

REVIEW

Accountability Simulacra: Fraud Cases from South and North America

Ana Paula Paulino da Costa*

FIPE – Economic Research Foundation Institute, Brazil

ARTICLE INFO

Article history

Received: 5 December 2018

Accepted: 29 December 2018

Published: 7 March 2019

Keywords:

Corporate fraud

Financial statements fraud

Financial fraud; Corporate governance

Accountability

ABSTRACT

Cases of corporate frauds with financial instruments count on simulacra of accountability. Based on grounded research, this study considered cases that were conducted for years without being detected causing billion-
aire injury to investors. The objective was to present how they bypassed internal controls, corporate governance, and all regulatory apparatus using substantive and symbolic resources at organization level analysis. An extensive analysis allowed perceive a common modus operandi that is described here organized by objectives. This paper also suggests a direction for accountability improvement.

1. Introduction

Accountability presumes control over what is been said about economic and financial situation of a business. Thus managers act in order to construct and enact a sense of being accountable. This information management does not mean that all managers hide, omit or falsify information, but it does not exclude these intentions.

Economic and financial situation is computed by accounting system based on three phases: recognition, measurement and disclosure (International Accounting Standards Committee Foundation)^[1]. Recognition is the process of incorporating in financial statements an element that has the probability of any future economic benefit associated with it will flow or from the entity and, when it has a cost or value that can be measured with reliability. Measurement is the process of determining the monetary amounts at which the elements will be recognized and carried in financial statements. Disclosure relates to the

set of information provided about the financial position, including statements, notes and supplementary schedules that may be useful to a wide range of users in making economic decisions. These include any relevant information about risks and uncertainties affecting the entity and any resources and obligations not recognized in statements. A survey conducted across 40 countries just before Enron collapse, indicated that most of CFOs respondents considered the lack of adequate disclosure to be a issue of more concern that the lack of effective accounting guidelines. Only in United Kingdom the perception was inverse^[2].

Economic and financial information then, can be manipulated at any part of this process. It is possible a) to recognize item that does not exist, b) to attribute false value to items and c) to omit or create (falsify) relevant information.

It was chosen four cases of corporate financial fraud to analyse their modus operandi and highlight how they manipulated economic and financial information along theses

*Corresponding Author:

Ana Paula Paulino da Costa,

FIPE – Economic Research Foundation Institute, Brazil

Email: apcosta@fipe.org.br

phases - which should provide accountability for users. They are two notorious cases from United States and two from Brazil.

Enron fabricated revenue, mismarked forward curve and risk analysis, simulated transactions volume and omitted several information about off-balance sheet partnerships^[3]. Madoff simulated transactions volume and profitability^[4]. Boi Gordo recognized inexistent cattle, simulated profit with related parties and omitted information about them^[5]. Banco Santos simulated profit, investment and loans operations, falsified risk classification, issued irregular bonds and omitted information about off-balance partnerships^[6].

All of these cases of corporate fraud has used financial instruments to perpetrate frauds, were conducted for more than 5 years, and caused injury up to EU 1 billion. Management controls and corporate governance apparatus were not enough to deter them.

This paper focuses on substantive and symbolic resources used by managers to perpetrate a corporate financial fraud and to hide it, avoiding been perceived by employees, auditors, regulatory agencies and general public.

There are several cases of corporate frauds in literature. Probably chosen cases are not so different from them to deserve a special treatment. Notwithstanding, they were too explored by media and so there are plenty information available to a deepened study. The extensive analysis allowed perceiving a common *modus operandi*. The purpose of this paper is to describe it in an organized way.

When we understand what happened through great scandals and divulgate it in a systemic way, we can easily recognize a several other cases in minor scale of pyramids and larceny crimes that affect million of people around the world even in nowadays. It is important to advice people that some extravagant events or characteristics are not isolated facts but are part of an orchestrated plan.

Some huge improvements were made on enforcements after and because of those cases but 2008 crisis showed us that they were not enough to avoid malpractices and big frauds. Actors in this crisis also used main elements presented on prior frauds. It is worthy to point out that fraudsters are always one step ahead, especially from enforcements, but their *modus operandi* preserve some elements in common^[7]. So the purpose of this paper is not to discuss the effectiveness of improvements on prevention and detection mechanism but prior to highlight what always fraudsters will explore.

2. Conceptual Fundamentals

Baucus^[8] developed an important multivariate model that

identified three groups of situational precedent factors: pressure, opportunity and predisposition to fraud. MacLean^[9] introduced the logic of cognitive frames as he argued that the decision to participate on deviant action or not is unclear. He improved the multivariate model but he focused on the sensemaking process to redefine deviant practices without linking them to antecedent factors. Misangyi, Weaver, and Elms^[10] contributed to this specific literature adding the way in which meanings are attributed to substantive resources. However they focused on societal level of analysis.

Despite this effort to consolidate resources into a multivariate model, literature about corporate fraud has been too fragmented. Resources have been more deeply explored at each of these various levels: individual, organization, industry^[11], economic^[12], political and regulatory system^[13], and society^[14]. Some of these developments were selected here in order to give support to concepts involved on what was observed on cases and to point out the general context on which fraud was perpetrated.

