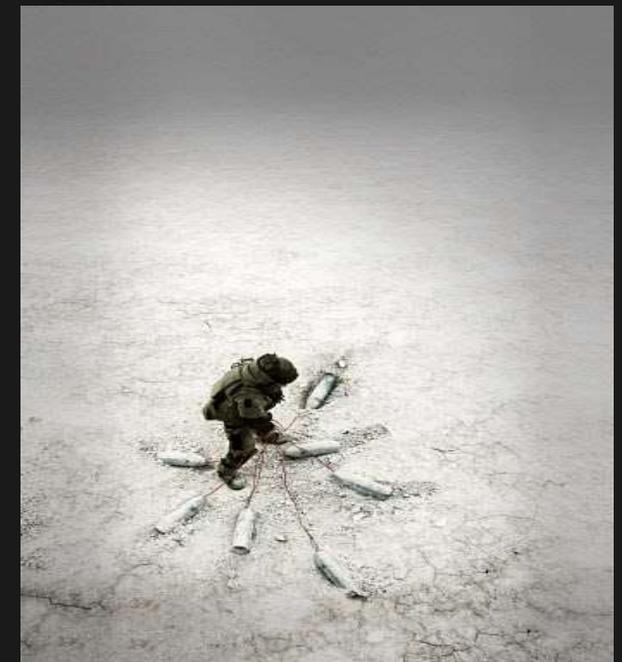


We're all in.

Explosion of New Financial Services Laws and Regulations: How Microsoft and Open Text Can Help Keep Financial Services Companies Out of the “Hurt Locker”

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Microsoft

The Film “The Hurt Locker” as Today’s *I Ching* for business

Quote from the film “You’ve Got Mail” (Tom Hanks as Joe Fox to Meg Ryan as Kathleen Kelly as she asks for business advice):

“The Godfather is the *I Ching*. The Godfather is the sum of all wisdom. What should I take for my summer vacation – ‘Leave the gun, take the cannoli’...And the answer to your question is ‘Go to the mattresses’. You’re at war – ‘It’s not personal, it’s business.’...Recite that to yourself every time you feel you’re losing your nerve.”

The *I Ching* for today’s business environment is the film “The Hurt Locker”.

The *I Ching* is an ancient Chinese method for divining the future based on three principles: (1) Simplicity, (2) Flexibility, and (3) Persistency

It's a Mine Field Out There

- “Explosion” of new U.S. Federal and state laws and regulations
- Trend for regulators is to set high compliance bar without providing technology “safe harbor”



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Watch Out For Snipers & Seek Cover

- Regulatory agencies are stepping up enforcement activities
- Risk of litigation due to new, unclear laws & regulations
- Companies should seek shelter with established vendors and products, map against best practices and seek third party validators



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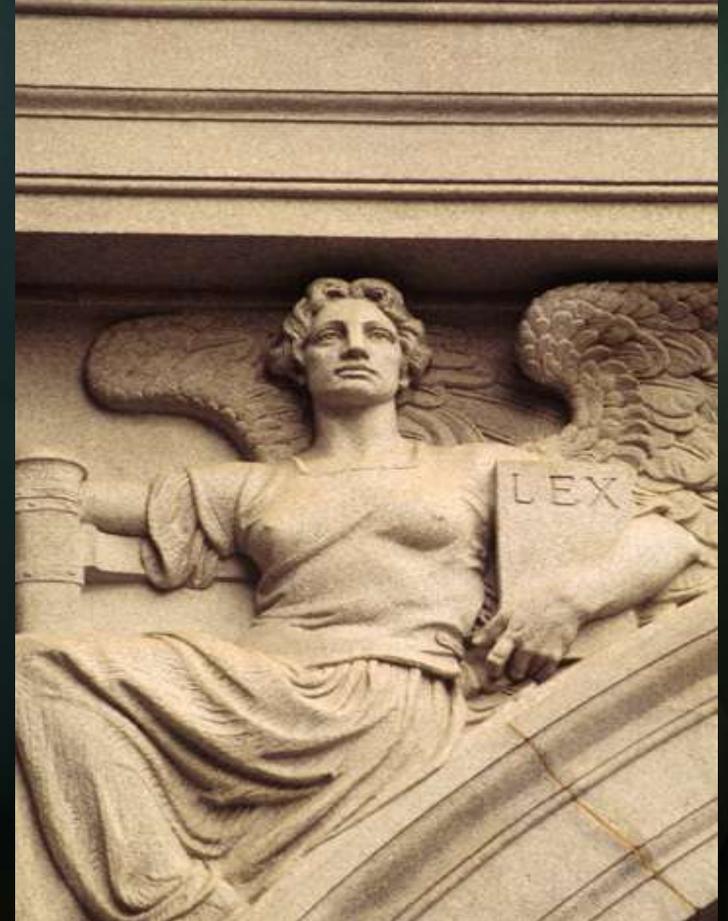
Don't Fight the Last War

