Center for the Study of Minority & Small Business

Department of Business Administration

Minority and Small Business Review

Volume 14

UNIVERSITY OF THE WEST

Spring, 2016

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Minority and Small Business Review

(ISSN 1543-1029)

The Minority and Small Business Review is published annually each Spring by the Center for the Study of Minority and Small Business (CSMSB) and the Department of Business Administration at University of the West. This publication includes original contributions based on both theory and practical insights on a variety of topics on entrepreneurship. While the topics may vary, each volume contains articles on subject matters that are critical to the growth and sustainability of minority and small businesses, such as: leadership & management strategies; finance/accounting; access to capital; marketing/branding; and legal/tax issues. The contributing authors include UWest Business Department Faculty as well as industry experts, business leaders/executives and entrepreneurs. Each year, the Review seeks to provide information that is content-rich and topically current.

We invite such articles to be submitted to the Editor via e-mail to meskeremt@uwest.edu (using a standard MS word-processing program such as Word). All submissions are subject to editorial review and modification--acceptance is not guaranteed unless such notification is provided in writing by the Editor.

The annual subscription rate is $10.00 for mailing within USA and $15.00 outside USA. (Please see Order Form). All correspondence regarding contributors' writings, excerpt permission and scholarly exchange; as well as subscriptions, changes of address and request for sample copies, should be addressed to: Editor of The Review, CSMSB, University of the West, 1409 N. Walnut Grove Avenue, Rosemead, CA 91770.

Editor: Prof. Meskerem Tadesse, Director, Center for the Study of Minority and Small Business (meskeremt@uwest.edu)

Administrative Assistants: Pauline Lim,
Yanan (Katherine) Guo

Center for the Study of Minority and Small Business

The Center for the Study of Minority and Small Business (CSMSB) serves as a link between the University and the minority and small business community, offering regular seminars, lectures, conferences, business counseling and the publication of "The Review". The Center seeks to develop itself into an outreach link to connect area minority and small businesses with governmental and non-governmental organizations in order to broaden their exposure to current business realities and changing governmental regulations.

As the Center strives to strengthen its efforts to play a more meaningful role towards the long-term growth and sustainability of minority and small business, it is mindful of the fundamental need for a broad-based support and partnership of area stakeholders and the community at large.

Your subscription to The Review will not only provide us your contact info so we can advise you of upcoming programs and events, it will also signify your support to the Center's programs and activities.

We invite your ideas, feedback, support and involvement. Please address all correspondence to the Center's Director via email @ meskeremt@uwest.edu.

Minority and Small Business Review

Volume 14, 2016

Published by:

Center for the Study of Minority and Small Business
Department of Business Administration
University of The West

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Minority and Small Business Review

Volume 14, 2016, ISSN 1543-1029

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University of the West

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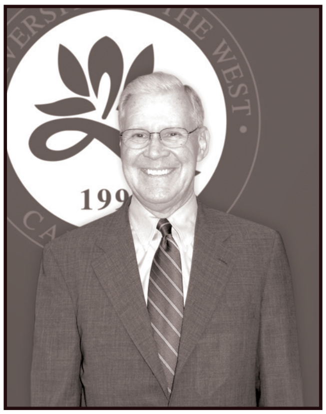

I am impressed when I read of the innovations and job creation coming from the small and minority businesses across the country. These businesses, the products of entrepreneurs willing to take risks, are the driving force behind economic growth and often lead the way to increased efficiencies and meaningful change in industries across a wide spectrum.

University of the West is proud to partner with the minority and small businesses of our region by producing this annual publication, **Minority and Small Business Review**. Through this publication we share information and ideas written to help those of you who fuel our economy by the creation and continuing growth of your small and minority owned ventures. In addition to producing this annual review, our graduates and many of our faculty serve as employees, consultants and advisors to your endeavors.

We are proud of our partnership and I thank those who have contributed to this publication and I add special appreciation to Professor Meskerem Tadesse who serves as the Director of the Center and Editor of **Minority and Small Business Review**.

Sincerely,

Dr. Stephen Morgan, President
University of the West

From The Editor

March 25, 2016

On behalf of the Business Administration Department of University of the West, it is my pleasure, once again, to present to our readers this 14th Volume of the UWest Minority and Small Business Review ("The REVIEW"). The REVIEW is an annual publication hosted by the UWest Center for the Study of Minority and Small Business (CSMSB) each spring, containing a collection of insightful and educational business articles authored by faculty from UWest and other institutions, as well as industry experts, entrepreneurs and business leaders.

Our institution is located in one of the most business-centered local communities, and this publication serves as our venue to extend our greetings to, as well as to inform and consult our community businesses on current and relevant topics that impact their societal and economic objectives. For example, this year's issue includes an article by a reputable SEC lawyer on the SEC's rules promulgated under the JOBS Act of 2012, finally in May 2016 allowing start-ups and new ventures to access equity capital—a critical resource that had been reserved only to those who have a high-level of net worth and/or earnings.

We also seek the collaboration and partnership of area stakeholders as we aim to strengthen our local businesses that support and sustain our community. To this end, we are happy to report that in 2015, we were recognized by Wells Fargo-Rosemead as their "2015 Non-Profit Partner Organization". We look forward to our continued partnership.

Finally, we extend our sincere appreciation to our contributing authors who graciously agreed to share their valuable works with our readers.

Best Regards,

Professor Meskerem Tadesse
Director, Center for Minority and Small Business &
Editor, Minority and Small Business Review

The Jumpstart Our Business Startups (JOBS) Act & Its Implications for Access To Equity Capital for Entrepreneurs

By Mark T. Hiraide, Esq.

Abstract: *On May 16, 2016, entrepreneurs will have unprecedented access to capital. On that day, the long-awaited rules by the Securities and Exchange Commission mandated by the Jumpstart Our Business Startups (JOBS) Act of 2012 take effect. With a change of this magnitude comes different ways of doing business. This article discusses the regulations governing raising equity capital, discusses why the JOBS Act will redefine how entrepreneurs capitalize their startup and early-stage businesses, and explains how the new rules and offering methods provide opportunities to entrepreneurs, particularly minority, women and others historically disenfranchised, to use technology to create new business and jobs.*

How many of your friends are managing directors of venture capital funds? How many are investment bankers? Angel investors? How many people do you know who know these people? If you're like most Americans, the answer is none. If you don't live in the San Francisco Bay Area, New York City, Los Angeles, Chicago, Boston, San Diego, Austin, Raleigh, or another major metropolitan area, these people may not even live near you.

Why do these questions matter in determining which startups receive funding, who becomes owners of successful businesses, and what demographic eventually accumulates capital and wealth in this country? And why might this all change beginning this Spring?

The answer is in large part attributable to the law that restricts who you may solicit to raise investment capital. That law is the Securities Act of 1933, which regulates raising capital, otherwise known as selling "securities" (e.g., stocks, bonds, investment contracts). For the past 90 years, it has been unlawful for a company to offer securities to the public without registering the offering with the Securities and Exchange Commission. And the SEC interprets "public" very broadly. In order to be exempt from SEC registration, the securities offering must be a private transaction offered only to those persons whom you know or with whom you have a pre-existing relationship.[1]

Violating the federal securities laws can be costly. In enacting the 1933 Act, the Depression-era Congress included draconian civil (and criminal) liabilities for violating its new laws that regulate taking OPM – other people's money. Among other things, individuals who control companies that violate these laws can be personally jointly and severally liable to return investors' money.

The 1933 Act's restrictions on soliciting investors -- however well-intentioned -- made the ambition of successfully raising capital for a startup unattainable for most people. Unless you or your relatives were members of a country club, finding investors through a private securities offering exempt from SEC registration was challenging. And the cost of registering a securities offering with the SEC, which is the very same process undertaken by companies going public through an "IPO," is prohibitive for most early-stage companies.

As small and emerging businesses have become the engine of job growth in our economy, the strict rules limiting solicitations of investment capital in unregistered offerings severely constrained growth

[1] Section 4(a)(2) of the Securities Act of 1933 (15 U.S.C. 77d).

of our economy. Moreover, in the age of Facebook, Twitter and other social media tools enabling people to communicate easily with the public, these laws' restrictions on public solicitations became increasingly impractical and hazardous for entrepreneurs to navigate.

To address these issues and close the early-stage financing "capital gap," in 2012, Congress enacted the Jumpstart Our Business Startups (JOBS Act), amending the 1933 Act to relax the restrictions on soliciting investors without registering the securities offering with the SEC. And now 3 years after the JOBS Act mandated that the SEC promulgate rules to implement the new laws, the SEC's final rules under Title III of the JOBS Act, which legalized equity crowdfunding, take effect on May 16, 2016. The JOBS Act and the SEC's rules represent a paradigm shift in the regulation of early-stage securities offerings and a potential sea-change in who can access capital. For the first time in the history of federal securities regulation, companies will be allowed to offer securities to the public without registering the offering with the SEC. This expansion of the funding universe for cash-starved businesses is the heart and soul of the JOBS Act.

With a change of this magnitude comes different ways of doing business. This article discusses the regulations governing raising equity capital, particularly by startup and early-stage ventures, describes how the JOBS Act will affect the way in which entrepreneurs capitalize their businesses, and finally explains how the new rules and offering methods provide opportunities to entrepreneurs, particularly minority, women and others historically disenfranchised, to create new business and jobs.

Raising Capital: A Highly Regulated Activity

Fundamental to the securities regulatory regime enacted by Congress in response to the 1929 Stock Market Crash and Great Depression was the notion that for capitalism to survive and flourish, the investing public needs the protection of the federal government. In an economy where business ventures and job creation are financed with "OPM", Congress resolved that a new federal agency, the SEC, would review all offerings of "securities" before those securities were sold to the public. The Supreme Court would later hold that the definition of "securities" includes, not only stocks and bonds, but "investment contracts" that call for any investment of money with an expectation of profit based on the managerial efforts of others.[2]

Today, the process of registering an offering with the SEC under the Securities Act of 1933 is time-consuming and expensive. Two surveys cited by the SEC last Fall concluded that the average initial compliance cost associated with conducting an initial public offering is $2.5 million, followed by an ongoing compliance cost for issuers, once public of $1.5 million per year.[3] A registration statement filed with the SEC consists largely of the public offering disclosure document known as a "prospectus." The staff of the SEC's Division of Corporation Finance reviews all initial public offering registration statements and approximately 30 days from the filing date will issue its written comments. The company responds to these staff comments by filing

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[2] Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293 (1946).

[3] *See* IPO Task Force, *Rebuilding the IPO On-Ramp*, at 9 (Oct. 20, 2011) for the two surveys, *available at* http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf ("IPO Task Force"). The SEC staff notes that these estimates should be interpreted with the caveat that most firms in the IPO Task Force surveys likely raised more than $1 million.

Title I of the JOBS Act provided certain accommodations to issuers that qualify as emerging growth companies (EGCs). According to a recent working paper, the underwriting, legal and accounting fees of EGC and non-EGC initial public offerings were similar (based on a time period from April 5, 2012 to April 30, 2014). For a median EGC initial public offering, gross spread comprised 7% of proceeds and accounting and legal fees comprised 2.4% of proceeds. *See* Susan Chaplinsky, Kathleen W. Hanley, and S. Katie Moon, *The JOBS Act and the Costs of Going Public*, Working Paper (2014), *available at* http://ssrn.com/abstract_id=2492241 a series of amendments to the registration statement and prospectus until all staff comments are addressed. Only then will the SEC declare the offering registration statement "effective" for distribution to the public. No sales of securities may be made until the SEC declares the registration statement effective. In most cases, the time period from SEC filing to the effective date is at least 60 days and in most cases much longer.

Because the securities laws provide for a form of strict liability for material misstatements or omissions in the prospectus, the preparation of a registration statement and preparing to file it with the SEC is typically a several month process as well. In an underwritten offering, the investment bankers, their counsel, the auditors, company counsel and company management meet in multiple "all hands" meetings to draft and review the prospectus before filing it with the SEC. Through this process, every material statement in the prospectus is "diligenced," which also provides the basis to support a statutory affirmative "due diligence" defense in the event investors ever challenge these disclosures. Needless to say, the process of SEC registration is not only time consuming but costly.

Once a company registers its securities offering pursuant to the Securities Act of 1933, it then becomes subject to the full securities regulatory regime applicable to SEC-registered public reporting companies pursuant to the Securities Exchange Act of 1934.[4] These regulations include, among others, the requirement to file with the SEC periodic reports (annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K), proxy statements and beneficial ownership reports by the company's officers, directors and 10% shareholders.

In addition to the federal securities laws, each state has its own state securities laws known as state "blue-sky" laws.[5] Although many states have adopted some form of the Uniform Securities Act drafted by the National Conference of Commissioners of Uniform State Laws, many states, including California, have not adopted the uniform act and have their own unique securities law. Many of these state securities laws provide the state securities regulator with the authority to deny a securities offering based on the merits of the terms of the securities. California is one such "merit review" state, and the Commissioner of the Department of Business Oversight must make a finding that an offering is "fair, just and equitable" before it will issue a permit to allow sale of such securities in California.[6] State blue-sky statutes provide civil remedies to investors similar to those provided under the federal securities laws for failure to qualify or register with the state securities commission a securities offering that is not exempt under the state law.

Crowdfunding and the Jobs Act

The term "crowdfunding" generally describes campaigns to raise relatively small amounts of money from large numbers of people. Modern crowdfunding started with campaigns soliciting donations for social causes or new business ventures. In exchange for a donation, individuals typically receive a token of appreciation for their donation, a t-shirt, a first opportunity to purchase a

[4] [Discuss Section 12(g) registration and the "Facebook" issue.]

[5] "Blue sky laws" refers to state laws regulating the sale and registration of securities. The term originated in Hall v. Geiger-Jones Co., 242 U.S. 539 (1917) in which the Supreme Court described fraudulent securities as "speculative schemes which have no more basis than so many feet of 'blue sky'." Id. at 550. See, Marianne M. Jennings, The Efficacy of Merit Review of Common Stock Offerings: Do Regulators Know More than the Market?, B.Y.U. Journal of Public Law, Vol 7, Issue 2 (1993).

[6] The federal securities laws are "full disclosure" laws; once the registrant makes full disclosure of the material terms of the investment, the SEC has no authority to deny the public offering on the merits.

product, or a movie- production credit.[7] In an "equity crowdfunding" campaign individuals purchase "securities," as that term is defined under the 1933 and 1934 Acts.[8] Consequently, the registration requirements relating to the offer and sale of securities under the 1933 Act, as well as its civil liability provisions and the anti-fraud provisions under both acts apply to equity crowdfunding offerings. Prior to the JOBS Act, private offering exemptions from the 1933 Act's registration requirement did not allow for equity crowdfunding, which, by definition, involves a public offering to the crowd.

The JOBS Act fundamentally changed the rules relating to private securities offerings by effectively creating three new methods of conducting "public" offerings that are exempt from SEC registration. These three methods are found in Titles II, III, and IV of the JOBS Act and are often referred to by these JOBS Act titles.

Title II of the JOBS Act: Rule 506(c) of Regulation D

The first exemption, promulgated under Title II of the JOBS Act, is limited to "accredited" investors only[9] It completely eliminated the 90-year old ban on public solicitations, provided that and the company take reasonable steps to verify that all investors are accredited. It relies on rule 506(c) of Regulation D, and, therefore, there is no dollar limit on these offerings and very few other limitations. Additionally, Rule 506 offerings preempt state securities laws. The SEC's rules under Title II have been effective since September 2014, so all of the equity crowdfunding sites operating today operate under this exemption and, consequently, offer investment opportunities only to accredited investors.

Prior to the JOBS Act, complying with the exemption from registration for transactions not involving a "public" offering[10] became increasingly difficult with the advent of modern communication technology. Although the Supreme Court long ago in 1953 outlined the contours of what constitutes a private offering for purposes of the exemption,[11] the boundaries were far from clear. Prior to the SEC's promulgation of Regulation D in 1982, many members of the securities bar were uncomfortable rendering "no registration" opinions.

In the last 30 years, Congress and the SEC provided guidance and some relief for practitioners counseling companies conducting private placements.[12] The

[7] Many of the 9,522 people who had contributed to virtual-reality pioneer Oculus VR Oculus's non-equity crowdfunding campaign on Kickstarter may have been surprised to learn that they would not share in Oculus' gains two years later when Facebook announced in March 2014 that it was acquiring Oculus for $2 billion. *INDIEGOGO IS GETTING READY FOR EQUITY CROWDFUNDING.* http://www.fastcompany.com/3050200/the-big-idea/indiegogo-is-getting-ready-for-equity-crowdfunding

[8] See Section 2(a)(1) of the 1933 Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the 1934 Act, Id. § 78c(a)(10). As discussed above, the definition of "security" includes, not only stocks and bonds, but an "investment contract" that is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. . . . " SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946).

