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Governance Review

What to Do When the Board Isn't Working

by Julie Schaeffer

When working with troubled companies, turnaround professionals often spend a significant amount of time thinking about how they can personally effect change – but there other ways to do so, such as using a board of directors.

“The right board of directors is highly effective in facilitating successful outcomes,” says Hugh Sawyer, a managing director with Huron Consulting Group. Adds his colleague, Raymond Anderson, also a managing director with Huron Consulting Group: “We’ve both seen firsthand how powerful it can be to construct a well-functioning board of directors in a company that isn’t functioning, and the payoff in terms of value creation has been obvious.”

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Bitcoin on the Brink?

MtGox's Failure Highlights Concerns

by Randall Reese

Bitcoin – the virtual currency perhaps most notable for its price volatility and mysterious origin – has begun finding its way onto the radar screens of the restructuring community. While many companies which sprung up as part of the Bitcoin ecosystem have failed, the first Bitcoin bankruptcy of note was the November 2013 Chapter 11 filing of bitcoin mining company Alydian, Inc. More recently, a much larger, vastly more complex case has been filed: the cross-border insolvency of bitcoin exchange MtGox Co., Ltd.

As background, a recent Goldman Sachs publication explains that, “Bitcoin is a decentralized, peer-to-peer network that allows for the proof and transfer of ownership without the need for a trusted third party.” The Bitcoin network was launched in 2009 by

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USEC's Unusual Chapter 11

Plan Confirmation Hampered by Feasibility Issues

by Eric Van Horn

What do uranium, the crisis in the Ukraine, Japan's tsunami, congressional politics, Solyndra's failure, and Chapter 11's feasibility requirement have in common? They are all issues facing USEC, Inc. (USEC) in its complex and interesting pre-arranged chapter 11 case filed in Delaware on March 5, 2013.

USEC is a public company (NYSE: USU) created by, and spun-off from, the federal government that enriches uranium for sale to nuclear power plants across the world. It obtains some of its raw material from Russia under a long-term contract to convert Russia's uranium from nuclear weapons into usable nuclear fuel. After a substantial drop in demand due in part to the tsunami in Japan, USEC filed its case to execute a balance sheet

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While a governance review seems like a necessity when a company is particularly troubled – such as a debtor’s breach of covenant, initiation of an amendment or forbearance process, the commencement of an out-of-court restructuring process, or as part of a Chapter 11 bankruptcy process – it can take place at other times. Those situations might include a refinancing, a conflict between members of the board, or a situation in which the interests of the parent company and operating subsidiaries diverge, requiring the establishment of independent boards at the subsidiary level.

According to Anderson, the first step in a governance review is looking at what the board is empowered to do. That, he says, involves reviewing board- and governance-related materials, including the company’s organic corporate governance documents, which include bylaws and articles of incorporation. “You have to determine where the board is coming from to figure out where it needs to go.”

Anderson adds, however, that when there are significant problems with the company, these documents may not be sufficient. Existing corporate organizational or financing documents rarely define board responsibilities in sync with the priorities of a turnaround or restructuring, in which case the turnaround professional will want to review other financing documents. If necessary, these documents should be modified to address current and anticipated needs, something that should be done with the input from incumbent lenders, new lenders, significant creditors, and their advisors, who “can insist on modifications to bring about positive change and safeguard their interests,” says Anderson. Elements that should be defined include observation rights by stakeholders such as capital providers, rules related to enhanced voting (including mandatory recusal of conflicted parties), and rules related to retention or discharge of specific parties, such as owners, officers, and advisors.

Next, says Sawyer, it can be critical for turnaround professionals to assess the capabilities and experience of the members of the board. Boards are often populated with executives or professionals who know the industry and company well, but when a restructuring becomes necessary that may not be enough. “In some situations, board members have

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programmers using the pseudonym Satoshi Nakamoto. “The unit of the network is bitcoin (with a little ‘b’), or BTC, which many consider a currency or internet cash,” notes the Goldman Sachs report.

On February 28, MtGox filed a petition for the commencement of a civil rehabilitation proceeding under Japanese law, which was accepted by the Tokyo District Court, Twentieth Civil Division. On March 9, MtGox filed a verified petition for recognition of the Japanese proceeding under Chapter 15 of the Bankruptcy Code in the Northern District of Texas bankruptcy court. According to court filings, MtGox had approximately ¥6.5 billion (\$63.9 million) in liabilities and ¥3.84 billion (\$37.7 million) in assets as of March 9, with no secured debt.

