to be in the spotlight. They know when to step forward and when to take a back seat.

Restructuring advisors bring a set of competencies to a management team that is not necessarily resident already. They are adept at bringing all parties and their agendas together under the common goal of creating the best solution for the greatest number of stakeholders involved—creditors, equityholders, management and employees, among others. This is a complex proposition, requiring expert financial, operational and management skills in addition to diplomacy and stoicism in the face of heated battles.

Figure A: Restructuring Advisory Services



In essence, restructuring advisors lend their skills, experience and relationships to the management team in each new situation and leverage these assets to best complete the reorganization.

"The restructuring advisor is a key member of the team guiding management through a challenging situation," says **Durc Savini**, managing director of Miller Buckfire. "When we are in a deal as investment bankers, we rely on the restructuring advisor to support the financial and operational aspects of a restructuring transaction and value their important contributions to the process."

Restructuring advisors may also be hired by creditor constituencies, such as official creditors' committees in chapter 11 cases. In creditor advisory roles, they monitor and challenge actions of the management to ensure the decisions that are made are in the best interest of creditors. Throughout the restructuring process, they maintain a thorough understanding of what's happening with respect to the debtors' finances, operations and restructuring case—from liquidity and cash flow to operating performance and profitability to claims and projected recoveries. They also assist with loan documents, plans of reorganization and other negotiated agreements. Creditor advisors develop enhanced knowledge of the borrower's issues and business, which is used in creditors' decision-making processes and ultimately augments their returns.

The Interim Manager

Company executives and boards of directors often seek an interim manager when they feel that some or all of the current management team is ill-equipped to handle an escalating situation. The kinds of crises that lead to the hiring of an interim manager commonly result from financial or legal pressures, such as financial statement errors and irregularities, allegations of legal violations, failed transactions, financial covenant violations, a loss of confidence by the financial community or simply failure to produce necessary results during times when such results are of critical importance.

The use of interim managers is not limited to high-profile crises. In addition to legal and financial issues, companies may also face strategic or operational problems. Crises may also arise from one-time events, such as natural disasters or communications or public relations debacles. Ultimately, if the board feels that the current management is unable to handle the crisis—whatever its cause—it may decide that an interim manager should be brought in. Not only does such a decision improve the likelihood of mitigating the problems at hand, it sends a signal to the business community and financial markets that management acknowledges its issues and is willing to do what it takes to address them head on.

"When we advise in a restructuring situation, there must be a strong member of the management team who takes ownership of the restructuring process in order to drive effective results," says **Douglas Bartner**, a partner at Shearman & Sterling. "In situations where existing management is consumed with day-to-day operations or does not have restructuring experience, having an interim manager on the team makes a very significant difference."

Interim managers are particularly well-suited to situations where there is a vacancy in a particular management role, such as a CEO, CFO or CIO. It's no secret that companies struggle to find the right talent to fill critical jobs, particularly during a crisis situation, and an experienced interim manager has the skills and expertise to fill such a role quickly. By definition, the interim manager role is a temporary one that allows the individual more degrees of freedom to be objective in decision-making while being viewed as an "honest broker" by those in the organization. The interim manager's ultimate goal is to get the job done and move on.

Once the crisis has been resolved and the organization has returned to more normal business operations, the board will find it easier to place a permanent executive that can focus on managing and growing the healthier company. This individual has a better likelihood of being successful as a result of the work done by his or her predecessor, the interim manager.

A Special Type of Interim Manager: The CRO

The CRO—or chief restructuring officer—is a unique position that an interim manager may fill. The CRO role was born out of the need for an expert to handle the complexities of the reorganization process, and today the CRO continues to be used most often in chapter 11 situations. The CRO is well-versed in the issues of financial distress and is an expert in complex negotiations with multiple tiers of constituents. He or she is the central "node" in the network of professionals representing the various parties and has the best insight into the process, work products and decisions required along the timeline of the reorganization. The CRO, if credible and respected by the working group, should be able to build consensus around the basic financial statements and documents that create the platform for the ultimate reorganization plan.

Unlike most c-suite executives, the CRO has led companies through chapter 11 time and again and is adept at identifying and leveraging the legal protections that bankruptcy offers. The CRO understands that the objective is to fix the company and save as much of the value as is possible, and that objective often requires tough decisions. No one likes shutting down operations, selling off subsidiaries, or implementing layoffs, but a CRO is often better positioned to be in the middle of such actions than existing management.

