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Oracle's hard sell illustrates industrywide problems

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What makes 9i database software work
Larry Ellison, CEO, Oracle

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It is a scene repeated countless times in the corporate jungle: A company endures months of sales pitches, pays millions of dollars for new software, discovers massive problems, and spends far more to fix the product than the original cost of buying it.

And customers have little choice but to keep eating the expenses while salespeople walk away making up to $1 million in a single year.

In dozens of interviews, executives, customers and sales representatives have described systemic problems that begin with the need to satisfy Wall Street's dual demands of stability and growth--a schizophrenic goal that has driven some companies to practice a kind of creative accounting that has drawn scrutiny from federal regulators.

CNET News.com examined database giant Oracle and its business practices as a case study in the chaotic world of corporate software sales, which includes such industry stalwarts as IBM, SAP and Siebel Systems. Although high-pressure tactics are common among all major players in this arena, the $100 billion database company stands out because of market dominance and a reputation for aggressive competition.

"WE GIVE THEM A CADILLAC WHEN THEY'RE ASKING FOR A COROLLA. YOU'LL GET MORE THAN YOU MIGHT NEED. BUT THAT'S HOW WE MAKE MONEY: YOU NEED HELP TO IMPLEMENT THE SOFTWARE."
– Oracle software consultant

The pitch: Inside the pressure cooker

Sources say Oracle salespeople, facing intense pressure from Chief Executive Larry Ellison on down, push the limits in nailing a deal--including making promises to customers that are never fulfilled.

The deal: Customers pay a high price

Some companies that buy corporate software say their products do not work as billed, leaving them in a perpetual state of emergency. With scant time and resources to fight back, these customers keep paying out of fear that reversing course would be even more costly.

The system: Searching for solutions

From revenue accounting to product complaints, the problems behind today's sales practices are increasingly finding their way into the courts and Congress. Through lawsuits, legislation and industry guidelines, customers hope to change the system.

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BACK TO INTRO

The pitch: Inside the pressure cooker

REDWOOD SHORES, Calif.--It is a sales manager's worst nightmare: a midnight call from Larry Ellison demanding to know why an important deal didn't close.

"If the numbers weren't coming in, the sledgehammer came out. Saturday, Sunday, any day, anytime, a call would come into the house or the office," a former Oracle employee said, noting that the chief executive's mercurial reputation is well deserved. "Oracle is a great company, but Larry treated people like chattel rather than humans."

To avoid such wrath, sales representatives may be willing to do whatever is necessary to make a deal. And that, critics say, is where the problem begins.

Customers and current and former Oracle employees say many companies that have purchased products from the database leader--most recently its customer-relationship management applications--have complained that they were misled about the technology's capabilities during the sales pitch, leaving them with software riddled with problems from the start.

"We had an order-entry product that didn't work," a former Oracle sales representative said. "We were successful in making the sale and getting them to implement it, but (the product) didn't work for them. We had a lot of pressure to sell the applications, even though they weren't ready for prime time."

Broken promises

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Pressure to make a sale is nothing new in the hypercompetitive business of corporate software, where a single contract can make or break a budget for an entire company, and Oracle is just one of countless manufacturers known for using aggressive tactics. But industry veterans say many salespeople--driven by Wall Street's relentless demands to meet earnings targets--often go too far to close a deal, making promises that are never fulfilled.

That touches off a domino chain of problems for company consultants, software engineers, and ultimately the customers, who often plan their businesses around these products only to get stuck with seemingly endless bills for installing, fixing, upgrading and tailoring their systems. Some companies have taken legal action, but far more end up paying for services that can cost 10 times the price of the original product.

"If you want to grow, you have to make promises for things that you don't yet have. Where it breaks down is when the sales reps lack discipline in what is promised and following through," a former Oracle manager said. "When you're a big company and have 40 sales guys who are not familiar with engineering and the product design, that's when it hits the fan."

Although hardball sales tactics are not the exclusive domain of any one corporate software company, Oracle in particular has long been known throughout the industry both for its prowess and its pugnacity--qualities attributable in no small part to Ellison himself.