According to a recent publication by Perkins Coie LLP, there are many similarities, but also notable differences, between Chapter 11 cases in the U.S. and civil rehabilitation proceedings in Japan. Among the similarities are that civil rehabilitation proceedings are designed to provide for the rehabilitation of the debtor, the debtor’s existing management is allowed to remain in place, and the debtor is barred from paying pre-petition unsecured claims. A key difference is the appointment of a supervisor and investigator who “play an active role in the Japanese proceedings.” Nobuaki Kobayashi, a Japanese attorney, was appointed as MtGox’s supervisor and investigator.

Perhaps the most interesting aspect of the MtGox case is that the company’s collapse appears to have been caused by criminal activity. In Texas court filings, MtGox’s Chief Executive Officer, Robert Karpeles, states that MtGox “lost almost 750,000 of its customers’ bitcoins, and around 100,000 of its own bitcoins, totaling around 7% of all bitcoins in the world, and worth about \$473 million at the time of the filing.” In the same document, he states that “[t]he cause of the theft or disappearance is the subject of intensive investigation by me and others – as of the present time I believe it was caused or related to a defect or ‘bug’ in the bitcoin software algorithm, which was exploited by one or more persons who had ‘hacked’ the bitcoin network.”

It appears that creditors’ and customers’ recoveries will be highly dependent upon successfully recovering those assets. “If

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restructuring of \$530 million of senior convertible notes coming due in October by replacing the debt with approximately \$240.4 million of new debt and new common stock. From the outside, USEC should have little trouble confirming its proposed plan of reorganization since it has substantial creditor support. But this case is far from ordinary, and USEC is facing many interesting feasibility issues.

USEC’s long-term business plan relies upon obtaining substantial funding, approximately \$4 billion, for the construction of a gas centrifuge plant in Ohio – much of which USEC will seek from the federal government’s Department of Energy (DOE) as loan guarantees that the DOE has not yet even considered. Thus, as USEC noted in its proposed disclosure statement, “[f]inancial projections for the commercialization of the American Centrifuge Program do not exist given the uncertainty in many of the key variables necessary to justify financing, development and construction of the American Centrifuge Plant at its full scale.”

Judge Christopher S. Sontchi quickly noted this obvious feasibility problem at the first day hearings and sharply questioned USEC’s lead bankruptcy counsel, Jan Baker of Latham & Watkins, asking why the case was filed given the lack of long-term projections and funding. Mr. Baker generally explained that the debt deleveraging was necessary to achieve USEC’s long-term goals. According to USEC’s proposed disclosure statement, strengthening the balance sheet will best position USEC to construct the centrifuge plant to transition to a more efficient enrichment technology, and maximize its chances of receiving ongoing government support. This could mean that the future funding from the government would be more likely after restructuring, or that the restructuring would be required before such funding would even be considered or approved by the DOE.

“This is a debtor with lots of hurdles and substantial cash requirements; Judge Sontchi hit it squarely on the head and was spot on raising the feasibility issue,” notes Donald A. Workman, head of Baker & Hostetler’s Washington D.C. Bankruptcy and Creditors’ Rights practice group, who frequently practices in Delaware bankruptcy courts. For Workman, not

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Research Report

Who's Who in Excel Maritime Carriers LTD

by Françoise C. Arsenault

Excel Maritime Carriers LTD (Excel) is an owner and operator of dry bulk carriers and a provider of worldwide seaborne transportation services for major dry bulk cargoes, such as iron ore, coal, and grains, and minor bulk cargoes, including bauxite, fertilizers, cement, sugar, scrap metal, and steel products. Excel currently owns and operates a fleet of 38 vessels, with a total carrying capacity of approximately 3.4 million deadweight tons (DWT). The company's fleet spans the globe, travelling trade routes within Europe, from the east coast of South America to the Far East, the Persian Gulf, and Europe, and from Australia and Southeast Asia to India and China. Excel was founded in 1988 and is incorporated under the laws of Republic of Liberia, with its headquarters in Athens, Greece. Maryville Maritime, Inc., a wholly-owned non-debtor subsidiary of Excel, manages all of the company's vessels. Excel has about 1,200 employees worldwide.