- Implement an IT infrastructure that can scale to handle the converging trends of mobility, social media, immersive experiences and enterprise-wide content analytics
 - Microsoft Boomer-Millennial Research Studies
- Become a futurist and anticipate how to adapt to the new content world, instead of being in a reactive mode



Impact of Explosion of New Laws and Regulations

- Rapidly shifting federal – state regulatory landscape
 - Movement toward macro-prudential regulatory oversight and federalization of areas formerly subject to state law
- Increased enforcement efforts by regulators
- Increased responsibilities for directors, chief compliance officers and other C-level officers
- As with PCAOB's approach to Sarbanes-Oxley compliance, there is a need today for a top-down, risk-based approach
- Increased risk of regulatory proceedings and litigation, including whistleblower activity



Continuing Environment of Uncertainty

- **Dodd-Frank Wall Street Reform and Consumer Protection Act**
- **10 regulatory agencies to undertake at least 243 rule makings and 67 studies**
 - **SEC: 95 rule makings**
- **Regulatory phase to continue for next 12 years**
- **Financial institutions have set up teams to analyze potential impact of Dodd-Frank legislation and likely new regulations**
 - **J. P. Morgan Chase has over 100 teams at work reviewing the legislation**
- **Sen. Dodd: “No one will know until this is actually in place how it works” –in effect, delegation of legislative power to agencies**



Highlights of Dodd-Frank Wall Street Reform and Consumer Protection Act

- Consumer and investor protection (Bureau of Consumer Financial Protection)
- Financial Stability Oversight Council (10 regulators, chaired by Treasury Secretary); OTS abolished
- Orderly Liquidation Authority to FDIC for nonbank financial firms or bank holding companies
- Certain advisors to hedge funds and private equity funds to register with SEC
- Rating agencies now deemed “experts” for credit ratings included in registration statements
- New Office of Credit Ratings at SEC; regulate Nationally Recognized Statistical Ratings Organizations (NRSROs)
- Volker Rule – restrictions on banks’ proprietary trading and investment in or sponsorship of hedge funds and private equity funds; new supervisory regime for “securities holding companies”
- Mortgage reforms, including new federal standards for home loans re confirmation of borrower’s ability to pay
- Stronger powers for the Fed to set capital, leverage and liquidity levels for large systemic financial institutions (including some non-banks posing systemic risks)
- Companies selling mortgage-backed securities must retain at least 5% of risk
- Reasonableness restrictions on card merchant interchange fees
- Tighter regulation of derivatives – central clearing and exchange trading
- Federal Insurance Office within the Treasury Department to monitor systemic risk in insurance industry; state-based reform of surplus lines and reinsurance

Bureau of Consumer Financial Protection

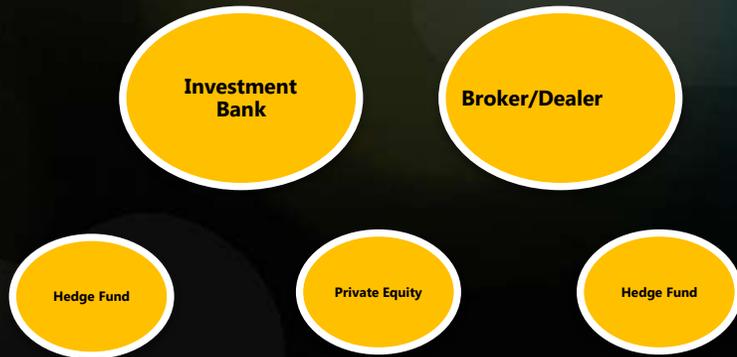
- Established within Federal Reserve System, but independent of the Fed, with authority to regulate providers of consumer financial products and services (e.g., mortgages, loans)
- Bureau has exclusive federal consumer law supervisory authority over largest banks, thrifts and credit unions, with total assets over \$10 billion; Bureau can participate in prudential regulatory audit of smaller institutions
- Bureau will be led by a single director and can take funding from the Fed budget, up to a limit
- Bureau takes over enforcement of Fair Credit Billing Act, Electronic Fund Transfer Act, privacy sections of Gramm-Leach-Bliley Act, Truth in Lending Act, RESPA and other laws; Bureau can sue in its own name
- Bureau can pass regulations and issue orders to prohibit discriminatory, unfair, deceptive or abusive acts and practices; can ban mandatory arbitration agreements; no definition as to what constitutes "deceptive act or practice"
- If another agency believes that a Bureau regulation puts the stability of the financial system at risk, that agency can petition the Financial Stability Oversight Council to review, stay or block the Bureau's regulation
- More protective state laws not preempted; Bureau has authority to determine if particular state consumer protection law conflicts with federal laws

