

# VIEWPOINTS

THOUGHT LEADERSHIP FROM BDO CONSULTING



## ▶ LETTER FROM THE EXECUTIVE DIRECTOR

BDO Consulting's Spring *Viewpoints* newsletter provides insights from our professionals, who are in the trenches daily assisting clients to manage the challenges of the current economy. From the banking world, Gene Truono discusses how community banks can address their risks to prevent becoming the next institution to be taken over by the FDIC. Tim Mohr and Nidhi Rao offer tips for avoiding missteps when conducting an internal investigation into employee fraud. Our Business Restructuring practice shares several news developments, including how businesses are ignoring credit problems even as the economy is improving, and also discusses the consolidation among auto suppliers. We are proud of the fact that BDO was recently ranked as one of the top two non-investment banks in *The Deal* magazine's quarterly bankruptcy league tables, a distinction we continually receive. You can view the fourth-quarter 2009 rankings in this issue as well.

We appreciate your interest, and welcome your feedback on these topics.

From my desk to yours,  
Carl W. Pergola

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### CONTACT:

**CARL W. PERGOLA**  
Executive Director, BDO Consulting  
[cpergola@bdo.com](mailto:cpergola@bdo.com)

**WILLIAM K. LENHART**  
Partner, National Director of  
Business Restructuring Services  
[blenhart@bdo.com](mailto:blenhart@bdo.com)

### ABOUT BDO CONSULTING

BDO Consulting, a division of BDO USA, LLP, provides litigation, investigation and restructuring services to major corporations, law firms, insurance companies, financial services entities and government organizations. Our highly experienced and well-credentialed professionals draw upon a range of industry knowledge and completed consulting engagements throughout the United States

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and internationally to provide clients with unparalleled service. BDO Consulting leverages the global industry and accounting knowledge of the BDO International network, providing rapid, strategic advice to assist our clients with dispute resolution, mergers and acquisitions, financial solvency and regulatory compliance issues.

BDO Consulting is a division of BDO USA, LLP, a New York limited liability partnership and the U.S. member of BDO International Limited. BDO International Limited is a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



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## THREE KEY STEPS COMMUNITY BANKS CAN TAKE TO MITIGATE THE RISK OF FAILURE

By Gene J. Truono, Jr., CAMS, JD

▶ THE CARNAGE SEEN IN RECENT HIGH RATES OF BANK FAILURES, WHILE LAMENTABLE, CARRIES ONE BENEFIT: THERE ARE INVALUABLE LESSONS TO BE LEARNED FROM THOSE FAILURES FOR THE VAST MAJORITY THAT SURVIVE.

The failed institutions that required an official “material loss review” by FDIC’s office of the Inspector General all share frighteningly similar characteristics. Most were small, community banks with poor management and board oversight that shared a laundry list of other problems. However, the two primary issues were an overextension of commercial real estate loans at the end of the market bubble, and an overall lack of proper controls.

This article, which was recently published on *ABA Banking Journal’s* website, discusses measures that bank executives can take to prevent future failures and evaluate long-term fixes to their operations and how they manage risk. Specifically, there are three line items that should be on bank directors’ agendas for their next board meeting:

### **Risk and control management**

The board, through the bank’s business line leaders, must focus on ensuring that an effective risk and control management process is in place—including credit, funding, and capital risks. This typically starts with an enterprise-wide risk assessment to identify key risk indicators. After these are identified, they would then be monitored regularly at a line-of-business level. It’s critical that these risk indicators feed into senior management level reports that can provide the board with a snapshot of the areas of control weaknesses.

Once this initial risk assessment process is complete, the business, in conjunction with staff handling the bank’s operational risk, quality control, regulatory compliance, and internal audit needs to identify existing testing programs for each of the identified line of business processes. The findings and corrective actions should roll up to bank management via a report, or “heat map,” which identifies all control weaknesses and ranks them as high, medium, or low risk to the bank. The reports highlight early warnings of problem areas. Actions can and should be taken at that point to mitigate the risk to avoid issues that lead to bank performance problems, and, in the worst case scenario, a bank failure.