Excel Maritime Carriers LTD and 45 of its affiliated debtors filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Southern District of New York on July 1, 2013. In its bankruptcy filing, Excel listed \$2.7 billion in assets and \$1.1 billion in debts. The severe downturn since 2008 in the charter rates for dry bulk vessels was cited by company officials as the one of the leading causes for Excel's financial difficulties, along with tight credit markets, weak international liquidity conditions, a depressed market for vessels, and limited available financing for vessels.

On January 27, 2014, the bankruptcy judge approved the amended Joint Plan of Reorganization for Excel. The plan was unanimously accepted by Excel's two voting classes, with 100 percent of the class of secured lenders and approximately 92 percent of the class of impaired general unsecured creditors voting in favor. The plan provides senior lenders with a majority stake in the equity of the restructured company (approximately 83 percent) and reduces the Excel petition debt from \$920

million to approximately \$300 million. Under the approved plan, which became effective on February 14, 2014, unsecured creditors will receive 8 percent of the stock in the reorganized Excel. Excel was the fourth largest bankruptcy filing of 2013.

The Debtor

Gabriel Panayotides is the Chairman of the Board of Directors and the President of Excel Maritime Carriers LTD. **Pavlos Kanellopoulos** is the Chief Financial Officer. **Ismini Panayotides** is the Business Development Officer.

Skadden, Arps, Slate, Meagher & Flom LLP is serving as the bankruptcy counsel to Excel. The team includes **Jay M. Goffman**, **Mark A. McDermott**, **Jonathan L. Frank**, **Laura A. Kaufmann Belkhatay**, **Chris Mallon**, **Steven J. Kolleeny**, **Sarah M. Ward**, **Michael R. Bergmann**, **George A. Zimmerman**, **Lauren E. Agular**, and **Shana A. Elberg**, partners, and **Julie E. Cohen**, **Suzanne D.T. Lovett**, **Benjamin S. Halperin**, **Christine A. Okike**, **Julie Lanz**, **Jesse R. Gero**, **Adi Habbu**, **Abigail Sheehan**, **Mollie Korneich**, **Bindya Hindocha**, and **Melissa M. Tiarks**, associates.

Joshua L. Seifert PLLC is acting as the conflicts counsel to Excel. **Joshua L. Seifert**, sole partner, is working on the case.

Miller Buckfire & Co., LLC is serving as the investment banker and financial advisor to Excel. Working on the engagement are **Kenneth A. Buckfire**, co-President and managing director, **Alexander Tracy**, a managing director, **Jon Abraham**, a vice president, **Vincent Fea** and **Patrick Gilbert**, associates, and **Max Islinger** and **Boby Katumkeeryil**, analysts with the firm.

Ernst & Young LLP is providing Excel with restructuring advisory services. **Ivan R. Lehon** and **Timothy Kreatscham**, partners, are working on the engagement, along with **Nicole R. Horton**, executive director, **Jason J. Jack** and **Briana A. Richards**, senior managers, and **Henry Beech**, a manager.

Global Maritime Partners, Inc. is a financial advisor to Excel. **Nikolaos**

Veraros, a director with the firm, and **John Liamis**, an analyst, are working on the engagement.

Joele Frank, Wilkinson Brimmer Katcher is providing Excel with media and public relations services. The Joele Frank team includes **Andrew Brimmer**, vice chairman, **Andrew Siegel**, a partner, and **Aaron Palash**, a director.

The Official Committee of Unsecured Creditors

The Committee includes **Zazove Associates, LLC**; **Christiana Trust**, a Division of **Wilmington Savings Fund Society, FSB**; **Fidelity Investments**; **Silverback Asset Management, LLC**; and **Kayne Anderson Capital Advisors, L.P.**

Akin Gump Strauss Hauer & Feld LLP is serving as the counsel to the Committee. The Akin Gump team includes **Michael S. Stamer**, **Sarah Link Schultz**, **Mark J. Volow**, **Sean E. O'Donnell**, and **Daniel I. Fisher**, partners, **Sunish Gulati**, senior counsel, **Spencer D. Smith**, **Jaisohn J. Im**, **Kevin M. Eide**, **Roxanne Tizraves**, and **Michael S. Haynes**, of counsel, and **Craig J. Karger**, **Jason S. Sharp**, and **Mili G. Desai**, associates.

