

# Arc Horizon

Arc Partners, Inc.  
New York - London

An Arc Partners, Inc. Publication

## Special points of interest:

- Inaugural Edition of Arc Horizon
- Is E-Mail Compliance Required?
- 2005 Value-Based Vendor Management Survey
- Arc's HR Manager Profiled

*“There is no sadder sight in the world than to see a beautiful theory killed by a brutal fact.”*

## Featured Article

### E-Mail Compliance: Requirement or Recommendation?

**S**o, which camp are you in? You might have noticed that there seems to be a running argument about whether some people are taking e-mail compliance too seriously, particularly as related to Sarbanes-Oxley and the Gramm-Leach-Bliley Act.

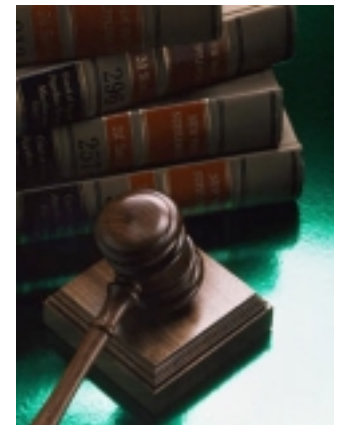
On one side of the argument are the people ‘reading into’ the text of these laws and deciphering a necessity for e-mail compliance that doesn’t *explicitly* exist. (It is explicit, however, in certain SEC and NASD rules; SEC 17a-3, SEC 17a-4, NASD 3010 and 3110.) They argue that e-mail compliance requirements derive from e-mail being the de facto standard for communicating within the business disciplines that *are* specifically mentioned;

financial records and safekeeping of personal information. In effect, their argument is, “B is a part of A and A is required, so B is also required.”

Their opponents are more precise in their interpretation. Strict constructionists hold that ‘financial records’ and ‘private information’ are already clearly defined, and note that the law does not specifically mention e-mail. They would also argue that stretching those definitions to include e-mail is a tactic of vendors, consultants, and other scurrilous dogs trying to scare businesspeople into believing they’re all headed to jail if they don’t immediately buy E-mail Compliance Product X. Their argument is, “A is all that is required. Vendors and

consultants are BAD!”

There is no sadder sight in the world than to see a beautiful theory killed by a brutal fact.



(Continued on page 3)

## Inside this issue:

<b>Featured Article</b>	
E-Mail Compliance: <i>Which is it, law or recommendation?</i>	1
<b>Leader's Notes</b>	
A Welcome from our MDs <i>Inaugural Edition of Arc's Newsletter</i>	1
<b>Inside Story</b>	
2005 Value-Based Vendor Management Survey. <i>Results are in... survey says!</i>	2
<b>Consultant's Corner</b>	
Book Review: Quick Hits—10 Key Surgical Strike Actions to Improve Business Process Performance	2
<b>Employee Profile</b>	
Jennifer Dougherty <i>HR, Wishes, and Crab-iar Dreams...</i>	3

## Leader's Notes

### Welcome, from our Managing Directors

Welcome to the inaugural edition of Arc Horizon, the official newsletter of Arc Partners. We hope to make this a forum for keeping our clients informed about the improvement of business performance through better management and the intelligent application of technology.

In these pages we will be sharing the reflections of several of our experts. Arc Partners is fortunate to have a cadre of professionals who average 18 years experience (none with less than 5 years). Among their numbers are individuals who have worked as CIO, Executive Director of Technol-

ogy, Chief of Staff (CEO), and Chief of Staff (CIO). There are licensed and credentialed analysts, financial experts, and a technology whiz or two. Their experience at executing strategies and leading projects in the trenches of financial services firms, banks, and exchanges should provide fodder for several interesting articles.

We also intend to profile several of these individuals to let you know a little more about the people you keep asking for year after year.

When the opportunity arises we will report on activities and industry events of interest to our

clients and to us as consultants.

You may note that the style of Arc Horizon is a little more laid-back than you may have come to expect from a corporate newsletter. It is our hope that by just being ourselves and treating this almost like a simple note between friends, we can make this newsletter entertaining as well as informative. We hope you will enjoy reading it as much as we will enjoy bringing it to you.

— Don Harder, John Marinelli, and Brendan O'Sullivan are Managing Directors at Arc Partners, Inc.

## Inside Story

*“86% of the respondent firms reported experiencing difficulty in effectively measuring and reporting on their vendor’s performance.”*

### The Results Are In: 2005 Value-based Vendor Management Survey Results

Value-Based Vendor Management (VBVM) is a technique for maximizing the value derived from any external service provider. In order to gauge how well financial organizations manage their vendor relationships, Arc Partners, Inc. conducted a survey in June 2005. The survey contained 13 questions and it was sent to over 200 senior business and technology managers representing over 65 financial companies including banks, broker/dealer firms, securities exchanges, asset managers, and hedge funds.