At the level of society literature there are references to anomie theory that leads with social disorganization of values^[15], to the pressure that certain social values put on individuals^[16, 17] and with the role educational system plays related to these values^[14, 18]. The social disorganization of values turns diffuse the distinction between what is acceptable from what is not. And from this difficulty to distinguish what is acceptable flourished illegitimate forms to obtain success under pressure. Fraudsters execute practices inside and outside organization that are focused on turning diffuse this distinction, and these practices are better explained at organization and individual level. The education system does not emphasize the condemnation of non-ethical behaviour. And worst, reinforce a practice where the appearance of good performance is more important than the good performance itself^[14]. This is the expression in business environment of what Boorstin^[19] pointed in general issues: ‘(...) we are haunted not by reality, but by those images we have put in place of reality’. According to Baudrillard^[20], instead of communicating and giving sense, information avoids it and is limited to enact communication and enact sense in a dissuasive simulacrum.

All cases present actions intentionally taken to influence social perception of company, of business and of people involved on it. These practices clearly take advantage of this absence and inversion of values on behalf of fraud.

At the level of economic, political and regulatory systems literature explores regulatory mechanisms^[12] and wrong incentive systems^[21], both as source of opportuni-

ties. Literature also explores the perception of punishment system^[13,22] as inhibition and deterrence factor. There is another perspective that considers fraud as systemic, part of our economic environment where there are demand and supply of corruption^[23]. Notwithstanding there are divergent results about opportunities, incentives and inhibition factors^[10].

The regulatory system can provide an opportunity for its inadequacy (with perverse incentives) or for its absence at all. This absence can be consequence of a usual delay between a new business or transaction and its comprehension and regulation^[12] or can be consequence of an intentional deregulation process^[21]. Anyway, in the absence of regular norms, spontaneous norms emerge to legitimate practices that reinforce what was pointed at societal level about the importance of appearance in place of reality. 'Do whatever you can, even deceive about or disguise any potentially disadvantageous aspects you know of, in order to show a growing profit rate'^[12]. Note that author said 'to show' and not 'to reach'.

The regulatory mechanisms are presented as an improvement in terms of corporate governance but some of them simply reduce probability of being punished or reduce its severity^[12]. An instrument that should be used as an inhibition factor instead smooth penalties and perception of negative effects. As pointed out by Hake^[24], while accounting firms turned to be more dependent on revenues from clients, the Private Securities Litigation Reform Act of 1995 reduced the penalties for accounting and legal fraud. According to Ivancevich et al.^[13] deterrence is based on three factors: severity, celerity and certainty of punishment. If there is a lenient punishment, many possibilities to avoid conviction or the process is too long, this system will not deter but stimulate fraudsters that could evaluate the crime to be worth the risk^[25].

In the other hand, too severe punishment as putting the defendant out of business can also stimulate misconduct^[22].

The regulatory system becomes an opportunity also because of weakness of its institution. Duran^[12] relates, for example, that in spite of the increasingly complex of financial sector, SEC is understaffed and under funded. SEC's staff is inexperienced and receives salaries under those in private sector.

Under this context of weak institutions, spontaneous rules that reduce penalties or probabilities of being convicted, a natural delay of regulation of new transactions, and a market of corruption, it is easy to think that a good image management allows company survive committing fraud for a certain time without being noted.

Literature at organization level advanced to ways to de-

tect and prevent non-ethical behaviour. They include internal controls^[26], ethical code and compliance-ineffective if used as a checklist and not incorporated to organizational cultural^[27]; organizational culture that instead of reinforce ethical behaviour, incentives non-ethical actions by rationalization and socialization processes^[28]; and corporate governance as effective mechanism of prevention but also limited in efficacy when internal processes are designed to waive Board responsibilities for deviant actions^[29]. Nonetheless Ashforth et al.^[23] point that it is not unusual that these systems have a ceremonial role as a checklist of best practices and are not prepared for an effective prevention.

At this level are the main practices to influence perceptions at individual, society and regulatory environment, like internal controls specially designed for spread control, diffuse responsibilities and not register certain irregularities^[17].

Organizational culture can avoid or promote fraud. It can avoid fraud emphasizing ethic behaviour^[27,30] or can promote fraud, emphasizing values related to non-ethical behaviour^[28]. When organizational culture emphasizes that goals should be achieved anyway, a perverse incentive is emphasized. Perverse results have been produced by compensation plan stimulating gains even by corruption^[31].

This incentive can be empowered by regulatory and legal sanctions. Regulatory and legal sanctions can incentive fraud as individuals do not think there is something wrong and trust company has good practices that are in accordance with those rules. Accreditations and ratings increase the list of influence factors^[26] that confer legitimacy to what company is doing. Social sanction is the same, but it is mediated not only by organizational culture (ethic code) but also by social values. External perception, then, can be managed by active company's behaviour to influence it^[26].

Internal perception and people involvement count on other resources. Ethic scripts can limit perception of deviant behaviour that is out of them, leading to atrophy of competence^[30] and to adherence to it.

The adherence by cognitive^[32] is achieved by routinization, socialization and rationalizing discourses. Routinization refers to systems and procedures that are spread enough to set apart culpability of employee, turning fraud transaction diffuse^[29]. Socialization process^[28] avoids behaviour dissonant in the group. Individuals are stimulated to integrate themselves in order to assimilate social norms and organization culture. Individuals that perceive some wrongdoing or even some incoherence adhere to organization behaviour in order to survive in the group^[32]. Ra-

tionalizing ideologies provide a repertory for individuals justify what they are doing, hiding the deviant nature of the act^[33].

The objective of this paper is to present the integrated conditions for some big cases of corporate fraud and indicate possibilities of improving accountability.

3. Methods

The present research was conducted under a grounded approach. Data were analyzed by procedures adapted from document analysis^[34] and discourse analysis^[35] methods. It was possible to describe facts and identify resources used along fraud mainly by document analysis. Discourse analysis was used mainly to identify how facts were re-signified to prepare context for fraud. Both methods allowed apprehend the content and insights about phenomenon studied^[36]: corporate financial fraud.