[9] An "accredited" investor in the case of an individual is a person who (i) had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; or (ii) has a net worth in excess of $1 million (excluding home equity). Rule 501 of Regulation D (17 CFR 230.501).

[10] Section 4(a)(2) of the Securities Act of 1933 (15 U.S.C. 77d).

[11] SEC v. Ralston Purina Co., 345 U.S. 119 (1953).required the issuer to examine the knowledge of the investor and its relationship with the issuer as a basis for distinguishing a private offering from a public offering.

[12] Campbell, The Plight of Small Issuers Under the Securities Act of 1933: Practical Foreclosure from the Capital Market, 1977 DUKE LJ. 1139, 1139 (small issuers frequently unable to comply with 1933 Act provisions because of combination of exorbitant costs, unworkable resale provisions, ambiguity, and taint of prior illegal stock sales).

Regulation D "safe harbor" rules promulgated by the SEC 1982 provides a set of bright line rules that the SEC deemed to satisfy exemptions from registration. And in 1996, Congress addressed the duplication of dual federal and state securities regulation in the National Securities Markets Improvements Act of 1996 (NSMIA) (Pub. L. No. 104-290,110 Stat. 3416 (Oct. 11, 1996). NSMIA preempts state blue-sky registration or qualification of "federal covered securities." Securities offered in compliance with Rule 506 of Regulation D are such securities. Today, largely as a result of NSMIA's preemption, 99% of all private offerings under Regulation D are conducted pursuant to Rule 506. Moreover, amounts raised through unregistered securities offerings have outpaced the level of capital formation through registered securities offerings during recent years. In 2014, there were 33,429 Regulation D offerings reported on Form D filings, accounting for more than $1.3 trillion raised. Prior to the JOBS Act, Rule 506 prohibited any form of "general solicitation."

Thus, prior to the JOBS Act, the only available exemptions from SEC registration were for transactions not involving any public offering and, to take advantage of the Regulation D safe harbor, the offering could involve no "general solicitation."

SEC rules do not define "general solicitation," but they provide that it includes "any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio" or "any seminar or meeting whose attendees have been invited by general solicitation." [13] The SEC staff's long standing position has been, and continues to be, that an issuer may establish the absence of a general solicitation by establishing a pre-existing substantive business relationship between the issuer and offeror investor existed at the time of the offer.[14] Although the staff recognizes that a pre-existing relationship is not the exclusive means of establishing the absence of a general solicitation, whether a particular communication would be deemed a general solicitation is not easily determined, particularly in today's connected world.[15]

Title IV of The Jobs Act: Regulation A+

The second exemption, promulgated under Title IV of the JOBS Act is commonly known as "Regulation A+" as it amends SEC Regulation A by increasing the offering limit from $5 million to $50 million. An offering under the new Regulation A+ requires an offering circular containing specific disclosures similar to those made in an IPO prospectus, and SEC review and "qualification" of the offering circular. The offering circular must include audited financial statements, consisting of the prior year's balance sheet and income statements for the two years. Once qualified, the offering may be sold to anyone; there is no requirement that the investor be accredited or

[13] Rule 502(c) of Regulation D.

[14] See, e.g., Mineral Lands Research & Marketing Corp. (Mar. 21, 1985); Bateman Eichler Hill Richards, Inc. (Dec. 3, 1985); E.F. Hutton & Co. (Dec. 3, 1985); and H.B. Shaine & Co. (Mar. 31, 1987)

[15] The staff of the Division of Corporation Finance in August 2015, articulated its long-standing interpretation of "general solicitation" in its CDI; however, many questions remain. For example, in response to the question what information can an issuer widely disseminate about itself without contravening Rule 502(c) (the prohibition on general solicitation), the staff answers that information not involving an offer of securities may be disseminated widely without violating the rule, citing as an example factual business information that "does not condition the public mind or arouse public interest in a securities offering.", Question 256.24.. Compliance and Disclosure Interpretations (CDIs), namely CDIs §§256.23 - 256.33 (August 6, 2015) and no action letter, Citizen VC, Inc. (August 6, 2015).

With respect to well-established demo days or venture fairs, the SEC staff stated in its CDI that there is no general solicitation as long as the event is limited to persons with whom the issuer or the organizer of the event has a pre-existing, substantive relationship or the invitees have been contacted through an informal, personal network. Id., §256.33.

sophisticated.[16], and there is no restriction on the means of solicitation. It has two tiers, one with a maximum limit of $20 million and the other $50 million. Tier 2 offering preempt state securities laws. Regulation A+ has been dubbed a "mini-IPO," as the SEC review process is similar to the registration process for an IPO.

Title III of the JOBS Act: Regulation CF - Equity Crowdfunding

The third exemption, promulgated under Title III of the JOBS Act, is the new Regulation CF and is commonly known as the "equity crowdfunding" exemption. Beginning on May 16, 2016, this regulation will enable entrepreneurs to raise up to $1 million during any 12 month period from anyone subject to certain dollar limits on the amount an investor may invest. There is no requirement that the investor be accredited or sophisticated. If the investor's net worth or income is below $100,000, he or she is subject to an investment cap of the greater of: $2,000 or 5% of the lesser of the investor's annual income or net worth. If both net worth and annual income are at least $100,000, the investment cap is 10% of the lesser of the investor's annual income or net worth, not to exceed an amount sold of $100,000. These caps reflect the aggregate amount an investor may invest in all offerings under Regulation CF in a 12-month period across all issuers.

An offering statement is required containing general information about the issuer, officer and directors and significant shareholders, the intended use of proceeds, the company's ownership and capital structure and financial statements for the two most recently completed fiscal years. If the offering amount is greater than $100,000 but less than $500,000, the financial statements must be reviewed by an independent accountant. If the offering amount is greater than $500,000, the financial statements must be audited, unless the company is conducting its first Regulation CF offering, in which case the financial statements need only be reviewed.

The offering statement must be filed with the SEC, but it is not reviewed by them. Once the offering statement is filed with the SEC, a process likely to be provided as a service by the internet portal, the offering may immediately commence and the company may accept investor subscriptions.

A significant limitation under Regulation CF is that all offerings must be conducted through a single internet portal, which must either be registered with the SEC as a broker-dealer or as a new form of regulated entity, a "financing portal." Another significant limitation under Regulation CF is that "general solicitation" is prohibited outside of the portal. All communications and other forms of solicitation must be limited to the registered users of the portal through communication channels provided by the portal. The only exception to the prohibition on general solicitation is a notice of the securities offering that may direct interested persons to the portal, where potential investors may register as a member of the portal to gain access to the Company's soliciting materials and communications.

A final limitation of any securities offering relates to compensation of persons involved in the solicitation of securities. After all, the old adage, "securities are sold, not purchased," is as true (if not more true) today than it was in 1933. Companies must be careful that if they engage individuals, even employees, to assist in the company's securities solicitation efforts, those persons may be required to register as broker-dealers with the SEC or state securities administrators.

Following the enactment of the Securities Act of 1933, which regulates offers and sales of securities, Congress enacted the Securities Exchange Act of

[16] In a Tier 2 offering under Regulation A+, non-accredited investors, however, may not invest more than the greater of 10% of their net worth or annual income.

1934. The Exchange Act regulates all aspects of securities transactions, markets and its participants, including securities salespersons. Generally speaking, persons selling securities are required to register under the 1934 Act and become members of the Financial Industry Regulatory Authority (FINRA).

Section 3(a)(4)(A) of the 1934 Act generally defines a "broker" broadly as any person engaged in the business of effecting transactions in securities for the account of others. According to the SEC, "finders," "business brokers," and other individuals or entities that engage in finding investors or customers for, making referrals to, or splitting commissions with registered broker-dealers, investment companies (or mutual funds, including hedge funds) or other securities intermediaries.[17] In order to determine whether any of these individuals (or any other person or business) is a broker, the SEC looks at the activities that the person or business actually performs.

The Jobs Act & Who May Now Access Capital

As we've discussed above, the JOBS Act enables entrepreneurs to raise capital from the public using three offering methods that do not require the expense of registration with the SEC. In addition to equity crowdfunding, the JOBS Act enabled peer-to-peer lending, created a new rules to allow "mini-IPOs," and paved the way for the SEC to create new sources of liquidity for early-stage investors through secondary "venture markets." The law already has spawned new and innovative financial companies dispensing capital to startup and growing businesses. Since its enactment, the JOBS Act has been heralded as "democratizing" access to capital, "disintermediating" Wall Street, and "uberizing" the process of raising capital.[18] Once the SEC's newly issued rules become final on May 16, everyday people will be able to join crowds of other small investors to directly fund startup businesses that pique their interest.

Under the restrictive securities laws in effect for the 90 years prior to the JOBS Act, entrepreneurs who did not have access to friends and family to provide seed capital had little chance of getting their startups off the ground. And seed funding – sums not in the millions, but an attainable $250-750,000, with today's technology is sufficient to advance an entrepreneur's ideas, develop a prototype, enter into a first contract or otherwise validating their technologies or business model, in order to get on the radar of seed investors. Without such seed funding, those entrepreneur's businesses would be lost in the sea of concepts floating over the transom to the inboxes of managers at venture capital funds.

In theory, the JOBS Act enables anyone to reach out to capital sources and raise seed levels of capital. And with the benefit of seed financing, with advances in programming and technology today, entrepreneurs have a realistic opportunity to attract followers, registered users, or customers. In turn, these constituents will represent a potential source of follow-on capital. After all, followers, users and customers should be well suited to evaluate the business prospects of the company. Through this process of capital access, the brilliant ideas in the minds of our young entrepreneurs eventually will become visible to larger institutional capital sources. No doubt, without the benefit of professional financial intermediaries, such as investment bankers, entrepreneurs on their own will have difficulty raising the tens and hundreds of millions of dollars raised in registered IPOs. The "disintermediation" of Wall Street is somewhat an overstatement. What

[17] See, SEC's Guide to Broker-Dealer Registration (available at https://www.sec.gov/divisions/marketreg/bdguide.htm#II).

[18] *The Uberization of Money*, Wall Street Journal, Nov. 4, 2015 (http://www.wsj.com/articles/the-uberization-of-finance-1446835102?alg=y)

the JOBS Act offers, however, is a pathway for companies eventually to reach these public equity markets, which prior to the JOBS Act, was accessible only by the most privileged few.

About The Author:

Mark T. Hiraide. Mr. Hiraide is a partner with Mitchell Silberberg & Knupp LLP. He is a securities and corporate lawyer and counsels clients in corporate finance and mergers and acquisition transactions and in litigation relating to liabilities under federal and state securities laws.

Mark defends directors and officers, broker-dealers and investment advisers in civil litigation relating to securities offerings, mergers and acquisitions, and investment management. He advises public and private companies and their boards of directors, including special committees and senior management, on issues including corporate governance, fiduciary duties, and SEC compliance, He also serves as an expert witness in corporate and securities law. In 2011, he testified before the Securities Subcommittee of the U.S. Senate Banking Committee about Crowdfunding, Regulation A, Regulation D, SOX 404, IPOs and other securities law issues relating to the JOBS Act.

Prior to entering private practice, Mark was an attorney for the U.S. Securities and Exchange Commission. He was as an Attorney-Advisor with the SEC in the Division of Corporation Finance in Washington, D.C. and a Chief of one of the Enforcement Branches in the Los Angeles Regional Office. While at the Commission, he was appointed as a Special Assistant United States Attorney to prosecute a major criminal securities fraud case.

Mark is the author of *Crowdfunding: Practical Guide to the SEC's Final Rules for Raising Capital* (Thomson Reuters 2016) and co-author of *Representing Start-Up Companies* (Thomson Reuters) (2015). *Securities Practice* and *Handbook for Incorporation of a Business in California* published by the Corporations Committee of the Business Law Section of The State Bar of California.

He received his JD from the University of Southern California and a BA in Economics from the University of California at Berkeley.

An Accounting Perspective on Cybercrime

By: Fredrick Ho, CPA, MBA &
Norbert Kawooya, *ITIL / MBA/CIS*

Introduction

Virtual environments introduced new levels of efficiency, connectivity and productivity to businesses. Along with these benefits has emerged a serious threat that each year results in hundreds of millions of dollars in measurable and unmeasurable losses to businesses.

The continuous tsunami of technology devices and other equipment; their extensive use across age, gender, socioeconomic and geographic boundaries; and, in many instances, a false sense of information security have merged to create a perfect storm for cybercriminal activity.

A cybercrime is defined as an intentional criminal act involving the use of computers or other technologies, and with the criminal activity taking place in a virtual setting, such as the Internet.Cybercrimes share three elements:

1. Tools and techniques to perpetrate a crime

2. Methodology for executing the criminal plan — known as a vector

3. Crime itself (a cybercrime is the ultimate objective of the criminal's activities)

With this continuously growing threat, CPAs have an urgent need for resources and direct strategies that can help avoid the risk of cybercrime, detect and recover from these crimes when they occur, and safeguard the interests of their firm, clients and organization.

Statistics

The number of cybercrime attacks is daunting. IBM estimates business entities are attacked an average of 16,856 times a year. That's 46 attacks every business has to deal with every day. Though the majority of these attacks don't actually get past the entity's defenses, an average of 1.7 per week is successful. Adding it all up across all businesses would amount to a lot of successful cyber attacks.

Should individuals be concerned about these attacks when many hackers target businesses and governments instead of individuals? The answer is a definitive yes,as these big organizations hold volumes of individual information which are useful for identity theft and other crimes.In fact, in 2014, 47% of American adults had their personal information stolen by hackers — primarily through data breaches at large companies. Data breaches targeting consumer information are on the rise, increasing 62% from 2012 to 2013, with 594% more identities stolen.

In 2013, 7% of US organizations lost $1 million or more resulting from cybercrime, while 19% of US organizations reported losses of $50,000 or more.

On a slightly smaller scale, cybercrime on individuals reported to the FBI in 2013 amounted to losses exceeding $781 million, with an average loss of nearly $3,000 per complaint. That included:

- $81 million taken by romance scammers, who target people on online dating sites— averaging over $12,000 per victim.
- $51 million taken by auto scammers, who convince their targets to pay for cars that don't exist, taking in an average of $3,600 per victim.

- $18 million in real estate rental scams which attempt to convince buyers to pay for property that doesn't exist — defrauding nearly $1,800 per victim.

The statistics speak for themselves. Everyone online is potentially at risk of cybercrime.It is not a matter of whether CPAs, their clients or their organizations will become victims, but when.

Relevance to CPAs

Services provided by CPAs in areas other than financial statements add significant value in the marketplace. These services include attestation or consulting services to evaluate controls relevant to the security, availability, and processing integrity of a system, and the confidentiality and privacy of the information processed by the system – commonly known as trust services.

Trust Services are a set of professional attestation and advisory services based on a core set of principles and criteria that address the risks and opportunities of IT-enabled systems and privacy programs. The following principles and related criteria are used by CPAs in the performance of Trust Services engagements in which a system is evaluated for reliability.

- Security. The system is protected against unauthorized access.
- Availability. The system is available for operation and use as committed or agreed.
- Processing integrity. System processing is complete, valid, accurate, timely, and authorized.
- Confidentiality. Information designated as confidential is protected as committed or agreed.
- Privacy. Personal information is collected, used, retained, disclosed and destroyed in conformity with the commitments in the entity's privacy notice and with criteria set forth in Generally Accepted Privacy Principles issued by the American Institute of Certified Public Accountants (AICPA).

Four Major Cybercrimes

1. Tax-Refund Fraud

In 2012, the IRS initiated approximately 900 tax identity theft related criminal investigations, tripling the number of investigations initiated in 2011. Direct investigative time applied to tax identity theft related investigations increased by 129 percent over that same period. Prosecution recommendations, indictments, and convictions for identity theft violations have increased dramatically since 2010. Sentences handed down for convictions relating to tax identity theft have been significant, ranging from 4 months to 300 months.

	2013 As of Jan. 31	2012	2011	2010
Investigations Initiated	542	898	276	224
Prosecution Recommendations	441	544	218	147
Indictments	353	494	165	94
Sentenced	90	223	80	45

A typical identity theft begins when thieves illegally buy or steal information from individuals, employers, hospitals, or nursing homes. Cybercriminals obtain a valid name and Social Security number, preferably from someone who will not be filing a tax return. That person could be a deceased taxpayer. Other common ways to obtain personal information include email or telephone phishing and dumpster diving. Thieves look for discarded tax returns, bank records, credit card receipts or other records containing personal and financial information. Numerous taxpayers have received email messages allegedly from the IRS notifying them that they are under investigation or have an unclaimed refund pending. To encourage the potential victim to respond, the email may threaten a severe consequence (see Exhibits 1a&1b for typical phishing messages). Often, the recipient is asked to click on a link to access what appears to be-(but is not) the official IRS website.