Savini adds: "Because a host of brand new business and financial issues come along with a restructuring, and many existing managers have neither the time nor the relevant skills and experience to address these issues, a CRO coming from within a company is quite rare. We often advise our clients to consider bringing in an experienced and well qualified CRO from the outside."

Making the Right Choice

Both restructuring advisors and interim managers help insulate the CEO, CFO or COO from many of the process details of the reorganization so they are free to carry on with the important day-to-day job of managing the company. However, there is one primary difference: Interim managers, unlike restructuring advisors, have decision-making authority and are vested with responsibility for successful execution of the reorganization. Restructuring advisors bring extensive experience and resources to the restructuring process, but do so while the management team retains ultimate authority.

How does an attorney advise a client on which expert is appropriate for that particular company? The decision depends on several factors, including the corporate culture, senior management's approach and style and the strength of existing management.

Interim managers work well in a corporate culture that accepts outside change agents or that requires a leader to have management authority to be successful. Interim managers also work well with a CEO willing to cede decision-making power on specific, relevant areas of the business to others. An interim manager often brings a fresh perspective and approach that can be a welcomed sign to the market, adding external credibility to a company dealing with a crisis. In situations requiring this type of exposure, an interim manager may be the best solution.

Conversely, if the corporate culture does not accept outsiders in leadership roles readily, or if there is a strong management team in place that works well with outside consultants, a restructuring advisor will often be the right choice. In certain circumstances, the announcement of a change in senior management would not be well received by the market, and the use of a restructuring advisor will draw less attention to the company's situation than the appointment of an interim manager.

In situations where there is considerable weakness in management or vacancies in certain leadership positions, an interim manager may be a better solution than a restructuring advisor. It is likely that the board of directors is involved in identifying resources when there are senior management issues, and the use of an interim manager is an effective solution that can be implemented very quickly by the board.

Of course, there is one more consideration a thoughtful attorney will take into account, and that is the chosen expert's ability to work collaboratively with legal counsel and the other professionals involved in the restructuring. Much has been written about the rising costs of reorganization, and some of that increase certainly can be laid at the feet of professionals who—by design or through poor coordination—work at cross-purposes or create redundant work products. While it is common for the various constituencies to have their own legal counsel and advisors, there is much that can be done

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by the company who, after all, is paying the bill for all, to manage the professionals in order to hold down expenses. The relative costs of an interim manager and a restructuring advisor should be carefully considered when deciding between the two.

In the end, the success of a restructuring is tied to a number of factors, not the least of which is the choice of experts who will lead or advise the company throughout the process. To achieve the best outcomes in these critical situations, attorneys should consider the specific needs and characteristics of the client when deciding between a restructuring advisor and an interim manager. And regardless of the route chosen, the most important factor will always be the qualifications and experience of the selected expert. ■

Assessing the Credentials of Financial Advisors

Feature

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As the nation's bankruptcies increase amid the current distressed economy, it is more critical than ever that bankruptcy attorneys seek out the best professionals in litigation support and the best financial advisors (FAs). For many attorneys, it frequently starts with the professional's credentials—a subject that generates much debate.

Howard Fielstein

Exactly how important are credentials? Are some more important than others? How valuable are multiple credentials covering the areas of turnarounds, restructuring, bankruptcy, insolvency, financial fraud, business valuations and appraisals? Most professionals would agree that the breadth and depth of a FA's education and practical experience are, at the very least, reflected by certain credentials. However, the implications go beyond this simple explanation. Exploring the answers to these questions and the broader implications of credentialing in today's bankruptcy environment is an exercise that those involved in the bankruptcy process should undertake.

The Growing Need for FAs

According to the Administrative Office of the U.S. Courts, bankruptcy cases filed in federal courts totaled 1,042,993 for the 12-month period, ending Sept. 30, 2008—a 30 percent increase over fiscal year 2007. The figure also earned the distinction as the highest number recorded for a 12-month period since the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was enacted.

The increase in bankruptcies last year was, across the board, in business and nonbusiness filings, chapters 7, 11 and 13. Handling the increase in cases for most attorneys generally means turning to FAs, including certified public accountants (CPAs).