#### Key Findings

Only 22% of the respondent firms expressed a high level of satisfaction with their firm’s effectiveness in maximizing the value of their vendor relationships. According to the respondent firms, the top three challenges faced in implementing a VBVM program are Vendor Comparison & Evaluation, Contract Administration and Capital & Expense Budget Management.

Approximately 50% of the participating firms have established a centralized function for managing external vendor relationships, while 22% of

them are in the process of setting up one. The remaining 28% of the firms are currently considering this option.

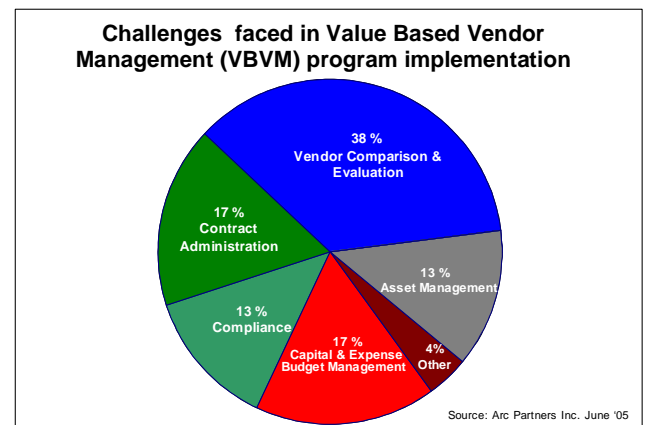
72% of the respondent firms indicated that they have well-defined enterprise-wide policies and procedures in place that govern external vendor relationships. However, when asked about the effectiveness of their vendor performance measurement approach, 86% of the respondent firms reported experiencing difficulty in effectively measuring and reporting on their vendors’ performance.

When asked if a vendor benchmarking study has been

completed recently, only 35% of the respondent firms responded yes. In addition, a majority of them reported that they do not currently have clear and concise performance measurement approach and profitability requirements for vendors.

Most respondent firms also reported that they have outsourced IT and Operations functions to external offshore vendors. Half of the respondent firms indicated that they plan to outsource a business process or technology component within the next 12 months.

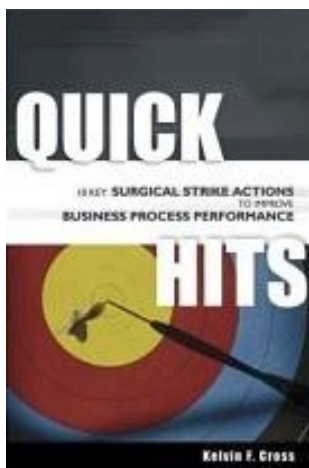
Of these, 27% would consider the off-shore option, 64%  
(Continued on page 3)



## Consultant’s Corner

### Book Review:

#### Quick Hits— 10 Key Surgical Strike Actions to Improve Business Process Performance



I recently finished scrutinizing a new book bearing the substantial title, *Quick Hits—10 Surgical Strike Actions to Improve Business Process Performance*. My first thought was, “I wonder what ‘surgical strike’ means to someone who composes 11 word titles?”

However, I’d read previous works by author Kelvin Cross, CEO of Corporate Renaissance, Inc. and especially liked his first book, *Corporate Renaissance: The Art of Reengineering*.

The book purports to provide an alternative to faddish business change methods, Six Sigma, TQM, Reengineering, et. al. by providing

“several specific key actions that work repeatedly.” ... as opposed to intermittently, I suppose.

I’m always on the prowl for new ideas to keep my skills fresh and provide food for thought in the area of Process Performance so I was a bit disappointed to find that the ‘specific key actions’ in question were a lengthy rehash of fairly basic reengineering design principles. “Eliminate Work, Streamline the Workflow, Redistribute the Work, Manage Fluctuations in Work Volume...” sound familiar?

The book does provide good examples and it moves the bar from theory into practical application; a

place where far too many business authors seem incapable of going. Maybe I wasn’t impressed because I’ve been shoulder deep in practical application for 15 years.

It’s not that these techniques aren’t valuable or don’t work, they do. But I was left wondering if the book might have been more accurately, and briefly, entitled, *Process Design Principles 101*. But then, who’s gonna buy that?

— J.L. Harris, is a Senior Manager at Arc Partners. The opinions expressed in this article are entirely his own.

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the on-shore, and 9% the near-shore. The respondent firms also reported that they are more likely to embrace a core on-shore strategic approach supplemented by some off-shore or near-shore initiatives.