Cases were chosen for attending better to theoretical requirements and for their disposal of accessible information. All cases described big frauds using financial instruments in Brazil and in United States, but at different sectors. Boi Gordo was an agribusiness (BR), Banco Santos was a bank (BR), Enron was an energy business (USA) and Madoff was a fund investment (USA). It follows a brief description of each case.

Enron grew from a sleepy natural gas pipeline to a trading colossus with products like gas, electricity, water distribution and many other businesses. In five years (1995-2000), Enron grew 900% in terms of revenue when other giant companies grew about 100% during the same period^[3]. Since 1986 many companies were created in 290 countries including tax heavens^[37,38,39]. For many years, the Enron group had hidden losses spread in off shores, out of balance sheet. By 1990, electricity market was liberalized at United States and Enron incremented its scheme of false profits. This accounting fraud allowed Kenneth Lay, his Chief Financial Officer Andrew Fastow and their families and friends made money-trading stocks. In 1999, Jeffrey Skilling jointed to them to implement the new liberal business consisted on a derivative energy market. This business turned to be the focus of group as it was used to create revenue based on false future values, sustaining stock prices. The fraudulent operation persisted for about 16 years until scandal and resulted in 4,000 people losing their jobs at group. It also resulted on Arthur Andersen collapse with 28,000 employees. Injury was estimated about EUR 18bn^[22,37,40].

Bernard Madoff founded Bernard L. Madoff Investment Securities LLC in 1960 as a brokerage business^[41]. In order to counterbalance the growing intense competition on brokerage, Madoff created a separate investment advisory business that targeted a select group of invited investors and promised returns that were 100% safe and regularly good (between 10 and 12% a year). Target, however, was not so select as claimed. Scheme included 59 managed companies, 339 funds identified around the world^[42] and some great banks^[37]. These returns were supposed to be obtained from investments in specific portfolios of stocks and options^[4,41,43]. Fraud consisted on the simple fact that there were no financial transactions for clients. Fraud was carried for about 18 years and injured estimated 13,500 investors^[44] that lost approximately EUR 13bn (also estimated).

Paulo Roberto de Andrade founded Boi Gordo at 1988, when he assumed his family traditional business. In 13 years, business grew 72.500% in terms of cows, spread on 111 own farms and 29 leased farms at 5 states and 18 companies^[45]. Business was pioneer and consisted on a new financing system for which they received many awards^[45]. Investor (partner) signed a contract by arroba. Boi Gordo used his money to buy calf and feed it, retaining 10% as administrative fee. The great attractive was the guarantee of 42% of gains for this period of 18 months, as normal agribusiness gained about 9% for the same period. Corporate fraud consisted in using investor's money to buy lands (private farms) and make many other investment (genetic, animal food etc.) despite the fact investors had no participation on them. This fraud caused injury for 30,000 investors, of about EUR 1bn, persisted for 12 years until scandal and fine was extinguished after 5 years from bankruptcy without condemnation^[46].

Edemar Cid Ferreira founded Procid Participações (holding) and Banco Santos at 1989^[6,47,48]. From these companies a group was constituted. Federal Policy identified 225 companies in total^[49]. By 2002 the Banco Santos was one of the most important re-leaser of BNDES¹ funds. One of them operated 82 funds by 2004^[6]. Banco Santos was different by its pioneer in international relation, by notable cultural sponsorship and had a different service from competitors, focusing on medium and big size companies with financial problems. For them, bank offered good conditions of lending without those guarantees required by competitors. Other niche were wealthy individuals and for them bank offered exceptional conditions of return, much more than market could offer. Corporate

1 BNDES - National Bank for Social and Economic Development. It lends public resources.

fraud consisted on using investor's money to buy bonds of paper companies (belonging to the group) and so deviate this funds to personal wealthy. This money at paper companies was spread into third parties and was evaded, part of them to holdings at tax heavens. Some off shores were used for funds evasion and money laundering, offering an illicit service for a public that demanded it. The group includes also a mirror-company named Bank of Europe, at Antilles. They developed a sophisticated scheme involving this Bank and many other companies [e.g. 50; 51]. This fraud caused injury for 2,000 investors of about EUR 1.1bn, persisted for 9 years.

Text material were mainly analysed by document analysis method ^[34] in order to reconstruct history of each case. Part of this material and media material was analysed by discourse analysis method ^[35]. The objective was to understand the way discursive resources were used to prepare a context for action ^[52].

4. Analysis and Discussion

The recognition, measurement and disclosure of economic and financial situation of a business should be accountable as financial information is fundamental to gain respect and credibility of market, investors and society. During a corporate financial fraud these information were manipulated in order to avoid questionings about business even when there were red flags that could not be perfectly hidden. This manipulation is conducted by accounting frauds as recognizing what is not real, attributing false value to items, omitting fundamentals information or creating facts. However all these practices are not enough to hide negative numbers or facts. Then symbolic resources are used to create a positive sense making toward business, as an illusion to blear analysis. False numbers allow false position in rankings intensively propagated by media. Difficulties to audit them and economic pressure over auditing firms and rating agencies lead to favourable opinion about business. This sense making results in favourable media by positive meaning attributed to negative facts. These resources reinforce a social sanction, legitimizing business as successful.

The analysis of cases indicated that when there is a clear intention to fraud, internal conditions for it are prepared and sustained.

Then, the modus operandi contemplates resources used to guarantee people participation, to dissipate fraud and dilute responsibilities and, to create positive sense making about business.

