

**Corporate Scandal:  
Jail Trumps SOX and SOX-Light as Deterrent to Crime;  
Favour Long Prison Terms for Ken Lay, Ebbers, Kozlowski,  
and Rigas, but Divided Opinion about Martha; Canada Soft**

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## **1.0 Introduction**

In the days between the conviction and sentencing of Enron CEO Ken Lay, the COMPAS business panel sees much value in tough sentences as a deterrent. “Executives who commit crimes that result in the equivalent of financial capital punishment to individual investors...,” observed one senior executive, “should receive very stiff penalties and have their personal fortunes reduced to the levels of their victims.”

Some volunteered concern that too few Canadian executives are brought to trial and given tough sentences. One CEO summed up the feelings of many that Canadian judicial enforcement is “not stringent enough.” According to this panellist, tough sentences are vital because they are “appropriate,” not because fear of jail is an effective deterrent.

Most members of the panel do see jail as more effective than the new accounting regulations being introduced for U.S.-listed companies under Sarbanes-Oxley and for Canadian-listed companies under what is often referred to as “SOX-light.” One respondent summed up the panel’s equivocal perspective on the new accounting regulations in the following words:

As an executive in a company subject to SOX, the regulations have refocused attention on internal financial controls, which were in place, but largely ignored. In this regard, SOX is a positive but has been expensive to implement. But as for SOX solving the problems of greed and malfeasance, the criminal mind is often superior, and there is always a way to beat the system if you don’t mind breaking the rules and the law.

Asked about recent convictions and sentences in various trials, the panel tends to see the strong sentences as appropriate in the case of the Rigas family, Koslowski, and Ebbers. CEOs and business leaders on the panel are divided about Martha Stewart with sizeable numbers believing that the sentence was too heavy given the “paltry” nature of her crime, as one CEO put it, or too light as a result of favouritism because of her gender or media star status.

As for Ken Lay, the overwhelming majority calls for a tough sentence.

These are the key findings from the current web-survey of the COMPAS panel of CEOs and business leaders undertaken for the *Financial Post* under sponsorship of BDO Dunwoody LLP.



## 2.0. Jail Trumps New Accounting Requirements for Discouraging Corporate Fraud

CEOs and business leaders on the COMPAS business panel believe that putting executives behind bars is a relatively effective way of keeping the capitalist system honest with more than 80% taking this view, as shown in table 2. By contrast, barely half the panel believes that Sarbanes-Oxley-type regulations will achieve the same effect. Meanwhile, sizeable minorities believe that “media and legal hype about corporate scandals often does more harm than good, shrinking the assets of innocent investors.” By the same token, sizeable minorities believe that U.S. prosecutors are overzealous in order to further their own political careers.

*Table 2: (Q6) On a 7 point scale, where 7 means agree strongly and 1 the opposite, please indicate how much you agree or disagree with the following opinions about fighting business crime.*

	Mean	7	6	5	4	3	2	1	DNK
Putting dishonest executives behind bars is a very effective way of keeping the capitalist system honest and effective.	5.6	31	30	20	11	2	4	2	1
The Sarbanes-Oxley (“SOX”) accounting regulations in the U.S. and “SOX-light” in Canada will do very little to protect companies against fraud from the inside because dishonest executives will always look for ways of tricking the system.	4.7	9	23	20	17	13	8	2	7
Media and legal hype about corporate scandals often does more harm than good, shrinking the assets of innocent investors.	4.2	16	11	21	15	11	13	12	2
U.S. prosecutors are overzealous in prosecuting executives in order to further their own political careers.	4.2	13	16	15	14	14	16	9	3

Members of the panel are ardent in their hawkish views about the need for prosecuting white collar criminals:



Stealing is still stealing - white collar crime should be severely punished, if for no other reason of the trust levels involved. Give me an honest crook who uses a gun any day over these low lives who steal while smiling at you and shaking your hand. They deserve everything they get and more.

Misconduct by corporate leaders is on the rise, more efforts are required to protect shareholders from unscrupulous individuals who use the investors' money as their personal cash float or who manage the business without the required integrity.

Too bad our Canadian prosecutors are so lax on white collar crime.

Executives who commit fraud should get stiff fines and jail time, because in many cases they affect many innocent employees who cannot afford to lose their pensions etc.

Sentences are OK as is but should be served in full.

Panellists were vocal and voluble on the need for stiff punishment but were not unanimous. A few CEOs and business leaders expressed concern about uneven patterns of punishment across different patterns of crime. As one put it, "In the same newspaper a few weeks ago there was an article about a child predator getting 3 years and a CEO getting 25 years. This has the feel of a witch hunt."

The general feeling that tougher accounting regulations are less effective than jail emerged not only in the scores on the agreement questions displayed in table 2 but also in the content of verbatim opinions:

The problem with SOX and SOX light (because of the prohibitive incremental comfort and protection costs that will become inevitable) is yet another financial burden on "regulated to death" North American businesses. China, India, Korea, Japan and the rest must be laughing at us more and more when they see these hurdles erected that make us less and less competitive in the world.

Confidence in the security markets is essential for investor participation. The Enron matter has destroyed life savings of many and placed an additional burden on their quality of life.

Unfortunately there will always be someone that will take advantage of systems and lack of controls, regardless how carefully an investor researches an investment. Heavy fines and jail terms are needed to discourage those that contemplate actions similar to Enron and the other matters.

There is far too much use of regulation at all levels, which is a major burden on the economy. Simplification and transparency is a must today if we are going to compete in the future.



### Section 3.0. Most Sentences about Right; Divided Opinion about Martha; Throw the Book at Ken Lay

Asked about recent convictions and sentences in four corporate fraud trials, the panel tends to see the strong sentences as appropriate in the case of the Rigas family, Koslowski, and Ebbers, as shown in table 3A. CEOs and business leaders on the panel are divided about Martha Stewart with sizeable numbers believing that the sentence was too heavy given the “paltry” nature of her crime, as one CEO put it, or too light as a result of favouritism because of her gender or media star status.

As for Ken Lay, the overwhelming majority call for a tough sentence, as shown in table 3B.

Table 3A: (Q1-4) Which opinion is closest to your own? [NO ROTATION]

	Innocent	Guilty but the sentence was too heavy	Sentence was about right	Sentence was too light	DNK
	%	%	%	%	%
For lying during an investigation of insider trading, Martha Stewart was sentenced to five months in jail and five months of home confinement. She was...	8	28	39	24	2
Worldcom’s Bernie Ebbers was given a 25 year sentence for fraud, conspiracy and false regulatory filings. He was...	0	25	66	5	3
At Adelphia, the father and son in the Rigas family were given 15 and 20 year sentences, respectively, for fraud and conspiracy. They were...	0	14	56	14	17
Tyco’s Dennis Kozlowski was given 8-25 years for grand larceny and securities fraud. He was...	1	6	56	27	11



Table 3B: (Q5) Enron CEO Ken Lay was convicted but not yet sentenced.  
Do you think that...

	%
The sentence should be heavy	86
He was guilty but the sentence should be light	7
He was innocent	1
Don't know or no opinion	7

## 4.0 Methodology

The COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted May 31 – June 2. Respondents constitute an essentially hand-picked panel with a higher numerical representation of small and medium-sized firms.

Because of the small population of CEOs and business leaders from which the sample was drawn, the study can be considered more accurate than comparably sized general public studies. In studies of the general public, surveys of 131 are deemed accurate to within approximately 8.6 percentage points 19 times out of 20. The principal and co-investigator on this study are Conrad Winn, Ph.D and Tamara Gottlieb.