Exhibit 1a: Sample of Phishing Email

From: "John Doe@irs.gov" <John Doe@irs.gov>
To:
Sent: Friday, 10 February, 2013 6:42:03
Subject: Rejected Federal Tax transfer

IRS

Your Tax transaction (ID: 152757344464), recently sent from your checking account was returned by your Bank.

Rejected Tax transaction	
Tax Transaction ID:	152757344464
Return Reason	See details in the report below
FederalTax Transaction Report	tax report 152757344464.pdf (Adobe Acrobat Reader Document)

Important Information for Home-care Service Recipients

If you are a home-care service recipient who has a previously assigned EIN either as a sole proprietor or as a household employer, do not apply for a new EIN. Use the EIN previously provided. If you can not locate your EIN for any reason, follow the instructions on the Misplaced Your EIN? Web page.

If you are a home-care service recipient who does not have an EIN, do not use the online application to apply for one. You must apply for your EIN using one of the other methods (phone, fax or mail). For additional information, visit the How to Apply for an EIN Web page.

Exhibit 1b: Sample of Phishing Email

Title/Subject of email: Your Tax Refund Payment Update
[attachment to email is "Refund Form.html"= link to webform]
From: taxupdates@irs.org

After the last annual calculations of your fiscal activity we have determined that you are eligible to receive a tax refund of $ 826.28.

Submit the tax refund request and allow us 3–5 business days in order to process it.

A refund can be delayed for a number of reasons. For example submitting invalid details which we don't have on record or applying after the deadline.

Download, fill and submit your Tax Refund Form in order to complete the process.

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Sellers of personal information on the black market typically have some degree of direct access to the personally identifiable information — person's name, Social Security number, address and date of birth — from their workplace. They usually are insiders at high-traffic businesses such as hospitals, doctors' offices or car dealerships that capture such information.

All taxpayers are at some risk of becoming victims of tax-refund fraud. It is not difficult for cybercriminals to use one or more of their tools and techniques to search for and fraudulently obtain personally identifiable information from the Internet or other sources. Surprisingly, the cybercriminals usually do not use a deceased person's personally identifiable information but rather that of a living person. The cybercriminal next makes up wage and withholding information, claims standard deductions or a few itemized deductions, and perhaps tax credits, and completes a return that generates a large refund. He or she files the fraudulent tax return electronically, which technically makes it a cybercrime and not ordinary fraud. Cybercriminals file electronically because W-2s are not included with electronically filed tax returns, and by the time the IRS discovers that the return does not match up with a W-2, the crime is complete and the cybercriminal has already escaped with the funds. The criminal then simply waits for either a check to be mailed, a direct deposit to be made to a "safe" bank account or, most commonly, a credit to be posted to a debit card. The debit card is bought specifically for accepting the fraudulent refunds. Often, multiple refunds are sent to the same address, bank account or debit card because the cybercriminal will complete dozens, if not hundreds, of fraudulent tax returns.

If a cybercriminal can obtain the relevant personally identifiable information, carrying out tax-refund fraud is fairly straightforward and somewhat detection-proof. In addition, tax-refund fraud is exacerbated by the number of entities that have personally identifiable information and the extent of exposure it presents. CPAs engaged in tax work should assess their privacy and security policies, and establish internal controls to keep client data secure.

2. Corporate Account Takeover

Corporate account takeover is costly and is considered among the fastest and most stealthy type of attack. Cybercriminals obtain unauthorized access to a business account –such as through the theft of online credentials or by hijacking an online session - and initiate transactions, change contact information, and gather information on the account's history to commit other crimes.

Businesses of all types and sizes are targeted bycybercriminals as they often carry higher balances than personal/individual accounts. Employees often serve as entry points into the company's networks by unknowingly providing their access credentials through phishing sites or by downloading malware onto the system after clicking on malicious links or opening infected attachments that will allow unauthorized access to financial accounts and other sensitive information. Fraudsters also target senior executives in Business Email Compromise scams in order to gain access to the executive's legitimate email account, impersonate them, and direct employees to perform wire transfers or payment transactions on their behalf.

Although corporate account takeovers can take different forms, it normally involves electronic funds transfer fraud, such as Automated Clearing House (ACH) or wire transfer. These types of schemes involve three steps:

1. *Illicitly acquire login credentials.* The credential compromise usually is undertaken by using a malicious program distributed as an email attachment, unintended web-browsing download or file transfer of a seemingly legitimate/safe file. The user inadvertently allows this malicious program, such as a Trojan, to be downloaded and executed, and usually is unaware that anything malicious is taking place.

2. *Covertly gain unauthorized access to the victim's computer to avoid the bank's security features, activated when it does not recognize the login "fingerprint."* To ensure security of customer accounts, financial institutions create login "fingerprints" of the computer system when customers open their accounts and for all future logins. The fingerprint verifies that the person logging into the account is the legitimate account holder, a process known as authentication. When the fingerprint does not match, the process triggers an additional layer to the login process, such as a security question or temporary PIN. The cybercriminal uses a hacker tool to hijack the victim's computer system, using the system as a trusted source to avoid the security check of the bank's login fingerprint. This approach allows the criminal to conduct fraudulent wire transfers out of the victim entity's bank account.

3. *Transfer the victim's bank funds to an account controlled by the cybercriminal*. The cybercriminal transfers the funds in the victim's bank account, usually by wire transfers. The criminal typically transfers the funds to individuals known as money mules, who will again move the funds to a protected account such as an overseas bank account in a country that is uncooperative with U.S. banking rules and protocols.

Small and medium businesses (SMBs) are often the targets for this crime because they tend to pay less attention to information security, controls and risk assessments. As a result, their systems normally are more vulnerable than larger entities. SMBs also experience resource constraints, including finances and expertise, which can lead to further risks.

The specific person targeted will be the one most likely to be conducting online banking transactions for the entity, such as the chief accounting officer (CAO), chief financial officer (CFO), treasurer or controller, all of whom are fairly easy to identify online. The experienced cybercriminal also knows the steps to be taken to access accounts as well as online banking's typical security features.

There are at least two risk areas for clients of CPAs and CPAs in business and industry who perform online banking transactions.First, the CAO, CFO, treasurer or controller often is unaware of corporate account takeovers and the consequences and liability that can follow. Second, there is a lack of adequate controls over the online banking process. However, even fairly strong controls can be overcome by a cybercriminal's persistent attack, and these controls can foster a false sense of security when, in reality, there still is substantial risk. Corporate account takeovers are of particular concern for CPAs as cybercriminals prefer to target small and medium businesses — businesses that comprise a large segment of public accounting firm clients or have management accountants on their staff.

CPAs can help educate their small and medium business clients regarding this type of cybercrime. Management accountants are often in a key position of responsibility and at risk of facing this type of fraud.For them, becoming knowledgeable and vigilant of the full range of controls and vulnerabilities of online banking is no longer an option.

3. Identity Theft

Identity theft often takes place when a cybercriminal steals a person's personally identifiable information. Identity theft serves as a gateway to other cybercrimes such as tax-refund fraud, credit-card fraud, loan fraud and wage-related fraud. It is currently estimated that annually there are 10 million victims of identity theft with an estimated cost to Americans of $50 billion in roughly 30% of identity theft cases; there is credit of financial fraud.

Identity theft can go undetected for a significant period of time — 50 percent goes undetected for at least one month and 10 percent remains undetected for two or more years. It also is increasingly more common for cyber thieves to steal personally identifiable information and hold that information for some time before using it. This approach is taken partly to build a compilation of personally identifiable information that can later be used to commit a massive crime. This circumstance can escalate financial or reputation damage that may follow and add to the challenge of apprehending the perpetrator. Victims spend an average of 200 hours re-establishing their identity, making the time lost in some cases just as damaging as the financial or reputational damage.

The opportunity for identity theft lies in the same source as tax-refund fraud.Personally identifiable information can be found in multiple locations across the Internet. There also is an active black market for personally identifiable information, which is relatively easy to steal. Social engineering and dumpster diving are additional approaches to gather this type of information. Business entities need to exercise due diligence to protect personally identifiable information — it is good customer service and helps avoid lawsuits or violations of state or federal laws. Forty-six states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have already instituted laws regarding security breaches of personally identifiable information.

4. Theft of Sensitive Data

Sensitive data such as unencrypted credit card information stored by a business, personally identifiable information, trade secrets, source code, customer information and employee records all attract the attention of cybercriminals. This cybercrime overlaps with the previous discussion on personally identifiable information, identity theft and security breaches. The costs to victims of this type of cybercrime can be high, and involve both public-image damage and financial costs related to loss of business, legal fees and increasing security measures.

The crime occurs when a cybercriminal obtains access to sensitive data and steals it. The crime can be as simple as copying an entity's customer data files onto a flash drive and selling it to a competitor, or hacking into a system to obtain and use confidential or proprietary information to compete with the entity's business.

Two prominent cases in recent years pertaining to the theft of sensitive data include:

- Target department store's 2013 data breach in which the company's system was hacked and the debit card/credit card information of potentially up to 70 million people may have been compromised.The settlement cost to Target may approach $10 million.
- More recently the extramarital affairs website Ashley Madison was hacked in 2015 in which data about its members was obtained by hackers who demanded the site to be shut down or threatened the data would be released online to publicly shame its many members. In the days following the breach, extortionists began targeting people whose details were leaked.

Strategies to Addressing Cybercrimes

CPAs need to make timely, informed decisions about the effective controls that can prevent cybercrimes from occurring, and detect promptly a crime that already has occurred. Equally important is the CPAs' ability to respond to and correct a security breach and cybercrime that has occurred.

Security Audits and Controls

A Computer Security Institute (CSI) survey ranked an effective internal cybersecurity audit as the strongest weapon to identifycybersecurity risks and assess the severity of each type of risk. For optimal results, entities should have a CPA audit their privacy and security policies and controls. Following the audit, preventive controls for the major risks that are identified need to be established by:

- Timely and proactively patching vulnerabilities, including vulnerable software.
- Providing limited access privileges and other logical access controls to limit crimes perpetrated internally. For external threats, perimeter controls such as firewalls and Intrusion Detection Systems are critical to protection.
- Monitoring systems, technologies and access, such as through logs created by technologies for those activities.Relevant controls proposed would vary based on the threat level determined through the monitoring process.

Insurance

Remediation for cybercrimes can become a costly process and every entity should have sufficient business insurance coverage to recover any financial losses. Reviewing coverage should be done on a periodic basis. Management should consider enlisting service providers that offer cleanup and restore functions after a cybercrime has been committed.

Response Plan

One useful remediation technique is to develop an incident response plan. The plan would require the organization to address points relating to cybercrimes such as:

- Which type of cybercrimes are potential risks?
- How should the organization respond to the various cybercrimes?
- How would the organization fully recover from the various cybercrimes?
- How can employees be educated about safeguarding information?

These closely resemble the plan required from Target as part of a proposed settlement plan in its data breach case. The plan required the company to implement changes to its security policies within 10 business days of the settlement becoming effective which included the need to:

- Appoint a chief information security officer
- Keep a written information security program, which would document potential security risks, and develop metrics to measure the security of its systems
- Offer security training to "relevant" workers to educate them about the importance of safeguarding personal identifying information.

Remediation measures and controls that apply to one cybercrime often apply equally well to others, which results in multiple cybercrimes being addressed with a single countermeasure. This supports the position that measures and controls taken by entities once a cybercrime occurs are the same measures and controls that should have been in place before the breach.

Conclusion

Cybercriminals are seldom in close physical or geographic proximity to, their targets. However, their distance and anonymity do not diminish the frequency of their crimes nor the damage they can inflict. In fact, these factors support them committing crimes of equal or greater magnitude than traditional crimes, and hide their behavior and crimes from their victims and members of law enforcement.

Cybercrime is more prevalent, more damaging and more sophisticated than ever before. CPAs therefore need to gain a clear, general understanding of the major threats, risks, costs and other negative factors associated with it, and the degree to which these factors relate to their employer and/or clients. They also need to be able to identify perpetrators and learn the manner in which they commit crime.

The proliferation of cybercrime does not require CPAs to undertake the role of cybersecurity expert. However, by remaining informed and aware of the core elements of cybercrime, and seeking assistance from security professionals when necessary, CPAs can best identify preventive controls, detection and reparative measures. In the process, they can ensure not only their own safety, security and future success but also that of the individuals and entities they serve.

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About the Authors

Fredrick Ho, CPA, MBA is principal of Ho & Associates, Certified Public Accountant, a full service public accounting firm. Since his graduation from the University of Southern California's School of Accounting, Mr. Ho has been providing accounting services to profit and nonprofit organizations for over 20 years, and his firm has been awarded certificates of recognition by the American Institute of Certified Public Accountants. In addition to his accounting practice, he has been concurrently an educator at various colleges and universities in the southern California area. He is currently a tenured faculty member in Accounting for the Los Angeles Community College District and an Adjunct Accounting Professor at University of the West. Mr. Ho can be reached by email at Hocpa@yahoo.com.

Norbert Kawooya, ITIL | MBA/CIS, is a post-graduate student at the University of the West. He has more than 15 years' experience in the IT industry's Information Security space. Norbert has designed and implemented various security practices for major international chains. In his current capacity, he continues to serve on the Information Security team of a major corporate chain. Having worked in different countries around the world, he possesses a unique blend of International experience in the Information Security space. He is also a member of the ISACA LA chapter, where he continues to keep abreast with revolving security needs in the industry.

Economic Outlook for the Year 2016

By Otto Chang, PhD

For the US, real GDP growth has been disappointing throughout most of the recovery and has also been unusually volatile. Much of the recent volatility has been due to swings in international trade and commodity prices. Private domestic demand is still growing solidly. Conditions remain in place for a positive growth in 2016: an accommodative monetary policy stance and favorable financial conditions, lower gas price, higher wages and salaries, and a gradually improved housing market (Wells Fargo 2015). Consumer spending, the locomotive of the economy, will benefit from positive employment reports in December 2015, lower unemployment rates, lower gas price, and rising real personal income. The real gross domestic product (GDP) is forecast to stay flat at 2.4 percent, as in 2015. Unemployment rate is predicted to decline from the current 5.3 percent to 4.7 percent by the end of 2016. Inflation rate, as measured by the Consumer Price Index, will maintain low at 1.9 percent in 2016. It is expected that the oil price will fluctuate between $40 and $55 per barrel during the coming year. According to the estimate of the US Energy Information Administration (EIA), the WTI Crude oiL price could average about $50.9 in the year of 2016 (USEIA, 2005).

For the rest of the world, the economic growth is anticipated to be better than 2015. Global Real GDP, measured using the IMF's World Economic Outlook PPP-based exchange rates, will be at 3.6, compared with the 3.1 percent registered for 2015. The rebound in advanced economies will pick up slightly, while the growth in emerging market and developing economies will slow down. Slower activities in most emerging market and developing economies reflects weaker prospects in some large emerging market economies and oil-exporting countries. In an environment of declining commodity prices, reduced capital flows to emerging markets and pressure on their currencies, and increasing financial market volatility, downside risks to the outlook have risen, particularly for emerging market and developing economies (IMF 2015).

Outlook for the U.S. Economy

The U.S. economy will continue its gradual improvement as in the 2015. For the year ahead, I anticipate a recovery path with reduction in inventory gains, increase in federal spending, improved employment, and slower gain in personal income and consumption. Government spending will increase at a rate of 1.9 percent in 2016. Inflation will remain low, but short-term interest rates will rise in anticipation that the Federal Reserve will continue to raise interest rate to prevent the economy from raising the expectation for inflation.

The consensus among economists is that real gross domestic product (GDP) will grow at about 2.4 percent in year 2016, flat from the growth rate in 2015. Since GDP is the most common indicator of how an economy grows, this reflects a slower growth of U.S. economy in 2016. All major components of real GDP are consistent with the gradual recovery trend. The real business fixed investment will grow at 4.2 percent (as compared to the growth of 3.1 percent in 2015); real personal consumption expenditures are expected to increase by 2.8 percent next year, representing a slight decrease when compared with a 3.1 percent increase in 2015. Industrial production is expected to increase at a rate of 1.4 percent, compared with a growth rate of 1.5 percent in 2015, resulting in a small inventory buildup for 2016. Housing starts are estimated to gain modestly from 1.12 million in 2015 to 1.25 million in 2016, above the 0.92 million and the 1.0 million in 2013 and 2014 respectively. Light vehicles sales will increase from 17.4 million units to 17.8 million units next year. Oil prices will fluctuate around $50 in 2016, giving a boost on the consumption of the U.S. economy. Interest rates are forecast to climb in 2016, in particular, the short-term interest rate. Because of the sustained recovery of the economy, unemployment rate will be decreasing throughout the entire year of 2016. Unemployment rate is forecasted to be at 4.7 percent compared with 5.3 percent in 2015.

