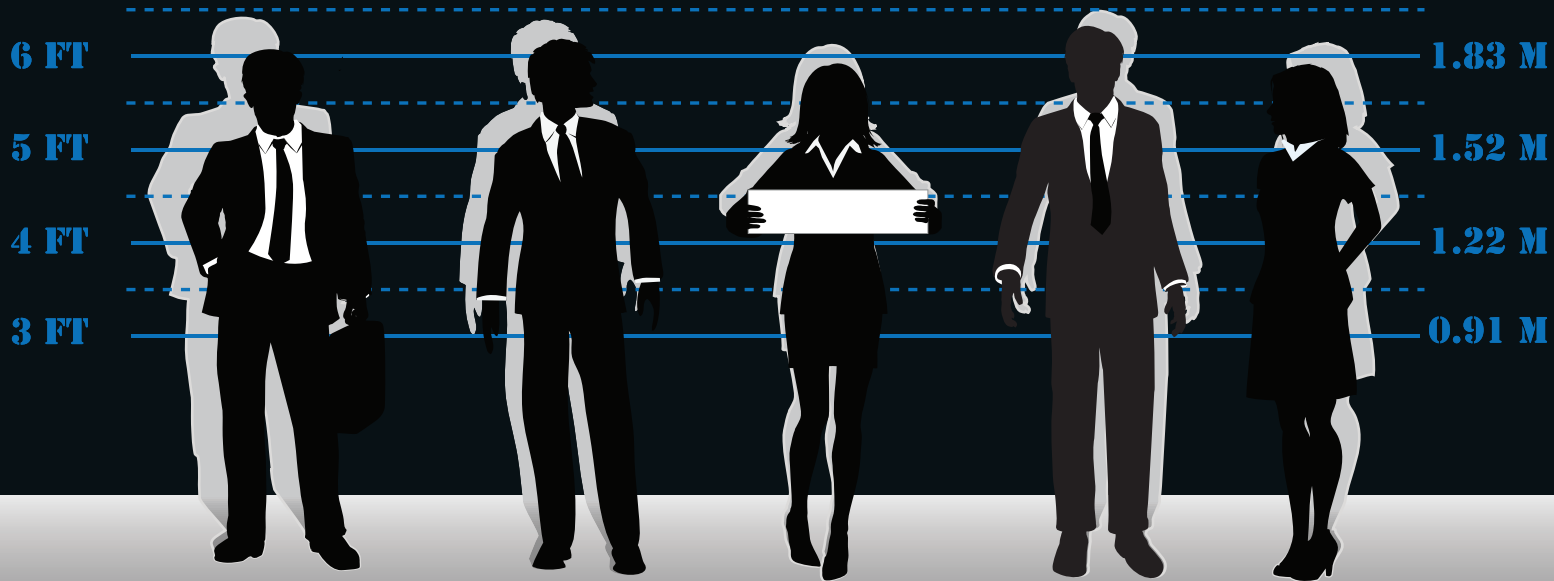


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CFO LEGAL TRACKER 2024



Introduction and Methodology

2024 has seen a continuing flurry of court cases against the Chief Financial Officer. The Northern District of California found that Vidul Prakash, a CFO of "smart" glassmaker, View, faces U.S. Securities and Exchange Commission allegations he defrauded investors relating to \$28 million in projected warranty-related liabilities.¹ The SEC won a legal victory against Karen Rosenberger former CFO of New Jersey-based software provider, Synchronoss Technologies accused of "longrunning accounting improprieties."² Ongoing activities against failed Silicon Valley Bank saw the Teachers Insurance and Annuity Association file suit against the institution's former finance chief Daniel Beck.³

However as this first edition of the CFO Legal Tracker reveals, "fiduciary duty" has emerged as the biggest reason Chief Financial Officers are increasingly being taken to court year-over-year, with a 233% rise in cases year-over-year (complete cases tracked in 2022 and 2023). Behind it in the rap sheet is fraud—in second place for allegations.