The law firm of **Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP** is acting as conflicts counsel to the Committee. Working on the case are **Lawrence S. Robbins** and **Michael L. Waldman**, partners, and **Erin C. Blondel** and **Mark A. Hiller**.

Jefferies LLC is providing the Committee with financial advisory services. The engagement team is led by **Steven Strom**, Group Head, Restructuring and Capitalization Group, and **Jeffrey Pribor**, Group Head, Maritime Group. Also working on the engagement are **Richard Morgner**, a managing director, **Rory Keenan** and **Harold Malone**, senior vice presidents, **Nikolaos Gkezepis**, vice president, and **Bhoomica Reddy**, an associate.

The Trustee

The U.S. Trustee is **Tracy Hope Davis**.

The Judge

The judge is the **Honorable Robert D. Drain**. □

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governed effectively in the ‘normal course’ and are highly skilled and capable of functioning in a healthy situation, but have simply never experienced an operational or balance sheet restructuring where specialized insight is often required,” he says. “I have found that industry and domain knowledge can be supplemented with the wisdom and experience of independent board members who have lived through a restructuring and seen the issues.”

Peter M. Gilhuly, a partner in Latham & Watkins’ Los Angeles office, agrees. “Many directors do not have distressed scenario skills,” which means that they often are unable to get ahead of a troubled situation. “Talented distressed directors are able to identify and act upon trouble signs.”

As an example, Gilhuly points to a troubled software company he is now involved with. “The sophisticated board is able to deal with sensitive insider issues in a distressed context before those issues become truly problematic.”

When weaknesses in existing board members are identified, the turnaround professional may want to investigate supplementing the board. It almost goes without saying that any new board members should fit in with the corporate and managerial culture. Additionally, new board members should have experience with a restructuring or operational turnaround, creating “circumstances in which an independent board member can provide significant value,” says Anderson.

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they cannot recover the bitcoins, creditor distributions do not look very good,” notes Timothy Durken, a member of the Bankruptcy and Restructuring Group and Litigation Group at Jager Smith, P.C. “Many bitcoin enthusiasts seem to think that the bitcoins are gone, but that is not necessarily clear. There is a digital trail to follow, but it may be difficult to do so because of laundering and other issues. It may be easier to trace the missing bitcoins if they were stolen by insiders, as some have suggested.” Durken also questions the assertion that customer claims will be first in line if any of the bitcoins are recovered. “It appears that MtGox pooled customers’ bitcoins, rather than segregating them such that a particular customer’s bitcoins would be identifiable.”

Because all transactions in bitcoin are recorded in the “block chain” – a massive and transparent ledger of each and every bitcoin transaction – there is some hope that

a forensic investigation may uncover the parties responsible for the disappearance at MtGox. “Insolvency generally provides a framework to recover stolen assets, digital or otherwise,” says Louis Bubala, a partner of Armstrong Teasdale LLP. “There are routinely actions to recover intellectual property rights, intangible assets, and trade secrets that are less than concrete. The hard part in a theft, presumably, is identifying the thief, getting that person before the court, and getting the goods or economic value since thieves often no longer have the goods or directly have the funds.”

Craig Greene, a leading certified fraud examiner and founding partner of McGovern & Greene LLP, believes that the first step in an investigation of MtGox would be to have forensic computer specialists examine the company’s systems to determine, among other things, “where the digital assets were stored on the system and if there is

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only is the case unusual given the debtor’s product, government support, reliance on Russia as a supplier, and high capital cost, it is also unusual because “you don’t usually have a bankruptcy judge be so pointed in questioning feasibility up front.” Another Delaware bankruptcy practitioner, not involved in the case who declined attribution, observed that “even though Delaware is very debtor friendly, Judge Sontchi is very smart, considered the toughest bankruptcy judge in Delaware, and is not going to lay down

on feasibility because he has to be faithful to the Bankruptcy Code, which could mean denying confirmation of a consensual plan.”