Forecasts of Major Economic Indicators

Major Economic Indicators*	2015	2016
Real Gross Domestic Products	2.4	2.4
Industrial Production	1.5	1.4
Real Personal Consumption Expenditures	3.1	2.8
Real Business Fixed Investment	3.1	4.2
Changes in Private Inventories (in billions)	92.9	66.3
Net Exports of Goods and Services (in billions)	-546.14	-634.6
Real Government Consumption Expenditures	0.8	1.9
Car & Light Truck sales (millions of units)	17.4	17.8
Corporate Profits before tax	1.3	4.6
Housing Starts (millions of units)	1.12	1.25
Unemployment Rate	5.3	4.7
Consumer Price Index	0.2	1.9
Two-year US Treasury Bill	0.69	1.54
10 year Treasury Note	2.16	2.53
30-year Fixed Mortgage Rate	3.90	4.16
Oil Price (dollars per barrel)	54.4	51.8

*All numbers are fourth quarter over fourth quarter percent changes unless otherwise indicated.
**Source: Wells Fargo (2015).

In 2015, corporate profits increased only by 1.3 percent as corporations still recovered from the great recession. In 2016, it is expected that corporate profits will grow at a 4.6 percent rate, and continue to grow at 4.4 percent for 2017. The stronger job market means consumers will have more money to spend. The lower gasoline bills will further boost the consumers' pockets, now that the price of crude oil is close to a five-year low. The hope is that companies will generate more revenue as a result. Since the recession, corporate profits have grown largely as a result of cutting expenses. Now they may reap some benefits of revenue enhancement.

According to Lawrence Yun, chief economist of the National Association of Realtors, existing-home sales in 2015 are expected to increase slightly from 2014 (4.9 million) to 5.3 million, and then are forecasted to increase to 5.45 million in 2016. "Sales activity in 2016 will once again be primarily driven by the ongoing release of more pent-up sellers finally realizing their equity gains and using it towards the down payment on their next home," said Yun (Hall 2015). "Rents and home prices are expected to exceed income growth into next year because of the insufficient creation of new home construction and the detrimental impact its inadequacy continues to have on housing costs in several markets. The real solution to preserving affordability is a substantial ramp-up in housing starts and more homeowners listing their home for sale." Housing starts are forecast to hit 1.1 million in 2015 and reach 1.3 million in 2016, which is still below the underlying demand of about 1.5 million, but should gradually normalize as lenders open their credit box more to builders. New-home sales are likely to total 505,000 in 2015, and increase to 590,000 in 2016. Mortgage interest rates are projected to increase to 4.16 percent next year and reach 4.35 percent in 2017.

The S&P 500 finished 2015 with a 0.7% loss for the year dragged by energy sector which lost about 30% of its value due to crude oil price drop. The good news is that not a single Wall Street stock strategist is calling for a bear market, or 20% drop. If they are right, the bull market will turn seven in March and stocks — which have tripled in value since March 2009 — will keep chugging higher. For 2016, S&P 500 index is projected to be at 2,215, which would produce a total return of approximately 8.4 percent (Shell 2015). The bad news is that there's a chance investors will see a replay of 2015 and the market could again trade sideways and deliver almost flat returns. Potential headwinds next year include more rate hikes from the Federal Reserve, tepid global growth, the U.S. presidential election and a still strong dollar and weak commodity prices.

Outlook for World Economy

Global economic growth is expected to be 3.6 percent in 2016 as compared to 3.1 percent in 2015 (IMF, 2015). The expansion will be accompanied by stable inflation, around 1.2 percent for advanced economies and 5.1 percent for emerging market and developing economies. The price of oil is expected to fluctuate around $50 a barrel. The euro is forecast to close in 2016 year at $1.08 per Euro and Japanese Yen at 125 per dollar (PNC 2015).

In the Americas, Canada's growth rate for next year is estimated to be 1.7 percent, slightly up from 1.0 percent in 2015. Mexico's economy will grow at 2.8% rate, up from 2.3% for the 2015. Brazil's economy will decline further from its growth rate of -1.0% in 2015 to a growth rate of -3.0% in 2016. The Argentine economy is expected to deteriorate from a positive 0.4 percent growth in 2015 to a -0.7 percent negative growth in 2016. Chile's growth rate will increase from 2.3 percent in 2015 to 2.5 percent in 2016. In 2016, Venezuela is expected to reduce its recession rate to -6.0 percent in 2016 as compared to a -10.0 percent recession in 2015 that was caused by severe supply bottlenecks, challenges from capital flight, and generally weak policy frameworks.

In Western Europe, British economy will grow by 2.2 percent next year, down from the 2.5 percent in 2015. The Euro area is forecast to grow by 1.6 percent in 2016, as compared to 1.5 percent in 2015.

In Central and Eastern Europe, the growth rate is different depending on the specific situation in each country as compared to 2015. Russia's economy will improve from -3.8 percent in 2015 to 0.6 percent in 2016. Poland and Romania's growth will be 3.5 and 3.9 percent respectively in 2016, compared with 3.5 and 3.4 percent registered in 2015. Hungary's economy will recess from 3.0 percent in 2015 to 2.5 percent in 2016. Turkey's growth rate will decrease slightly to 2.9 percent in 2016 from 3.0 percent in 2015.

In Asia, the economy reflects the slower demand from their major markets in the U.S. and Europe. The four countries that will have the largest growth are India, Vietnam, China, and Philippines. In India, growth is expected to increase because exports and investment continue to grow. Growth in China was broadly in line with previous expectation. Investment growth slowed compared with last year and imports contracted, but consumption growth remained steady. Equity prices have dropped sharply since July 2015 after a one-year bull run. While the authorities intervened to restore orderly market conditions, market volatility remained elevated through 2016. Growth in several countries such as Vietnam and Malaysia is a bit weaker than expected, reflecting lower exports but also a slowdown in domestic demand.

The following is a table showing the projected growth rates in 2015 and 2016 for the countries in this region.

Table: Growth Forecasts for Asian Countries

Country	2015	2016
China	6.8%	6.3%
India	7.3%	7.5%
Indonesia	4.7%	5.1%
Japan	0.6%	1.0%
Malaysia	4.7%	4.5%
Philippines	6.0%	6.3%
Singapore	2.2%	2.9%
South Korea	2.7%	3.2%
Taiwan	2.2%	2.6%
Thailand	2.5%	3.2%
Vietnam	6.5%	6.4%

Source: IMF (2015).

Risks and Uncertainties

Several risks are inherent in the economic projections presented above. As we head into 2016 with positive momentum, there are some major uncertainties that we need to watch for. These major uncertainties are discussed below:

The increase in geopolitical risks and their repercussions for commodity markets and real activity, including turmoil in the Middle East and international tensions surrounding the situation in Russia and Ukraine. Another significant risk to global growth is the conflict related to the Islamic State. The threat of terrorist attacks could destabilize the entire Middle East and lead to a spike in oil prices, a development that could jeopardize global growth.

Prices of commodities have fallen sharply in recent months. They could fall further if market rebalancing in response to recent excess supply conditions were to take longer than expected. Growth in commodity exporters would be negatively affected, and their vulnerabilities would increase further in light of lower revenue and foreign exchange earnings.

US dollar appreciation against most currencies could continue, causing a lasting upswing in the dollar, as has happened previously. If this risk were to materialize, balance sheet and funding strains for dollar debtors could potentially more than offset trade benefits from real depreciation in some economies.

Growth has slowed in China in recent years. There are risks of a stronger growth slowdown if the macroeconomic management of the end of the investment and credit boom of 2009–12 proves more challenging than expected.

Extreme weathers and global warming might cause major disasters, severely impacting on the prices of food and agricultural commodities.

Outlook for California Economy

California's economy will continue to expand as the US and world economy continues to grow in 2016. The state's housing starts will increase from 110,000 in 2015 to 135,600 in 2016. Nonfarm payroll employment will grow at a lower rate of 2.2 percent in 2016 as compared to 2.8 percent in 2015. Regardless, unemployment will shrink to 6.3 percent for the 2015 and to 5.5 percent at the end of 2016. Personal income will increase at a 4.5 percent in 2016 versus a 4.3 percent in 2015 (Young 2015). Single family home resale will increase at 6.3 percent in 2016, the same rate as in 2015. Median home prices will increase from $476,300 in 2015 to $491,300 in 2016 (CAR 2015). In the Southern California area, the leading industries will be healthcare and social assistance; construction; professional, scientific and technical services; administrative, support and waste services (LAEDC 2015).

Implications for Small And Minority Business

In summary, U.S. and world economy will continue to recover slowly but steadily from previous years at different paces in different countries. For planning purpose, small and/or minority business should monitor the economic conditions of their primary trading regions carefully and set growth rates of their sales or profits commensurate with the pace of the economic development in those regions.

There are things that small business can do to improve their bottom lines. On top of all, small firms should continuously try to raise their productivity by incorporate information and communication technology in their operation. Secondly, as global warming is expected to cause more extreme weather and natural disasters, the prices of the raw materials are expected to more volatile in the future. Small and/or minority business should carefully plan their requirements of inputs and materials for the coming year to make sure the cost of them are budgeted. Part of the solution could be making their businesses green. By relying less on carbon-based energy consumption, their businesses may be less susceptible to the fluctuation of energy and raw material prices. There are techniques to improve e-commerce, inventory planning, and to make supply chain green. If any business needs assistance, please contact the Center for Minority & Small Business at the University of the West at (626) 571-8811, ext. 380.

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About the Author

Dr. Otto Chang is a reputed accounting and business educator with specialty in several areas, including taxation, management and international accounting, business ethics and philosophy, corporate governance and social responsibility. Born in Taiwan of Asian Heritage, Dr. Chang attended National Taiwan University, receiving a bachelor degree in Economics. He came to University of Illinois in 1978 to complete his Master and Ph. D. degree in accountancy. He taught at the University of Wyoming, Texas Christian University, and California State University at San Bernardino (CSUSB). He was the Chair of the Department of Accounting and Finance, Associate Dean for Administrative Affairs at CSUSB, and Dean of the Doermer School of Business at Indiana University-Purdue University Fort Wayne.

Throughout his educational career, Dr. Chang received numerous awards and recognitions for his outstanding teaching, excellent research, and dedicated service to the community. His professional activities include more than forty-five publications; some of them appear in major academic journals, such as Journal of Accounting Research, Journal of American Taxation Association and Management Accounting. He is often called upon to conduct professional workshops to top-level management from all over the world and serves as consultant to several major firms in the United States and China.

Contact Info:
Otto Chang, PhD,
Professor of Accounting
Doermer School of Business
Indiana University-Purdue University Fort Wayne
260-481-0219; chango@ipfw.edu

Foreign Corrupt Practices Act: Are US Firms at a Competitive Disadvantage?

By: Loren Cargile, MBA, and
Peng Chan, PhD

ABSTRACT

The Foreign Corrupt Practices Act (FCPA) was passed in 1977 in response to allegations of widespread bribery of foreign officials by American companies in order to win business in international markets. However, other countries, especially emerging markets, do not view corruption the same way as the US. Therefore, the global playing field is not even. This study seeks to examine whether the FCPA puts US firms at a competitive disadvantage when it comes to global expansion. The research also examines the type of actions that are acceptable within the scope of FCPA as well as the strategic entry options that are available for US firms to enter markets where corruption is rampant.

Introduction

Corruption can be broadly defined as the abuse of public power for private benefit (Rodriguez 1). Certain countries and cultures have accepted corrupt practices as a necessary means to accomplish business or personal objectives. For example, in 2010, Afghan people paid approximately $2.5 billion in bribes, and almost half of the population had given the government kickbacks (Johnson 1). During the 1970s, the Securities and Exchange Commissions conducted a series of investigations on American firms and discovered over 400 US companies had paid in excess of $300 million in illegal payments to foreign officials (US Department of Justice). In response to the findings, the US Securities and Exchange Commission created the Foreign Corrupt Practices Act (FCPA) of 1977, which was designed to prevent American firms/individuals from engaging in corrupt activities when conducting business internationally. The act allows the Department of Justice to impose penalties up to $2 million per violation or twice the amount of any gain or loss against companies, and $250,000 plus up to five years in prison for individuals (Norton 5). Whether corruption is considered morally or ethically unacceptable is a question that can have relative answers based almost entirely on how certain cultures throughout the world have evolved. To add to the complexity, a grayer area exists in what constitutes corruption in different countries. For example, *guanxi* is a Chinese term used to signify personal connections with instrumental figureheads to ensure favorable business treatment. *Guanxi* can range from "strong personal loyalties to ceremonial bribery." (Xin and Pearce 2) Regardless of other countries' perceptions of corruption, the United States government has established a strict stance against corrupt practices, which directly affects American firms conducting business in foreign countries. Why is the FCPA an important topic to address? It is important because American firms that desire to expand into international markets are held to more restrictive standards than non US-based companies. The potential problem for American firms is that they are at a competitive disadvantage when entering foreign markets where corruption is not viewed as harshly compared to the United States. The purpose of this study is to determine if the FCPA truly does put American firms at a competitive disadvantage when expanding internationally. Additional research questions to be answered in this study will include: 1) what actions are acceptable within the scope of the FCPA? 2) what mode-of-entry options are available for American firms to enter foreign markets where corruption is present?

Factors of Corruption

Globalization and advancements in technology, communications, and logistics have paved the way for a myriad of multinational corporations (MNC) to operate in multiple countries throughout the world. As an MNC ventures into a new market, several factors must be evaluated to determine market potential, including: cultural standards/traditions, economic conditions, type of government, and existing infrastructure. With respect to levels of corruption, there are notable factors that influence corrupt activities. A study published in the *Strategic Management Journal* in 2004 observed that corruption is influenced by changes in the amount of foreign direct investment, cultures with high levels of uncertainty avoidance, and nations that place a high emphasis on masculine values (Robertson and Watson 9). Countries with governments that have considerable influence and control over key resources can be challenging to enter as a foreign company due to the complexity of navigating through an entrenched bureaucratic system. Bribes, grease payments, kickbacks, etc. can often times expedite these processes and/or facilitate favorable treatment in the host country. Additionally, certain business practices that are customary and seemingly harmless in some cultures are viewed questionably through the lens of the FCPA. For instance, in China, treating a State Owned Enterprise (SOE) executive or government official to a lavish meal has become customary in the Chinese culture prior to engaging in business activities—it is a "tradition" that signifies respect for the authority figure. Even though this type of activity is considered a custom according to the Chinese culture, it could be viewed negatively within the scope of the FCPA; in turn, US companies doing business in China must delicately balance the need to establish rapport with key figureheads while avoiding a violation of the FCPA.

Economic Impact of the FCPA

Since the passage of the FCPA in 1977, many executives have criticized the regulation for putting American firms at a competitive disadvantage. Other larger trading partners throughout the world are not held to as restrictive standards at the US because of the FCPA, thereby potentially making it more challenging for American firms to earn contracts in foreign territories. To illustrate, a study by the Department of Commerce estimated that American firms lost out on approximately $4.5 billion in foreign contracts between April 1994 and May 1995. The study further concluded that bribing firms earned those contacts approximately 80% of the time. In 1995, an empirical study was released by a professor from the John F. Kennedy School of Government at Harvard that examined multiple macroeconomic indicators in 35 countries after the five years that followed the enactment of the FCPA, including: foreign direct investment, joint venture activity, and aircraft exports. With respect to foreign direct investment, corruption indicators and economic indicators were evaluated in a five year regression model. The data demonstrated that there was a decline in foreign direct from US firms into high growth, corrupt countries during the 5 years that followed the passage of the FCPA. In conjunction with this trend, the data also demonstrated that foreign direct investment by American companies into less corrupt, high-growth countries increased during the same time period. With respect to joint venture activity, the study examined property, plant, and equipment (PPE) growth across multiple countries over a five year time period. The data illustrated that US investment of PPE, which is linked to foreign direct investment, decreased in high-growth corrupt countries and increased in high-growth, less-corrupt countries. In analyzing aircraft exports, the study examined worldwide aircraft exports during a five year time period and then contrasted that data to all US exports (to take macroeconomic trends into consideration). Aircraft exports were selected as a variable for the study due to the large contracts associated with importing and exporting countries. The data demonstrated that US exports of aircraft products to corrupt countries declined by approximately 21.2% while exports to less corrupt-countries declined by 6.4%. This data suggests that the enactment of the FCPA may have had a direct impact on the decision-making of US firms engaging in business with high-corrupt, high growth countries.