Regulatory Shift to a "Many Masters" Framework

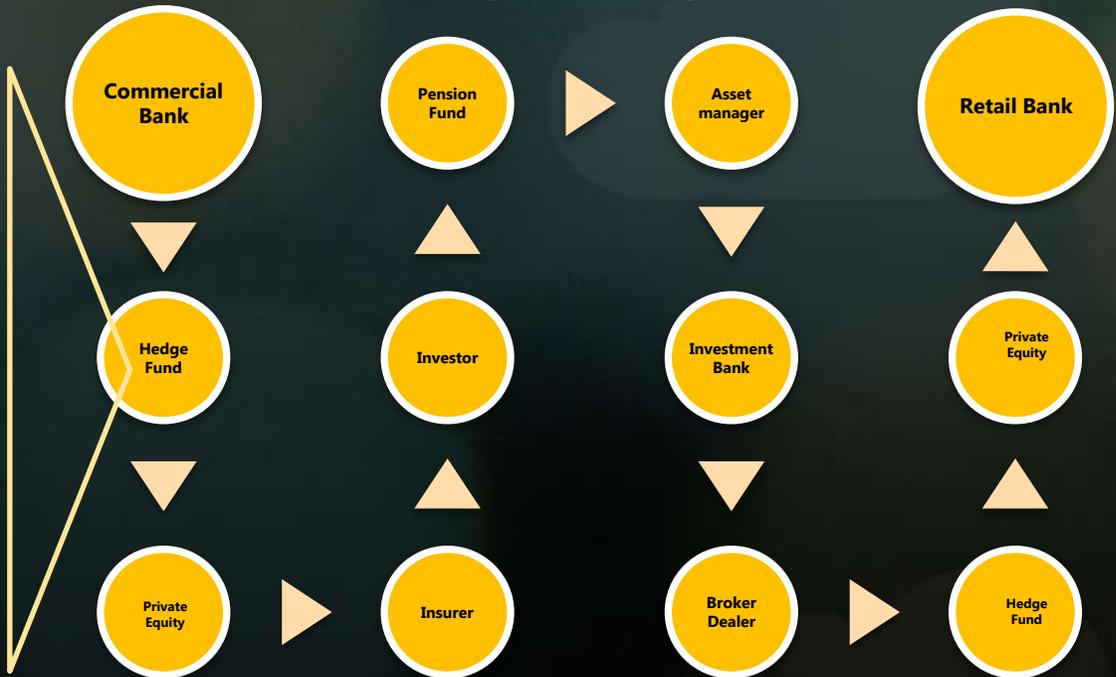
Fed/OCC/FDIC/OTS Regulated



SEC, CFTC Regulated



Financial Stability Oversight Council



From micro to macro supervision, with a regulated entity's data being more widely distributed between and among agencies

Boards of Directors: The New Battleground

- U.S. Securities & Exchange Commission (SEC) August 25, 2010 Final Rule entitled "Facilitating Shareholder Director Nominations"
- 3% and larger shareholder or shareholder group (held for at least 3 years) able to nominate directors, using management's proxy statement (e.g., hedge funds, pension funds such as CalPERS and other large institutional investors)
- No restriction on relationship between nominee and nominating shareholder or shareholder group; nominations cannot be for purpose of change of control of target company
- Company not required to include nominees for more than 25% of the board seats; if hit 25% limit, largest shareholder takes precedence over first to file
- Brokers no longer able to vote shares unless authorized by beneficial owners (NYSE Rule 452)
- Possible future scenario: boards to maintain their own IT infrastructure for information management purposes