About the Authors

Howard Fielstein is chairman and partner and John Lemanski is a senior manager of the Litigation Consulting and Bankruptcy Practice Group at Margolin, Winer & Evens LLP in its New York office.

John F. Lemanski

Attorneys rely on a FA for a wide range of work, from assessing the current and future financial viability of the debtor to business planning and financial projections, on-site crisis management, reorganization and restructuring feasibility studies and comprehensive financial analyses and cash-flow projections. The attorney will often rely on the FA, among others, to identify opportunities for profit enhancements and cost reductions. Identifying the tax issues and ramifications relating to the bankruptcy proceeding (*e.g.*, net operating losses, gains taxes and income from cancellation of indebtedness) is another key role of the FA.

The FA's forensic accounting expertise is provided to assist in locating and tracking any of the filing entity's diverted funds or assets and to assess any potential recovery actions. All of these capabilities are vital to the successful and timely resolution of a bankruptcy filing. The conclusions and financial information provided by the FA will be subject to heavy scrutiny by the stakeholders, counsel for the various constituencies, the court and office of the U.S. Trustee. They will be evaluated as much on their own merits as on the merits of the professional incorporating the assumptions and data. The professional's merits will be based on several criteria: experience, firm affiliation and professional credentials.

Professional Credentials: Do We Really Need Another One?

In May 2008, the American Institute of Certified Public Accountants (AICPA) approved its fourth specialty credential. The certified financial forensics (CFF) designation is designed to enhance the credibility of CPAs who practice as forensic accountants. Earning the CFF designation requires that a CPA have five years of experience as a practicing accountant and be an AICPA member. In addition, the CPA must accumulate at least 100 points and meet certain criteria, including:

- have forensic accounting experience within the most recent five years (60 points);
- have relevant continuing education (up to 60 points); and
- hold other associated credentials such as certified fraud examiner (CFE) from the Association of Certified Fraud Examiners (ACFE), certified valuation analyst (CVA) from the National Association of Certified Valuation Analysts (NACVA), accredited in business valuation (ABV) from the AICPA, and other credentials, including a Juris Doctor (J.D.).

CPAs who seek the CFF designation are subject to oversight by the AICPA standards committee, which is reviewing applications, but there are no exams for CFF applicants at this time. It is the AICPA's current belief that the application process and continuing education requirements are substantial in upholding the integrity of the credential. In introducing this latest credential, the AICPA was clear in its intent because it wants to differentiate its forensic credential from others that do not require the CPA designation.

One could argue that the CFF, as well as the ABV, CFE, certified insolvency and restructuring advisor (CIRA) from the Association of Insolvency and Restructuring Advisors (AIRA), certified in distressed business valuation (CDBV) from AIRA, certified turnaround professional (CTP) from the

Turnaround Management Association (TMA) and accredited senior appraiser (ASA) from the American Society of Appraisers and other designations, add value and credibility to the FA serving in a bankruptcy filing. If you consider the testing, continuing education and participation in the activities of traditional and forensic accounting, restructuring, valuations, appraising, etc., indicated by these various credentials, they should lend confidence to bankruptcy attorneys and the parties involved in the bankruptcy process.

The organizations that award these designations maintain high standards of quality service and professional ethics. Within the broader context of financial services, this matter of individuals casting themselves as financial professionals has caught the eye of various associations and government agencies. While organizations and agencies such as the North American Securities Administration Association, Massachusetts' Securities Division and Nebraska Department of Banking and Finance formed task forces and issued regulations primarily designed to protect consumers being served by individuals with suspect experience and knowledge, the concern also extends to situations when the client is another professional or corporate entity.

Some organizations emphasize the credibility of their designations by subjecting their certification programs to rigorous scrutiny by the National Organization for Competency Assurance (NOCA) and the National Commission for Certifying Agencies (NCCA). The NOCA is a nonprofit, 501(c)(3) organization dedicated to providing educational, networking and advocacy resources. NCCA evaluates certification organizations for compliance with the NCCA's "Standards for the Accreditation Certification Programs." One organization relevant to the field of bankruptcy and related credentials is the National Association of Certified Valuation Analysts (NACVA). This association subjected its CVA and accredited valuation analysts (AVA) certification programs and documentation to a three-and-a-half year in-depth evaluation by the NCCA to attest its validity. A periodic review of certification programs such as the one undertaken by the NACVA is a valuable endeavor. It is a way of ensuring that a certification program—*i.e.,* its course materials and exams—remain fresh, timely and relevant.