"WE HAD A LOT OF PRESSURE TO SELL THE APPLICATIONS, EVEN THOUGH THEY WEREN'T READY FOR PRIME TIME."

– former Oracle sales representative

Oracle declined to comment on this report.

"Oracle kind of admits this (aggressiveness) with a little bit of pride to say that they go out and get the job done," said Joshua Greenbaum, an analyst who heads Enterprise Applications Consulting. "I don't expect Oracle, to a large degree, to stop that very aggressive salesmanship. It's what made them who they are today."

Craig Ramsey, former vice president of U.S. commercial sales for Oracle, acknowledged that salespeople were under tremendous pressure to land a deal. "Software is always in a state of development. But the more pressure there is on sales and managers to make the numbers, the more likely they are to sell features that haven't been developed," he said.

Not surprisingly, tension typically builds as the quarter draws to a close. Wall Street applies microscopic scrutiny to earnings reports at those times, and a negative assessment can tank a stock price overnight.

Giving it away

Some customers have grown savvy to this desperation and use it as leverage.

"All quarter long, there is no pressure and you do your normal selling. But in the last couple weeks before the end of the quarter, things get frantic," former Oracle President Ray Lane said. "The sales process is geared toward the end of the quarter, and the customers know that if they hold out till the end of the quarter, they get the best deals. This situation has gotten worse with the economy."

Deep discounts are standard practice among all corporate software manufacturers--even to the point of giving some products away. Oracle used that tactic recently when competing against Siebel and PeopleSoft for large contracts, throwing in its customer-relationship management software for free, sources say.

"That's the tactic," Forrester Research analyst Laurie Orlov said. "They discount if you buy before a certain date, and sometimes they have free (software) modules thrown in."

Competitors say this kind of guerrilla maneuvering is classic Oracle. "One customer once said, on a sales automation product, that Oracle didn't want Siebel to win the business," a former Siebel executive said. "That's what they've typically done with their ERP products."

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Tech exec exodus expected to continue

This speaks to another aspect of Oracle's culture--its reputation for making competition a personal matter. Ellison has long been known to harbor animosity for Tom Siebel, who was a senior executive at Oracle in the 1980s, and their rivalry has taken on bitter tones over the years.

"I DON'T EXPECT ORACLE, TO A LARGE DEGREE, TO STOP THAT VERY AGGRESSIVE SALESMANSHIP. IT'S WHAT MADE THEM WHO THEY ARE TODAY."

– Joshua Greenbaum, an analyst who heads Enterprise Applications Consulting

Indeed, failure by any measure is not tolerated at this deceptively sterile compound at 500 Oracle Parkway just off San Francisco Bay, a message that is communicated to its sales staff directly from the top.

Stories of Oracle sales exploits are legion, many focusing on the establishment of personal relationships with executives who have purchasing power. Tactics include slipping personal notes under the front door of a prospective customer's home and offering to give a CEO a ride to the airport just for an opportunity to talk.

"I even knew of a guy who went to the same church as one customer who was Irish Catholic--and he was a Jew," one former Oracle manager said.

If the personal approach doesn't work, money offers another powerful incentive. In dealing with a Fortune 500 company that was weighing a database purchase, Oracle offered steep discounts, according to an executive from a competing company.

"The customer asked us if we could match, and our answer was no," he said. "Oracle says they have a standard discount that they give everyone based on volume, but lately we've heard the discounting goes beyond being volume-based."

A former Siebel employee agreed. "Oracle will never lose a deal on price," he said. "They will just give away their stuff and make it up with services later."

That could mean a considerable expense for the customer. Arvindh Balakrishnan, a former Oracle manager who is now chief executive of software company MetricStream.com, said the cost of after-the-fact consulting often exceeds the price of the product by severalfold.

Mounting expenses

"I myself was involved in selling a product for $25 million with consulting costs of $80 million," Balakrishnan said. "This is nothing new. A 1-to-1 price-consulting ratio would be considered extremely good."