Business is structured in order to allow projecting an image without apparent dissonance to substance. The lack of

dissonance was fundamental to construct confidence with investors, regulators agents, media and employees. Many substantive and symbolic resources were used with success and business continued to expand. The modus operandi drove business to success as a self-fulfilling prophecy in a manner similar that described by Boorstin ^[19].

The result of analysis was organized by objectives as follows, with some examples of each case.

4.1 To Get Involvement of Executives, Employees and External People

The participation of people can be direct or indirect, consciously or not. Resources like compensation scheme and social sanction were intensively used. There were also indicia of active corruption.

All cases used hiring process or good compensation plans in order to get their complicity or even direct participation. Banco Santos hired people greed enough to execute clearly and not so clearly illicit transactions for a good financial compensation ^[51]. At Enron commodity traders had hidden losses by mismarking forward curves as they were compensated by larger bonus based on profits ^[39]. At Boi Gordo, qualified employees had bonuses higher than market and some of them were paid by offshore ^[45]. At Madoff, deviant practices were executed by a limited group of 12 employees of friends and relatives. They falsified tickets of operation and then extract to investors ^[41].

Indirect or unconsciously participation was extensively gotten by economic compensation and routinization, mediated by social sanction. Some employees behave like soldiers just executing fragmented transactions and are compensated for good results on them. Public recognition and ratings retro-feed these policies, as employees felt certain comfort for it. Banco Santos hired idoneous people to project an image of conformity ^[51] and Enron hired 'bright minds' from Stanford and Harvard with exceptional salary and bonuses and socializing them into 'Enron way of doing business', leaving all other loyalties behind ^[38]. At Madoff, a compensation scheme was for feeder funds. Some fund admitted they knew that Madoff's strategy was not what he said and possibly he had privilege information – which is crime. Madoff, distinct from market practices, received just a market rate commission on each trade. Distributors appropriated the fees, and part of them survived just because Madoff existed and this compensated the risk of some illegality ^[53].

It is interesting to note that there were indicia of active corruption to execute transactions outside company. Boi Gordo bought vaccines labels (and not vaccines) in order to pretend they had those cows. Who sold all these labels could have questioned what was going on. They also falsi-

fied animal transportation legal note. Instead of 4 animals, they delivered a note with 41,717 animals. It was a visible fraud, as 41 thousand animals would require more than one truck to be transported^[45]. These actions enacted a cattle size necessary to justify sham asset transfers among related companies and then improve financial condition on statements. These facts indicate that there were some active corruption.

There were more subtle indicia of corruption at Enron, Madoff and Banco Santos cases but none of them were convicted by active corruption what limit affirmations about it.

In response to several complaints received against Madoff, SEC's conduct on investigations was at least questionable. Team assembled was relatively inexperienced and conducted general questions or even pro form questions. In fact, SEC never conducted a Ponzi scheme examination or investigation of Madoff^[4]. At Enron cases, indicia were more commented. SEC allowed a market-to-market procedure without obvious questionings about assumptions^[24,43]. If there were financial contributions to SEC to favour frauds it is not possible to affirm but certainly there was political influence that minimize concerns about those businesses. Economical importance of business could be enough to exercise political influence.

Other people were involved just in name of friendship without a clear notion of what was going on or the proportion of it. For this kind of involvement public recognition and ratings played a fundamental role. Banco Santos, Enron, Boi Gordo used third people as a front of paper companies and offshore. His brother-in-law audited Madoff's business and he justified it by the secret maintenance. Confidence was the main factor here.

Then routinization, public recognition and ratings appeared as important factors to construct confidence and so get people involved, consciously or not.

4.2 To Turn Fraud and Culpabilities Diffuse and to Routinize It

Schemes include the spread of fraud and culpabilities in order to turn difficult to be perceived by employees unconsciously involved and to give some protection to those consciously involved. This is also necessary to avoid accounting frauds detection by auditors, regulatory agents and analysts.

The substantive resources included a centralization of command and simultaneous decentralization of operation in many companies, part in name of front persons, out of formal group or with limited capital. Command centralized was necessary to orchestrate transactions and funds deviation. Business turned too complex as transactions

were fragmented into companies leading to parallels controls and allowing accounting frauds. Information systems and processes started at one company and ended at another and, employees of both did not have entire information and control over transactions.

It was tracked 18 companies at Boi Gordo (only 1 under regulation) and 225 at Banco Santos (19 of formal group and few under regulation). At both cases, companies served to spread control, to avoid confirming the existence of real guarantees and to simulate gains. They did it, for example, by creating false transactions between them and by executing transaction at one company divulging a risk classification of the group and not of that company, which was a bad one^[6,45]. At Enron, Stars War protagonists named some companies with limited capital, in 290 countries, out of formal group. They were used to simulate business volume of transactions and profits^[38,39]. At all cases, it was difficult to convict all involved by their responsibility on fraud scheme as many employees argued they were executing orders or corporate procedures^[6,22].

All cases presented red flags on financial information and operation along fraud execution. Inconsistencies were seen as function of complex nature of business what legitimated its differentiation from others.

Rationalizing discourses, sense making process and social and regulatory sanctions had helped to give sense of modernity, conformity and differentiation, legitimating extraordinary competence and gains in spite of questioning the routine of deviant behaviour. These actions are described at the following item.

4.3 To Create and Sustain a Positive Sense Making About Business

It is important to convince people that business is a case of success recognized by specialized public (as auditors, regulatory agencies) and general public. This positive sense making serves as social sanction and facilitates rationalization discourses inside and outside company.