CFOs have an information advantage, compared to other managers including the CEO, which potentially allows them to engage in accounting manipulations which can favor both the CEO and themselves reflected in the range of varied suits facing the incumbent of this role.

Datarails, the FP&A solution for Excel users, compiled the CFO legal Tracker 2024 with law professor and legal practitioner Jed Chedid, adjunct professor at Cleveland State University law department, and owner of litigation law firm Chedid & Co. His company has been involved in multiple cases relating to CFO litigation.

¹ Feb 26, 2024, Law360: Ex-Glass Co. CFO Can't Beat SEC's Accounting Fraud Suit

² January 29, 2024, Law360: Ex-CFO Sued By SEC Ordered To Return Fraud-Tainted Bonus

³ January 29, 2024, CFO Dive: TIAA sues SVB ex-CEO, ex-CFO to recoup investment losses

The Reasons why the CFO role is one of the Most Dangerous in Corporate America



“Cases against CFOs are commonplace given their discretion in making accounting and disclosure decisions on behalf of corporate entities. When investors or third parties feel jilted by a perceived error arising out of the duties of the CFO, they tend to look to the CFO to hold them personally liable for decisions made in the course of their duties. And, with the recent rise in fly-by-night investment firms, and an accompanying social obsession with financial products – such as the Reddit group, *Wall Street Bets* which has more than 15 million followers, we are seeing more and more cases against financial officers, especially in the investment context.”

“But the law isn’t made to hamper businesses’ abilities to perform their basic functions, and with the right corporate formalities in place, CFOs can minimize their risks and retain their corporate protections. It is always best practice for CFOs to seek competent third-party advice, remain proactive with their disclosure of bad or questionable news, be conservative with financial forecasts, and closely abide by corporate formalities.”

Jed Chedid adjunct professor at Cleveland State University law department, owner of Chedid & Co

Cases Launched Against CFOs

2024 Partial cases (January- February 2024)

CASE NAME	CASE AGAINST CFO
<i>Lottery.com, Inc Sec. Litig., No.1:22-CV-07111 (JLR)</i>	Fraud, false statements and misappropriation. Complaint dismissed
<i>RGIS Int’L Transition Holdco LLC vs Retail Servs Wis Corp No.N21C-12-077</i>	Civil conspiracy and aiding and abetting fraud
<i>Evolution CFO Jacob Kaplan named as a defendant in a class action suit (not officially reported)</i>	Class action lawsuit alleging untrue or misleading statements, securities fraud
<i>Teachers Insurance and Annuity Association of America vs former executives of Silicon Valley Bank including former finance chief Daniel Beck (not officially reported)</i>	Federal Securities Law, lack of controls
<i>Proposed investor lawsuit vs Archer Daniels Midland ex CFO (not officially reported)</i>	Failing to implement appropriate risk controls and lack of controls

2023 Complete Cases Against CFOs

CASE NAME	CASE AGAINST CFO
<i>Vanipenta v SVB Financial Group et al, U.S. District Court, Northern District of California</i>	Fraud, Non disclosure, and Concealment of material facts
<i>Martin Def. Grp.,LLC v. Aspen Am. Insurance</i>	Gross Negligence
<i>Whitchurch v. Mulkey</i>	Fraud
<i>Firemen’s Retirement Sys. of St. Louis v. Telos Corp</i>	lack of analysis in assuming agent status & inadequately designed internal controls, false misleading statements
<i>AEP Shareholder Derivative Litigation</i>	shareholder derivative action
<i>Air Sols Inc. v. Spivey, 2023</i>	breach of contract and fraud
<i>plaintiffs V. AmerisourceBergen Corporation, Nominal Defendant.</i>	Breach of fiduciary duties
<i>IBEW Loc. Union 481 Defined Contribution Plan & Tr. on Behalf of GoDaddy, Inc. v. Winborne,</i>	Breach of fiduciary duties
<i>re Columbia Pipeline Group.,Merger Litigation 2023)</i>	Breach of fiduciary duties
<i>Nanoventions, LLC v. Daniels</i>	Georgia Racketeer Influenced & Corrupt Organizations ("RICO") Act); fraud, conversion, breach of fiduciary duties, unjust enrichment

