

Hard and Soft Controls: Mind the Gap!

Tawhid Chtioui^a and Stéphanie Thiéry-Dubuisson^b

*^aISEG Business School, 28 Rue des Francs Bourgeois
75003 Paris, France*

tawhid.chtioui@gmail.com

*^bICN Business School Nancy-Metz, 13 rue Michel Ney
54000 Nancy, France*

stephanie.dubuisson@icn-groupe.fr

ABSTRACT

With the recent economic and financial crisis and other excesses working as catalysts, corporate governance, regulation and internal control have become inescapable topics in our present day society. Despite the introduction of new rules and the strengthening of the existing control bodies, new events could shake the global economy and call into question the effectiveness of the current control mechanisms. Between the obsession with formal control, which systematically leads to more regulation, and the search for other control systems, which would enable one to master the informal mechanisms, we have completed our analysis in this article with a review of the possible interactions between informal and formal control.

JEL Classifications: M42, M49

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I. INTRODUCTION

Jensen's (1993) assertion¹ that «*making the internal control systems of corporations work is the major challenge that economists and management scholars are facing*» is, perhaps more than ever, at the heart of the evolution of management science in the 2010's. Internal control can be defined by all the means of control available to managers to enable them to master their organization. But the overall level of control has often proved insufficient, especially in the case of frauds, some of them highly publicized and which have shaken global capitalism. Undoubtedly new shocks will occur. McKesson and Robins (1940), Enron (2001), then the Société Générale in 2008: So many different factors and circumstances that led these companies and their directors to bear the full brunt of the consequences of the frauds developed therein.

Mastering the organization, having it under 'control' and being accountable to investors is not only a clear will of the management, but is also an identified request of internal control frameworks as well as a legal expectation (Sarbanes-Oxley Act, Financial Security Act, EU Directives 2006/43/EC and 2006/46/EC). For nearly a century, legislators have systematically been trying to impose numerous regulations in order to respond to the scandals originating from the discovery of frauds and to reassure investors (Heier et al., 2005). From the Foreign Corrupt Practices Act to the Treadway Commission, from the Sarbanes-Oxley Act (issued in reaction to Enron) to the implementation of the European Directives and the recommendations of the EU Commission (Green Paper on Auditing, 2010), all the regulations imposed to regulate the life of corporations in a general manner, as well as the financial and accounting professions, especially in the aftermath of crisis moments, prove that legislators are working on successive levels of coercion to achieve an ideal of universal control. These various laws and regulations, which led to the implementation of new formal controls, invariably resulted from the history of the 'affairs', reflecting a willingness to improve company management (Heier et al., 2005). They are necessary. No company can expect to ensure its continuity without sufficient investment in its internal controls. The fact that these internal controls are essential does not mean that they are effective enough, hence the feeling that a formal control firewall is powerless against the excesses that everyone has been able to witness. And it is clear that nothing, at least for the moment, has enabled corporations to completely curb the 'affairs' or financial scandals. The illusion of control is given both by the requirements of the various laws and by the current control disclosure, and also by the professional standards (especially those of auditors), which have followed the escalation towards the 'total control' obsession. In this respect, working techniques and standards for statutory auditors (SAS 99, ISA 240) have been continuously attempting to adapt to the new forms of fraud and have evolved in accordance with the ingenuity of the fraudsters. But this is not sufficient to limit the scandals.

Is the potential control of the corporations in this case illusory? How could we ensure a good level of internal control? Understanding the various aspects of internal control and assessing control systems and their malfunctioning enables one to partially understand the nature of frauds that may be developing in organizations. Our goal here is therefore to show that controlling an organization cannot be limited to the formal aspects of control (hard controls) and that informal aspects (soft controls) are both tricky to define and complementary in order to cover the risks in the most suitable way.

The first part of the present paper focuses on the definition and on the sometimes inflationary implementation of the layers of formal controls, as well as on the issues related to the successive addition of these regulations. In the second part, we will try to define, or at least approach, soft control aspects in order to reach, in the final part, the question of the interaction between these two aspects of internal control.