A symbolic resource for deceiving public is the exploration of specific values to attract investors and blear analysts by projecting a genius and innovative image. Banco Santos, for example, explored art market to project a sophisticated image, and so their clients could feel they were also sophisticated. Boi Gordo explored the image of being bright and pioneer on agribusiness financing. Enron was known by its bright minds, 'master of universe', as their clients should also be. Madoff explored the idea of exclusive club and secret. Awards and detach position on rankings reinforce the success of these genius.

A substantive form of avoid questioning about business is how they set them. They operated outside boundaries of

legislation, regulation or dominant technical knowledge.

These main resources combined enabled the construction of a context to sustain fraud. From these, each case developed their fraudulent scheme using other substantive and symbolic resources. It follows some comments about how they drilled down their strategies.

As there was no transaction at all, the Madoff's investment advisory business was not registered with the SEC, thus preventing in-depth external evaluation of its practices and performance^[4]. Furthermore, investors had to invest by feeder funds indicated by Madoff. Great firms audited these feeder funds and this gives legitimacy to business. These funds could not disclose the name of Madoff or his company when dealing with investors, as investor's transaction was secret. This arrangement prevented access to the business as a whole and its transactions. Then, Madoff, a sophisticated multibillion-dollar business, was not audited neither by a great firm neither regulated by SEC^[54].

The secrecy and genius image turned some questionable procedures to be taken as reasonable. A hedge fund should use independent third parties to execute some activities, in order to guarantee certain level of compliance, avoiding frauds and assuring that those asset value presented were real. Nevertheless, Madoff executed all of them internally and feeder funds should believe him. It is important to point out that some of them thought Madoff had privileged information and accepted the risk. Fraud itself consisted on simulating trades with investors' money in Fortune 500 stocks hedged against Standard & Poor (S&P) Index. Every day, Madoff and his CFO picked the stocks that had a good performance and created false documents enacting trades with them, giving the sense of privilege information. As investors accepted that business strategy was a secret, he just informed average prices during each day and not actual prices for each transaction, and never answered questions about performance^[4]. Modus operandi consisted on simulating purchases and selling of all stocks within the month, so investors money with gains were at cash at the end of the month. Doing so, investors would never receive from an intermediary an extract with custodian stocks to check their investment.

By volume that should be trading, he turned to be three times the size of the largest known hedge funds in the world but most market professionals did not know about him or have done transactions with him^[54]. Madoff recognized transactions that never existed but no one mistrusted^[53]. He created returns based on average prices that were not possible to be replicated by specialists. They questioned the possibility of that, but they were not listened^[4]. They did no divulgate market prices that should com-

pound the false returns. These were some of red flags ignored by investors, feeder funds and SEC^[41]. On contrary, they constituted on simulacra of governance and success.

This success was sanctioned by SEC behaviour. It received the first complaint against Madoff in 1992, and up to 1998, there were six. Despite three examinations and two investigations conducted, SEC never questioned the Ponzi scheme, and the absence of something wrong reinforced the good image of Madoff.

At Enron, public relation was used to minimize any chance of relationship^[38]. Enron registered false events. It enacted a market of big transactions, registering purchases within group companies, as they were third parties. In order to convince specialists and media, beyond all accounting frauds, Enron constructed a theatre stage to simulate a real trading floor and justify the volume of transactions and importance of operation.

Enron falsified measurement process. There was no benchmarking price to future market of energy and so it could raise price assumption as needed. Enron created a market for long-term contracts that exceeded 6 years, longer than usual maturity. Therefore, traders mismarked forward curve without being questioned. The board, particularly the audit committee, did not understand statistical detail neither had information about trading business and its effective risk. Despite this complexity, they met only five times in 2000. The accuracy of its risk model at 95% of the time, without a risk management, was also obfuscated by external communication. SEC did not monitor how Enron carried out its mark-to-market accounting^[38-40]. They were genius and this justified the accuracy.

Enron divulgated information omitting partnerships transactions^[40] affecting balance sheet; loans disguised as energy trades with Citigroup and Chase involvement, affecting cash flow statement; a sham asset sale to Merrill Lynch with the promise to resale the asset at a minimum return, affecting income statement; loans from Citigroup disguised as transfer of asset at inflated values to SPEs and joint venture not independent, inflating earnings and affecting debt position; a complex loan transaction issued by a Chase-controlled SPE, producing Canadian tax benefits and income benefit. These are examples of transactions omitted or hidden on financial statement. It is important to detach that Enron would not have been able to do it without active participation of some major financial institutions, well compensated for it^[43]. Auditors and rating agencies were also well financially compensated for ignoring bad signals. They are all increasingly dependent on clients' money as SEC's budget is influenced by political interests^[24,40]. Financial and political influence (or corruption), lack of knowledge of general and specialist

public, awards and favourable media retro-feed a simulacrum of accountability.

Boi Gordo was also a business under a lack of regulation and ineffective auditing. It sold contracts under a legal apparatus not applicable to that business, just in order to confer some legality appealing ^[45]. About 50% of cattle registered on financial statements were inexistent. The owner, Paulo Roberto, said that CVM - Comissão de Valores Mobiliários (Brazilian SEC) had a few auditors and they could not verify the existence of cows in loco, spread out over 140 farms ^[55]. Boi Gordo simulated many profitable transactions among related companies, outside regulator reach. They included transfers of cows (inexistent), assets sale (farms, land) and loans in order to create sham guarantee, profits and reduction of debts ^[5,45]. Paulo Roberto deviated investor's funds to private diversified business but he re-signified this, promoting this growth as a signal of success, developed with only 10% of fees ^[46]. After all, he was a genius as agro business management. As some institutional videos claimed, he had 'the feet on the ground and the eyes on the future' ^[56].