How might USEC prove feasibility in these unique circumstances? “Compelling evidence is needed to satisfy such substantial feasibility concerns, and the debtor likely needs someone from the federal government to testify as a witness,” the source speculates. Workman similarly observed that “a sound way to deal with feasibility is to have an official from the Department of Energy

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Calendar

National Association of Bankruptcy Trustees

2014 Spring Seminar
April 4 – 5, 2014
The Biltmore
Coral Gables-Miami, FL
Contact: www.nabt.com

Turnaround Management Association

16th Annual Symposium
April 23, 2014
Concert Hall, Fairmont Royal York Hotel
Toronto, ON
Contact: www.turnaround.org

American Bankruptcy Institute

32nd Annual Spring Meeting
April 24 – 27, 2014
JW Marriott Hotel
Washington, DC
Contact: www.abiworld.org

American Bankruptcy Institute

16th Annual New York City Bankruptcy Conference
May 15, 2014
New York Hilton Midtown
New York, NY
Contact: www.abiworld.org

Association of Insolvency and Restructuring Advisors

30th Annual Bankruptcy & Restructuring Conference
June 4 – 7, 2014
Westin Denver Downtown
Denver, CO
Contact: www.airacira.org

Turnaround Management Association

TMA 2014 Annual Conference
September 29 – October 1, 2014
Westin Harbour Castle
Toronto, ON
Contact: www.turnaround.org

National Conference of Bankruptcy Judges

2014 Annual Conference
October 8 – 11, 2014
Chicago Hyatt Regency
Chicago, IL
Contact: www.ncbj.org

Special Report

Restructuring Departments of European Accounting Firms

Firm	Senior Professionals	Representative Clients/Industries	
BDO – London 55 Baker Street London W1U 7EU www.bdo.uk.com	Shay Bannon	Domestic and international lenders, creditors, companies, pension funds, private equity, alternative investment funds and government agencies. Sectors include football, real estate, healthcare, and financial services.	
Begbies Traynor Group 32 Cornhill London EC3V 3BT www.begbies-traynorgroup.com	Andrew Dalton Sorca Hunt	Aviation, automotive, construction, financial services, healthcare, leisure and hospitality, media and entertainment, manufacturing, real estate, retail, sport.	
Deloitte Reorganisation Services Athene Place 66 Shoe Lane London EC4A 3BQ www.deloitte.com	Neville Kahn Nick Edwards Louise Brittain	Henry Nicholson Jas Sahota Lee Manning	Banks and financial institutions, corporates, lawyers, government and public sector, private equity and investors, bondholders, trustees.
Ernst & Young 1 More London Place London SE1 2AF www.ey.com/uk	Alan Bloom Alan Hudson	Keith McGregor	Corporates, banking, financial sectors, private equity, bondholders, pension interests. Sectors include automotive, retail, real estate, shipping, healthcare, hotels and leisure, financial services, media, mining, oil and gas, utilities, telecoms.
Grant Thornton UK 30 Finsbury Square London EC2P 2YU www.gr antthornton.co.uk	Martin Ellis Mark Byers	Adrian Richards Andrew Charters	Consumer markets, emerging markets, energy, financial services, government and public sector, health services, hotels and leisure, industrial and extractives, nonprofit, real estate and construction, technology, media, communications.
KPMG LLP (UK) 8 Salisbury Square London EC4Y 8BB www.kpmg.com	Richard Fleming Paul Kirkbright	Richard Heis John Darlington	Financial services, insurance, banking, healthcare, automotive, construction, government and public sector, oil and gas, utilities, mining, life sciences, leisure, real estate, technology, telecommunications.
Moore Stephens 150 Aldersgate Street London EC1A 4AB www.moorestephens.co.uk	Phillip Sykes Jeremy Willmont David Rolph Brendan Clarkson	Philip Cowan Alistair Minchin Miles Needham	Aviation and aircraft leasing, energy, mining, renewables, financial services, healthcare, hotels and leisure, insurance, pensions, real estate, shipping, sports, technology and media.
PwC Business Recovery Services 7 More London Riverside London SE1 2RT www.pwc.co.uk	Barry Ross Tony Lomas Glen Babcock	Robert Smid Peter Spratt Richard Boys-Stones	Debtors, banks and financial institutions, private equity, bondholders, government and public sector, working capital, chief restructuring officers.
Smith & Williamson Moorgate London EC2R 6AY www.smith.williamson.co.uk	Anthony Spicer Finbarr O'Connell	Henry Shinnars	Aerospace, financial services, international services, media, pensions, property and construction, shipping and marine, sustainable technologies, travel and leisure.
Zolfo Cooper London +44 (0) 20 7332 5000 www.zolfocooper.eu	Simon Appell Simon Wilson	Simon Longfield	Tourism, hospitality and leisure, shipping, retail, automotive, healthcare.

