



Friday, October 01, 2010

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http://www.sddt.com

Source Code: 20101001czc

EXECUTIVE ROUNDTABLE

New financial regulations to increase transparency, costs

By **MONICA UNHOLD**, The Daily Transcript
Friday, October 1, 2010

New financial regulations are a mixed bag for the accounting industry. While these restrictions will surely increase the cost to do business, they also provide much needed oversight, experts said during a *Daily Transcript* Executive Roundtable.

"We found out with the financial meltdown that Wall Street is accountable," said John Tishler, partner with **Sheppard Mullin**. "What they do affects taxpayers. We're all shareholders."

The United States is the leader of thought in the area of financial markets and the transparency that must surround them, said Steve Austin, managing partner of **Swenson Advisors**, who sponsored the roundtable.

The level of transparency surrounding the U.S. capital markets is integral to their success, and is the reason people are less willing to invest in the capital markets of Asian countries, said Jamie Mercer, partner with **Sheppard Mullin**.

"We still have undeniably the most transparent capital market on the planet," Mercer said.

Dodd-Frank aims to further increase that transparency, but fails by providing an exemption for small public companies, Austin said. The majority of public entities in San Diego are not subject to Dodd-Frank because they are too small.

"Unfortunately, they (small companies) are the ones that need it the most," Austin said, calling the exemption "a hall pass for life."

However, small companies would likely be unable to shoulder the financial burden of the new regulations, said Jim Laswell, president and CEO of **INDUS Technology Inc.**

Despite the benefits of increased reporting, the Dodd-Frank Act includes several provisions with potential negative impacts.

The regulations make executive pay subject to shareholder approval. A majority of shareholders must approve compensation packages and bonuses, which are subject to a "clawback" provision, Tishler said.

The provision has the potential to create big problems for companies. It is unclear what would happen if shareholders return a "no" vote when a contract is already in place, Mercer said.

The provision may result in performance targets for executives that determine whether they achieve bonuses, Tishler said.

Such performance targets are not necessarily a bad thing, Austin said. Executive pay has skyrocketed over the past several years and often does not correlate with performance.

Restrictions on executive pay may impact companies' ability to attract and recruit top-level executives, said Jeff Davids, chief financial officer of **SG Biofuels**.

Punishing executives for their performance may encourage them to move to other companies, Laswell said.

The bottom line is, investors are looking for shareholder value. They must consider what they are willing to pay executives that do a good job, said Don Starkey, vice president and senior relationship manager of corporate banking for **Union Bank**.

Another problematic policy included in the Dodd-Frank Act institutes a bounty system for reporting problems with companies' accounting practices to the Securities and Exchange Commission (SEC). Compensating whistleblowers is likely to result in an enormous number of complaints. The agency already receives more complaints than it is able to investigate, Tishler said.

Procedures are currently in place to deal with accounting issues -- most companies have an investor hotline through which concerns can be reported, said Keith Krzewski, partner with Swenson Advisors.

Most errors these days are the result of mistakes rather than fraud, Austin said. Prior to the passage of Sarbanes-Oxley, there was a lot more outright fraud. Thus, more would be accomplished by bringing the problem to the company than launching an investigation.

With the increased reporting requirements, ethical, well-intentioned people will likely make mistakes, said Laurie Ball, audit director of Swenson Advisors.

Increased reporting requirements also create a level of transparency that may be detrimental, Austin said.

"One of the challenges with disclosure is the more you disclose on your 10K, the more insight (you will have) into how you're running your operation," Austin said.

Despite the challenges, the regulations are needed to ensure another financial meltdown does not occur. While the new regulations will be useful in preventing future problems, the real need is to educate children and business students about the values of honesty and integrity, Austin said.

"This is a recurring theme in the U.S.," Austin said. "We don't have the values to police ourselves."

While new financial regulations will increase the cost of doing business for many companies, they will likely benefit members of the accounting industry, Davids said.

"This is the full employment act for accountants and regulators," Davids said jokingly.