Continuing Education

Every designation generally requires that the holder earn continuing education credits in order to maintain the designation. In some cases, the continuing education requirement can be satisfied through general accounting courses while other designations require education that is credential-specific, and the number of hours required varies from association to association. For example, the AICPA requires its CPA members in public practice to complete 120 hours of continuing professional education (CPE) credits over a three-year period with 20 hours minimum per year.

For members not in public practice, the requirement is 90 hours of CPE credit over a three-year period with 14 hours minimum per year. CPAs also must adhere to their state society's CPE requirements, and there are minimum CPE credit requirements imposed by state licensing boards. For example, New York recently underwent change with the passage of a series of accountancy regulation reforms. One pertaining to continuing education now requires that all CPAs, including those who work for private industry, complete professional education requirements.

The TMA requires that CTP holders obtain 50 hours of CPE credit every two years with at least two hours of those credits in ethics topics. The AIRA's CPE requirements for its CIRA credential is 60 hours of CPE credit, with the stipulation that at least 20 of the 60 hours must be completed in nonemployer-related educational programs.

Bankruptcy attorneys may consider asking prospective FAs that they are considering for a unique assignment about what conferences or educational programs they have recently attended and/or presented at before. It is another qualifier, which adds further credence to the FA's certifications. In view of today's economy, the issues introduced by unprecedented government actions and the current lending environment, it is especially relevant that FAs be current on the effects that these market conditions will have on various cases. Particularly for attorneys serving affected industries such as the financial, retail and automotive sectors, as well as those practicing primarily in the middle market for which funding for bankruptcies is currently constrained, it is important that the FAs they select are current in their understanding of the various nuances now at work in their cases. The same holds true for seeking out FAs who remain abreast of legislative developments

Ongoing Participation in the Process

Credentials notwithstanding, probably the most important qualifier for any FA serving in a bankruptcy is experience. There is no replacement for it because it brings an understanding of the tangibles and intangibles at work, the process and the procedures and the underlying concerns of the different parties to the bankruptcy. It also is indicative of a professional's broader relationships within the bankruptcy community. These relationships with other FAs, attorneys, trustees and the courts accrue benefit for the attorney and the client. There is a comfort level established that should not be underestimated in its role in helping to keep a case moving forward in an efficient, timely manner.

[A]ttorneys are well-served when seeking out specific experience in the area(s) relevant to their cases' needs.

To drill down further on this topic of ongoing involvement and experience, attorneys are well-served when seeking out specific experience in the area(s) relevant to their cases' needs. A case in which there are issues regarding the valuation of a business or intangible assets will benefit from the expertise and experience of an FA with a business valuation credential. If the case involves a large bank looking for a workout, then a CTP's experience will generally serve the attorney and client well. Where there are potential fraud and significant forensic issues, a fraud credential is advisable. For their experience in the entirety of the bankruptcy process, FAs holding the CIRA credential are a wise selection.

In general, FAs who have experience working on diverse bankruptcy cases (*i.e.*, involving different issues of fraud, valuation and restructuring, industries, size of entities, and complexities) can be extremely valuable resources. These professionals may hold more than one credential and be actively enrolled in numerous educational programs to maintain these credentials. Their wide

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experience and multiple credentials also are favored by the judiciary, which can be a factor in moving through the bankruptcy process.

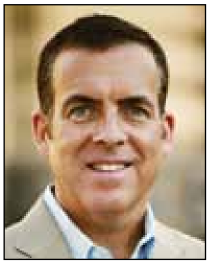
The last thing any attorney wants to have happen when standing in front of a judge is to have the FA's qualifications challenged. At the very least, this can cause a delay and, in the worse case scenario, the FA may not be accepted. This will disrupt the case even more and may also cause the attorney to lose credibility with the judiciary—potentially affecting this and future cases. A lesser-qualified FA could also cause objections to be raised by the opposing side with similar outcomes.