<i>Premier Residential SE LLC vs Silverstone Residentialalt</i>	Breach of contract, breach of fiduciary duties
<i>VXI Lux Holdco S.A.R.L v. SIC Holdings</i>	Common Law fraud
<i>JRM, Inc. v. HJH Companies, Inc.</i>	Unauthorized contract
<i>Campbell v. Davidson</i>	Fraud, breach of fiduciary duty, conversion, and civil conspiracy
<i>Joseph on behalf of Columbia Oldsmobile Co. v. Pond Realty Co.</i>	Breach of fiduciary duties and self-dealing transactions.
<i>Employees' Ret. Sys. v. Wells Fargo & Co., No. C 20-07674 WHA, 2022 WL 1443231 (N.D. Cal. May 6, 2022)</i>	Proposed class-action lawsuit that accused the bank of deceiving investors. In this case. But here the CFO John Shrewsbury (though named in the suit) was only representing the company. The case was dismissed.
<i>Schaeffer v. Depaolo, No. 23-CV-1921-FB-JRC, 2023 WL 5153481, at *1 (E.D.N.Y. Aug. 10, 2023)</i>	The recently closed Signature Bank is facing an investor lawsuit. CFO Stephen Wyremski was not representing the bank as CFO in this case, and is only named as a "party" representing the company
<i>Local 272 Labor Management Pension Fund v. Walt Disney Co. et al., No. 23-cv-3661, complaint filed (C.D. Cal. May 12, 2023)</i>	Disney along with former Chief Financial Officer Christine McCarthy, are accused of violating the anti-fraud provisions of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), and SEC Rule 10b-5 .
<i>Snyder v. UnitedHealth Grp., Inc., No. 21-CV-1049 (JRT/DJF), 2022 WL 16631447 (D. Minn. Nov. 2, 2022)</i>	Unitedhealth case saw CFO John Rex named as a defendant in relation to a suit alleging with the company's decision to drop "one of the worst-performing target date options in the entire market."
<i>Husqvarna Pro Prod inc vs Robin Autopilt Holdings LLC no 23 CVS 5594, 202 WL 8869698 (2023)</i>	Fiduciary Duty
<i>Mindbody, Inc., S'holder Litig., No. 2019-0442-KSJM, 2023 WL 77 at *1 (Del. Ch. Nov. 15, 2023), judgment entered, (Del. Ch. 2023)</i>	Fiduciary Duty
<i>Clevinger v. Advoc. Holdings, Inc., No. CV 23-1159 (JMC), 2023 WL 4535467, at *2 (D.D.C. June 30, 2023), dismissed, No. 23-7089, 2023 W 5664054 (D.C. Cir. Aug. 30, 2023)</i>	Fiduciary Duty, Dismissed
<i>Securities and Exchange Commission v. Vidul Prakash, 3:23-cv-033 00 (N.D. Cal., Complaint July 3,2023)</i>	Negligent Failure to disclose company's liability, material misstatement & Fraud

<p><i>SEC: Without admitting or denying the findings, the following six individuals and five public companies agreed to cease and desist from violating the respective charged provisions and to pay the civil penalties set forth below: Nicole M. Fernandez- McGovern, CFO of AgEagle Aerial Systems Inc., \$125,000</i></p>	<p>Failing to Timely Report Transactions and Holdings</p>
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2022 Complete Cases Against CFOs