The FCPA and Sarbanes-Oxley Act

After the massive accounting scandal and bankruptcy of Enron Corporation in the early 2000s, publicly traded US companies became subject to even greater oversight and more restrictive financial practices. The Sarbanes-Oxley Act, a byproduct of the Enron scandal, forced companies to become more transparent with accounting practices and disclosures. With increased oversight, US companies with operations and subsidiaries in foreign countries became more at risk for non-compliance if local agents were engaging in potentially corrupt activities. Off the book transactions conducted by local representatives to gain favorable business advantages, while still illegal per the FCPA, posed an even greater risk for parent companies in the US after the passage of the Sarbanes-Oxley Act. Prior to Sarbanes-Oxley, companies were not required to rotate lead partners from accounting firms; after the act was passed, however, companies become required to rotate lead partners from accounting firms every five years. This change, which directly addressed the corrupt practices by Enron, decreased the likelihood accounting firms would overlook off the book transactions during audits. With a greater amount of scrutiny, certain activities such as entertainment of foreign officials drew more attention to potential violations of the FCPA. As discussed earlier, certain countries have traditions that essentially require foreigners to entertain local officials to create a rapport. For China it is *guanxi*. The practice may have different names or take different forms in other countries, but is virtually essential to engage in these "rapport-building" activities to form business relationships. With Sarbanes-Oxley, and the FCPA, US firms have to be extremely cautious with entertainment expenses for foreign officials, even if certain activities are essential to earn business.

Increased Costs of Doing Business

The FCPA inherently increases the costs of doing business for US firms in foreign countries due to the amount of procedures, compliance programs, and monitoring needed in order to eliminate corrupt activities. The following are procedures and programs recommended by HG.org, a global law resource organization, to mitigate risks of violating FCPA regulations:

- Create a corporate policy
- Adopting implementation procedures for enforce FCPA standards
- Communicate with and train employees
- Have procedures in place to take immediate action of the company is alleged to have violated FCPA regulations
- Review FCPA matters regularly

Creating the aforementioned policies and procedures requires resources such as time, capital, legal counsel, and possibly consultants to ensure these initiatives are effective. Monitoring the effectiveness of these programs and training employees require additional resources that do not translate into revenue generating activities. From an economics perspective, FCPA compliance is a recurring sunk cost for US companies. Acquisitions of foreign-based firms can create challenges due to retraining of employees and instituting FCPA-compliant procedures. If valuable resources such as time and money are allocated towards compliance with a law that not only countries are held to, then that places US firms at a competitive disadvantage with respect to costs of doing business in foreign countries.

Notable Violations of the FCPA

To illustrate the case of attempting to gain favorable business treatment, one can observe the "Bananagate" incident in 1974, in which United Brands bribed the President of Honduras $2.5 million to revoke a tax that doubled the export cost for bananas. The FCPA also governs relationships such as foreign subsidiaries and agents located in the host country. A notable example is the case with Invision Technologies, a supplier of explosive detecting equipment and subsidiary of General Electric. In 2004, Invision paid $800,000 in fines after the Department of Justice determined Invision was aware of a high probability that "a number of its agents or distributors in the Kingdom of Thailand, Republic of Philippines, and the People's Republic of China, had paid or offered to pay certain foreign officials to get its equipment installed in airports." (FCPA Reporting Center) Relationships with local agents and third party distributors will be discussed further in the *Managerial Implications* section of this study. A more recent (and pending) violation involved Wal-Mart and its subsidiary Wal-Mart de Mexico. The Mexican subsidiary allegedly paid more than $24 million in bribes to local officials to obtain permits for new store sites. There is uncertainty whether top executives at the Wal-Mart corporate headquarters were aware of these transactions; irrespective of whether top executives were aware of these transactions by their foreign subsidiary, Wal-Mart will still be held liable for violating FCPA regulations.

Costs Associated with FCPA Violations

The Department of Justice defines the monetary ramifications for violating the FCPA; however, what other costs can be incurred by a firm who has violated this regulation? In 2008, Avon Products, the world's largest direct sales cosmetic company, was audited for questionable entertainment and gift expenses made to Chinese officials to obtain licenses to sell products door-to-door. According to one report, the investigative costs alone in 2009 and 2010 were estimated to be nearly $130 million (Corporate Compliance Insights). In a more dramatic incident that concluded in 2009, Halliburton pleaded guilty to facilitating approximately 180 million in bribes to the Nigerian government with hopes of obtaining an estimated $6 billion energy contract. Consequently, Halliburton paid the US government a total of $402 million as a criminal fine and also paid the Nigerian government $35 million in fines, which included $2 million legal fees. A separate, but related, question worth examining is: what is a company's exposure if compliance programs are in place but employees voluntarily ignore compliance protocols and engage in corrupt practices? Currently, the FCPA does not have a compliance defense clause, which would allow a firm to be relieved of liability associated with employees voluntarily engaging in corrupt practices.

FCPA and the OECD

If there is any savings grace for US companies that believe the FCPA regulations place them at a competitive disadvantage, it is the Organization of Economic Co-operation and Development (OECD). This organization was formed in 1961 with the intent of creating fair, unified, and democratic practices for countries doing business in the world economy. In 1998, the OECD created the Ant-Bribery Convention, which echoes principles similar to the FCPA. The OECD cannot enforce compliance with anti-bribery provisions; instead, the OECD reviews legislations from its respective members and measures the effectiveness of each member's policies. Participating countries are ultimately responsible for enacting legislation that criminalizes corrupt practices. While there are currently 39 countries that participate in this convention, there are some notable countries that have yet to become members, including the two most populous countries in the world: China and India. Other non-members include many Middle East countries such Afghanistan, Iraq, and Iran. A noteworthy accomplishment for the Anti-Bribery Convention was the inclusion of Russia in 2012, which ranked 143 out of 182 in the 2011 Corruption Perceptions Index (1 being lease corrupt).

Managerial Implications

Managers and executives of US-based companies need to be very cognizant of the activities occurring in foreign markets where they already have a presence or are striving to establish a presence. For countries where bribery and other forms of corruption are viewed as generally acceptable practices, US-based firms have to be extremely cautious in engaging with these countries. Understanding the nature of corruption within new markets will allow a firm to choose the appropriate entry strategy. In a study published in the *Academy of Management Review*, three authors examined two factors of corruption that they determined were necessary to comprehend before entering a new marketing: arbitrariness and pervasiveness of corruption. The authors furthered arrived at the following conclusions: 1) firms will likely choose an arms-length investment approach (e.g. joint venture) when the arbitrariness of corruption is high, 2) firms will likely enter a new market via a wholly owned subsidiary when pervasiveness is high, 3) firms are more likely to engage in corruption if pervasiveness is high. The last conclusion is contingent upon a firm's prior reputation for ethical behavior and stance on corrupt activities. If a firm chooses to enter a market via some form of a direct investment (e.g. joint venture or wholly owned subsidiary), then the US-based firm needs to monitor the actions of its local subsidiary since parent companies can ultimately be held liable for a subsidiary's actions (e.g. Wal-Mart in Mexico). Is it possible to have a fully compliant organization from the ground level employee to upper management? No; however, proper training programs along with education about repercussions related to FCPA violations could help reduce corrupt activities. Tying back to modes of entry, it is imperative that US-based firms evaluate the cultural standards and societal norms before entering a new market. Understanding local cultures will, among other considerations, help management determine the best mode of entry. For example, if a US-based athletic equipment firm decides to enter India via a joint venture with an Indian firm, then the US firm should perform exhaustive due diligence on the Indian partner to ensure compatibility with corporate compliance standards. Furthermore, any agents affiliated with the parent company need be to properly trained on how to comply with FCPA standards.

Conclusion

The opinion of what is right and wrong is typically relative to one's culture; the desire to want more, however, virtually transcends all cultures. The old adage "There are multiple ways to skin a cat" has relevance to how individuals conduct themselves relative to accomplishing tasks/goals. Within the context of business, an individual could pursue a route that others feel is "corrupt," yet that individual may have personal beliefs, shaped by cultural beliefs, that his or her actions are perfectly acceptable. Ethics and morality aside, corrupt actions are simply a means to an end. Unfortunately for US-based companies, the United States government has taken a stance against certain activities deemed as "corrupt." Does the FCPA serve to fulfill a higher purpose other than the advancement of capitalism? Possibly. Regardless of its purpose, however, the FCPA does place restrictions on how US-based firms can conduct business internationally that other countries in the world do not have to adhere to. Not only are certain actions prohibited, but the cost of doing business is higher for US-based companies. Ultimately this puts US firms at a competitive disadvantage compared to foreign-based companies in countries without an FCPA-equivalent law. As discussed earlier, the OECD Anti-Bribery Convention may be the saving grace to equalize the playing field for US firms. The inclusion of historically corrupt countries, such as Russia, does help place US firms at less of a competitive disadvantage; however, the membership of historically corrupt countries is only as good as the agencies responsible for enforcing anti-bribery regulations. The Department of Justice has proven it is not shy to indict firms that have violated the FCPA. If members of the Anti-Bribery Convention emulate the aggressive stance of the US government, then the competitive disadvantage for US firms will diminish over time.

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About the Authors

Loren Cargile, MBA, is an associate with VOIT Real Estate Services, a company that helps fulfill commercial real estate needs in the Orange County and Los Angeles markets.

Dr. Peng Chan is Full Professor of Strategic Management at Cal State Fullerton. He obtained his Ph.D from the University of Texas at Austin. His research interests include strategic management, franchising and global business.

The Five Steps of Competency Modeling

By Murray Johannsen, MBA

"All the worlds a stage,
And all the men and women merely players:
They have their exits, and their entrances."
And one man in his time plays many parts."
Act II, Scene VII, *As You Like It*, by William Shakespeare

Overview

You can choose to be a bit player on the stage of work or a superstar, be it in the field of entrepreneurship or employment. But to be a star, you will want to learn competency modeling.

Competency modeling is robust process used to define critical skill-sets required for a particular role. The beauty in this technique lies in the fact that you can:

a. Improve current work performance, while
b. Preparing for that next big work role.

The Five-Steps of Competency Modeling

Step into the future by following this robust five-step process. The first four focus on crafting the right strategy, the last step is all about execution.

Step 1. Define Your Vision and Work Roles

This step focuses on both current and future roles. Many find the most difficult aspect of this phase of the process is developing a clear understanding of what one wants to do in the future. This is where it's helpful to have a mentor and a guide. And that means developing a vision focused on:

Your Current Role. It's been said many times that, "The best predicator of success in a future job is your current one." This is the overriding belief held by managers who have the power to promote. From their standpoint this makes perfect sense; if you're marginally competent in the current job, surely you will join the ranks of the incompetent in the next one.

Your Next Role. Thinking, "I'll get the training I need after I get the new position," means you won't get the new position. The last thing any manager wants is to wait six months for the person to get up to speed. You must have developed the critical skills needed for your next job before it's offered to you.

Your Dream Role. The means you must have a vision. Think big. Think about what you would like to do in twenty or thirty years. Reach the c-level? Have your own business? Get executive pay without working executive hours?

Step 2: Understand Your Organization's Business Model

You might say, "Well, I'm not an executive or entrepreneur, why is a business model important to me?" It's been said that entrepreneurial start-ups must discover a workable business model while established organizations already have one (Blank, 2010).

Understanding the business models helps you to develop the mind-set necessary to understand the big picture. You don't need a b-school degree, but you do need to understand the essence of how the organization generates revenues, expenses and earnings if you are to prosper.

Step 3. Determine Your Skill Sets

"The door of opportunity frequently opens for those best prepared to walk through it." — Murray Johannsen

Katz (1955) defined technical skills as, "The knowledge of methods, processes, procedures, and techniques for conducting a specialized activity, and the ability to operate tools and equipment."
Every job, no matter how simple, requires technical skills of some type since all require the use of tools and working with machines. This definition applies to many two and four-year college degrees, and what is learned in apprentice programs.

Some examples of technical education include degrees in scientific or technology areas such as engineering and its specialties, molecular biology, forensic pathology, accounting, lab technicians of all types, and medical specialty areas such as cardiology. Typical trades requiring specialized technical expertise include: plumbers, welders and CNC operators. But the technical area does not always require a high level of education and training since janitors, window washers, and maids also use tools.

Technical skills can become obsolete. As anyone who is in the electronics can attest, their knowledge has a limited shelf life. Also, not all technical skills are equally in demand. One of the prime mistakes high school grads and college students make is not understanding the value society places on different technical skills. Some appreciate in value (programmers), while others are in decline (telephone operators and secretaries).

The Importance of Technical Skills at Work

Most people get their first job based on their technical skills (unless one happens to be the daughter of the owner, but that is another story). These jobs include traditional jobs such as software programmer, engineer, hair dresser and machinist; to more exotic ones such as web master, systems integrator and beauty consultant. In fact, the U.S. Labor Department's *Dictionary of Occupational Job Titles* contains thousands of jobs requiring technical skills.

Also as someone climbs the organizational ladder, technical skills become less important relative to conceptual or human relations ones. For example, executives rarely solve technical problems; but they do need to understand the application and nature of the technology. This means that good managers can run IT departments without having a technical degree.

The Trap of Technical Skills

Too many individuals never develop any skill-sets beyond their technical ones. There are accountants who only know how to navigate a balance sheet and income statement. Lawyers who never evolve to outside of the law to grasp the business model. Janitors who never learn much beyond how to keep things clean.

Another trap is specialization. The more specialized you become, the smaller the job pool. It is great that one is an expert in reliability engineering, but how many jobs are there that require this expertise? A related problem is that specialization traps one in a specific industry. Once you are in industry more than ten years, it's difficult to get out.

Conceptual Skills. Katz defined conceptual skills as:

- General analytical ability,
- Logical thinking,
- Proficiency in concept formation
- Conceptualization of complex and ambiguous relationships,
- Creativity in idea generation and problem solving,
- Ability to analyze events and perceive trends,
- Anticipate changes, and
- Recognize opportunities and potential problems."

These are mostly learned, but contrary to popular belief, they are not learned in college under the label of "critical thinking." A cynic might define critical thinking as the ability get to get an A by writing a scholarly paper no one except a professor will read. The key understanding here is that many conceptual skills are based on context; therefore, they must be learned on the job.

When the quality movement begin to blossom in America during the 80s, one of the conceptual tools taught to employees were the Seven Tools of

Quality. These were really very simple techniques such as flow charting, control charts, cause and effect diagrams and Pareto analysis. When used routinely throughout the organization, these basic conceptual tools allowed companies like GE, Motorola, Toyota and Sony to develop a reputation for high quality that resulted in better profit margins.

Human Relations Skills. This key skill area is defined as:

- Knowledge about human relations and interpersonal process,
- The ability to understand feelings, attitudes and motives of others from what they say or do (empathy, social sensitivity),
- Ability to communicate clearly and effectively (speech fluency, persuasiveness), and
- Ability to establish effective and cooperative relationships (tact, diplomacy, knowledge about acceptable social behavior).

One would think that human relations skills would be high on everyone's skill build list, but a fair amount of people neglect it completely. And most college degrees neglect it completely. Sad to say, if you transition from being a technologist to being a supervisor, it's a lack of human relations skills that typically cause you to lose that position.

One would hope that executives would possess stellar human relations skills. Many do, but a fair amount don't. Between 1980 and 1993, *Fortune* Magazine ran a series of articles under the label of the, "*Ten Toughest Bosses in America*." These CEOs were tolerated since they get bottom line results, even as employees suffer through the excessive turnover they typically produced. You often saw a persona where they are affable enough toward outsiders; but by most accounts, acted like unholy terrors when dealing with subordinates.

Katz has a model that is both important to understand and apply. It's a useful conceptual model that works for anyone who wants to work and serve as a good foundation for those getting started. But for those that wish to get to the top of the pyramid, the Core Five offers better insights into what competencies to build and maintain.

The Core Five model (Johannsen, 2015) and its associated assessment serve as a guide to personal development for those who are who desire get to the c-level or for the entrepreneur who wants to run a bigger company. It's designed to help individuals understand their strengths and correct their weakness.

Some of these domains are very close to Katz who wrote a classic article on the subject, but others are quite different (See the summary table below).