Golfsmith International is one company with firsthand experience with that harsh reality. Things got so bad at one point that the golf equipment retailer felt compelled to send a letter to its customers explaining business problems caused by complications with Oracle's software.

"In the spring of (1999), Golfsmith launched a new companywide $4.8 million computer software upgrade to better service the customer. Since implementing the system on January 1 (2000), we have been experiencing unbelievable difficulties. It is fair to say that we have spent millions of dollars over and above the original Oracle licensing fees working to solve the problems," Golfsmith President Carl Paul said in a letter written to customers Feb. 19, 2000.

"ORACLE WILL NEVER LOSE A DEAL ON PRICE. THEY WILL JUST GIVE AWAY THEIR STUFF AND MAKE IT UP WITH SERVICES LATER."

– former Siebel employee

"We tested the new system extensively with 50 users in November and everything was fine," he added. "We then waited until the slowest time of the golf year to implement it. However, when we flipped the switch in January and had 400-plus users at one time, the system 'bogged down.' A short time later, when we applied a fix

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recommended by Oracle, the system crashed. We were completely down and had no computer system for about a week."

Golfsmith ended up having 150 customer service representatives taking orders by hand over the phone, according to the letter. "We shipped orders manually, but could not come close to keeping up with demand. We didn't even have computers to tell customers the status of their orders, and we were literally dead in the water," Paul wrote.

Golfsmith said the company does not comment on such matters to the press. A source at Golfsmith noted that the software issue has since been resolved, saying only that the company is "happy with Oracle now."

Others assume that expensive services are an inevitable cost of using cutting-edge technology.

"If you are going to be a pioneer and the first companies to use a release, you understand there is a price to be paid to be on the bleeding edge," said Jeff Francis, a president at Applied Digital Solutions, a consulting firm that uses and sells Oracle's 11i customer-relationship software. "It's a problem that the industry has in general. No software vendor waits until the product was totally ready before it was released."

"IF A SALES REP GOT A CALL FROM A CUSTOMER THAT (THE SOFTWARE) DIDN'T WORK, WE TRIED TO IGNORE THE CALL OR HAVE OUR SERVICE DEPARTMENT HELP THEM."
– former Oracle sales representative

Still, in some cases, the cost of bug-ridden software can backfire on the manufacturer if the customer puts up a fight.

"There was a huge multinational company that was attempting to do a worldwide rollout of applications that would handle multi-currencies. The functionality they thought would be there wasn't," a former Oracle executive said. "They threatened to file all these lawsuits, and to resolve the issue, Oracle gave them credit for future purchases of software and committed support and consulting resources until they were successful.

"It took more than a year to fix the problem, with five to seven people committed to the project. Each of these people made about $150,000 a year, and Oracle absorbed the cost."

Such consequences rarely come back to haunt those who sold the products to begin with.

Salespeople off the hook

"The salespeople didn't care. Oracle's philosophy was to sell the product and go on to the next customer," a former Oracle sales representative said. "Customer satisfaction was left to whoever was going to implement the software, whether they were from Oracle or an outside consultant. If a sales rep got a call from a customer that it didn't work, we tried to ignore the call or have our service department help them."

Because the technology industry is so maniacally competitive--and the stakes of each contract are so high--top performers are always in demand. A sales representative with a large account like Ford Motor or British Telecommunications can land a multimillion-dollar contract almost single-handedly.

"Some people make $1 million selling software--maybe not every year, but they may reach that level occasionally. They're in the 1 to 2 percent

category," former Oracle Vice President Ramsey said. "Then about 15 to 20 percent make over $300,000 a year. And if people don't make their quotas, they're usually fired if they work for Oracle, Siebel or SAP."

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Ramsey, who has also been senior vice president of worldwide

sales for Siebel, said that company and others have annual quotas in the range of $2 million to $4 million for sales representatives, depending on their levels of experience.