<i>Ka . Mekk</i>	fraud and negligent misrepresentation claims
<i>InfoTek Corp. v. Preston, 626 F. Supp. 3d 885 (D. Md. 2022)</i>	misappropriation of trade secrets, tortious interference with employer's economic and business relations
<i>Ulizio v. MMMG, LLC,</i>	tribal sovereign immunity for actions as CFO
<i>IDEA Pub. Sch. v. Truscheit</i>	Breach of contract
<i>Xu v. Gridsum Holding Inc</i>	Alleged omissions in a press release related to a misleading audit report.
<i>Whitten v. Clarke</i>	Breach of fiduciary duty, of engaging in a scheme to artificially inflate stock price
<i>Katerra Inc. v. Marks et al</i>	Breach of contract
<i>Bennett, Tr. for MTE Litig. Tr. v. Siffin</i>	Breach of fiduciary duty. Allegations of engaging in a scheme to artificially inflate stock price
<i>Joseph on behalf of Columbia Oldsmobile Company Co vs Pond Realty co</i>	Fiduciary duty
<i>Sec. & Exch. Comm'n v. Hwang, 2023 WL 6124041</i>	Securities fraud. material misrepresentations or missions, scheme liability, and market manipulation under the Securities Act of 1933. Aiding-and-abetting liability and control person liability.
<i>Sec. & Exch. Comm'n v. Taronis Techs., Inc., 2023 WL 5625299</i>	Fraud, accounting misconduct
<i>United States Sec. & Exch. Comm'n v. Garcia, WL 3976235</i>	Securities fraud , misappropriation of funds
<i>Sec. & Exch. Comm'n v. Wilcox, 663 F. Supp. 3d 146 (D. Mass. 2023)</i>	Securities fraud, unreasonable conduct resulting in misleading financial statement
<i>Sec. & Exch. Comm'n v Rosenberg (S.D.N.Y.)</i>	Securities fraud

Fiduciary Duty: 233% rise in cases against CFOs

Failure to comply with their “fiduciary duty” has emerged as the biggest reason Chief Financial Officers are increasingly being taken to court, with a 233% rise in cases year-over-year.

The tracker shows that 10 cases against US CFOs in 2023 featured charges of CFO failure to comply with fiduciary duty, a rise from 3 cases in 2022. The cases, which remain ongoing, involve well-known companies AmerisourceBergen Corporation, GoDaddy and Columbia Pipeline Group.

Fiduciary duty is something that CFOs must always pay close attention to in their vaulted position.

“Fiduciary Duty applies when one person has responsibility for the assets or property of another person. The fiduciary must act in the best interest of the person who has entrusted those assets”

Tamar Frankel professor of Law Boston University School of Law

In short, CFOs must act in the best interest of the person who has entrusted them with assets and must act as “watchdog” for financial reporting quality.

Breach of fiduciary duty cases are civil cases that have a statute of limitation of three years. To satisfy this duty, directors and officers must be “reasonably” well informed before making a business decision. Unlike fraud, a fiduciary does not need to have personally benefited. They simply must be shown to have not acted in “good faith” in executing their duties.

For example in the case of American publicly traded Internet domain registry, GoDaddy In August 2023, the Delaware Court of Chancery denied the company's motion to dismiss a derivative claim that alleged that its directors had breached their fiduciary duties by approving in a payment of \$850 million to settle liabilities under tax revenue agreements ("TRAs") valued at \$175.3 million in GoDaddy's audited financial statements. The lawsuit, filed by a pension fund, targets members of the GoDaddy board and chief financial officer Raymond E. Winborne. It accuses them of running a "sham process" aimed at drastically overpaying for the rights to "tax receivable agreements".

Another fiduciary case shows the importance of the CFO's role in merger cases, (re Columbia Pipeline Group, Merger Litigation 2023) where plaintiffs sued Columbia's CEO Robert Skaggs Jr., and CFO Stephen Smith who served as Columbia's executive vice president and chief financial officer, and TransCanada. Claims included that the executives rushed through an underpriced sale so they could cash out with change-in control benefits and retire in 2016. It alleged that the defendants engineered a scheme to spin-off Columbia Pipeline from its former parent—and sell the Company to TransCanada as part of a "self- interested plan" to trigger lucrative change-in-control benefits for the Company's officers and directors.