### Internal audit program

The banks that have been criticized by regulators over the past few years for weak internal control audit programs did not focus on addressing the issues identified in specific regulatory guidance. Banks need to demonstrate that internal auditors are qualified to perform such regulatory reviews; otherwise, strong consideration should be given to using contract staff or external auditors until internal staff can be trained in these specific areas of regulatory review. Federal regulators rely on internal audit programs as part of the regulatory examination process, so it behooves the bank to ensure that it has a robust internal audit program.

Furthermore, bank management and boards should not rely on the auditor's overview report and be sure to drill down into each line of business' assessment. Often, the auditor will give the bank a clear bill of health—but deeper into the report will highlight areas of weakness in smaller divisions of the banks. It's important that management ensures that the line-of-business leaders address these identified risks with remedial action plans.

### Board examination

The board's toughest job may be taking a hard look at itself and how it functions. Are the right people on the board to lead the company through the challenges that lie ahead? Is everyone truly well-versed in the banking industry, to the degree necessary for competent oversight? Is everyone appropriately equipped to make the best decisions?

Traditionally, small community bank boards and even some regional banks are made up of key local business leaders or close friends of the bank's chairman or CEO—making this a politically difficult move. In addition, finding well-qualified and amenable board members is not always easy. One alternative to replacing existing members is to give management training and oversight responsibility to qualified board advisory consultants who can provide corporate governance, financial reporting, and financial strategy guidance. Boards should also ask questions about credit management staffing and strategies to ensure the bank is capably and appropriately addressing the changing regulatory environment.

The above steps aren't a magic bullet. But they can help arm banks with stronger controls and oversight to navigate through this crisis and put them in a position to recoup losses and reach profitability in the future.

*Gene Truono is a Managing Director in the New York office of BDO Consulting. As a member of the firm's Financial Institution Consulting practice, his work includes initiatives related to anti-money laundering, mortgage lending investigations, regulatory compliance and 1441 compliance. He has over twenty years of banking, regulatory compliance, and legal experience covering all aspects of various institutions including retail banking, commercial lending, wholesale banking, residential mortgage, private banking, credit card issuing and merchant acquiring businesses.*

GENE J. TRUONO | [gtruono@bdo.com](mailto:gtruono@bdo.com)

This story was adapted from an article posted on ABA Banking Journal's web site on March 18, 2010.

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# INTERNAL INVESTIGATION MISSTEPS

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By Timothy L. Mohr, CFE, and Nidhi Rao, CPA, CFE, CFF, CIA, CAMS

- ▶ AN INTERNAL INVESTIGATION IS GENERALLY THE FIRST STEP TO DETECT EMPLOYEE FRAUD. BUT IT IS NOT ALWAYS EASY. THERE ARE MANY MISSTEPS THAT CAN DERAILED INVESTIGATIONS; THE FOLLOWING ARE SOME OF THE MOST COMMON — AND HOW TO TRY AND AVOID THEM.

## Misstep #1 INVESTIGATIVE TEAM BIAS

A risk manager's initial step is to determine who will be leading the investigation and who within the organization will be privy to the results. One commonly overlooked factor is whether the investigative team is sufficiently removed from the situation to assure independence. Before



selecting an investigator, a company should examine the candidate's relationship with both the suspect and the whistleblower (e.g., the investigator should never be the suspect's supervisor) and also ensure that the candidate is at an appropriate level within the organization to obtain the required information.

## Misstep #2 SUSPECT IS NOT CUT OFF

Based on the severity of the potential fraud, the suspect may need to be immediately isolated and constrained from accessing potential evidence once fraud is detected to preserve the integrity of the evidence. Specifically, the suspect can be placed on a leave of absence and restricted from accessing the organization's internal computer network and its books and records during the course of the investigation.

## Misstep #3 MISHANDLING EVIDENCE

The handling of evidence is one area in which errors can occur that can cause items to be inadmissible in court. To protect the integrity of potential evidence, investigators should take the following steps: (1) Review the organization's privacy policy to confirm that collection of information and materials is done in accordance with company rules. (2) Determine which documents may be relevant to the scope of the investigation, and consider issuing a document preservation order. (3) Document the chain of custody of the documents and materials, including how the information was obtained, when it was collected, who has handled it, where and how it was transported and where it is stored. (4) If electronic materials must be collected, ensure that the investigator understands the intricacies of hard-drive image creation and comprehensive electronic search.