Such quotas are met in part by selling expensive, one-size-only packages that contain more software than many customers require. This strategy benefits their companies as well as their own personal track records, because more complicated technology usually translates to more consulting fees.

"What that means is, we give them a Cadillac when they're asking for a Corolla. You'll get more than you might need," an Oracle software consultant said. "But that's how we make money: You need help to implement the software."

This consultant and others say they often have no idea what customers were told about the products before they bought them.

"I go in there not knowing what the salespeople said. We go in there, and I find myself saying, 'You were told this could do what? Oh, really? Let me get back to you on that,'" he said. "The salespeople win the account, get their commission, and move on to the next customer. They wash their hands of it. We're left with the dirty work."

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BACK TO INTRO

The Deal: Customers pay the price

The project deadline was considered ambitious even for the frenetically paced high-tech world.

At the height of the dot-com mania last year, Oracle promised a small business-to-business start-up that it would install 60 percent of the software it needed in two months. When that deadline slipped, Oracle said it could finish 30 percent in that time frame. Even that proved unrealistic.

"I'M LIKE A FIREMAN. I'M LIKE 911 TO THE RESCUE. WE ARE TOTALLY IN REACTIVE MODE AND CAN'T ANTICIPATE THE NEXT MOVE."
— Oracle software consultant

"I'm like a fireman. I'm like 911 to the rescue," said one Oracle software consultant who worked on the project, adding that eight months was the minimum time needed for the job. "We are totally in reactive mode and can't anticipate the next move."

At issue in this case was its customer-relationship management software, a key part of Oracle's strategy to expand beyond its core database business. The so-called CRM initiative reflects Oracle's need to generate more business at a time when the slumping technology economy has slowed growth and driven down its stock price.

Oracle advertisements, which use the motto "Winning the war on complexity," portray a well-oiled technology that can bring even the smallest company into the wired world in short order, regardless of system disparities and particular needs. Yet those familiar with the inner workings of any large technology contract offer a very different picture, one fraught with miscommunication, software glitches, customization problems, and inadequately informed personnel on both the buying and selling side of the deal.

"Once you are committed to Oracle's applications and you buy their order-management software, their financials, and their CRM package, they

charge you maintenance fees and charge you for consulting labor for upgrades," Forrester Research's Laurie Orlov said. "The customer is not in a position of power."

Hyped-up software

Customer-relationship management software is supposed to help businesses keep track of customer information and maintain a record of their transactions. Companies can then use this information to predict buying patterns or to identify potential new customers. Because it is one of the more popular corporate applications on the market today, Oracle hopes to use it as a way to entice customers to buy the company's flagship databases to work with it--a particularly important strategy as it cuts prices to stay competitive.

BUYER BEWARE

Veterans of corporate software sales say service contracts have evolved in three stages in recent years as customers try to keep costs from spiraling out of control.

Until about 1996: Consultants say it was not uncommon to give a customer a relatively loose labor estimate such as 10 engineers for six months at $10,000 a day. Those estimates were invariably exceeded as unanticipated problems cropped up.

What happened next: Customers then began asking for lump-sum estimates based on specific requirements. Because large software projects are difficult to estimate with any certainty, consulting companies have been accused of inflating projected costs to give themselves cushion.

Today: Companies request a detailed estimate that includes a cap, with such contract provisions as "time and material not to exceed" a given amount. Although those estimates could still be inflated, one source said customers "are a lot wiser" about scrutinizing bills.

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In a pattern familiar throughout the software industry, Oracle's marketing department cranked up its engines while the technology was still in development to generate interest and build momentum leading up to the product's release. But Oracle has felt more pressure than usual in the customer-relationship management market because it was late to the game, following archrival Siebel Systems.

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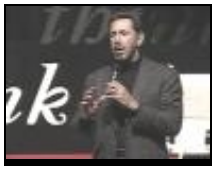

Ellison: 9i software more reliable

Larry Ellison, CEO, Oracle

"THE CUSTOMER IS NOT IN A POSITION OF POWER."