II. THE OBSESSION WITH FORMAL CONTROL

The very definition of formal control (hard control) is sometimes difficult to determine (Pfister, 2009). What are we exactly talking about when referring to, firstly, internal control, and then secondly, to its formal part? According to Leatherwood and Spector (1991), the internal control systems include written procedures and rules that guide individuals' behavior, ensuring the fulfillment of the company goals, detecting and punishing fraud(s) or mistake(s). These established control mechanisms must be sufficiently explicit and known to all (Ouchi, 1977). Therefore, in terms of formal control, we find both the current procedures applicable within the organization, as well as the laws and regulations which may have preceded them. From a practical point of view, the most well-known and used definition, by both professionals and academics, is the Committee of Sponsoring Organizations of the Treadway Commission or COSO (1992) definition, which gave a first conceptual framework to internal control. Without going into the details of this framework, it basically consists of ensuring the achievement of three main objectives as much as possible: Effectiveness and efficiency of operations, reliability of financial reporting, compliance with applicable laws and regulations. To this end, internal control must have five components, as described by the COSO: Control environment, control activities, risk assessment, information and communication, and monitoring. We can thus define all the control procedures among all these formal controls: Segregation of Duties (SoD), information system and its authorization system (including its accounting part), reporting procedures, access controls (physical and others). The idea here is to guide the behavior of executives, managers and operational staff, in order to gain a better control of the organization and to avoid any issues such as fraud(s) or mistake(s) that gradually affect, in terms of inefficiency and additional internal costs, external financial information disclosure, market reaction, followed by loss of trust and reputation². Legislators have thus attempted to impose, upstream and in advance, more standards and norms related to the implementation of internal control and its disclosure by the management.

The effective implementation of regulatory requirements on internal control can be dated back to the early 1900's in the United States (Tipgos, 2002). Those formal control requirements, initiated by the U.S. legislators, initially applied to U.S. corporations only, but as for what generally concerns corporate governance, quick dissemination to Europe has been the rule... Legislators initially endeavored to respond to fraud by requiring companies to take their internal control and its formalization into account (Foreign Corrupt Practices Act, 1977; Treadway Commission, 1987; COSO, 1992; the French Stock Market Regulator³, AMF, 2007). Then, as a second step, the imposition of harmonization in the disclosure of corporations' internal control was required. As a result, U.S. and French corporate presidents have to issue a report on the

relevance of their corporation's internal control procedures, and this report has to be audited by the external auditors (Sarbanes-Oxley Act, Section 404; Financial Security Act). Similarly, EU Directives (2006/43/EC and 2006/46/EC) require from EU external auditors to report on internal control procedures to the audit committee, to disclose the corporate governance framework referred to by the corporations, imposing also on groups to describe their internal control and risk management system. These requirements concern all EU corporations, whatever the activity. Additional obligations are required, however, for investment service providers like credit institutions, which are subject to specific risks. Supervisory rules and controls applying to banks at the world-wide level and in Europe are much more significant than in any other activity sector (Basel II, 2004, relayed by the Capital Requirement Directives or Directives 2006/48 and 49/EC). In France, these financial institutions must also have a compliance function, as well as a compliance and internal control officer (AMF General Guidelines); the combat against money laundering and terrorism is subject to specific EU Directives (2005/60/EC and 2006/70/EC).

Do all those formal control requirements really reassure the markets and the investors, as they are supposed to do? It is not so sure. Several voices, including the SEC (Securities and Exchange Commission), have argued that a better internal control would enable the best controlled corporations to reduce their cost of capital. A study conducted by Ogneva et al. (2007) shows that, on the contrary, companies reporting internal control weaknesses in their Section 404 do not generally have a higher cost of equity. Similarly, Hammersley et al. (2008) have been studying market reactions to management's disclosure of internal control weaknesses, as required by the Sarbanes-Oxley Act. The results show that the market reaction to the announcement of internal control problems is not automatic and depends in particular on certain characteristics of the announcement itself, such as the severity of the event, management conclusions and the auditability of the problem. And, in all the scenarios, it seems that the management tend to delay the dissemination of bad news or to announce it only when there is some good news to be disclosed at the same time (Kothari et al., 2009).