## Misstep #4 BACKGROUND CHECKS ARE LIMITED

Background checks are a logical step during a fraud investigation but the search is often limited, resulting in missed information about the suspect's lifestyle or litigation history. Common mistakes include: limiting the background check to internet or search engine research; not conducting the criminal background check on local, state and federal levels (including civil court records); and not analyzing the data within the context of the fraud allegations being investigated.

## Misstep #5

### INTERVIEWING SUSPECT TOO EARLY

Interviews are often one of the most valuable sources of information during an investigation. One common mistake is to interview the suspect of an investigation too early in the process, before investigators are able to review gathered documents and materials and interview other informants. Conducting the interview with the suspect later will enable investigators to develop pertinent questions and allow them to refer to relevant and potentially incriminating documents during the interview. Another mistake is to interview alone—two people should be present during an interview so that one can act as a witness and one can be responsible for documenting the findings.

*Tim Mohr is a Partner in the New York office of BDO Consulting. He is a Certified Fraud Examiner and a licensed private investigator with more than twenty years of experience conducting and leading complex criminal and civil investigations. Nidhi Rao is a Director in the New York office of BDO Consulting. She is a Certified Public Accountant and a Certified Fraud Examiner with more than fourteen years of experience conducting forensic investigations involving complex accounting and auditing issues, with a focus on fraud prevention.*

TIMOTHY L. MOHR | [tmohr@bdo.com](mailto:tmohr@bdo.com) • NIDHI RAO | [nrao@bdo.com](mailto:nrao@bdo.com)

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## AUTO SECTOR TURMOIL LEADING TO SUPPLIER CONSOLIDATION

By Mark A. Goodenow, Jr., CPA, CIRA, CFF, CDBV

- ▶ 2008 AND 2009 HAVE PROVEN TO BE THE WORST PERIOD IN THE HISTORY OF THE AUTOMOTIVE INDUSTRY. PLUMMETING SALES VOLUMES LED TO GENERAL MOTORS AND CHRYSLER FILING FOR BANKRUPTCY PROTECTION AND FORCED FORD AND OTHER MANUFACTURERS TO QUICKLY RATIONALIZE THEIR PLATFORMS, SALES CHANNELS AND SUPPLY BASE.



BDO CONSULTING AND AMHERST  
PARTNERS SIGN AFFILIATION  
AGREEMENT TO PURSUE AUTOMOTIVE

Hundreds of Tier I, Tier II and Tier III suppliers were either forced into bankruptcy or have liquidated, while many of those suppliers fortunate enough to survive are working day-to-day with their banks to fund operations. Recent sales trends appear to be promising a moderate recovery for 2010, but this optimism is tempered by modest consumer spending and an inability of many customers to obtain vehicle financing.

This market turmoil is leading to a gradual consolidation in the supply base. During this unstable period, suppliers should quickly analyze their competitive position to re-craft a business strategy by:

1. Determining whether their business is positioned as a weak or a strong player in the market.
2. Assessing the potential of the platforms being served and those that could be served in the future.
3. Identifying any and all points of leverage that can be used to demonstrate value to the market, such as patents, key engineering personnel or high-tech equipment.
4. Analyzing and understanding the true cost of products at a variety of production / sales levels for each platform supplied.
5. Being realistic and open with all stakeholders about the necessary working capital of the company to ramp up to normal inventory levels and serve new platforms through investment in tooling, machinery or equipment.

Many suppliers are left unable to perform these analyses in-house as a result of cost cutting or because the finance and operations teams are busy addressing daily crises. Mark Goodenow, a Director in BDO Consulting's Business Restructuring practice, recently sat down with *Automotive Digest* to discuss what he's seeing in the marketplace. You can find his video interview in the "Dealer Management Weekly" section of the web site at: <http://bit.ly/cxc2Vd>

*Mark Goodenow is a Director in the New York office of BDO Consulting. He is a Certified Public Accountant and Certified Insolvency and Restructuring Advisor with more than thirteen years of experience in the operational and financial turnarounds of middle market and leading Fortune 500 companies. He has held numerous interim management positions within distressed companies and has assisted clients with capital raising, debt restructuring, strategic planning, business plan analyses and numerous Chapter 11 bankruptcies.*

## WORK

BDO Consulting has signed an agreement with Amherst Partners, LLC to co-market and co-execute on automotive restructuring opportunities. This affiliation will allow both firms to provide financial advisory and restructuring services to larger and more diverse clients in the automotive sector.