Whistleblower “Bounty Hunters” under Dodd-Frank Legislation

- **New incentives for whistleblowers**
 - 10-30% of total penalties recovered by SEC for cases over \$1 million as reward to whistleblower
 - Rewards not just in insider-trading cases, but now in all securities law cases
 - Whistleblowers can be not only employees of violating company, but also third parties, such as consultants, business partners and service providers
- **New protections for whistleblowers**
 - Private right of action for whistleblowers terminated in retaliation
 - Reinstatement plus 200% of back pay
- **SEC to report to Congress on efforts to promote and publicize the whistleblower program; also must establish special office at SEC to handle whistleblower reports**
- **Independent development: SEC subpoena authority delegation rule now made permanent: regulatory inquiry now can more quickly escalate into high-profile, high-risk SEC investigation**



2010 Amendments to U.S. Sentencing Commission Guidelines: Push for Chief Compliance Officer to Report Directly to Board

- Amendments to U.S. Sentencing Commission Guidelines effective November 1, 2010 permit a company to receive a reduction in criminal penalties despite the involvement of high-level personnel in criminal conduct, if the company has met the following four criteria:
 - **The head of the compliance program reports directly to the board of directors or the board audit committee**
 - **The compliance program uncovered the criminal conduct before discovery outside the company was reasonably likely**
 - **The company promptly reported the criminal conduct to the company's regulator or other appropriate governmental authority**
 - **No compliance officer participated in or condoned the criminal conduct, or was willfully ignorant of the criminal conduct**

Regulators and Companies Will Need 30,000-Foot Views

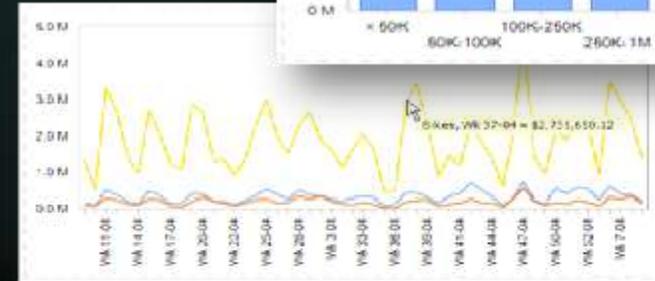
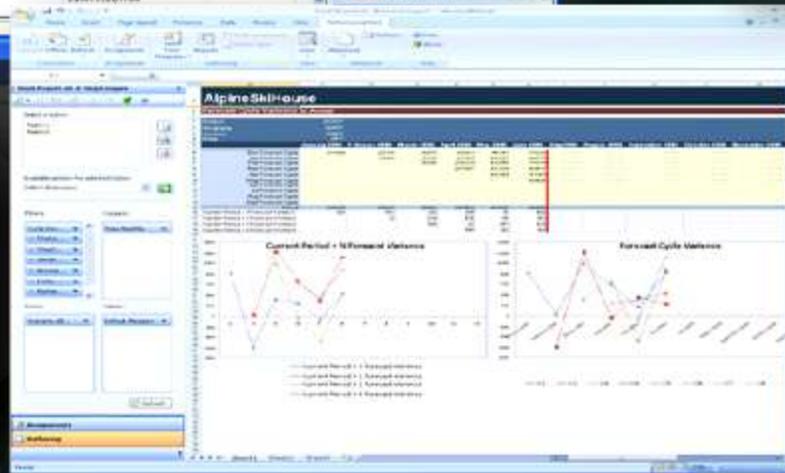
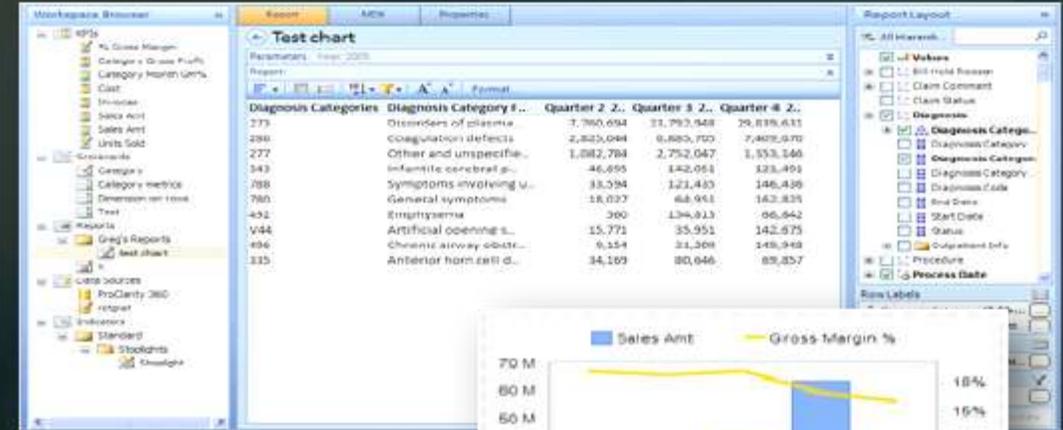
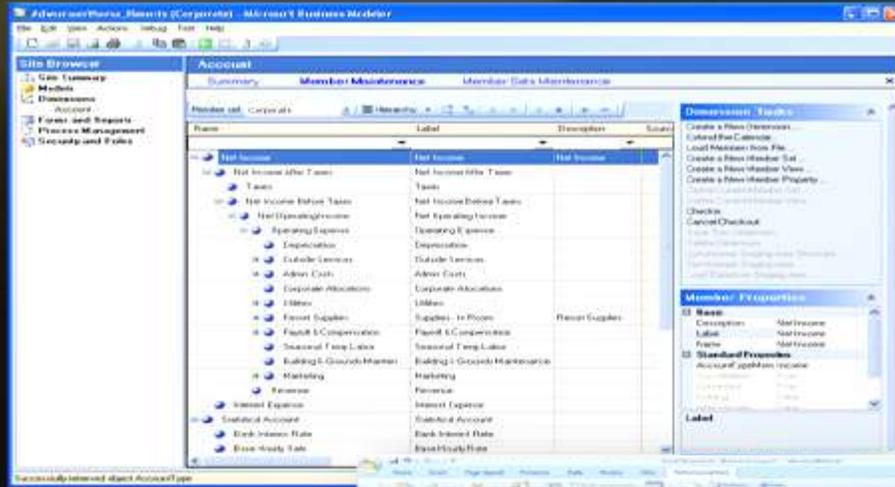