Fraud cases against CFOs rise by 50%

Second-placed in the docket against CFOs are fraud cases. Courts heard 9 cases against CFOs in 2023 compared to six in 2022. This was fuelled by investor activism and the high profile collapse of Silicon Valley Bank.

One suit launched in 2023 seeking damages for Silicon Valley Bank Investors named the bank's ex-Chief Financial Officer Daniel Beck and CEO Greg Becker. In the case, Silicon Valley Bank (SVB) shareholders filed a lawsuit against two top executives at its California headquarters for concealing that rising interest rates would make the bank vulnerable to its current crisis. Disney, along with former Chief Financial Officer Christine McCarthy, are accused of violating the anti-fraud provisions of the Securities Exchange Act. Meanwhile the SEC is prosecuting two ongoing cases against CFO securities fraud launched in 2023

Overall, proving fraud requires a higher burden of proof against CFOs. Unlike than fiduciary duty, such actions must prove that a person given trust and confidence actually benefited from an action.

"The reasons that CFOs are so susceptible is that they are in charge of a company's financial reporting. Positively this means they can be a counterweight against problematic CEOs. Nevertheless, CFOs also have an information advantage, compared to other managers including the CEO, which potentially allows them to engage in accounting manipulations which can favor both the CEO and themselves."

Douglas M.Boyle, Kennesaw State University, Brian W. Carpenter, University of Scranton, Dana Hermanson, Kennesaw State University

Other CFO Court Cases

Other cases truly run the gamut of allegations from gross negligence to theft to fund an illegal marijuana business.

They provide more color than instruction about how CFOs can avoid wrongdoing. Other charges include gross negligence, theft, breach of contract, and Failing to Timely Report Transactions and Holdings.

Gross Negligence

In *Martin Def. Grp LLC (MDG Aspen Am Insurance MDG v. Aspen)* 2023 former chief financial officer, defendant Clifford Chen, MDG was named in MDG's coverage case because as the CFO, he was required to ensure the company had proper insurance, the contractor said. This follows the company CEO being charged with defrauding the Paycheck Protection Program of around \$10m.

Theft/RICO

In *Nanoventions, LLC v. Daniels*, July 17, 2023) the case argued that over several years while serving as Chief Financial Officer, Steve Daniels stole nearly \$2 million from his employer, Nanoventions. Over several years while serving as Chief Financial Officer, Daniels stole nearly \$2 million from his employer, Nanoventions to fund a criminal conspiracy to grow and distribute marijuana. Daniels's theft was eventually discovered by Nanoventions and he was arrested, indicted, and convicted of various offenses in Forsyth County, Georgia related to the theft.

Failing to Timely Report Transactions and Holdings

Without admitting or denying the findings, Nicole M. Fernandez-McGovern, CFO of AgEagle Aerial Systems agreed to pay \$125,000. The SEC charge alleged this was for failing to timely report information about their holdings and transactions in company stock.

