

# A Team Effort: SFO & Insolvency Practitioners

## 11<sup>th</sup> Annual Corporate Insolvency Conference

# SFO: 2010/2011 in review

- Average age of investigations (5-6 months)
- 34 investigations commenced (75% up on forecast)
  - Belgrave Finance
  - Hanover Finance
  - South Canterbury Finance
  - Dominion Finance
  - Data South Finance
- 14 prosecutions commenced
  - Five Star Finance
  - Capital + Merchant Finance
  - Aorangi Securities
  - Lane Walker Rudkin
- 15 Convictions secured (100%)
  - National Finance
  - Five Star Finance



- Budget increased to \$15M for FY11
- Staff increased from 27 to 40
- Police
  - New MOU being finalised
  - Secondments
  - Joint investigations a priority
- FMA
  - New MOU being finalised
  - Joint investigations a priority
- CA firms
  - Secondments
  - Contracted assistance on major investigations (including South Canterbury Finance, Hanover, Capital + Merchant)



## Priorities:

1. More frequent joint agency investigations
2. Greater flow of information from private sector
3. Earlier intervention in major cases
4. Faster results on small-medium investigations
5. Greater understanding of scale and cost of financial crime in NZ
6. Improved international networks for information sharing

# SFO & the insolvency profession: Introduction

- Insolvency professionals are a critical part of SFO work – both for detection and subsequent investigations
- SFO aim:
  - To facilitate increased co-operation and sharing of information between SFO and insolvency practitioners (“IPs”) to the extent legally permissible and commercially practical

# Serious Fraud Office's role

- Detecting, investigating, prosecuting “*serious or complex fraud*”
- Criteria for investigation:
  - **Scale:** investor numbers or alleged losses
  - **Public interest:** e.g. public funds or public officials
  - **Complexity:** legal, financial, evidential
- SFO focus is on cases that make a real difference to:
  - Investor confidence
  - public confidence in the justice system
  - New Zealand's business reputation internationally

# Insolvency Practitioners' role

- Maximise returns for appointing creditor/creditors
- Duty (s.258A Companies Act – liquidators / s.28 Receiverships Act – receivers) to report offences:
  - Crimes Act 1961
  - Securities Act 1978
  - Companies Act 1993
  - Takeovers Act 1993
  - Financial Reporting Act 1993

# Challenges

## *SFO wants to:*

- Take swift & early action (both detection and prevention)
- Preserve (admissible) evidence.
- Conclude investigations effectively and efficiently.
- Prevent further offending.

## *IPs want to:*

- Maintain the cooperation of directors and/or management without distraction.
- Have the unencumbered use computers and/or other records.
- Sell assets and/or continue trading operations.
- Minimise costs.

# Areas of overlap/interaction

1. Reporting concerns or issues
2. Securing physical or electronic information
3. Access to individuals
4. Media



# 1. Reporting concerns or issues

## “Timing is everything”

- SFO’s undertaking:
  - We understand that SFO involvement can have an immediate and potentially detrimental effect on an IP’s work
  - We can discuss specific transactions to determine whether our threshold is met and/or the issue is of interest
  - We can accept formal or informal reports of issues, and on a confidential basis.
- Our Goal:
  - The earliest possible alert from IP’s to minimises the risk of further losses

## 2. Securing documents and information

### “Quality and Quantity”

- SFO’s undertaking:
  - We can use s.9 SFO Act to protect IP’s against any allegation of confidentiality breaches
  - We can quickly copy/clone documents and quickly return to IPs to enable orderly progress of receivership/liquidation
  - Where we take possession in our own right, we can disclose documents to IP’s under s36 of the SFO Act 1990
- Our Goal:
  - Timely access to evidence to preserve evidential integrity and maximise the possibility of a successful investigation  
(\*NB: 1. Waiver of legal privilege; 2. Need to take clones using recognised electronic forensic software )

### 3. Access to individuals

#### **“Witnesses are critical”**

- SFO’s undertaking:
  - If physical and electronic evidence is secured, timing of interviewing individuals is flexible
  - Where appropriate, we may disclosed interview information to IP’s
- Our Goal:
  - We will work where practicable with IPs to ensure access to individuals is to the benefit of both parties

### **“Media are essential part of public confidence in law enforcement”**

- SFO’s undertaking:
  - We will endeavour to keep IP’s advised of media interest and of any proposed comments by SFO (e.g. Aorangi Securities Ltd)
- Our Goal:
  - Regular and timely awareness of likely media issues and proposed comments

# Conclusion

- SFO cannot succeed without IP's assistance.
- Things have improved, but could be better still.
- What is the appetite of the profession to assist law enforcement agencies?
- Are there any material impediments to assisting?
- Are new/different incentives needed?