To us, this obsession with control appears to be further strengthened by three factors: On the one hand, establishing a formal internal control enables, in the event that this control is bypassed, the actors to name more easily one or several responsible persons. On the other hand, the formal ramparts of control induce a willingness to bypass them on the part of the personnel or the managers: The means and ways employed by fraudsters can be more and more difficult to detect by the traditional audit techniques. Thus, even the traditional overlapping and plurality of operational, protection and recording functions (Segregation of Duties or SoD), which was thought of to be one of the most scrutinized points in detail in terms of internal control (on account of the development of Information Systems - ERP - that control better these risks), remains however one of the stumbling blocks in the fight against fraud (Elsas, 2008; Barra, 2010). Similarly, the collusion of top management (Enron) or the deliberate exploitation of flaws in an internal control system (Société Générale) are sometimes difficult to detect. But other, more traditional forms of fraud also work extremely well, and thwart with a complete impunity all the safeguards established by the regulatory authorities: The ancestral Ponzi scheme proved very successful for Bernard Madoff, under the powerless eyes of the SEC, by exploiting the possibility of not having a genuine audit. Finally and ever since the legislators launched these

requirements, corporations have seemed reluctant to adopt the recommendations in terms of formal control: The follow-up of these latter recommendations appears constrained (determined by the behavior of other corporations) and not guided by the merits or reality of the control itself. It appears that, from 1976 to the early 2000s, both individuals and organizations have showed great ingenuity at preventing (or discouraging) any attempt to impose additional requirements on internal control (Shapiro and Matson, 2008).

So how can the combat against fraud be envisaged, the financial cost of which is estimated at U.S. \$50 billion per year in the United States (Coffin, 2003), and at £2 billion per year in the U. K., this only for the listed companies (Management Issues News, 2005)⁴? In fact, the legislation and laws in force and the formal controls which follow, even if they are necessary and reflecting an apparent willingness to clean up corporations management, do not appear to be a sufficiently effective safeguard. Perhaps could we even ask whether this succession of formal procedures defeat the object of its initial aim by favoring a rejection of an excess of procedures? Internal control by the application of only its formal aspect does not seem, in any case, to be sufficient (Tigpos, 2002). But, if these formal controls are necessary and contribute to the prevention of excesses, they are above all an integral part of the control environment and, more generally, from what is called the informal control (or soft control). The two faces of internal control, the formal aspect and the informal aspect, are recognized and defined by the internal control frameworks (COSO or AMF), but only the formal aspect has really been developed and taken into account in the evaluation of control by the professionals. Studies, moreover, highlight the predominant role of the environment of control and of informal control, perceived as one of the most important components of internal control (Langfield-Smith, 1995; Stringer and Carey, 2002). Based on the concepts of “clan” (Durkheim, 1933; Kanter, 1972; Ouchi, 1979, 1980), informal controls stand out as a subtle and effective means of controlling the behavior of the actors within their organizations.

III. HARDINESS OF SOFT CONTROLS

Unlike formal control systems, which tend to supervise and monitor the behavior through systems using explicit measures, informal control enables the control of the attitudes of the actors of the company through values, beliefs and unwritten traditions (Falkenberg and Herremans, 1995). According to Snaveley and Snaveley (1990, p. 247), “*informal types of control coordinate employee behavior through interpersonal, social and/or cultural influence methods (...)*” and “*emphasize work group norms based on shared values and beliefs among peers and learned through socialization*”. For Ouchi (1980), an informal control system is composed of shared beliefs, values, moral standards and traditions that influence the behavior of employees.

Can we agree on a common content for informal controls? The issue had already been raised but it remains unresolved, as no consensus has been agreed upon (Roth, 1998; Dallas Chapter, 1999; Buhariwalla, 2006). Informal control is however brought up in the COSO (1992), in particular via the environment of control, which groups together, amongst others, integrity and the philosophy of management, ethical values

and corporate culture, as well as the employee's skills and the policy of recruitment and training. The COSO explicitly classifies the environment of control as the foundation for all the other components, which brings discipline and structure. Environment of control is described as an "operationalization" of the organizational culture (Hooks et al., 1994), the latter being defined as the most profound level of beliefs and values to be shared by the members of the organization, integrated in an unconscious way and who participate in a manner consistent with the vision of the organization and its environment (Schein, 1985).

It appears therefore at first that, according to economic values (profit maximization, drive to profitability, opportunistic and pragmatic goals), organizational values (hierarchical or collegial structures) and social values (hierarchical relationships, relationships of trust), that defines the attitude of the individual in relation to the respect of the objectives, rules and values of the organization (Falkenberg and Herremans, 1995). Self-control, as notably defined by Andersen (1987), is born of the assumption that individuals do not dissociate their work and material life from their beliefs and moral values. Liedtka (1989) defends the theory that people act in accordance with their own ideologies and values, and also in agreement with those of their charismatic managers. The values of an individual's circle and working environment come and influence his own values. Depending on the individual's personal involvement within the organization and ethical and social issues, the values of the company and those of its managers can influence the values and principles of the said individuals (Norris and O'Dwyer, 2004). Corporate culture does become thus an informal control tool exerted on its employees. The way culture influences control is determined as follows: Individuals integrate a strong set of beliefs, thus avoiding direct orders and enables the said individuals to perform their job and what is necessary for the organization (Collins and Porras, 1994).