"Amherst is very respected by lenders and investors for the many financial advisory services it provides to the automotive industry. The affiliation between our two brands will expand the profit improvement, turnaround, and restructuring capabilities offered in the automotive sector and to Amherst's existing clients," said Bill Lenhart, Partner and National Director for BDO Consulting's Business Restructuring Services practice. "BDO has an established international footprint through the BDO worldwide network of public accounting firms that will allow Amherst to serve larger clients domestically or globally in more than 110 countries."

"Working closely with the BDO team gives us the capabilities to take on larger restructuring assignments, while still maintaining our strong, independent presence in the marketplace," said Sheldon Stone, Partner in charge of Amherst's Restructuring practice.

Amherst Partners, which is celebrating its 16th year, is well-known and respected in the Detroit restructuring and turnaround space. Since 1994, Amherst Partners has assisted middle market businesses by providing comprehensive merger and acquisition, corporate restructuring, turnaround, and management advisory services. With offices in Birmingham and Ann Arbor, Michigan, Chicago, Illinois, and Columbus, Ohio, Amherst brings together skill in the merger and acquisition process, expertise in finance and operational management, and a network of local and global resources. [www.amherstpartners.com](http://www.amherstpartners.com)

MARK A. GOODENOW | [mgoodenow@bdo.com](mailto:mgoodenow@bdo.com)



## LIVING IN WORLD OF DENIAL: “RED FLAGS” THAT BUSINESSES ARE IGNORING CREDIT PROBLEMS

By William K. Lenhart, CPA, CFE, CTP, CIRA

- ▶ RECENT ANALYST REPORTS INDICATE THAT THE ECONOMY IS ON THE ROAD TO RECOVERY. EVEN FEDERAL RESERVE CHAIRMAN BEN BERNANKE ANNOUNCED THAT THE RECESSION IS VERY LIKELY OVER. WHILE THIS MAY COME AS COMFORTING NEWS, MANY COMPANIES THAT CHOOSE TO EMBRACE THIS OPTIMISM ARE LIVING IN A WORLD OF DENIAL.

Sectors such as commercial real estate, oil field service and certain tech subsectors are ridden with debt maturity complications, particularly in the middle market, with more than \$500 billion coming due this year. But companies think that they have time to weigh their options, since many loans are not due until late 2010. They are hoping that the economy will improve before they have to take any preventative measures and that their businesses, in turn, will recover.

However, unless many of these companies immediately address the issues head on, the situation will most certainly get worse before it improves. Some “red flags” to identify companies that will run into problems:

- **Significant outstanding loans are due in the next 12-18 months.** While many companies will be looking to refinance their outstanding debt in the next 12-18 months, many of those loans were made during good times. Terms were not scrutinized as closely as loans being granted now. Debt is more difficult to come by today, and what is available is far more expensive than the loans that are currently on most companies' books.
- **The company is starting to receive late payments.** A customer's problems are a business' problems - if a company's customers demonstrate a difficulty in meeting their financial obligations to the company, than the company will inevitably have trouble of its own. *(Note: Many of the industries cited above are further down the economic food chain than most and are only now experiencing serious cash flow issues.)*

- **The company's loan note owner has changed.** While a company may have received a loan from one institution, that loan is now likely owned by several investors. Communication in this instance can be difficult, and the new note owners may have different opinions on the best course of action for paying down the loan - which range from extending the loan to taking over the firm and its assets.