Macro and micro management through the use of technology

Risk Data Analysis Approaches Will Have to Evolve



Dashboards Will Need to Be More Easily Configurable



Costs Will Be Reduced Through Automation and Standardization

- The focus of regulatory oversight has moved from review of just the output (e.g., the financial statements) to a review as well of the procedures used to produce the regulated output
 - Trend is for reporting companies to be faced with shortened reporting time frames (e.g., SOX & SEC filing deadlines)
 - Breakdown of costs for a typical compliance program*
 - 55% staffing
 - 15% IT
 - 12% Training
 - 10% External counsel
 - 8% Monitoring
- Automate to reduce staffing costs**
- Standardized, enterprise-wide IT platform reduces training costs**

* Virginia Garcia, *Seven Points You Should Know About IT Compliance*

Need to Reduce Costs and Be Agile Will Lead to the Cloud



CLOUD SERVICES



Operating costs must fall, yet financial services institutions require more computing power to meet market and regulatory obligations – need to compare benefits of data center clouds against private clouds

Putting All the Pieces Together

- Financial services companies need to keep in mind the *I Ching* principles of Simplicity, Variability and Persistency:
 - FinServ companies need to map their toughest mandates against their best resources and simplify their life by standardizing against their best solutions on an enterprise-wide basis—Maintaining Control
 - FinServ companies need to choose a flexible IT approach in order to adapt to a variable regulatory and business landscape – Achieving Agility
 - FinServ companies need to choose a forward-looking IT vision and be persistent in applying that vision instead of an ad hoc approach – Empowering Workers



Open Text and Microsoft: Better Together

- Open Text has made a big bet on Microsoft and SharePoint
- Open Text office on Microsoft campus in Redmond, WA
- Both companies invest heavily in research and development for the future
- Both companies have a large, worldwide installed base of customers
- Open Text and Microsoft together make an ideal platform for adopting a standardized, enterprise wide ECM & GRC approach
- Microsoft platform and Open Text ECM & vertical-specific applications— **the solution to keep FinServ companies out of the “Hurt Locker”**



Open Text – Named 2009 Global ISV Partner of the Year Finalist by Microsoft



Microsoft - Named Technology Partner of the Year by Open Text

QUESTIONS?



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