Worth Reading

The Manipulated Society: How Advertising, Public Relations, and Mass Media Influence Public Opinion, Taste, and Purchases

Author: Isadore Barmash

Publisher: Beard Books

Softcover: 283 pages

List price: \$34.95

Most other books on the subject of how organizations and individuals manipulate the media to accomplish questionable ends treat it at a superficial level or almost as a form of light entertainment. The books take examples of media stories and images and compare what was reported or the images created with true circumstances of the respective matter or person. These books are more or less simple analyses of how the manipulation occurred, and they serve as cautionary tales to the public about accepting all that they read or see in the media.

Barmash's *The Manipulated Society*, in contrast, takes the case farther than this. The author is concerned not only with how media are being manipulated by public relations people, advertisers, various "spokespersons" and "talking heads" in the service of corporations, politicians, celebrities, and other figures who seek public attention or are thrust into it, but also with the effects of this on basic social values and the subsequent fraying of the social fabric necessary to keep the country united and well functioning.

"In a word, we are losing our values because our values are being manipulated by others with specific, ulterior motives," Barmash cautions. The "callousness" being formed in the public leads to "an almost complete loss of credibility in not only all our communications' elements but also in the various institutions of American society." This loss of credibility in central institutions such as government bodies and large corporations is the more serious effect of the manipulation of the media.

To illustrate the disorienting and corrupting effects of media manipulation, whether it is uncritically taken in or commonly accommodated when it is recognized, Barmash uses the effective technique of devising representative individuals and putting them into familiar situations. Readers will recognize themselves in these situations, which are like short scenes in a TV drama or soap opera. By observing their behavior, talk, and thoughts along with the author's commentary, readers see what Barmash means by saying that basic values are being jeopardized.

If anything, *The Manipulated Society* is more relevant today than when it was first published in 1974. Barmash's examples are still familiar, though the names of the corporations and politicians have changed. The manipulations Barmash spoke against have become even more sophisticated. Some big media today are seen by many not only as being manipulated, but as willing partners of those doing the manipulating. Thus Fox News is seen as more or less a house organ of conservatives; and MSNBC is seen as a platform of liberals. Even though the media's pervasive influence on society is now well recognized, Barmash was one of the first to identify and criticize it, which he did four decades ago. *The Manipulated Society* still stands out for the clarity and depth of its analysis of the media manipulation running through modern society. □

Isadore Barmash, was a business and financial writer for the New York Times, and also wrote for many domestic and international publications.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com.

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After looking at the current composition of a company's board and determining what pieces are needed, Anderson says different approaches to finding supplementary board members can be used. "There's a pool of applicants well known in the industry; there are recruiters who specialize in this; or, if needed, it may be appropriate for us to take a position on the board, depending on whether we're involved as an advisor or officer."

The vetting process, even after identifying a candidate, is involved. "The standards for duty of care and loyalty are high, and it's important to receive buy-in, not only from existing board members, but also from the executive management team and any sponsors involved, such as private equity firms or hedge funds," says Sawyer. "You need to find people who have the experience to exercise independent judgment, yet can work in a collaborative way with other board members and all key constituents."

It may be getting easier to get a representative on a board. A recent *Wall Street Journal* article described how Carl Icahn has secured representatives on more boards this year than he ever has (with at least one of his representatives on the boards of seven companies). And, he's done it without shareholder vote battles – something that would have been unthinkable a year ago. "Companies decide it is easier to work with him and his representatives than to have him exercise options from the outside," says Gilhuly.

According to Anderson and Sawyer, a good example of how these tools can work is the case of beleaguered AIG during the financial crisis of 2008 and 2009. As the crisis unfolded, Roger Miller, a renowned turnaround expert, was named to the AIG board of directors, later becoming chairman of the board. Under his guidance – during which a governance architecture was created that facilitated the difficult decisions made by the board and executed by its management team – AIG returned to a position of prominence in the insurance industry.