*William Lenhart is a Partner in the New York Office of BDO Consulting. He is the National Director of the Business Restructuring practice and the President of BDO Consulting Corporate Advisors, LLC. Mr. Lenhart is a Certified Public Accountant, Certified Fraud Examiner, Certified Turnaround Professional and a Certified Insolvency and Restructuring Advisor with over twenty-five years of experience assisting clients with accounting, auditing, tax, as well as bankruptcy and insolvency matters.*

WILLIAM K. LENHART | [blenhart@bdo.com](mailto:blenhart@bdo.com)

## ▶ BDO CONSULTING AMONG TOP TWO NON-INVESTMENT BANKS FOR VOLUME OF DEALS IN FOURTH QUARTER

BDO Consulting ranked in the top two, once again, for highest volume of global deals among non-investment banks for the fourth quarter of 2009, according to *The Deal's* quarterly Bankruptcy League Tables. The full rankings are included here.

Rank	Noninvestment Banks	No. of Cases
1	Deloitte Touche Tohmatsu	918
2	BDO Consulting	651
3	Kurtzman Carson Consultants LLC	179
4	Epiq Bankruptcy Solutions LLC	176
5	BMC Group Inc.	132
6	Ernst & Young	94
7	Garden City Group Inc.	70
8	KPMG	69
9	PricewaterhouseCoopers LLP	65
10	Protiviti Inc.	31

## UPCOMING EVENTS

June 15th

### Behind the Investigation: Legal and Ethical Considerations in Corporate Investigations

By utilizing actual examples of employee fraud, this Continuing Legal Education (CLE) course, held at Pace Law school, will address the legal and ethical issues involved in conducting corporate investigations. Participants will follow a fact pattern based on a real investigation conducted by the panelists, and analyze the motives for fraud, legal protocol when conducting an investigation, and methods for detecting and preventing fraud going forward. The program will feature BDO Consulting professionals **TIMOTHY MOHR, NEIL MORAN, FRANK RUDEWICZ, STEPHANIE GIAMMARCO, BRIAN MICH, and ROBERT WEINER.**

To register, please visit

[www.bdoconsulting.com/resources/events.aspx](http://www.bdoconsulting.com/resources/events.aspx)

## NEWS

» **BDO CONSULTING WELCOMES** several new professionals who have joined the firm in recent months:

**TODD BEARUP** joined the Orange County office as a Director in the Business Restructuring Services Practice. He has over fifteen years of experience in the finance industry, including ten years in financial restructuring and distressed investing. His experience includes in and out-of-court restructurings on both the debtor and creditor side. Todd may be reached at [tbearup@bdo.com](mailto:tbearup@bdo.com).

**MICHAEL MAGER** joined the New York office as a Manager in the Litigation & Fraud Investigation Practice. He has over ten years of experience in forensic accounting, litigation consulting and financial auditing with a focus on investigations, performing gaap/gaas research, assisting expert witnesses and preparing damages calculations. Mike can be reached at [mmager@bdo.com](mailto:mmager@bdo.com).

**JERRY SEPICH** joined as a Managing Director in the Chicago office of BDO Consulting Corporate Advisors, LLC, a subsidiary of BDO Consulting that assists underperforming organizations through transitions by providing a range of strategic restructuring services. Jerry has more than twenty years of experience in asset-based lending, restructurings, bankruptcies and workouts and brings significant expertise in the agriculture, automotive, retail, metals, furniture and staffing industries. Jerry may be reached at [jsepich@bdo.com](mailto:jsepich@bdo.com).

» **Congratulations to JOE CASHEL**, Manager in the Business Restructuring Services practice, on receiving the Certified Insolvency & Restructuring Advisor (CIRA) Certification from the Association of Insolvency & Restructuring Advisors (AIRA). The CIRA program was established to recognize professionals that demonstrate a high level of competency through the completion of course study and examination, as well as comprehensive experience. Applicants must have 4,000 hours of specialized business turnaround, restructuring and bankruptcy experience within an eight year period.

» **Special Congratulations also go to BRIAN MALONEY**, Senior Associate in the Business Restructuring Services Practice, on being named AIRA's Zolfo Cooper/Randy Waits CIRA Bronze Medal Winner for 2009. This highly prestigious award is given to the candidate finishing the CIRA course with the third-highest examination scores in 2009. Brian will receive the award at AIRA's 26th annual Bankruptcy and Restructuring Conference on

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June 10th in San Diego, CA. The AIRA Journal and CIRA Directory will also publish a full listing of CIRA Award winners.

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