Conclusion

Credentials must first be viewed in the context of a FA's overall experience, standing in the profession, active involvement and leadership roles within professional associations, relationships within the bankruptcy and insolvency community, and comfort level that exists between an attorney and FA. Then they can be appreciated for what they also represent: A professional who, through hard-earned designations, reveals a strong commitment to his profession and high standards of service. ■

By Carl S. Lane and Duncan S. Bourne

Interim Officers: Critical Skills for Critical Situations



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In the current economic environment, management teams can find themselves in perpetual flux as their organizations attempt to refocus on key markets, leverage strategic advantages and improve cost structures. Over the long term, management team changes are typically accomplished through succession planning, organized outside searches and designed turnover. However, management teams often encounter acute situations where gaps in the management team's capabilities can increase risk to the organization and hamper the organization's ability to compete successfully. Hiring an interim officer[1] is often critical to the successful execution of key operational and strategic initiatives, or is needed as a short-term solution where gaps exist in senior management's skills and abilities (*see* Chart 1).

Common Situations

The four most common situations where interim officers are hired include the following: (1) the organization is contemplating a merger, acquisition or sale and requires specialized expertise for a short time frame; (2) the organization is experiencing financial or operational distress and management does not have the necessary expertise or sufficient experienced manpower to address the situation quickly; (3) the organization has encountered an abrupt departure due to actual or alleged improprieties and such issues have made long-term hiring difficult; and (4) a key executive has resigned and the organization needs an extended time frame to properly identify, evaluate and hire new senior leadership.

For example, in a bankruptcy or restructuring, the company's board of directors commonly engages a chief restructuring officer (CRO) to focus solely on turnaround and restructuring activities. The hiring of a CRO is often at the insistence of the company's lenders or another party-in-interest. A CRO is usually "battle tested" and can be very helpful during tense situations and in handling tough negotiations. The CRO often also provides side benefits: When the assignment is complete and the CRO departs, many of the negative feelings created during the restructuring phase go away with that person.

Owners of a closely held business that are pursuing a sale may employ a chief financial officer (CFO) on an interim basis. The interim CFO will most likely have led other companies through sale processes and other transactions. Having another senior executive with the right technical background clearly helps. More importantly, however, the interim CFO is well experienced in closing the deal.

Private-equity deals are also good situations for interim officers. Private-equity groups (PEGs) often buy companies that they expect to restructure or combine with an add-on investment. PEGs expect quick results, like hiring entrepreneurs who have bought, fixed and sold companies at least once, if not several times. Interim officers do a good job of accelerating change and implementing performance improvements at companies that will ultimately be sold or taken public.

Key Characteristics and Skills

Organizations seeking to hire an interim officer should focus on the key characteristics and skills that make an interim officer successful. The key characteristics and skills are encompassed in five primary areas: (1) decision-making, (2) communication, (3) relationship development, (4) strategic management and (5) transition planning. Though the mix or balance may be different, these key characteristics and skills are strongly held among all successful interim officers.

While industry or sector experience is always a valuable trait, it is less important for the interim officer who brings specialized expertise and process capabilities to the situation. Furthermore, as interim officers often "land" at a new situation just as tensions are at their highest (*e.g.*, restructuring, sale of a company,

Chart 1

1 "Interim officer" is used herein to refer to all senior interim-management positions. The names "interim executive" and "interim manager" are also commonly used to describe similar roles.

etc.), soft skills are critical. Ultimately, organizations should still evaluate all candidates broadly, and personality and cultural fit are always fundamental considerations (*see* Chart 2).

Decision-Making

The successful interim officer possesses confidence and experience that have been gained in similar situations and that are invaluable in guiding an organization through the evaluation of strategic alternatives and making difficult decisions. Existing management does not often have the expertise that is necessary to navigate unique business or industry transitions. The interim officer can bring his or her broad experience from prior roles to direct the organization more effectively through the transition and reduce the risk of delay or failure along the way. The interim officer will quickly take control, make tough decisions, deal with uncertainty and chaos, and challenge "business truths" and information. These competencies are addressed below.

• *Take control.* While every situation is different, most interim positions are driven by a lack of management capacity. In such situations, it is imperative that the interim officer elicits control very early upon arrival to send a definitive message that he or she is a leader.

• *Make tough decisions*. It is very common, especially in distressed situations or where the leadership departed abruptly, that management will be experiencing decision-making paralysis due to the complexity of the situation and the extent of the issues to be addressed. The successful interim officer must be able to break through the paralysis and make the tough decisions.