After the innovative business being regulated by 1998, Boi Gordo intensified these transactions with many changes on partnership of companies and intensified accounting frauds and omissions. In 2001, an anonymous denounce was made to CVM and the investigation resulted on restriction for Boi Gordo selling its investment contracts. But Boi Gordo innovated again and started to sell the contract by third and related parties outside regulation boundaries, but with the same group of employees. The complexities of group constitution did not allow employees perceive changes on operation ^[45]. Mega events, extravagant purchases of cattle and intense positive publicity, increased the list of actions in order to obfuscate people to question business success. The simulacrum started to ruin after two denounces to CVM.

Banco Santos developed an intricate scheme of 225 companies to deviate and evade funds and laundering money. There were many transactions simulated similar to Enron's, as loans among related parties and sale of companies ^[51]. However, Banco Santos added to scheme a component that would turn the money arresting a very difficult challenge: work of arts. Edemar was a mecenas and part of related companies were structured to organize mega cultural events, and also to do extravagant purchases and spread work of arts around the world.

The bank and the broker companies registered transactions among related parties to create false earnings. One example of instruments was used at broker company. The broker sold bonds based on loans issued by bank. Bank issued loans but required reciprocity of client to invest

on related companies papers (part of deviating funds scheme). Most of these companies had no operational activity at all. Complexity included some guarantees deposited by clients on Bank of Europe, a mirror company of Banco Santos at tax heavens. This relationship among companies and investment papers were not explicit for none of stakeholders. Central Bank argued there were unusual transactions, but not illegal ^[6,51].

Bonds price were over measured, ignoring risk evaluation. Broker company argued that Bank had a risk management over loans, and bonds were based on them. It should be enough to create confidence. Bank employees argued risk management of bonds were made by broker company. Then, broker dealt junk bonds without being perceived by regulators ^[6]. In order to obfuscate public perception about what was going on, an intense marketing of competence and sophistication was promoted. So, even lending money to companies in difficult situation rejected by other institutions, the extravagant result on operation was the effective signal of how they were genius. Central Bank, BNDES, rating agencies and media started to question Banco Santos group business when it was too late to recover money. Along many years, the simulacrum of accountability was sustained by positive internal and external discourses, by promotion of success on diversified businesses and by financial incentives (or corruption) to other institutions

Finally, ethic codes, compliance and corporate governance practices were used at Banco Santos and Enron to avoid internal fraud (against company) and reinforce sense making of legitimacy. Another resource was rationalizing discourses. They were similar at Enron, Banco Santos and Boi Gordo and are synthesized at Table 1. As Madoff had no operation at all, these discourses were not necessary.

Table 1. Syntheses of rationalizing discourses

DISCOURSE	DESCRIPTION
Denial of responsibility	Top management attributes deviant actions to operational employees. Employees attribute to routines and procedures. External participants do not even know what company does; they were just helping a friend (front persons).
Denial of injury	Business is good for all; everybody gains.
Denial of victim	Clients are partners; they are qualified, they know the risk and accepted to participate into business.
Legitimizing of exceptional competence	The extraordinary result, compensate plan for employees and business growth are all consequence of a differential competence that legitimize business.

5. Conclusion

The study concluded that at corporate financial fraud cas-

es no management control or regulatory and governance apparatus have been enough to prevent and detect it. The four cases studied manipulated accounting information in recognition, measurement and disclosure. Despite these accounting frauds, several red flags could be perceived at each case. But they were not considered neither by employees, auditors, regulatory agencies, investors or general public. A positive sense making created and sustained by companies had a fundamental role to hide frauds and disregard red flags. This sense making was constructed based on confidence, in genius image, with rationalizing discourses and financial and political influence.

In fact many improvements in corporate governance were made since these cases and probably many actions described here, would be avoided by new norms, laws, systems etc. Under contemporaneous context, however, fraudsters would adapt these actions to fit another deceiving way of doing things. Therefore the fundamental is not to focus on actions themselves but to understand for which purpose they were used: a) to get involvement of people; b) to turn fraud and culpabilities diffuse and routinize it and; c) to create and sustain sense making. Fraudster with new substantive and symbolic resources will pursue these purposes. That's the essence of the model.

Accountability presumes control over entire business structure and modus operandi, what goes beyond accounting framework. To improve accountability, auditing and regulatory apparatus should include symbolic resources analysis integrated to substantive ones available at multiple sources. It should avoid checklist of practices or even simple compliance to recognition, measurement and disclosures rules. In turn, investors and society should suspect of genius, secrets, exceptional gains and growth.

Fraudsters were genius but of illusionism. They did not have risk management on business but they were experts on calculating fraud risk and on working without being perceived by operational risk systems. As always have people greed or ingenious enough, other cases of corporate fraud should be avoided by market institutions and analysts in an integrative and cooperative way among them.

Finally, it is worthy to point out that 2008 crisis emerged as a huge fraud perpetrated not by a single corporate but several ones together – nevertheless there is a sense making to call it crisis instead of fraud. It is cheaper to create sense making in nowadays with digital media and it is easy to certify this phenomenon through recent national elections around the world. One lesson to extract from it is that new big frauds could be still subtler to lay audience than priors.