Katz' Administrative Skills	**The Core Five**
Human Relations	**Leadership**
Technical	**Technical**
Conceptual	**Strategy & Tactics**
	Management
	Self-Mastery

Leadership. Rather than using the general term human relations, the Core Five uses the term leadership. Entrepreneurs and executives have extremely important leadership roles, whether they perform them or not.

Technical. Technical stays as technical. Technology is still a tool, whether it is a hammer, a WIFI network, a gun or a syringe. Throughout one's career, one will need to update technical expertise

Strategy and Tactics. The conceptual domain shifted slight to Strategy and Tactics, a term borrowed from the military. Nothing wrong with being a theory wonk writing research studies few will read in a think tank or a professor if you want to occupy a desk in a university. But it's the ability to execute that makes for a great entrepreneur and executive.

Management. In the Core Five, the management domain was added, a major omission in the Katz model. It is pretty much impossible to be an executive or entrepreneur without the ability to manage. The b-schools have a point, organizations, projects, process, resources, and money need managers.

Self-Mastery. The fifth skill-set in the Core Five is self-mastery. This was added to address major blind spots in most people. And if they know their weaknesses, they are clueless about how to decrease them. In some respects, this is the most important of all. For how can one achieve success if one possess numerous weaknesses or heaven forbid, a fatal flaw?

For example, a college student must learn to manage time, develop self-discipline, get good at certain elements of information technology, etc. Prior to graduation, the really smart ones execute a job search strategy and had developed the communication skills necessary to get through an interview.

Of course, once college students graduate, they must start the skill development process all over again. For example, at the university they learn a skill called writing a research paper. However, in corporate America, rain will fall in the Sahara about as often as you will write in scholar English a research paper with citations in the APA style in 12 pt Times.

Sadly, many students lack the skills employers want and so graduate into a time of being unemployed or underemployed (Selingo, 2015).

Step 4. Define Strengths and Weaknesses For Each Role

"You get hired because of your strengths, fired because of your weaknesses." — Murray Johannsen

If you plan on having the same role the rest of your life, stay with your existing strengths and don't worry about your weaknesses (Rath, 2007). For example, an artist can focus exclusively on their art, making a God-given talent even stronger.

However, if you see yourself as an unfinished work, as someone who doesn't want the same job for 30 years, as a person who wants to move up the ladder of success, you better work on those weaknesses.

This is where assessments, a mentor, or a coach comes in handy — it's vital to get feedback from an expert. They can provide specific details only someone who really mastered a skill is capable of knowing.

If in doubt about proficiency, put a skill into the weakness category. Also, some skills are so important that you never take them off your weakness list. An example is certain verbal communication skills.

Remember, if you are starting something new and you don't think you have any weaknesses, your head is not screwed on straight.

Step 5. Build Knowledge and Skills

Some things are just nice to know. Quantum physics and astronomy come to mind. However, from a practical standpoint of making a living, you must continuously build application skills. Application skills can be physical or mental; the point is that they can be used in the real word. For example, many once knew geometry and algebra, but few, very few, use it in their jobs.

Besides a focus on application skills, it's really important to perfect the skill of building skills (Johannsen, 2015). This breaks out into:

Skill-Based Learning. There is a theory to learn on how to learn. And it wouldn't hurt to understand smart practice.

Mastery Practices. There are five of these: self-talk, visualization, meditation, reflection and mindfulness. For accelerated learning of skills.

Summary

The right mix of application skills prevent you from getting fired and improves your likelihood of success. But to know what skills to build, it is helpful to go through the process of competency modeling.

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About the Author

Mr. Johannsen serves as a management instructor and adjunct professor at UCLA, The University of the West, Woodbury University; and in Asia teaches at Korea University in Seoul. Murray Johannsen teaches in the areas of entrepreneurship, leadership, management, and psychology. He holds both an MBA from the University of Iowa and an MA in Psychology from Harvard University.

Feel free contact the author through email or via Linkedin.

info@legacee.com
https://www.linkedin.com/in/murrayjohannsen

Hypocrisy, Ethics, and Deception in Chinese/American Cross-Cultural Business Negotiations

Steven J. Clarke, PhD and
Peng Chan, PhD

Abstract: *The formation and evaluation of hypocrisy, moreover moral hypocrisy is synonymous with deceit, deception, lying, fraud, unethical, dishonest, and misrepresentation of information, all leading to bad faith or mistrust. This paper endeavors to dissect key elements of motivation and relative issues influencing the use of deception and/or morally hypocritical behavior in cross-cultural negotiations whether a result of cultural diversity and/or ethical relativism. These divergences are magnified when comparing the cultural multiplicity between Chinese and American business negotiators. Because cross-cultural negotiations are divergent and pivotal in strategic alliance development, such questionable conduct of deception and hypocrisy suggests a current gap in the critical knowledge of ethical interactions during Chinese and American negotiations, currently leading to a significant high rate of failure in negotiations. As a result, motivating potential researchers to close the breach, by way of theory development, by pinpointing for future inquiry, poses the following questions: What role do Sun Tzu's Art of War and Confucian teachings have in cross-cultural ethical negotiations strategy? How does Sun Tsu and Confucian ethical teachings relate military strategy and business strategy? To what degree does deception affect military strategy in an unalike way than business strategy? Are hypocrisy and/or deception therefore inherently present in Chinese/American cross-cultural business negotiations creating an imbalance?*

Keywords: *hypocrisy, deception, moral hypocrisy, ethical relativism*

Introduction

"China is a society in search of virtue instead of truth" Geert Hofstede

The two Chinese characters, Fu (復) and Dan (旦), literally mean, "Heavenly light shines day after day". China, throughout most of history, as recently as 150 years ago, was the largest global economy. Then Deng Xiaoping spawned the march towards a reappearance back to the zenith, as China continues to "shine", whereas The World Bank projects China will overtake the United States as the world's largest economy in 2015 (Stiglitz, 2015). At the current level of GDP per capita, China is already the largest market in the world for numerous consumer products including cars, and voluminous luxury goods; and consumer services, comprising agriculture, health care, technology, and financial services. With another doubling of China's GDP projected over the next 10 years, the market for these consumer goods and services will be unmatched in global economic history, founded on an additional 750 million people joining the domestic consumer demography (Forbes, 2012). The opportunities for expanding business in China by foreign and in particular, US corporations appear unlimited, incorporating factors such as: (a) a large and capable workforce; (b) and entrepreneurial culture; (c) a strong university system; and (d) exponentially growing middle class. However, challenges exist including: (a) lack of raw materials; (b) environmental issues; (c) immorality and corruption; (d) income inequality; (e) social stability; and (f) legal issues (McFarlan, 2008). American executives recognize that Chinese business negotiators are arduous and can be a traumatic and stressful endurance test. Chinese negotiating strategies and tactics have been depicted as being analogous to guerrilla warfare: "Strike hard, retreat, seize a position, reject compromise, and strike again" (Brahm, 2011, p. 22). "Deep cultural differences have created seemingly incompatible contrasts between Chinese and Westerner's approaches to negotiations" (Graham & Lam, 2003, p.2). "Yes" in China may be the first word of the negotiation or agreement nonetheless is not always the last word in negotiations. "Yes" is often simply another way of saying, "Let's begin to talk seriously". American culture is goal-oriented. Negotiations are straightforwardly a progression through which the final goal-the contract-is reached (Brahm, 2011). Success in cross-cultural business negotiations between Chinese and American managers is dependent on understanding the cultural diversity and perceptual elements of ethical attitudes and business strategy. Chinese often see Americans as aggressive, impersonal, and excitable, while Americans see Chinese as inefficient, indirect, and even dishonest (Akgunes & Culpepper; 2012; Graham & Lam, 2003). Research reflects that the perception by westerners of Chinese are that they are more likely to consider it appropriate to use ethically inappropriate negotiations strategies as compared to western ethical strategies creating uncertainty, ambiguity, and an imbalance in cross-cultural business negotiations (Ma, 2010). Is this the result of Chinese negotiators employing military strategies of Sun Tzu, or social and ethical elements of Confucian theory? In addition, is Sun Tzu strategy and Confucian teachings ethically compatible? In either case, does this necessarily lead to hypocrisy or deception? China is a vast land; dynamic, ethnically diverse, and growing economically suggesting cross-cultural negotiations are complex instead of stereotypical, and require future research for promising abundant market opportunities successful outcomes.

Hypocrisy and Deception

"Wouldn't the social fabric come undone if we were wholly frank with everyone?" Molière

Hypocrisy, from the Greek word hypókrisis, is described as "play acting", ruminated as an antediluvian art, and the original Hypocrites were, in fact, classical stage actors. For hypocrisy is not simply lying – that is, a non-coincidence with the truth. Hypocrisy is, rather, a question of character, or better still, a question of whether the persona constructed, the role one plays, provides a false impression of one's actual beliefs and practices. The practice of claiming to have higher standards or more noble beliefs than is the case (Oxford Dictionary, 2015). Furthermore, hypocrisy is "the assuming of a false appearance of virtue or goodness, with dissimulation of real character or inclinations, especially in respect of religious life or beliefs; hence in general sense, a pretense, or sham" (as cited in Monin & Merritt, 2010). To sum up, hypocrisy is synonymous with deception, unethical, dissimulation, dishonesty, bad faith, guile, phoniness, duplicity, fraud, and trickery (Dictionary.com, 2014; Thesaurus.com, 2013).

Double standards, or the development or expansion of a working definition of hypocrisy beyond a behavioral inconsistency is offered by Monin and Merritt (2010). Where "not practicing what you preach" is how Stone & Fernandez (2008) define hypocrisy, the authors contend, hypocrisy also mingles inconsistency, and deception with dishonesty. Individuals can be moral hypocrites, additionally, cultures can support various psychological devices; As a rule, human societies are unequal (Leavitt, 2005; Magee and Galinsky, 2008); that enable cultures to substantiate and rationalize their own immoral and unethical behavior (Bandura, 1999; Bandura, Barbaranelli, Caprara & Pastorelli, 1996; Valdesolo & DeSteno, 2007).

Another approach to understanding the role of hypocrisy and deceit in cross-cultural negotiations offered by Lammers, Stapel, and Galinsky (2020) suggests we explore the ethical failures in negotiations because of the decision to trick, fraud, withhold, or misrepresent facts, details, and/or overall information. Their underlying assumption was that doing so, is not mutually beneficial and/or does not builds trust, and is destructive towards the long-term relationship and joint success. A key element of their study was the enablement of the negotiators to enhance their power position while increasing their personal success by misrepresentation as a strategy. The study utilized Hofstede's high and low power context methodology. The major conclusion of this slant is that trust and deception had a negative impact on negotiations, leading to bad faith, distrust, and the appearance of hypocrisy, also resulting from in-equality of social groups of varying degree of power. Analysis of contrasting negotiation strategies between Chinese and American business executives obliges cultural foundations of honesty. The problem of culturally dissimilar perceptions of ethical honesty and hypocrisy between Chinese and American business managers during negotiations is informed by a conventional theory that Chinese are motivated by Sun Tzu (War is the path of deception) and Confucian strategies of negotiations as a zero-sum, correspondingly, as a competitive win-lose game, and that the marketplace is a battlefield. Americans are bound by modern adversarial, aggressive, win-win, individual and humanistic ethics (Al-Khatib, Vollmers, & Liu, 2007; Ma, Liang, & Chen, 2013).

Ethical Relativism

Ethical relativism is the theory that suggests that different societies have different morality, which is relative to the deep influences of one's own culture, and that are no unanimous moral yardstick. That is, whether an action is right or wrong depends on the moral norms of the society in which it is practiced (Velasquez, Andre, Shanks, and Meyer, 1992, para 4). The issue then becomes, who judges this morality, that is, which culture prevails, as it may be that there is no common framework for different societies relative to resolving moral disputes, or what is then perceived as hypocritical "assuming a false appearance of virtue" in nature. If moral customs and principles vary among cultures, are ethical and moral uniformity even possible as to a universal definition? Can it then be a requirement? Is it then even possible in Chinese/American negotiations? Around 2500 years ago, the philosopher Socrates debated the question with his colleagues. Socrates' stance was clear: "Ethics consists of knowing what we ought to do, and such knowledge can be taught" (Velasquez, Andre, Shanks, and Meyer, 1987, para. 2). Would not Socrates encourage us to explore the reasons underlying each other's ethical values, and teach ourselves and each other, how to best negotiate for mutual success?

Moral Hypocrisy

What are the intrapersonal incongruities between what negotiators think is moral hypocrisy as an adaptive strategy, and how they comport themselves based on their views. Research by Wu and Shu-Ling (2012) provide one interpretation, which is the assumption that moral hypocrisy is a combination or blend of cognitive dissonance, psychoanalysis perspectives, deceit, and self-deception, resulting in attitude or behavior modification. Further, moral hypocrisy is then fashioned by perceptions and judgement, entailing emotions, power, consistency, and other greyed variables. Wu and Shu-Ling tends to confirm the element of cross-cultural perceptions relative to hypocrisy and deceit, which result in judgement and behavior that influences attitude resulting in lesser trust and leading to bad faith. Potential research on moral hypocrisy needs to be done from Chinese and American perspectives, such as emotional intelligence and cultural variables.

Emotion

Another element of hypocrisy incorporates the stimulus of emotion; how it influences moral judgement and honesty. Starting with another view of hypocrisy as that of "personal double standards", with an explanation of differences between immoral behaviors that are done by others, versus those done by ourselves as recounted by Polman and Ruttan, R. (2012). A key element of this study suggests that while significant literature has been developed on the subject of moral judgement, much less so, concerning emotional influences affecting moral behavior. Assumptions include the element of emotional ubiquity in social and moral activities, including anger, guilt, and envy. The contribution that can be derived from analysis comprises and highlights the importance of emotions in ethical judgement during Chinese/American negotiations in an effort to develop cultural theory as to what these emotions are, why they occur, and how others might adjust or deal with these strategies, tactics, planned or unplanned for.

Language

Additionally, language plays a role in the assessment of hypocrisy as it is a primary delineator of cultural groups because it is an important means by which a society's members communicate to each other. Language organizes the way members of a society think about the world, and it filters observations and perceptions and thus affects the unpredictable messages that are sent throughout cross-cultural negotiation, and provides clues to cultural values and attaches to acculturation. (Griffin and Pustay, 2013). Additionally, translation is more than a simple substitution of words, but requires sensitivity to sub-titles, connotations, ideas, and body language. "The use of language to deceive appears to be a universal human trait. As Molière suggests, a world of absolute transparency and frankness would probably be unbearable. People find many reasons to conceal truth. Some of those reasons might be considered legitimate while others not, and judgments about the legitimacy of any particular deceit often are themselves contestable" (as cited in Bukovansky, n.d.). "A supreme moment in the life of Confucius: When asked the ultimate political question, if elected, what will you do first? Confucius replies; Correct language! Correct language, Tzu Lu queries - what are you saying? What a stupid questions Confucius retorts: A chün tzu never speaks when he is in ignorance. If language is inaccurate then hypocrisy abounds; if hypocrisy abounds then nothing is completed; if nothing is completed then ritual dies; if ritual dies then law is unjust; and if the law is unjust then the people have not on to trust" (Kramer, 1986, p. 103-104). If Chinese and American cultures have different values and moral principles, which require significant continued investigation, we are able to develop theory, learn, and clarify how to help resolve disputes in our cross-cultural negotiations.

Approach and Specifications

The goal for this study is theory development towards cultural elements of hypocrisy and deception in cross-cultural Chinese and American business negotiations, and establishing the agenda for future in-depth phenomenological research. Significant questions for consideration include:

1. What are the perceived differences of hypocrisy and deception in cross-cultural negotiations relative to strategy, with a focus on Chinese "styles" when compared to American "styles"?
2. Do cultural negotiators present a moral inconsistency without essentially feeling like hypocrites or perceived by others as bad faith participants?
3. How does intentional and/or unintentional behavior generate hypocrisy and/or deception, and if it takes place, is it then always immoral?
4. Are hypocrisy and/or deception therefore present in cross-cultural business negotiations, and is it then inevitable?

We need to understand the meaning of hypocrisy, deception, and its foundations if we wish to understand the context of culture and to assess or estimate the power of dishonest dynamisms and the inevitability of the continuing imbalance created in the exchanges between Chinese and American cross-cultural business negotiation styles. Chinese or American cross-cultural business negotiations individually are not right, or wrong, better or worse, ethical or unethical. Respectable scrutiny expects and requires research into diverse cultures as complicated, and not straightforwardly measured by a human scale: excellent, good, not so good, fair, and medium, or below medium, (Rosaldo, 2014).