• *Deal with uncertainty and chaos.* It is not "business as usual" in any interim officer situation, and there will be a higher level of uncertainty and even looming chaos. The interim officer is more comfortable in these situations due to his or her prior experience with similar circumstances and broader background. The interim officer is also more flexible in his or her decision-making and is willing to change direction as the situation evolves.

• *Challenge "business truths" and information.* The interim officer must be ready to challenge the status quo and the very strongly held beliefs of the organization. Statements like "we've always done it that way" and "that's just how our industry works" are signs that "group think" is likely limiting the business initiative. The interim officer also needs to heavily scrutinize the information and data being utilized by the organization for making decisions. Inadequate or poor information, often generated by antiquated processes or byzantine systems, is prevalent in underperforming and distressed situations. Mergers and acquisitions often require special *ad hoc* reporting that is susceptible to inaccuracies, and alleged fraud puts all accounting and financial data into question. The interim officer must act quickly to gain access to reliable and relevant information in sufficient detail to make business-critical decisions.

Chart 2

Communication

The successful interim officer is an accomplished relationship-builder and a tireless communicator. Given the limited term of the interim officer, he or she cannot wait for regular periodic meetings or other standard business dealings. Instead, he or she must devise and execute a communication plan that has a bias to proactive interfacing with stakeholders. The communication focus is highlighted below.

• *Quickly build relationships with stakeholders.* It is important for the interim officer to recognize that his or her responsibilities extend to all stakeholders, especially when there has been management turnover and uncertainty exists regarding the strategic direction or viability of the organization. The interim officer should quickly reach out to key stakeholders and develop lines of communication, especially with the stakeholders who could be negatively impacted. In distressed situations, it is extremely important to build relationships with creditors, such as banks, and rebuild their confidence in senior leadership. In transactional situations, it is important to communicate with employees regarding the impact of the transaction on the organizational structure. While the information may not always be positive and uncertainty will surely exist, a lack of information will lead to disruptive rumors and often result in unnecessary employee anxiety.

• *Communicate, communicate, communicate.* An overarching theme in many of the key characteristics outlined herein is communication. While communication is always important, its importance is amplified when there has been management turnover, the company is distressed or the organization is undergoing strategic change. The interim officer should utilize all forms of communication to send a clear and consistent message to all stakeholders.

Relationship Development

The successful interim officer is adept at quickly building constructive relationships with key stakeholders within and outside of the organization. Stakeholder relationships are often strained or even nonexistent when there is a management void, especially when the organization is distressed or management departed under problematic circumstances. The interim officer needs to have an impeccable reputation and should use his or her impartiality to build or resurrect important connections. The interim officer will be visible and accessible, build trust and confidence, and promote a positive work environment. These activities are expanded upon below.

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• *Be visible and accessible.* To effectively manage during a finite time period, it is imperative that the interim officer builds both formal and informal lines of communication with all employees. Informal communications often provide added insight into the issues facing the company and surface ideas for resolving them from the employees who deal with them on a day-to-day basis. Even in this increasingly connected world where communications devices are in everyone's hands "24/7," the interim officer needs to be highly visible and accessible to gain access to required information. While "management by wandering around" (MBWA) may be a cliché, it is often extremely useful for increasing visibility and accessibility, particularly when time is of the essence.

• *Build trust and confidence of employees and management.* Building trust and confidence in a short time frame can be difficult, especially when the interim officer is an outsider and may be injected into a volatile business environment. However, it is imperative for the interim officer to develop trust and confidence quickly to gain the support for key business-critical decisions. Having other senior leaders or employees undercutting such decisions can be disastrous for both the organization and the interim officer's reputation. First, the interim officer should initially spend some time "selling" other officers and employees on his or her background and experience. Remember that just because the board of directors or chief executive officer believes that the interim officer has the necessary skills, it does not mean that others will automatically agree and support the interim officer in achieving his or her objectives. Second, the interim officer should present sound reasoning and analysis to support early decisions. The key is to demonstrate knowledge and expertise so that focusing on areas of particular strength will be useful. Lastly, the interim officer needs to be forthright and honest in all dealings with management and employees as early missteps are difficult to overcome.