References

- [1] International Accounting Standards Committee Foundation. S. International Financial Reporting Standards (IFRSs). London: IASB, 2008. 2719p.
- [2] Barth, J. R.; Trimbath, S.; & Yago, G. J. Before the Enron Collapse: What Corporate CFOs Around the World Said About the Status of Accounting and Disclosure Practices. Review of Pacific Basin Financial Markets and Policies, 2003, Vol. 6, Issue 4: pp. 433-440.
- [3] Schilit, H. M., & Perler, J. M. Financial Shenanigans. 3rd Edition. McGraw-Hill, 2010, 318p.
- [4] US Securities and Exchange Commission. R. Report of investigation executive summary. 2009. Retrieved October 19, 2011 from <http://www.sec.gov/spotlight/secpostmadoffreforms/oig-509-exec-summary.pdf>.
- [5] Rio de Janeiro. Comissão de Valores Mobiliários. R. Inquérito Administrativo nº 17/01. 2003, September 17. Retrieved June 01, 2009 from <http://www.cvm.org.br>.
- [6] Rio de Janeiro. Comissão de Valores Mobiliários. R. Processo Administrativo Sancionador no 01/05, 2008, November 26. Retrieved October 01, 2010 from <http://www.cvm.org.br>.
- [7] Costa, A. P. P. Corporate Governance and Fraud: Evolution and Considerations. Corporate Governance and Strategic Decision Making, Associate Prof. Okechukwu Lawrence Emeagwali (Ed.), InTech, 2017, DOI: 10.5772/intechopen.68489. Available from: <https://www.intechopen.com/books/corporate-governance-and-strategic-decision-making/corporate-governance-and-fraud-evolution-and-considerations>
- [8] Baucus, M. S. J. Pressure, Opportunity and predisposition: a multivariate model of corporate illegality. Journal of Management, 1994, Vol 20, Issue 4: pp. 699-721.
- [9] Maclean, T. L. J. Framing and organizational misconduct: a symbolic interactionist study. Journal of Business Ethics, 2008, Vol 78, Issue 1/2: pp. 3-16.
- [10] Misangyi, V. F., Weaver, G. R., & Elms, H. J. Ending corruption: the interplay among institutional logics, resources, and institutional entrepreneurs. Academy of Management Review, 2008, Vol 33, Issue 3: pp. 750-770.
- [11] Daboud, A. J., Rasheed, A. M. A., Priem, R. L., & Gray, D. A. J.. Top management team characteristics and corporate illegal activity. Academy of Management Review, 1995, Vol 20, Issue 1: pp. 138-170.
- [12] Duran, M. A. J. Norm-Based Behavior and Corporate Malpractice. Journal of Economic Issues. 2007, Volume XLI, Issue 1: pp. 221-241.

- [13] Ivancevich, J. M., Duening, T. N., Gilbert, J. A., & Konopaske, R. J. Deterring white-collar crime. *Academy of Management Executive*, 2003, Vol 17, Issue 2: pp. 114-12.
- [14] Gioia, D. A. J. Business education's role in the crisis of corporate confidence. *Academy of Management Executive*, 2002, Vol 16, Issue 3: pp. 142-144.
- [15] Durkheim, É. M. *Da divisão do trabalho social* in Durkheim – Os pensadores. São Paulo: Abril Cultural, 1983.
- [16] Belkaoui, A. R.; & Picur, R. D. J. Understanding fraud in the accounting environment. *Managerial Finance*, 2000, Vol 26, Issue 11: pp. 33-41.
- [17] Zahra, S. A., Priem, R. L., & Rasheed, A. A. J. The antecedents and consequences of top management fraud. *Journal of Management*, 2005, Vol 31, Issue 6: pp. 803-828.
- [18] Adler, P. S. J. Corporate scandals: it's time for reflection in business schools. *Academy of Management Executive*, 2002, Vol 16, Issue 3: pp. 148-149.
- [19] Boorstin, D. J. M. *The Image – a guide to pseudo-events in America*. New York: First Vintage Books Edition, 1992. 259p.
- [20] Baudrilard, J. M. *Simulacros e simulação*. Lisboa: Relógio D'água, 1991. 201p.
- [21] Stiglitz, J. E. M. Os exuberantes anos 90: uma nova interpretação da década mais próspera da história. São Paulo: Companhia das Letras, 2003. 391p.
- [22] Hamdani, A., & Klement, A. J. Corporate crime and deterrence. *Stanford Law Review*, 2008, Vol 61: pp. 271-310.
- [23] Ashforth, B. E., Gioia, D. A., Robinson, S. L., & Treviño, L. K. J. Re-viewing organizational corruption. *Academy of Management Review*, 2008, Vol 33, Issue 3: pp. 670-684.
- [24] Hake, E. R. J. Financial illusion: accounting for profits in an Enron world. *Journal of Economic issues*, 2005, Vol 39, Issue 3 September: pp. 595-611.
- [25] Baer, M. J. Linkage and the Deterrence of Corporate Fraud. *Virginia Law Review*, 2008, Vol 94: pp. 1295-1365.
- [26] Lange, D. J. A multidimensional conceptualization of organizational corruption control. *Academy of Management Review*, 2008, Vol 33, Issue 3: pp. 710-729.
- [27] Treviño, L. K., Weaver, G. R., Gibson, D. G., & Toffler, B. L. J. Managing Ethics and Legal Compliance: what works and what hurts. *California Management Review*, 1999, Vol 41, Issue 2: pp. 131-151.
- [28] Ashforth, B. E., & Anand, V. J. The normalization of corruption in organizations. *Research in Organizational Behavior*, 2003, Vol 25: pp. 1-52.
- [29] Pinto, J., Leana, C. R., & Pil, F. K. J. Corrupt Organizations or organizations of corrupt individuals? Two types of organization-level corruption. *Academy of Management Review*, 2008, Vol 33, Issue 3: pp. 685-709.
- [30] Stansbury, J., & Barry, B. J. Ethics programs and the paradox of control. *Business Ethics Quarterly*, 2007, Vol 17, Issue 2: pp. 239-261.
- [31] Delves, D. P. M. Stock options & the new rules of corporate accountability – measuring, managing and rewarding executive performance. New York: McGraw-Hill, 2004. 202p.
- [32] Goffman, E. M. *The presentation of self in everyday life*. New York: Anchor Books, 1959. 259p.
- [33] Anand, V., Ashforth, B. E., & Joshi, M. J. Business as usual: The acceptance and perpetuation of corruption in organizations. *Academy of Management Executive*, 2004, Vol 18, Issue 2: pp. 39-52.
- [34] Bardin, L. M. *Análise de conteúdo*. Lisboa: Edições, 70, 1977. 281p.
- [35] Phillips, N., & Di Domenico, M. C. Discourse Analysis in Organizational Research: Methods and Debates. in D. Buchanan and A. Bryman (eds.), *The Handbook of Organizational Research Methods*. London: Sage, 2009: pp. 549-565.
- [36] Glaser, B. G., & Strauss, A. L. M. *The discovery of grounded theory: strategies for qualitative research*. New York: Aldine Publishing Company, 1979. 271p.
- [37] Nars, K. M. *Golpes bilionários: como os maiores golpistas da história enganaram tanta gente por tanto tempo*. Belo Horizonte, MG: Editora Gutenberg, 2012. 2014p.
- [38] Boje, D. M.; Rosile, G. A.; Durant, R. A.; & Luhman, J. T. J. Enron Spectacles: A Critical Dramaturgical Analysis. *Organization Studies*, 2004, Vol 25, Issue 5: pp. 751-774.
- [39] Boje, D. M.; Gardner, C. L.; & Smith, W. J. Mis)Using Numbers in the Enron Story. *Organization Studies*, 2006, Vol 9, Issue 4: pp. 456-474.
- [40] Smith, R., & Emshwiller, J. R. M. 24 days: how two Wall Street Journal reporters uncovered the lies that destroyed faith in Corporate America. New York, NY: HarperBusiness, 2004, 400p.
- [41] Gregoriou, G. N., & Lhabitant, F.-S. J. Madoff: A flock of red flags. *The Journal of Wealth Management*, Summer, 2009: pp. 89-97.
- [42] Martin, G. A. J. Who invested with Madoff? A flash analysis of funds of funds. *The Journal of Alternative Investment*, Summer, 2009: pp. 75-85.
- [43] US Senate. R. Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by US Financial Institutions. US Senate, Permanent Subcommittee on Investigations,