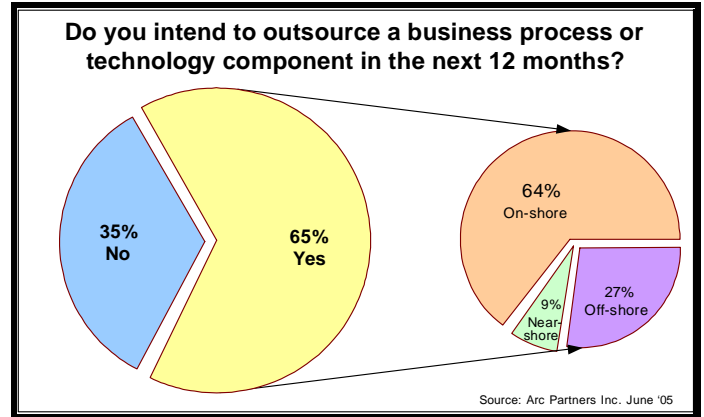
Of the firms currently outsourcing, 41% of them identified Quality Control as their greatest challenge followed by Risk Mitigation (23%), Process Control (23%), and Logistics (9%). Of the respondent firms that are planning to outsource in the future, 67% indicated that they would issue an RFP to a select group of outsourcing vendors within the next 6 months. The respondent firms also indicated that the main

areas in which they would require assistance are RFP Start-up Support, Requirement Analysis and ROI Analysis.

### Conclusion

The majority of the participating firms recognize the importance of a value-based vendor management program. Despite this, the survey results indicate that there is a need for a more comprehensive and measurable approach to address specific vendor management issues such as vendor benchmarking, ROI analysis and contract administration. The firms that have successfully implemented a well-defined

vendor management program, generally reported a higher level of satisfaction from customers and vendors.



## E-mail Compliance: Requirement or Recommendation?

(Continued from page 1)

There are only two ways to determine what is or is not ultimately included in a piece of legislation or a governmental rule; either a regulatory body issues a ruling or the issue is decided in court. And where, you might ask, are the regulatory bodies and courts coming down on the question of e-mail compliance? It's a tricky question because legal decisions are influenced by the facts of the case and the laws involved, but to attempt an answer, three recent situations may be instructive.

In a well-publicized civil dis-

pute decided in 2005, Morgan Stanley was instructed by a jury to pay \$1.45B in compensatory and punitive damages **due to its failure to produce e-mails in a timely manner**. In fact, the Wall Street powerhouse did produce the e-mails but it did so in spurts. Several times their IT executives stated categorically that they had complied with the judge's order to produce relevant e-mail. Yet, after many delays, multiple sets of tapes intermittently showing up from several New York offices, and at least two more categorical statements of compliance, the judge had finally had enough.

Because "the [discovery] abuses have continued unabated" she ruled that Morgan Stanley's actions were in "bad faith." She instructed the jury to award \$604M in compensatory damages and asked them to determine whether an additional \$850M in punitive damages should be awarded. It was.

How's that for snatching defeat from the jaws of victory? There's no way to know whether Morgan would have won the case, of course, but losing because you can't produce e-mail efficiently is just... wrong. Chalk one up for the courts siding with compliance.

In an unrelated, and more re-

(Continued on page 4)

*"You can imagine the fear... when Burst produced copies of emails from Microsoft that did not appear in Microsoft's list."*

## Employee Profile

### Jennifer Dougherty

If you've spoken to her on the phone you probably already guessed that Arc Partners' HR Manager is efficient, business-like, and very focused. You probably also know that she uses her 10 years of experience at being efficient and focused to help Arc clients and employees solve a multitude of problems. What you might not know is, her focus does not stop at

the end of the business day.

Jennifer is a 3 year volunteer with the Make-A-Wish Foundation®, an organization that grants the wishes of children with life-threatening medical conditions.

"I just wanted to do something that strictly helped children," she said recently, "and Make-A-Wish was it." Jennifer is preparing now for the Foundation's upcoming Annual Walk-

For-Wishes. "I'm ready to roll," she quipped, "More dollars equals more wishes!"

When Jennifer is not volunteering she spends as much time as possible at her new Beach House in Lacy Township, NJ, where she enjoys camping, fishing, crabbing... and, no doubt, thinking about ways to make wishes come true.