Unfortunately, it often takes a third party to drive change on a board of directors. "Ideally, the chairman of the board or even the CEO would recognize that there's weakness, think about whether the company has the right board setup, and act proactively to make any changes," says Anderson. "It's often an outside actor that helps the company identify that there's an issue and demand or request some sort of change. Often this is a lender or other third party with an interest in the company." □

Special Report

People to Watch – 2014 Business Professionals Making Their Mark

Name	Firm	Outstanding Achievements
R. Brandon Aebersold	Lazard Freres & Co New York, NY Brandon.aebersold@lazard.com	Led successful global restructuring of CEMEX, involving \$7.2bn of debt; advised GIC RE (creditor to MSR Resorts) in acquisition of five-hotel portfolio; advised Exide Technologies in its bankruptcy. Led Rural/Metro pre-negotiated restructuring in which over \$300 million of bonds converted to equity and contributed in excess of \$100 million of new capital.
John Boken	Zolfo Cooper New York, NY jboken@zolfocooper.com	CRO for Flying J restructuring that resulted in nearly \$1.8 billion in debt and creditor claims being satisfied in full; CEO and CRO for TOUSA; CRO for Collins & Aikman; president and COO of NRG Energy and CEO of Entegra Power Group. Other notable assignments include Mirant, Southern California Edison Company, Fleetwood Enterprises, Sun Healthcare.
Alan J. Carr	Drivetrain Advisors New York, NY acarr@drivetrainadvisors.com	A rising star in the restructuring community, including LightSquared bankruptcy where serving as an independent director charged with investigating litigation claims and running restructuring for LightSquared debtors. Recently created Drivetrain Advisors with other distressed investors to better align incentives of trustees with investment goals of distressed investment community.
N. Scott Fine	Scarsdale Equities New York, NY scott@scarsdale-equities.com	As vice chairman and lead board director of Central European Distribution Corp. (CEDC), was instrumental in historic global prepackaged bankruptcy restructuring, which eliminated \$665.2 million in debt from the books of CEDC corporate family. Also serving as sole director of Better Place Inc. in its global wind-down, including Chapter 15 case pending in Delaware.
Jeffrey E. Finger	Centerview Partners New York, NY jfinger@centerview.com	Co-leader of Centerview Partners. Selected transaction experience includes Amtrol, Danka Business Systems, DeflectaShield Corporation, Dura Automotive Systems, Eddie Bauer, Edison Mission Energy, Energy Future Holdings, Fluid Power Industries, Grupo TMM, Huntsman Corporation, Interstate Bakeries, International Airlines Group, Isola Group, J.C. Penney.
Brian J. Grant	Conway MacKenzie, Inc. Atlanta, GA BGrant@ConwayMacKenzie.com	Worked on Turkington Industries/Turkington USA, recognized as restructuring deal of the year (\$10mm to \$100mm) by M&A Advisor. Led out-of-court turnarounds of two private equity sponsored companies. Orchestrated out-of-court restructuring of large Midwest homebuilder, including restructuring approx. \$150 million of secured debt across 13 separate secured lenders.
Laura Marcero	Huron Consulting Group Chicago, IL lmarcero@huronconsultinggroup.com	Serving as DCRO, guiding Revstone Industries through on-going bankruptcy. As CRO of defense contractor and franchise company, restructured and sold both entities, preserving jobs and value. Chief restructuring adviser to Kazi Foods, second-largest KFC franchisee, with 140 locations in four states, including 44 in MI. Awarded Crain's Detroit Business Deal of the Year.
Steven D. Simms	FTI Consulting, Inc. New York, NY steven.simms@fticonsulting.com	Leading senior managing director in firm's creditor rights practice, representing 13 UCCs in the last year. Recent clients include UCCs of Cengage, Hawker Beechcraft, and Fresh & Easy. In Cengage, led engagement team, helping achieve significant recovery for all unsecured creditors. Significant focus in food industry, having advised 30+ food and restaurant industry clients.
Evan M. Tomaskovic	Carl Marks Advisory Group New York, NY etomaskovic@carlmarks.com	Financial advisor to: unsecured creditors' committees (TruPS holders) of Rogers Bancshares, Inc., a regional bank with over \$1 billion in assets, during its 363 sale process; North Texas Bancshares, Inc, a regional bank with over \$420 million in assets, during its 363 sale process; and First Mariner Bancorp, a regional bank with over \$1 billion in assets, during its 363 sale process.
Wayne P. Weitz	Gavin/Solmonese Wilmington, DE wayne.weitz@gavinsolmonese.com	During 2013, was financial advisor to 11 statutory and ad hoc committees in bankruptcies, including equity committee in AgFeed Industries and creditors' committees in Oreck Manufacturing, Conexant, Namco Pools, Highway Technologies and MFM Industries. Also an advisor to indenture trustee in Exide and served as chapter 11 trustee in Waste2Energy.