- Washington, January 2, 2003. Retrieved October 30, 2001 from http://www.google.com.br/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0C-CcQFjAA&url=http%3A%2F%2Fwww.hsgac.senate.gov%2Fdownload%2Freport_report-on-fish-tail-bacchus-sundance-and-slapshot-four-enron-transactions-funded-and-facilitated-by-us-financial-institutions&ei=1YSUU5myBbflsAS-qx4DIBQ&usg=AFQjCNFLnvYxqUTvuRd46LzsPd33lup6ww&bvm=bv.68445247,d.cWc
- [44] Kranacher, M. J. J. Accounting for the Madoff fraud: Where's the guidance? *The CPA Journal*, 2009, April: p. 80.
- [45] São Paulo. 1a Vara Cível do Foro Central da Comarca da Capital. R. Laudo Contábil da Falência. Processo de falência nº 583.00.2002.171131-3. 2006, February 17. Retrieved June 24, 2009 from http://www.albg.com.br/si/site/jornal_materia?codigo=326
- [46] São Paulo. R. 1a Vara Cível Sentença Condenatória em 1a Instância do processo penal falimentar no 000.06.000023-6. 2008, March 31. Retrieved 24 June 2009 from http://www.almeidapaiva.adv.br/novo/template_geral.php?id=644.
- [47] São Paulo. R. Pedido de Falência - Banco Santos, Liquidação extrajudicial. 2005, June 16. Retrieved 10 October 2010 from <https://www.bancosantos.com.br>.
- [48] São Paulo. R. Tribunal de Justiça do Estado de São Paulo. 2a Vara de Falências e Recuperações Judiciais. Sentença de falência. Processo 000.05-065208-7. 2005. Retrieved 10 October 2010 from <https://www.bancosantos.com.br>.
- [49] Prestes, C. N. Massa falida do Banco Santos vai quitar R\$ 270 milhões da dívida. *Valor Econômico*, 17 December 2009, Finanças.
- [50] Carvalho, M. C. N. Empresa do Caribe controla Cid Collection. *Folha de São Paulo*, 23 November 2004, Dinheiro.
- [51] Brasil. Ministério Público Federal. R. Denúncia. 2005, June 30. Retrieved November 22, 2010 from http://www.conjur.com.br/2005-jul-06/justica_aceita_denuncia_mpf_edemar_cid_ferreira?pagina3.
- [52] Phillips, N., & Hardy, C. J. *Discourse Analysis – Investigating processes of social construction*. Thousand Oaks: Sage; Sage University Paper Series on Qualitative Research Methods, 2002, Vol 50.
- [53] Markopolos, H. J. How I got the goods on Madoff, and why no one would listen. *BusinessWeek*, 2010, Vol 22 March: pp. 60-64.
- [54] Markopolos, H. J. How I brought down Bernie Madoff. *Canadian Business*, 2010, Vol 83, Issue 4/5: pp. 48-53.
- [55] Damiani, M. J. Como perdi meu boi gordo. *Istoé Dinheiro*, 12 October 2001, Ed. 217, Finanças.
- [56] Colonizadora Boi Gordo. Institutional video. *BoiGordo.info*. 2000. Retrieved September, 04, 2010 from: <http://youtube.com.br>.