High Profile Convictions of CFOs

<p>2023</p>	<p>Former Trump Organization Chief Financial Officer Allen Weisselberg was sentenced to five months in jail after pleading guilty to multiple tax crimes related to former President Donald Trump's businesses</p>
<p>2022</p>	<p>The United States Attorney for the Southern District of New York case was ex-CFO ERIN VERESPY sentenced to 66 months in prison for her participation in a widespread, \$33 million scheme to misappropriate client healthcare funds and defraud multiple lenders through her role as the Chief Financial Officer of Employee Benefit Solutions LLC ("EBS"), an insurance firm located in Wilton, Connecticut.</p>
<p>2018</p>	<p>In a case brought by the SEC, former chief financial officer of Bankrate Inc. Edward J. DiMaria, a publicly traded financial services and marketing company, was sentenced to 10 years in prison for orchestrating an accounting and securities fraud scheme that caused more than \$25 million in shareholder losses</p>
<p>2018</p>	<p>Paul A. Margis, the former chief executive of Panasonic Avionics Corp., and Takeshi "Tyrone" Uonaga, its former finance chief, reached deals with the SEC. In a case brought by the SEC, Uonaga, then-CFO of Panasonic Avionics, Uonaga caused Panasonic Corp. to improperly record \$82 million in revenue</p>
<p>2018</p>	<p>The former CFO of Salix Pharmaceuticals agreed to pay \$1 million to settle charges that he lied to analysts and investors by significantly understating the amount of Salix drugs that wholesaler customers held in inventory.</p>

How CFOs can protect themselves

The burdens on the CFO are only set to grow. In the realm of cybersecurity, CFOs have a critical role helping their company produce accurate, well-reasoned and defensible cybersecurity disclosures on Forms 8-K and 10-K.⁴ Furthermore, Climate change (ESG disclosure rules) are set to appear in April 2024 – but 45% of companies have yet to lay the cross-functional groundwork required to integrate ESG strategy into business operations.⁵ This is despite the fact that a significant share of those ESG-related challenges could fall under the purview of CFOs, given their “responsibility for company wide data and oversight over budgetary matters.”⁶

But CFOs can act in a number of ways to protect themselves with the law not out to punish Chief Financial Officers. Jed Chedid writes: “The law isn’t made to hamper businesses’ abilities to perform their basic functions, and with the right corporate formalities in place, CFOs can minimize their risks and retain their corporate protections.”

⁴PwC: The CFO’s role in SEC cyber disclosures

⁵Deloitte CFO Insights, January 26, 2023: How ESG Disclosures May Expand the Nature of the CFO’s Role

⁶Ibid

⁷How Datarails Gives Payroll Provider CloudPay More Confidence in Its Numbers <https://www.datarails.com/success/how-datarails-gave-the-board-of-online-payroll-company-cloudpay-more-confidence-in-the-numbers/>

⁸Randy Kominsky: Chief Financial Officers: Ways To Improve a Company’s Procedures And Minimize Personal Risks (CFO Leadership Council meeting on January 15, 2019)

Some of the ways that CFOs can mitigate risks include

- Documenting all actions and decisions so that any doubts about the standard of care provided can be evaluated thoroughly.
- Ensure use of technology in the CFO's Office to create greater confidence in the numbers and a more accurate story for investors and show that your fiduciary duty is taken seriously.⁷

"Many companies that I work with, especially private companies, do not allocate enough financial resources for adequate systems", says Randy Kominsky former assistant general counsel at \$12 billion transportation/logistics company, Rider System. "But using older technology or systems, for whatever reason, including budgetary constraints, may not be an adequate defense to a claimed breach of a duty of care. The CFO must request and receive the most effective tools to accomplish the task."⁸

⁴PwC: The CFO's role in SEC cyber disclosures

⁵Deloitte CFO Insights, January 26, 2023: How ESG Disclosures May Expand the Nature of the CFO's Role

⁶Ibid

⁷How Datarails Gives Payroll Provider CloudPay More Confidence in Its Numbers <https://www.datarails.com/success/how-datarails-gave-the-board-of-online-payroll-company-cloudpay-more-confidence-in-the-numbers/>

⁸Randy Kominsky: Chief Financial Officers: Ways To Improve a Company's Procedures And Minimize Personal Risks (CFO Leadership Council meeting on January 15, 2019)