Sun Tzu and Confucius in War and Business "The Art of Negotiation"

"China is a society in search of virtue instead of truth" Geert Hofstede

In order to investigate further into the contrasting negotiation styles incorporating deception and/or hypocrisy requires supplementary analysis of cultural foundations for business practices and war strategies. Do either or both Chinese and American business executives treat business like a war? Individual theory: Chinese are motivated by Sun Tzu (War is the path of deception) and Confucian strategies of negotiations as a zero-sum, correspondingly, as a competitive win-lose game, and that the marketplace is a battlefield. Alternative theory: Americans are bound by modern adversarial, aggressive, win-win, individual and humanistic ethics. Another theory offered by Fang (2006) suggests the Chinese negotiator does not adhere to one negotiating style but rather incorporates an amalgam of different styles including "Maoist bureaucrat in learning", "Confucian gentleman", and "Sun Tzu-like strategist". In examination of negotiation theories, when trying to contrast Chinese and American culturally relative elements of hypocrisy, deception as to moral and ethical inconsistencies, emerge adjoined questions:

1. Are strategies for war and business tactically identical?
2. Are strategies for war and business ethically identical?
3. Is Confucian philosophy and Sun Tzu compatible with a "war like" cross- cultural business negotiation strategy?
4. Is there an inherent cultural hypocrisy in trying to appear Confucian while negotiating like Sun Tzu?

Sun Tzu "The Art of War" Strategy

Cicero defines war broadly as "a contention by force" In the 1989 movie Wall Street, Bud Fox says, "Sun-tzu: If your enemy is superior, evade him. If angry, irritate him. If equally matched, fight, and if not split and reevaluate" (Cantrell, n.d.). The word strategy comes from the Greek word – stratggos: "stratos" – meaning army, and "ago" (leading, guiding, and moving) – which signifies "the general sought to defeat an enemy".

Sun Tzu's "The Art of War" strategy for business is taught at major universities in China and the United States respectively: Peking University, Shanghai Jiao Tong, Fudan University, Xiamen University, Sun Yat-sen University and more: Harvard & Yale Business Schools, Stanford Business School, Wharton, University of Southern California, Thunderbird School of Global Management, and more. Additionally, the Sun Tsu Art of War Institute (suntzuinstitute.com) founded in 2007, offers Sun Tzu strategic management courses in English and Chinese. Carl von Clausewitz (1968), a Prussian military theorist and author of the archetypal "On War" suggested that business was a form of social competition that greatly bears a "resemblance to war". As a result, business and academia apply Sun Tzu to strategic management, project management, innovative management, quality management, marketing, e-commerce, human resources, organizational behavior, leadership, negotiation, and international business (Dimovska, Maric, Uhan, Durica, & Ferjan, 2012). However, does this mean ancient war strategies, even though dynamic and constantly evolving ought to form current strategic ethical negotiation tactics towards successful cross-cultural ventures?

Conversely, a central question for this research; "is the marketplace a war zone"? Are ethical elements of war the same as those for business, while business "resembles" war? According to Sun Tzu: "War is a matter of vital importance to the State; the province of life or death; the road to survival or ruin" (Sun Tzu, 1971). "War is constituted by a relation between things, and not between persons…War then is a relation, not between man and man, but between State and State…" (The Social Contract). Leaders in the military and business are entangled with competition, and share the issue of how to succeed in the face of resolute adversaries. The basic purpose of business is to make efficient use of capital, labor, and material resources to produce goods and services that meet society's needs and wants. As profound and aggressive as competition among business may be, it is irrational to compare it unambiguously to warfare. Executives and military leaders intensely emphasis creating advantages represented by profits and commercial survival in the marketplace, and victories and physical survival on the battlefield, allowing "life and death" real in war, figurative in business (McCann, 2012), in essence, a different "bottom line". Further, Sun Tzu approaches war with a "shih", the term for "zero-sum", or only leading to victory or defeat. Legitimate business relies on a "win-win" quality. In war, it then follows that the role of deception and lying are within moral limits. Chinese literature is replete with heroic tales that describe and by association, support deception when dealing with inimical opponents and diverse interpretations of what is ethical that is different in social interactions including negotiations (Sebenius, 2006). In business, the unrestricted use of deception and lying as a strategy and/or tactic are inappropriate. The specific military stratagems that reflect tactical degrees of deception from Sun Tzu's 36 stratagems in Appendix A include:

1. "Deceiving the heavens to cross the sea" (mask your real goals)
7. "Creating something out of nothing" (a plain lie)
8. "Creating something out of nothing" (deceive the enemy, take a long time, surprise, and sneak up.

10. "A dagger sheathed in a smile" (Charm and ingratiate yourself to your enemy. When you have gained his trust, move against him in secret)

20. "Catching a fish in troubled waters" (Create confusion and use this confusion to further your own goals)

27. "Pretending to be insane but remaining smart" (Hide behind the mask of a fool, a drunk, or a madman to create confusion about your intentions and motivations.)

"The Art of War makes Sun Tzu's lessons readily transferable to business strategy… The fundamental principles of strategy are the same for all managers, all times, and all situations. Only the tactics change — and tactics are modified to the times" (Michaelson, 2009). Additionally, Sun Tzu offered a military and political view of leadership, which can be applied to business; "Leadership is a matter of intelligence, trustworthiness, courage and sternness" (Cleary, 2000, p. 44). It can be therefore constructed, using the Art of War translation provided by Lionel Giles (1910) with the acknowledgement that Sun Tzu's strategies (13) could adapt mental activities for business level equivalency as seen in Appendix B. These strategies (13) recognize that business is like war in that both are a contest of wills, dealing with efficient use of scarce resources, dynamic and ever advancing, one can conclude that while war and business utilize these mental activities as a way to characterize winning, which is then termed as the process of "strategy". Sun Tzu is ideally suited and valid as to the competitive business global environment (McNeilly, 2012).

However, future research needs to focus on and better understand the *perceptions* of both Chinese and Americans as to the exploitation of Sun Tzu's military strategy as a model for cross-cultural negotiations. To what degree do managers employ ethical behavior relative to deception when tactically implementing Sun Tzu strategies, whether they are defined as military or business? Forthcoming research would also address the level or gradation of ethical transference from military strategies dealing with hostility, to the business strategies application to mutually successful commercial relationships.

"Theory becomes infinitely more difficult as soon as it touches the realm of moral values" Carl von Clausewitz

Confucian Strategy

Confucianism is acknowledged as both a religious and philosophical convention in China, delimited by, Taoism, Chinese legalism, and military strategy. Confucianism and Taoism, for over 20 decades have fashioned the political, economic, and educational systems in China, influencing personal, group behavior, and belief archetypes. "At the center of Confucianism lie relationships" (Rarick, 2012). Confucianism extends to a form of moral ethics and values, is a rational code of interpersonal relationships or connections (Guanxi). Further, Guanxi is based on trust and is rooted in Confucian beliefs (Crombie, 2010), and incorporates the element of reciprocity, defined as the custom of exchanging things with others, influencing, giving, and taking between individuals, for mutual benefit (Oxford Dictionary, 2013).

Confucius contemporary was Lao Tsu, the creativity for Taoism, the harmonious relationship between life and nature, as Tao is "the way", suggesting balance between the Yin and Yang, negative and positive. Eight Tai Chi (Tao) negotiators stratagems includes: (1) integrity; (2) caring and compassionate; (3) non-contention in problem solving; (4) avoiding deadlocks and long term; (5) spontaneity and direct; (6) harmonious and gradual build-up; (7) learning and creative; (8) manage stress; Further particulars of each can be seen in Appendix C. Overall, the Tai Chi negotiator is a view of the entire negotiation process, long-term oriented, constantly improving one's self, employing integrity, caring, win-win, positive attitude, patience, and creativity. The mindset regarding ethical behavior and personal perception of customs strongly influence ethical behavior in Chinese dominated business organizations (Rarick, 2012). Additionally, Han and Altman (2010) put forward that Confucian values are perfectly consistent with the Western concept of citizen's social rights and responsibilities are mutually dependent. However, one can argue that a "contradiction" exists in the value of Confucian ethical teachings embracing positive business dealings, corporate social responsibility, harmonious relationships, and those of his disciple, Sun Tzu's concept of strategy through deception, bribery, and corruption to defeat the enemy (Low & Ang, 2012).

American Cross-Cultural Negotiation Strategy

Culture & Strategy

The golden rule is an ancient principle to attain a win-win, treating people fairly, much-admired by Confucius, Tao-tzu, Buddha, Hinduism, and Jesus. "He who sows hemp will reap hemp; he who sows beans will reap beans". Chinese proverb (Cheng, Low & Patrick, 2010). It is incumbent on both American and Chinese executives that each has a significant understanding of the other's complex and ambiguous negotiating techniques to negotiate successfully. The main steps in a negotiation model, according to Mujtaba's (2013) can be abridged under four categories, which are: (1) initiating or pre-planning; (2) negotiating; (3) closing; and (4) maintaining the relationship and renegotiating if necessary. In an effort to understand these categories and process, evaluation of various cultural negotiation factors is required, as seen in Table 1.

Table 1 The Impact of Culture on Negotiation China and United States

Negotiation Factors	United States		China
Goal	Contact	↔	Relationship
Attitudes	Win/Win	↔	Win/Lose
Personal Styles	Formal	↔	Informal
Communication	Direct	↔	Indirect
Time Sensitivity	High	↔	Low
Emotionalism	High	↔	Low
Agreement Form	Specific	↔	General
Agreement Building	Top Down	↔	Bottom Up
Team Organization	One-Person Leadership	↔	Consensus
Risk Taking	High	↔	Low/Medium

Note: Adapted from Salacuse, 2004. It should be noted, these factors are comprised of Salacuse and this researchers experience. It should also be noted that different views exist as to elements such as Win/Lose when evaluated based on history and the military, versus the more contemporary adaptation of strategy from these historic foundations.

Deception as a Strategy

A fundamental question for this study's focus on deception; is the result of these natural cultural elements of negotiation factor diversities, might lead to a divergence in ethical behavior between Chinese negotiators and US. Are there differences in perceptions of the application of Sun Tzu's military use of deception as strategy, a cause for the imbalance and resultant high failure rate in negotiations? In previous research, we found that Sun Tzu's military strategy, when adapted to business, requires a level of modification as to the exploitation of deception, but the question is, to what measure? While Sun Tzu is taught in business negotiation courses in both China and the United States, is there a difference in the ethically marginal tactics resulting from the education and adaptation of these military strategies to business and the marketplace?

Just as Chinese executives reflect their culture in negotiations, so to do American executives conduct business negotiations based on culture, history, economic national maturity, and ethnocentric beliefs. Further, while business necessitates the need for negotiations as a method of resolving differences and/or developing successful business relationships, some executives are ambivalent towards, and even resistant to the process. Negotiations by definition require compromise, cooperation at least in theory, and are not always comfortable or enjoyable for all bargaining parties. In particular, when Americans negotiate with Chinese, suspicion as to motives adds complexity, just as Chinese find Americans arrogant and ethnocentric (Benjamin, 2012). Based on these negotiation approaches by Americans, do Chinese executives view American arrogance as a form of ethnocentric deception?

Ethnocentrism, Deception & Hypocrisy

Negotiations in business communication conducted between Chinese and American cultures surface when participants either culture are unable to understand culturally governed contrasts in communication practices, including language, ethnicities, and meditation processing. Ethnocentrism is the belief that one's own society or ethnic group is by some means essentially superior to others. Ethnocentrism is deceptive precisely because members of any culture perceive their own behavior as logical, since that behavior works for them, which some argue is self-deceptive, hypocritical, and/or arrogant. Supplementary, self-deception involves allowing you to believe something about yourself that is not true, because the truth is more unpleasant. One of the manifestations of self-deception is arrogance. The prophet Obadiah (1:3) identifies arrogance as one of the roots of self-deception. Are Americans then indulging in hypocrisy via self-deception when negotiating with Chinese? Do American executives express judgmental bias in terms of arrogance in their view of the China government, communism, and human rights when negotiating? Further, do Chinese negotiators then view American egotism manipulating negotiation strategy to include a "hard sell" and/or "bluffing" as acceptable and consequently unethical forms of deception?

Reciprocity – a Form of Deception?

In China Guanxi is a Confucian rooted legacy covers centuries and is principally a set of morally correct courses of action, bonding two persons through the custom of reciprocity, which is, exchanging favors rather than an attitude. Friendship is not required however, it is preferred. The connections formed through the performance of reciprocal understandings tend to be seen as perpetual and implies a continued exchange of favors. Guanxi is not automatically equally reciprocal (Dunning & Kim, 2007). The Chinese have evolved Guanxi into a judiciously gauged discipline.

The qualms by American executives regarding Guanxi tend to view reciprocity with negative connotations. American tends to view international negotiations in terms of exchange theory, motivated by the prospect of mutual gain, or equal in nature. Reciprocity refers to exchanges, which are mutual and perceived by the parties as fair. Further, timing of repayment and of obligation is an important dimension of exchange that varies by issue area and relationship. In progressive exchange, the negotiators that moves first risks being exploited and must therefore trust the other. Norms and customary expectations determine what is considered fair when there is no standardized measure of value, which appears more prominent in Chinese culture versus American expectations. In other words, Americans think of reciprocity more in terms of concessions that are matched.

If then, these differences of perception of reciprocity are not equalized, Americans then incline to view favors given as potential corruption, or deception regarding what is given `might be called a contractual approach. In a more informal approach, open reciprocity issues can be perceived as a form of unethical elements of the negotiation, or a form of deception.

Discussion

This study ascertains that China will continue to be a progressively evolving economy and opportunity for American businesses that includes not only new strategic alliances and a new marketplace, but also a plentiful source for mutual intellectual and cultural knowledge to expand and enrich current and future business theory and practices. China strategic knowledge, which derives from enduring Chinese communal philosophies, in various cultural elements, but focusing on ethical elements of deception and hypocrisy runs counter to the American transactional and existential fundamentals that characterize contemporary American cross-cultural business custom. Specific future research should include the factors of the use of deception, and the potential resultant hypocrisy in strategies, based on ethical perceptions and extents of application of military strategy to business strategy. Future research should also include the evolution of increased understanding by both American and Chinese negotiators, that is, to continue to evaluate history and current trends in negotiation strategies and tactics. This study suggests the need for future phenomenological research into the cultural elements of hypocrisy, and honesty in cross-cultural negotiations between Americans and their Chinese counterparts, with a particular focus on perceptions of adapting military tactics to business tactics. Imminent enquiry for added knowledge must incorporate elements of Guanxi, Sun Tzu, language, and the levels of each as to the influence they have on adoption and use of deception and hypocrisy in Chinese/American negotiation strategies.

This study suggest a proposed qualitative phenomenological hermeneutics approach, utilizing purposeful sampling, which will explore the lived experiences of Chinese and American international business negotiators focusing on the cultural and social elements that may influence their perceptions of deception and hypocrisy. Examples of overall research questions as follows:

- What are the perceived differences of hypocrisy and deception in cross-cultural negotiations relative to strategy, with a focus on Chinese "styles" when compared to American "styles"?

- Do cultural negotiators present a moral inconsistency without essentially feeling like hypocrites or perceived by others as bad faith participants?

- What conflicts exist between Confucian and Sun Tzu negotiation strategies, addressing the acceptable levels of deception and hypocrisy in military for commercial relationships

- How does intentional and/or unintentional behavior generate hypocrisy and/or deception, and if it takes place, is it then always immoral?

- What perceptions exist of the elements of ethnocentricity and arrogance of each culture

- Are hypocrisy and/or deception therefore present in cross-cultural negotiations, and is it then inevitable?

(Please refer to Appendix A, B & C for the specifics related to the various strategies,)

About The Authors

Dr. Steve Clarke is Senior Consultant and Managing Director-Asia, for Global Management Group (www.globalmanagementgroup.com), a leading consulting firm that helps US companies and executives succeed in Asia. He has consulted for Fortune 500 companies and has extensive experience in the China market.

Dr. Peng Chan is Full Professor of Strategic Management at Cal State Fullerton. He obtained his Ph.D from the University of Texas at Austin. His research interests include strategic management, franchising and global business.