• *Avoid blame and distribute credit.* Given the heightened importance and total number of important decisions that will take place during an interim assignment, there will likely be some unfortunate failures along with the desired crucial successes. The interim officer can use the failures and successes to enhance his or her relationship with management and employees by avoiding blaming others and distributing credit where credit is due.

Strategic Management

The successful interim officer is exceedingly organized and an exceptional project manager. As discussed, it is not uncommon for management teams to be overwhelmed (the proverbial "deer in the headlights") by the complexity of the situation and sheer number of potential activities during an M&A transaction, a restructuring or a forensic investigation. The project-management competency allows the interim officer to catalyze action undertaken by the organization, directing the organization to deal with the unique issues and additional outside demands encountered during such situations. The interim officer will clearly define roles and responsibilities, identify the key focus areas, and prioritize and delegate. The interim officer will also define his or her goals consistent with the transactional milestones that govern his or her term. These undertakings are expanded upon below.

• *Clearly define roles and responsibilities.* The managerial responsibilities of senior leaders vary from company to company and can be impacted by the same factors that led to the need for an interim officer. Therefore, it is extremely important for the interim officer to clearly define his or her role and responsibilities at the outset of the assignment, which should be done initially through the employment contract or engagement letter and subsequently reinforced through discussions with other senior leaders and subordinates.

• *Identify key focus areas.* When management is being stretched thin, they may be working on many projects or issues but successfully completing or resolving very few. In these instances, it is imperative that the interim officer rely on his or her experience to identify the key focus areas (important and urgent) and to limit the pursuit of tangential activities (urgent but not very important). In distressed and transactional situations, the focus should be on short- and medium-term projects that will directly impact the near-term performance or the success of a transaction.

• *Prioritize and delegate.* Similar to identifying key focus areas, the successful interim officer will prioritize the key projects and clearly assign responsibilities with definitive deadlines for each project and other key milestones. The interim officer can also use the status updates and debriefs to assess the quality of the management team, which can be extremely useful if the interim officer's role includes reshaping a key department or operation.

• *Goals should be consistent with the term.* As the interim officer will primarily be evaluated for his or her performance and the performance of the organization during the finite period, goals should always be defined with this in mind. While the organization's long-term strategies should not be neglected, the interim officer should ensure that key projects are substantially completed because the remaining management team may not have the skills or desire to complete ongoing projects.

Transition Planning

Lastly, the successful interim officer recognizes that an efficient transition is critical to the organization's long-term success and enhances his or her reputation. If the transition is incomplete or ineffectual, the strategies and business processes implemented by the interim officer will potentially collapse. The perceived value of the interim officer's services will diminish if the remaining management team cannot expand upon or at least sustain what was introduced by the interim officer. The interim officer needs to plan and prepare for the transition and follow up even after the formal arrangement has ended. The two most essential transition steps are discussed below.

• *Plan and prepare for transition.* A smooth transition from the interim officer to the full-time officer will not only be more efficient and effective, but will also leave a good last impression. The interim officer should perform his or her duties while recognizing this certainty. As such, it is a good practice to keep well-organized records and even work programs for key tasks and activities. The interim officer should assist with the transition process and would typically have some overlap with the full-time officer. Additionally, the interim officer should assist with identifying, recruiting and evaluating full-time candidates as he or she will have a deep understanding of the challenges facing the new officer.

• *Follow up.* The interim officer should also make it a practice to periodically follow up with his or her replacement and other key stakeholders. This follow-up not only provides an opening for the full-time officer to ask you that question he or she "has been meaning to call you about," but may also help in identifying other situations where interim assistance may be needed.

Conclusion

Organizations seeking to hire an interim officer should identify and assess the different mix of skills that interim officers must have in order to be effective. Those skills include decision-making, communication, relationship development, strategic management and transition planning. The interim officer should also have specialized expertise and relevant experience to deal with the current situation and the critical issues that the organization is facing. However, organizations certainly should not ignore the "whole package," and they must ensure that the interim officer's personality melds with the other officers and managers and that there is a good cultural fit with the organization. abi

Editor's Note: *For more in-depth information, purchase* The Chief Restructuring Officer's Guide to Bankruptcy: Views from Leading Insolvency Professionals *(ABI, 2013), available at bookstore.abi.org (members must log in first to obtain special pricing).*