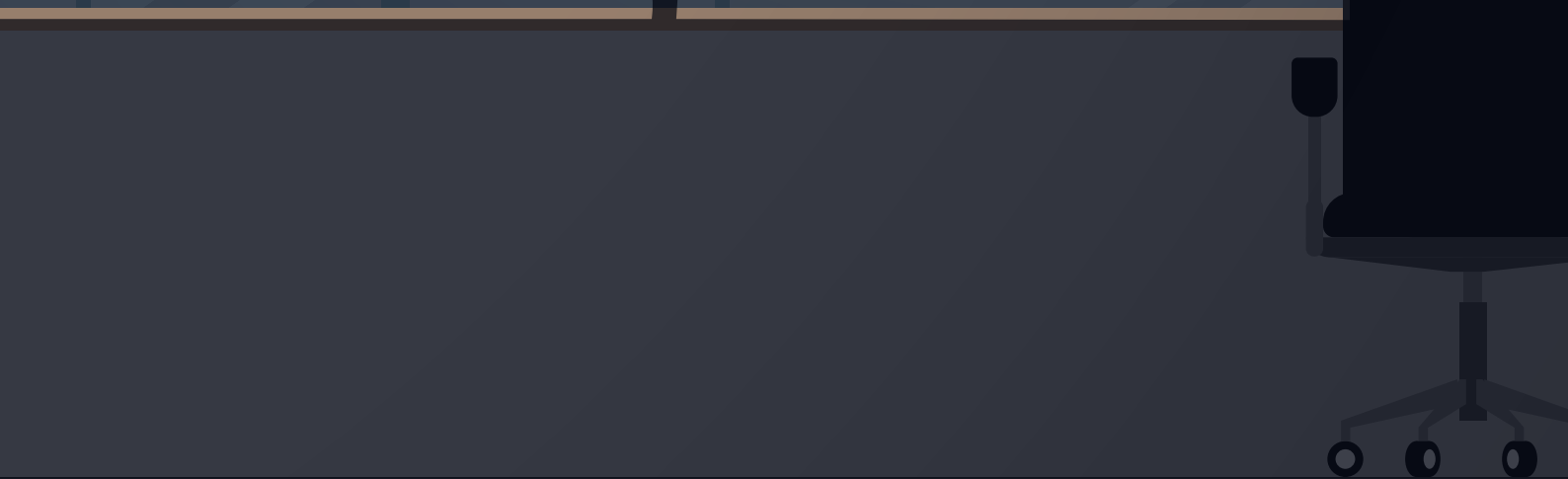
- Invest in FP&A: Still today there appears to be very little process integration against risk management, strategic planning, financial forecasting, and budgeting—integration often considered vital to addressing the speed and range of risks many companies face.⁹
- Give bad news early, rather than seeking to obfuscate or hide numbers.
- The duty of loyalty is a very clear obligation: if you know (or should know) something, say something. Officers are expected to both recognize and to disclose to the board (directly or through the counsel) information and analyses that are relevant to the board’s decision-making and oversight responsibilities.¹⁰
- If a company is experiencing significant financial strain, directors and officers have additional duties and should consult with counsel.

⁹Deloitte: CFO Insights: FP&A, What’s Risk Got to Do with it?

¹⁰Randy Kominsky: Chief Financial Officers: Ways To Improve a Company’s Procedures And Minimize Personal Risks (CFO Leadership Council meeting on January 15, 2019)

- Stay well informed: CFOs are directly accountable for compliance with all regulations and must keep informed about any upcoming changes in regulation which could affect the business. The Big Four accounting Firms for instance provide regular updates on compliance updates for CFOs.
- Evaluate if the books can be closed quicker. Many companies are dependent on receiving information from the field or business segments. Determine what technology is needed to speed up the process and better automate the workflow progress. Make all your best practices automatic and do not rely on spreadsheets, word documents and emails.
- Regularly perform reconciliations. Many times reconciliations fall in arrears. In some cases there are no bank reconciliations for the prior 6 months plus the CFO, and CEO, were submitting fraudulent numbers to the senior lender in their borrowing base. Reconcile all funds and accounts on at least a monthly basis and record any necessary adjustments in a timely manner.¹¹

¹¹Ibid



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