On the other hand, the role of ethics in informal control is more ambiguous, although there appears to be a direct link between ethics and willingness to 'do well' (Rae et al., 2008) or dedication to the organization (Valentine et al., 2002) seems to exist. This is in fact intrinsically linked to the recruitment and remuneration policy adopted by the organization. A healthy working environment (along with the resulting effectiveness and efficiency) cannot develop unless the following condition is fulfilled: No employee should create a situation where other employees feel oppressed or humiliated (Sutton, 2007). The orientation of the behavior given by the programs and codes of ethics could be perceived like any form of control, perhaps as a coercive means (with a system of sanctions), but also as an adherence to the goals of the organization (by sharing common values) and the development of ethical behavior (Weaver et al., 1999a, 1999b). Managerial influences are exercised through the involvement of management in the ethics program (the latter influence is particularly important because of the formal authority of top management, who can thus more easily determine any subsequent actions) (Paine, 1996). But control exercised by means of the program of ethics, which is imposed, appears to carry pernicious consequences: It weakens thus the capacity and motivation of the employees to use their own moral judgment, especially in the case of new and unattended situations and may lead in the extreme to a sort of indoctrination, atrophy of skills and a politicization of ethics (Stansbury and Barry, 2007).

Does informal control possess capacities which would be found lacking in formal control? It seems that the power of the informal system mainly lies in the control of behavior in ambiguous and unexpected situations (Falkenberg and Herremans, 1995). Controlling behavior through written rules can prove efficient against specific and/or predictable events. But insofar as the organization cannot implement rules that would cover all possible situations, the information spread by the formal system and its controls is limited. It follows that establishing an implicit and informal system, is very important in order to manage the behavior of the employees in unexpected circumstances. Therefore, the individual acquires a set of unstated laws and norms thanks to signals sent by his superiors and colleagues. The pressure of this control on the individual is exercised through transparent procedures such as the look of the others persons, criticism, the feeling of guilt feeling or shame for failure to the rules (Falkenberg and Herremans, 1995). These unstated principles spread a kind of common philosophy that guides individuals in their actions within the organization. The informal control system should thus help to create implicitly an environment and control situation that could take in hand the individual, grasp his attention and direct his choices. This should equally help to create a climate of confidence and trust that formal control systems would find difficult to establish (Guibert and Dupuy, 1997). Indeed, one of the limits of the formal control is that it cannot cover all the complexity of the company. On the one hand, informal interactions between certain representatives of the company, creating a feeling of confidence, are difficult to control by formal means. On the other hand, a system which is too formal would leave little room for initiative and new interactions, without which any new advances, development and adaptation of the company would become difficult. In fact, the establishment of a predetermined system would be too rigid to adapt to the potential changes that the company might undergo.

Moreover, a lot of academic research has identified a link between, on the one hand, the values spread by the top management (tone at the top) and, on the other hand, the quality of financial reporting (D'Aquila 1998; Reding et al., 2007), the operating performance (Booth and Schulz, 2004) or the financial performance (Verschoor, 1998; Hosmer, 1994). Other researchers (Bogard, 1996; Cubitt, 2001; Bunzel, 2001) cast doubt on the pertinence of this passage from formal to informal control mechanisms. Finally, a third category of research (Tiwana, 2010; Rae and Subramanian, 2008; Gomez and Sanchez, 2005; Sitkin and George, 2005; Guibert and Dupuy, 1997; Snavely and Snavely, 1990) focuses on the interaction and articulation between these two ways of control.

IV. HARD AND SOFT CONTROLS: SUBSTITUTION OR COMPLEMENTARITY?

Although formal and informal controls do coexist in today's systems of corporate governance, understanding the nature of the interaction between these two methods of control is a subject of debate amongst the researchers. It is therefore difficult to assert whether the use of one could replace or could complement the use of the other.