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evidence that the system was compromised by hackers and the digital assets were actually removed from the system (stolen).” If the investigation suggests that hackers did steal the bitcoins, Greene notes that forensic computer specialists could “try and determine the location and IP addresses used by the hackers in order to physically locate them and bring them to justice.”

Greene also believes that forensic accountants would likely be involved in many aspects of the case, including conducting an examination of MtGox’s “company accounting records, bank statements, and other documents to determine if any of the stolen digital assets were in fact used to fund the Exchange’s operations and/or were taken by insiders, determine the financial condition of the Exchange, and determine if other reasons may exist that would have resulted in the Exchange filing for bankruptcy protection other than theft of the digital assets, and

determine if any insiders and/or others may have personally benefited from the company through fraudulent transfers of assets.” Additionally, forensic accountants could be helpful in verifying claims of individuals whose bitcoins were stolen and determining an allocation of any asset recoveries.

Nevertheless, there are several aspects of the MtGox case that significantly add to the complexity of an investigation and recovery process, says Greene. “Theft that crosses international borders is harder to investigate, as cooperation of the country in which the cybercriminals are located is required. Extradition and asset recovery may be more complex for the same reason. Further, local laws may not address computer crimes. Since bitcoin is a new monetary commodity, this may also complicate the investigation in gaining an understanding of the systems, accounting procedures, and the like. Further, probably no professional guidance exists that a forensic accountant can look to in accounting for bitcoins.”

Beyond generating creditor recoveries, some believe that MtGox may mark a turning point for the entire bitcoin ecosystem. “If they cannot recover these bitcoins with the amount at issue and the ability to hire the best forensic professionals, it calls into question the value of bitcoin overall,” says Durken. Thomas Buck, a partner at EisnerAmper LLP, says that, “the problem with bitcoins is trust.” He notes that, “Banks had the risk of a ‘run on the bank’ until the creation of the federal reserve and FDIC insurance” and believes that “bitcoins will have this problem until there is a greater regulatory framework and protections for depositors.” He believes that “bitcoin could develop into a hard currency (inflation hedge), but for it to become a more ubiquitous form of exchange it needs to abandon its role as a confidential and illicit currency.” □

USEC, from page 4

testify.” In light of needing such unique evidence, Workman found a positive light to Judge Sontchi’s comments: “He wants the debtor and other parties to figure it out, and Jan Baker can use his comments as leverage” to help get what USEC needs to confirm its plan, such as a government witness to testify on funding prospects, or the cooperation of any other reluctant parties or witnesses.

USEC’s feasibility issues may not end there. The recently imposed sanctions by the United States against Russia involving the crisis in Ukraine might affect whether or how Russia supplies USEC with uranium under its contract. Given that Russia is the

supplier, Workman notes the ineffectiveness of the Bankruptcy Code against a sovereign contract counterparty: “The use of section 365 to force Russia to supply is laughable and the debtor does not have an army.” While this uncertainty could hurt the feasibility of USEC’s plan, it could also highlight the importance of USEC eliminating its reliance upon Russia, which would be helped by building the more efficient gas centrifuge plant.

The debtor also disclosed that the Pension Benefit Guaranty Corporation asserts that the debtor is jointly and severally liable for \$130 million of underfunded pension liabilities that would require the debtor to escrow or furnish a bond in that amount which could have an

impact on the feasibility of the plan. If the debtor fails to resolve the issue, but obtains the clear support of the DOE, Judge Sontchi could be faced with an additional feasibility issue that pits two government agencies against each other.

Given USEC’s reliance upon the federal government, Mr. Baker noted that this case was filed in the age of Solyndra, the failed solar panel maker supported by the government. Like Solyndra, USEC could become a political issue this election year if additional congressional approval is needed since USEC is supported by Ohio Republican Representative John Boehner and the \$4 billion centrifuge plant will be built in his home state.

In the end, Workman explains that “there are definitely scenarios where an objecting creditor can make a strong case” against confirming the plan based upon lack of feasibility. The next major hearings are on April 21, 2014 when the court will consider several motions, including motions to approve the disclosure statement and the plan support agreements, and final approval of post-petition financing. □

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