Make-A-Wish Foundation's Annual Walk for Wishes  
Jersey City, NJ Liberty State Park  
October 15, 2005  
For more information: (908) 964-5055

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*Arc Horizon is published quarterly by Arc Partners, Inc. Special editions may be published intermittently as circumstances require.*  
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*Arc Partners was founded during a time of unprecedented business and technology change in the financial services industry. Our goal is to assist financial services companies in improving business performance through better management and application of technology.*

*We are a high performance management consulting firm that works closely with our clients to ensure key business process and technology initiatives succeed. Our combination of industry expertise and consultative skills allows us to creatively analyze fast-changing environments and recommend best-fit solutions.*

*Arc Partners has earned a reputation for high quality, value-added service. We perform multiple engagements for over 90% of our clients, reflecting their satisfaction with their service. We continue to expand, but pace our growth to ensure continued excellence in the quality of our work.*

## Email Compliance: Requirement or Recommendation?

*(Continued from page 3)*  
cent situation again involving Morgan Stanley, the SEC has threatened a \$10M fine for **allegedly failing to preserve e-mail messages**. Because the case is still under review and in negotiation—meaning no one is talking—at least not ‘on the record,’ it is unclear whether the fine being considered is purely in relation to a violation of SEC rules, a 2002 cease-and-desist order on e-mail retention, or Sarbanes-Oxley Section 802, which requires firms to retain **all** records for 7 years when the records are related to pending legal and/or compliance actions against a company. (There are several.)

The latter carries criminal, not civil penalties; a sentence of up to 10 years imprisonment may be levied for violation of 802’s provisions. Chalk one up for regulators siding with compliance.

A third, not-so-well-publicized case, involves Microsoft Corporation. For the last few years, Microsoft has been engaged in a dispute with Burst.com, Inc. The trouble started when Burst ac-

cused the software giant of illegally incorporating some of its patented audio/video streaming technology into one of Microsoft’s products. Microsoft denied it had done anything wrong and set out to prove its case.

In response to a subpoena that Burst had submitted, Microsoft’s attorneys told the judge **they had produced a total and complete accounting of all the email relevant to the case**. So, you can imagine the fear in the eyes of Microsoft’s lawyer when Burst produced copies of emails from Microsoft that did *not* appear in Microsoft’s list.

It’s probably important to understand that whether or not Microsoft had anything to hide, the mere appearance of impropriety would have been devastating to its case. As noted earlier, judges do not look kindly on attorneys, or companies, caught violating legal discovery rules.

While it’s impossible to know for certain whether the missing emails were a key driver of subsequent events, Microsoft soon settled out of court and forked over


\$60 million to the utter delight of Burst’s stockholders and anyone else who revels in watching David peg Goliath right between the eyes<sup>1</sup>. Chalk another one up for the courts siding with compliance.

E-mail compliance wins Three-Zip. Actually, many more examples exist than we can address here. Bottom line is, big money will be flowing out of corporate coffers over this issue.

Of course, \$60M is a mere annoyance to Microsoft, and \$10M is not going to ruin Morgan Stanley. \$1.45B on the other hand... ouch! that’s gonna leave a mark, especially when the financial giant stated that it had set aside a mere \$360M in anticipation of a payout in the case.

But what if it had been *your* lawyers who couldn’t accurately produce those records? The fate of one Morgan Stanley IT executive was ‘administrative leave for unrelated reasons,’ how do you think you might fare in a similar situation? Can your company’s coffers and reputation withstand a large settlement, regulatory entanglements, or similarly em-

barrassing yet entirely avoidable situations? Most companies are concerned with being compliant, largely due to a fear of regulatory scrutiny. But many don’t stop to think about the more tangible effects, civil and now criminal, of non-compliance.

So, which camp are you in now? 

*While Arc Partners cannot keep your company entirely free of extraneous legal entanglements, we can help you survive the experience.*

*Our expertise in Compliance Assessment & Strategy, Compliance Solution Implementation, and our strong understanding of SEC and NASD regulations pertaining to archiving, retrieval and surveillance of messages can help you determine what to do and how to do it.*

*We can help you avoid some of the common mistakes committed by organizations by working closely with your Legal & Compliance, IT, and Business divisions to ensure that all E-mail and IM requirements are successfully met.*

*For more information, contact John Marinelli at (212) 370-9460 or [john.marinelli@arcpartners.com](mailto:john.marinelli@arcpartners.com).*

<sup>1</sup> Microsoft apologists, and company spokespeople, claim that the company’s recent actions, settling a slew of intellectual property rights suits, are a key strategy of the new administration to “clear the deck” of problems initiated by the earlier regime, and to “get a fresh start on the new millennium”. The reality is that during the court hearing in question, Microsoft’s lawyers admitted that the company had deleted 35 months worth of Burst-related email from its systems, “because Burst’s technology was not of interest to Microsoft.” They also claimed not to have the capability to retrieve archives of the missing email. Whether Microsoft settled because they couldn’t find the email, or didn’t want its contents revealed will never be known because the case was settled soon thereafter.