An initial viewpoint consists in saying that, depending on the situation that is faced, the passage towards one or the other of these two systems of control would lead

to a more efficient level of control. Within the actual context of multinational companies (MNCs), requiring more flexibility and autonomy for their subsidiaries, Martinez and Jarillo (1989) underline the move “*from structural formal subsidiary controls towards subtler, informal controls*”, a conclusion shared by Chatman and Cha (2003), Gong (2003), Jaeger (1983) and Ouchi (1977). Gomez & Sanchez (2005), on the basis of their research using a sample of 74 Mexican subsidiaries of US MNCs within the manufacturing sector, point out that this shift from hard to soft control is moderate by four criteria: Globalization pressures and pressure from local regulations make MNCs likely to use all kinds of control mechanisms, formal and informal. By contrast, local dependence and educational requirements of the subsidiary appear to discourage formal controls while stimulating informal ones. In the same way, based on a series of four case studies during systems development projects, Kirsch (1997) suggests that all stakeholders use different mechanisms of formal control (existing or created) and supplement some of them with mechanisms of informal control: “*Throughout this process of construction, the choice of particular control mechanisms depends on task characteristics, role expectations, and project related knowledge and skills*” (p. 215). Sitkin and George (2005), in the light of two case studies, conducted successively on a first sample of thirty Human Resources Managers and a second one of fifty-one HR executives, using different research design, found that threats to legitimacy and trust would lead to a non-significant change in reliance on formal control, with a decrease in reliance on informal control, results that are in contradiction with the two previous researches and not consistent with the mainstream institutionalist traditions (DiMaggio and Powell, 1991). A second point of view consists rather on putting the emphasis on the complementarity between formal and informal controls. Using the grounded theory approach applied to a sample of nine companies in the trucking industry, Mello and Hunt (2009) suggest that both formal and informal control methods are used in various combinations and that no single control method is completely effective in isolation. It is in this direction that Guibert and Dupuy (1997) suggest that the relation between formal control and informal control can only be considered from the viewpoint of complementarity. One cannot be the substitute for the other, but its complementary. That is why formal control would develop on the basis of a perspective with informal control and vice versa. It is necessary that the informal system be in harmony with the formal system so that the organization, its objectives and its functioning go in the same direction, resulting in a system which is secure, sound and reliable. The articulation between the formal and informal system is essential for an organizational system to be finally efficient (Guibert and Dupuy, 1997). Even when some company charters oppose fraud and non-compliance with the internal rules of the group, it turns out that, if there is a “performance race” atmosphere within the departments, the formal rules in place would have no effect. On the one hand, this situation may create imbalance or instability in the individual, partly due to the problem of purely quantitative indicators and to the possible recruitment of ‘jerks in the workplace’ (Sutton, 2007). On the other hand, this situation could lead one to consider that the explicit and formal principles of the corporation are not made to be respected. In contrast, if informal control could reinforce formal control, then a climate of confidence and trust would emerge and create a strong degree of cohesion in the heart of the company and the performance level will be increased. Thus, the main thing for the company is that its values are in the same direction and are in harmony with its

written codes and its formal incentive system (Guibert and Dupuy, 1997). It is therefore necessary that formal and informal control be in harmony and developed in a balanced way according to the characteristics of the company, so as to form a single set of efficient controls. Control harmonization is a prerequisite for creating a stable and efficient organization (Falkenberg and Herremans, 1995).

But we must not delude ourselves. Putting informal controls on a pedestal is not enough for getting the organization under control. But forgetting them is equally carrying serious dangers. Seen from this point of view, the report of Snavelly and Snavelly (1990) remains qualified. Their research, based on a sample of 122 staff nurses from three work medical units argue that both formal and informal systems contributed to efficient error detection, suggesting that a combination of the elements in both systems may maximize detection. However, findings indicate that satisfaction with control was significantly greater under formal control dimensions than under informal control ones and that only formal control system were found to be highly associated with effectiveness at improving performance deviations. Finally, Tiwana (2010) propose a conciliatory approach which “*develops the idea that these competing perspectives are mutually compatible rather than contradictory because informal and formal control mechanisms can simultaneously be complements and substitutes*” (p. 87). Using data from 120 outsourced systems development projects, it is shown that informal control mechanisms strengthen the influence of formal behavior control mechanisms on systems development ambidexterity (complementary effects) but weaken the influence of formal outcome control mechanisms (substitutive effects).

As we can see, our review of the literature shows divergent responses to the question concerning the nature of the interaction between hard and soft controls. Through Figure 1, we tried to throw new light on this subject. It emerges that the best combination between hard and soft control mechanisms depends on certain contextual and cyclical parameters. According to these parameters, it would therefore be more judicious, and depending on the literature studied, to combine or substitute the two ways of control, both formal and informal.