Appendix A: 36 Stratagems

Table 2 36 Stratagems of Ancient China

#	Stratagem *	Explanation **
	Advantageous (Winning) Strategies (胜战计)	The "Advantageous Strategies" are used in situations when time and resources are to one's advantage, when there is no need to rush, and detailed planning can be carried out. The six strategies in this category include the following:
1	"Deceiving the heavens to cross the sea" (瞒天过海 or "Man Tian Guo Hai")	You can mask your real goals, by using the ruse of a fake goal that everyone takes for granted, until the real goal is achieved
2	"Besieging Wei to save Zhao" (围魏救赵 or "Wei Wei Jiu Zhao")	When the enemy is too strong to be attacked directly, then attack something he holds dear
3	"Killing with a borrowed knife" (借刀杀人 or "Jie Dao Sha Ren")	Attack using the strength of another
4	"Conserving energy while the enemy tires himself out" (以逸待劳 or "Yi Yi Dai Lao")	It is an advantage to choose the time and place for battle
5	"Looting a house on fire" (趁火打劫 or "Chen Huo Da Jie")	When a country is beset by internal conflicts it will be unable to deal with an outside threat
6	"Making a feint to the east but hitting out in the west" (声东击西 or "Sheng Dong Ji Xi")	In any battle the element of surprise can provide an overwhelming advantage
	Opportunistic Strategies (敌战计) (Enemy Dealing Strategies)	The "Opportunistic Strategies" thrive on situations where vulnerabilities can be exploited. The idea is to capitalize on all opportunities to gain the advantage. The strategies include:
7	"Creating something out of nothing" (无中生有 or "Wu Zhong Sheng You")	A plain lie. Make somebody believe there was something when there is in fact nothing
8	"Creating something out of nothing" (无中生有 or "Wu Zhong Sheng You")	Deceive the enemy with an obvious approach that will take a very long time, while surprising him by taking a shortcut and sneak up to him
9	"Observing the fire from the other side of the river" (隔岸观火 or "Ge An Guan Huo")	Delays entering the field of battle until all the other players have become exhausted fighting amongst themselves. Then go in at full strength and pick up the pieces
10	"A dagger sheathed in a smile" (笑里藏刀 or "Xiao Li Cang Dao")	Charm and ingratiate yourself to your enemy. When you have gained his trust, move against him in secret
11	"The plum dies in place of the peach" (李代桃僵 or "Li Dai Tao Jiang")	There are circumstances in which you must sacrifice short-term objectives in order to gain the long-term goal
12	"Stealing a goat along the way" (顺手牵羊 or "Shun Shou Qian Yang")	While carrying out your plans be flexible enough to take advantage of any opportunity that presents itself, however small
	Offensive Strategies (攻战计) (Attacking Stratagems)	Like the Advantageous Strategies, the "Offensive Strategies" are used in situations when time and resources are not constraining factors. However, these strategies seek to gain victory through direct attack. The six strategies include:
13	"Hitting the grass to startle the snake"	Do something spectacular ("hitting the grass") to

	(打草惊蛇 or "Da Cao Jing She")	provoke a response of the enemy ("startle the snake"), thereby giving away his plans or position
14	"Borrowing a corpse to resurrect a soul" (借尸还魂 or "Jie Shi Huan Hun")	Take an institution, a technology, a method, or even an ideology that has been forgotten or discarded and appropriate it for your own purpose
15	"Luring a tiger from its lair in the mountain" (调虎离山 or "Diao Hu Li Shan")	Never directly attack an opponent whose advantage is derived from its position. Instead, lure him away thus separating him from his source of strength.
16	"Releasing the enemy to recapture him later" (**欲擒故**纵 or "Yu Qin Gu Zong")	Cornered prey will often mount a final desperate attack. To prevent this you let the enemy believe he still has a chance for freedom.
17	"Tossing out a brick to get a jade" (抛砖引玉 or "Pao Zhuan Yin Yu")	Bait someone by making him believe he gains something or make him react ("toss out a brick") and obtain something valuable from him in return ("get a jade gem")
18	"Disband the bandits by arresting their leader" (擒贼擒王 or "Qin Zei Qin Wang")	If the enemy's army is strong but is allied to the commander only by money, superstition or threats, then take aim at the leader
	Confusion Strategies (混战计) ***(Chaos Stratagems)***	The "Confusion Strategies" aim to confuse a pursuing enemy to throw him off his guard. In this way, valuable time can be gained in making one's escape. These strategies include:
19	"Pulling out the firewood from beneath the cauldron" (斧底抽薪 or "Fu Di Chou Xin")	If something must be destroyed, destroy the source
20	"Catching a fish in troubled waters" (混水摸鱼 or "Hun Shui Mo Yu")	Create confusion and use this confusion to further your own goals
21	"Making an unnoticed escape like a golden cicada shedding its skin" (金蝉脱壳 or "Jin Chan Tuo Qiao")	A stratagem mainly used to escape from an enemy of superior force. Mask yourself
22	"Shutting the doors to catch the thief" (关门捉贼 or "Guan Men Zhuo Zei")	To capture the enemy, plan prudently. Before you "move in for the kill", first cut off your enemy's escape routes
23	"Befriend the far and attack the near" (远交近攻 or "Yuan Jiao Jin Gong")	It is known that nations that border each other become enemies while nations separated by distance and obstacles make better allies.
24	"Borrow a passage to attack Guo" (假途伐虢 or "Jia Tu Fa Guo")	Borrow the resources of an ally to attack a common enemy. Once the enemy is defeated, use those resources to turn on the ally that lent you them in the first place
	Deception Strategies (并战计) ***(Proximate Stratagems)***	Deception is commonly used in war to create advantages for oneself, and to handicap the enemy. Such strategies are designed to mislead the enemy. They include the following:
25	"Replace superior beams and pillars with inferior ones" (偷梁换柱 or "Tou Liang Huan Zhu")	Disrupt the enemy's formations, interfere with their methods of operations, change the rules in which they are used to following, go contrary to their standard training
26	"Pointing at the mulberry but scolding the locust tree" (指桑骂槐 or "Zhi Sang Ma Huai")	To discipline, control, or warn others whose status or position excludes them from direct confrontation; use analogy and innuendo

27	"Pretending to be insane but remaining smart" (假痴不颠 or "Jia Chi Bu Dian")	Hide behind the mask of a fool, a drunk, or a madman to create confusion about your intentions and motivations. Lure your opponent into underestimating your ability
28	"Remove the ladder after the enemy ascends to the roof" (上屋抽梯 or "Shang Wu Chou Ti")	With baits and deceptions, lure your enemy into treacherous terrain. Then cut off his lines of communication and avenue of escape
29	"Deck the tree with flowers" (树上开花 or "Shu Shang Kai Hua")	Tying silk blossoms on a dead tree gives the illusion that the tree is healthy. Through the use of artifice and disguise, make something of no value appear valuable
30	"The guest takes over as host" (反客为主 or "Fan Ke Wei Zhu")	Usurp leadership in a situation where you are normally subordinate.
	Desperate Strategies (败战计)	In a desperate situation, one may have to resort to unconventional and unorthodox methods and means. As such, some of these strategies can be quite dramatic and "tragic". However, when used appropriately, such strategies can be very effective. These include:
31	"Beauty Scheme" (美人计 or "Mei Ren Ji")	Usurp leadership in a situation where you are normally subordinate
32	"Empty City Scheme" (空城计 or "Kong Cheng Ji")	When the enemy is superior and you expect to be overrun, then drop all pretense of military preparedness and act calmly so they will think you are setting an ambush
33	"Double Agent Ploy" (反间计 or "Fan Jian Ji")	Undermine your enemy's ability to fight by secretly causing discord between him and his friends, allies, advisors, family, commanders, soldiers, and population
34	"Self-injury scheme" (苦肉计 or "Ku Rou Ji")	The enemy is lulled into relaxing
35	"A series of interconnected ploys" (连环计 or "Lian Huan Ji")	In important matters, one should use several stratagems applied simultaneously after another as in a chain of stratagems
36	"Escape - the best scheme" (走为上 or "Zou Wei Shang")	If it becomes obvious that your current course of action will lead to defeat, then retreat and regroup. When your side is losing, there are only three choices remaining: surrender, compromise, or escape. Surrender is complete defeat, compromise is half defeat, but escape is not defeat. As long as you are not defeated, you still have a chance.

Note: * Thirty-six Strategies is a summary of some of the war strategies used by the ancient Chinese warriors, the name Thirty-six Strategies may have come from Yi Jing's (or I-Ching) (易经) Yin Yang Theory (阴阳学说) which uses the Tai Yin number of 66 (太阴六六之数) to mean many tricks . The main statement, which sums up the Thirty-six Strategies writes: Quote Six multiplied by six is 36. The word calculation (数) conceals another word, namely strategy (术). In the application of a strategy, careful calculation is required. Once one is able to calculate the pattern of how situations develop, he will find the required strategy. A strategy cannot be detached from an objective assessment of a situation. It cannot work by subjective imagination. (Wee Chow Hou & Lan Luh Luh, 2004). ** Adapted from Craven, R. (2013).

Appendix B: Sun Tzu as a Business Strategy (13)

Table 3 Sun Tzu Military Strategy Application to 13 Business Strategies

#	Stratagey	Application
1	Laying Plans *"All warfare is based on deception"*	Executives employ principles of project management, mindfulness of competences and the market environment, adjusting plans to suit resources, and track or monitor strategies against possible divergence from the original plan. Research and apply SWOT.
2	Waging War *"Let your main object be victory, not lengthy drawn-out campaigns"*	Decisive actions save and manage resources, focus on competitor's weakness, include exit strategies when and where necessary.
3	Attack by Stratagem *"The skillful leader subdues the enemy's troops without any fighting"*	Incorporate the opposition's weaknesses, avoid fights where possible, shun emotional overreaction, reduce losses as much as possible, and consider all elements of the market and competition.
4	Tactical Disposition *"One may know how to conquer without being able to do it"*	Emphasis on defense, exploiting new opportunities, efficient, and calculation, balances of victory and defeat opportunities in long-term.
5	Energy *"The quality of decision is like the well-timed swoop of a falcon which enables it to strike and destroy its victim"*	Direct, indirect, combinations of maneuvers, deceive appearances, sacrifice short term, momentum and sustainability. Balance of marketing mix with strategies that build long-term success and loyalty.
6	Weak Points and Strong *"Do not repeat the tactics which have gained you one victory, but let your methods be regulated by the infinite variety of circumstances"*	Recognize and utilize opportunities for attack. Strike weaknesses. Invisible, moving target, maximize resources, and utilize core competencies and competitive advantages. All with proper timing. The right product/services, at the right time, at the right price, at the right place.
7	Maneuvering *"The difficulty of tactical maneuvering consists in turning the devious into the direct, and misfortune into gain"*	Disciplined devious long and circuitous route, drawing the enemy out. Strong alliances utilizing good local knowledge. Surprise the competition by way of newness, creativity, innovation, and technology.
8	Variation in Tactics *"In the midst of difficulties we are always ready to seize an advantage, we may extricate ourselves from misfortune"*	Strategic alliance focusing on advantages, variation of tactics, configuration of the competition. Avoiding recklessness, weakness, hasty temper, unnecessary battles, worry, and indecision.
9	The Army on the March *"When envoys are sent with compliments in their mouths, it is a sign that the enemy wishes for a truce'*	Read all the "signs" correctly. Understand the environment, apply history, and watch for deception efforts by opponent. Research all elements of the market, including competition, and economic elements and implications.
10	Terrain *"The power of estimating the adversary, of controlling the forces of victory, and of shrewdly calculating difficulties, dangers and distances, constitutes the test of a great general"*	Protect your resources; insure you are pay proper attention to the competition and clearly understand their strategies. A willingness, to adjust your own strategies based on internal and external forces. Emphasize and exercise strong leadership and decision-making processes. Never lose sight of the vision, the long term.
11	The Nine Situations	1) On Home ground: do not waste too many resources campaigning

	"Strike at its head, and you will be attacked by its tail; strike at its tail, and you will be attacked by its head; strike at its middle, and you will be attacked by head and tail both"	here. 2) On Entering New territory; keep pushing aggressively early in the campaign as long as nothing gets in the way, and as long as you have a clear easy exit strategy. You are not too heavily invested at this stage and can turn back if need be. 3) Contentious ground or strategically essential territory; Do not be the first to move without smoking out your competitors' intentions first and understanding their strategy too. Hide your true interests and distract the competition where possible from discovering them. 4) Open ground or easily accessible territory - do not get in the way of other competitors assuming their activity is of no strategic relevance to your mission. 5) Ground of intersecting highways, where there is activity from more than one interested party or contender – form alliances with others. 6) Serious ground; where much effort was required to secure this territory and you are in a precarious position. It may be hard to exit and hard to move forward – A "Winning Hearts and Minds" policy is required here. Do not antagonize any stakeholders and do your best to sustain all of your business relationships at their optimum levels. 7) Difficult ground or difficult conditions in which to operate – keep going and do not stop until you are in a safer position. In Business terms, I interpret this as consolidating resources, being cost conscious and keeping your productivity high, maintaining and pushing for higher targets. 8) Hemmed-in ground; where it is difficult to extricate oneself from this situation – resort to deception, intrigue, and stratagem. 9) Desperate ground; where there is no exit possible – once there you have to stick it out and give it everything you've got, it's all about survival (Bul-Godley, 2013).
12	The Attack by Fire *"Unhappy is the fate of one who tries to win his battles and succeed in his attacks without cultivating the spirit of enterprise; for the result is waste of time and general stagnation"*	Utilize resources to attack all elements of the competition, including personnel, financial investments, demographic markets, marketing, operations, and any other stakeholders exposed.
13	The Use of Spies *"Spies are a most important element in water, because on them depends an army's ability to move"*	Obtaining information by way of all networks available on competitions strategy, resources, and personnel.

Note: Adapted from the translation of Sun Tzu's The Art of War by Lionel Giles (1910), assembled in The Art of War (2009); and from (Bul-Godley, 2013).

Appendix C: Tai Chi Negotiations Stratagems (8)

Table 4 Tai Chi Negotiation Stratagems based on Tao De Ching (8)

#	Stratagem	Explanation
1	Negotiating and Having Integrity	Negotiating the Tao way means the negotiator perceives purity and acknowledges integrity when it appears. He embraces simplicity. He diminishes his self-interests and desires (Lao-tzu, verse 19). "If you close your mind in judgments and traffic with desires, your heart will be troubled" (Lao-tzu, verse 52).
2	Embracing the Tao Way and Being Caring	The tai chi negotiator is caring and compassionate, with the capacity to guide the world and direct its future (Lao-tzu, verse13) and associated with Confucian leadership. "Gold in the heart is better than gold in one's pursed" Chinese proverb.
3	Practicing the Tao and "Prosper Thy Neighbors"	Very much influenced by Taoism, the strategic negotiator should uphold the idea of non-contention. Lao-tzu pointed out that violence and conflict, no matter how tightly controlled, and could not help but cause negative side effects or much harm. Tao ideal is to solve problems through peaceful means.
4	Being the Tao Negotiator and Acting Long Term	The wise tai chi negotiator avoids negotiation deadlocks. He embraces long-term thinking. Long-term thinking is also strategic, and haste and impatience are avoided. One sees the forest and the entire landscape instead of just the particular trees. For long-termism and wisdom to prevail, there is a definite need for pauses, meditation breaks, or silences. Such is the nature of things so that one can think forward and plan.
5	Being Spontaneous and Going with the Flow	Tai chi is also about spontaneity, being natural and going with the flow. Simply put, why use or apply complex strategies when at times the issues are fundamentally straightforward? At times, the most natural way to get what you want, and it even becomes the quickest way to get it, is to ask for it.
6	Being Patient and Taking Gradual or Incremental Steps	Each step and almost all steps taken would be strengthening one's position against the other party. Tai chi is a system of harmonious and gradual build-up of one's successful negotiation.
7	Learning and Being Creative	The tai chi negotiator learns. Learning and creative thinking can be applied when we used Lao-tzu's dialectic pairs of yin and yang. "Being and Non-Being produces each other" (Low 2005a, p. 12). When there are yin and yang interactions, Tao is at work.
8	Having Correct Breathing and Being a Healthy and Positive Negotiator	Like the tai chi proponent, the tai chi negotiator should adopt correct breathing, which plays an important role in managing stress and living healthily. Deep breathing is done and this has a calming effect on the nervous system.

Note: The Tao De Ching way is not static but dynamic. The greater the interaction between the two forces, yang and yin, the greater the size of tai chi (the Great Ultimate); it expands. Tao is expansive and if applied to negotiation, it is to be collaborative. Chinese negotiators want to have business sustainability and growth or longevity. Most Chinese aim for long-term business survival as well as partnerships in business. They are in it for the long haul, and not for short-term gains. Most of them would like very much for their businesses are long term, and in fact survive long enough to be passed from one generation to the next (adapted from Kim Cheng Low, Patrick, 2010, p. 97).

Minority and Small Business Review

Volume 14, 2016
ISSN 1543-1029

Editor: Professor Meskerem Tadesse

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Fax: (626) 571-1413

E-mail: info@uwest.edu

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