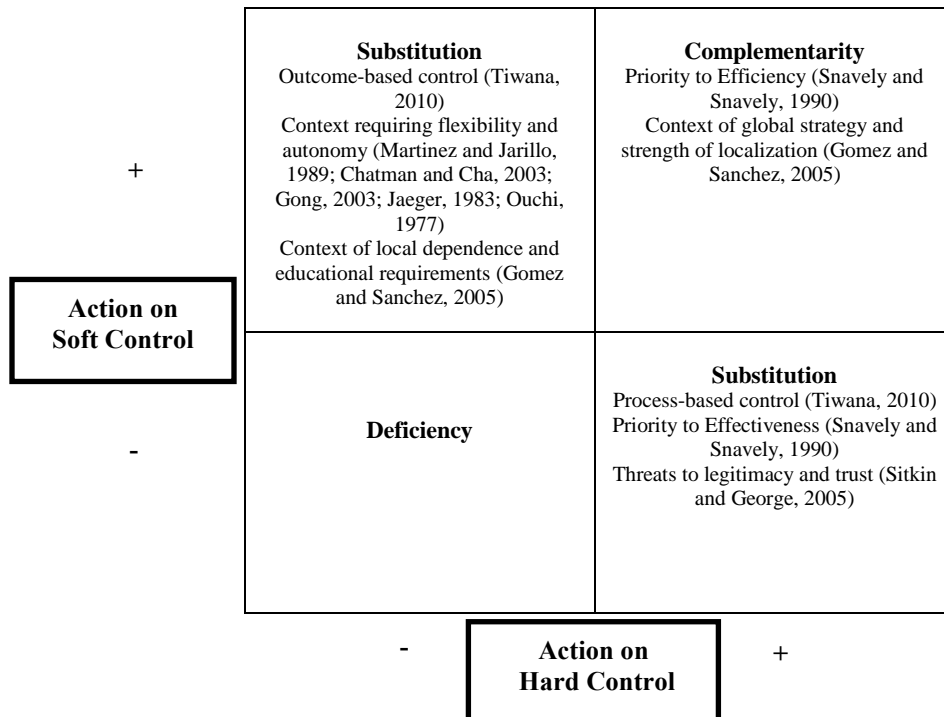
V. CONCLUSION

With the recent economic and financial crisis and other excesses working as catalysts, corporate governance, regulation and internal control have become inescapable topics in our present day society. Despite the introduction of new rules and the strengthening of the existing control bodies, new events could shake the global economy and call into question the effectiveness of the current control mechanisms.

Between the obsession with formal control, which systematically leads to more regulation, and the search for other control systems, which would enable one to master the informal mechanisms, we have completed our analysis in this article with a review of the possible interactions between informal and formal control.

Finally, several authors agree in asserting that both indivisible aspects make a whole in terms of controlling organizations, and that informal control is a key component, without which the entire internal control system would ‘seize up’ and open the door to mistakes and fraud.

Figure 1
The interaction between hard and soft controls



For managers, the analysis of this interaction should help to draw attention to the fact that there is no perfect and well-balanced situation between “soft and hard controls” (informal and formal controls). The ideal combination depends on, for example: (1) the priority given, either to efficiency or to effectiveness; (2) the type of formal control mechanisms: “process-based” or “outcome-based”; and (3) certain criteria related to the global or local environment, to the characteristics associated with the target of the control or to the search for legitimacy.

However, some gray areas do, however, remain that it would be interesting to shed light on those within the framework of some future research. To sum up, is there any ideal formal or informal recipe of control so as to achieve the ultimate in the smooth functioning of the control procedure? No one can truly tell what the right amount should be, even if some situations are more conducive to a preponderance of formal controls or informal controls, as we tried to shed light on. How can we understand and grasp this informal aspect of internal control that is potentially a starting point for carrying out fraud? Well, neither professional literature, academic literature, current conceptual frameworks, nor, lastly, professional standards can explicitly tell us how to grasp and understand this dimension. And yet...

ENDNOTES

1. During American Finance Association's presidency, quoted by Simons (1995, p. 4).
2. One major international corporation out of two could be affected by fraud (PricewaterhouseCoopers, 2009).
3. Autorité des marchés financiers.
4. In Rae and Subramanian (2008).

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