– Laurie Orlov, Forrester Research analyst

"Oracle tried to catch up with CRM and pushed it as fast as it could. They knew they had lost the first-mover advantage, so what they did was refocus and say, 'We're the first to market with the whole e-business suite,'" an Oracle consultant said. "Oracle is saying, 'We're the Kmart and Wal-Mart of the world--we have everything.'"

Everything, including bugs. Orlov estimates that Oracle's 11i e-business package, which includes its CRM software, had more than 5,000 glitches in previous versions. "The earlier releases are the buggiest software I've ever seen come out of Oracle," she said.

Ellison himself acknowledged that the software has had problems but said the company has resolved them, adding that "450 live customers" are using 11i today. Others working with the software agree that the latest version, released in the last month, has far fewer bugs than did previous releases.

"We took a lot of heat. We had our fair share of bugs. It's not been easy. It's a huge product," Ellison said Wednesday at a conference for financial analysts covering Oracle. Now, he added, "it's a proven technology with world-class references."

Oracle attributes many software problems to customers who want to tailor their products--a claim that others dismiss as absurd because corporate software always needs to be tailored to meet specific needs. The problem, critics say, is that Oracle wants to produce one off-the-shelf product to fit all sizes.

"WE'RE CONSTANTLY SEEING NEW BUGS. WE'RE SAYING, 'OH, THIS DIDN'T HAPPEN BEFORE.' WE'RE LIKE GUINEA PIGS."

– Oracle consultant

"Oracle tells us all the time that it would be great if people adapted automatically to their world. That's not possible--that's naive," said Steve Mills, general manager of IBM's software division, one of Oracle's archrivals. IBM, too, has had its share of problems in this field, having scuttled its own CRM division two years ago.

For every dollar spent on off-the-shelf software made by Oracle in the 1990s, a customer could pay as much as 10 times more in installation and customization costs, former company President Lane said. Although he said this ratio has improved in recent years, expensive service bills remain a fact of life today.

In an offer dubbed "CRM in 90 days," Oracle promises to pay for all consulting and support services if it fails to install its customer-relationship management software in that time period. "The catch is customers can't customize the software and have to install it as is. It's perfect if you are a small or midsized company, but if you're a giant company with lots of older software in your computer network, you need to customize," an Oracle consultant said.

"The whole technology stack has been so integrated, you have to know what you're doing, otherwise you're hosed," he added. "Normal users won't know how to turn on the 'purchasing' application if they want to. You will use consulting services to help you understand whatever you bought."

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Complicating matters further is a breakdown in communication between Oracle's salespeople and its engineering staff, sources say.

"I read the white papers and what it was designed to do, and when I tested it out I realized it doesn't do that," the Oracle consultant recalled of another customer-relationship software project last year. "It's supposed to do this, but it's not doing it."

As a result, Oracle's consulting services have been on a war footing ever since its customer-relationship software hit the market. A crisis can trigger a "Severity 1" problem, which means that engineers must work around the clock to resolve it.

"THE ASTERISKS (IN THE CONTRACT) LOOSELY SAID THAT ORACLE IS UNDER NO OBLIGATION TO DELIVER A FUNCTIONING PRODUCT."

– PurchasePro employee

While that designation remains the exception, "we now have Severity 2's up the yin-yang," the consultant said. "We're constantly seeing new bugs. We're saying, 'Oh, this didn't happen before.' We're like guinea pigs."

That is what happened after PurchasePro, a business-to-business e-commerce exchange, purchased Oracle's customer-management software package last August, according to those involved with the project.

The package was supposed to provide new systems for customer service, marketing and sales operations. Today, just one of these modules is functioning, and only at 15 percent of capacity, said one employee at PurchasePro, which declined to comment on the contract.

The issue came to a head late last year, when PurchasePro terminated the software project and fired the two executives in charge of it. The company has since gone with Siebel, the PurchasePro source said, but only after paying more than $700,000 to Oracle consultants in the futile attempt to get the software to work.

Adding to their frustration, PurchasePro executives were stunned to find language in the fine print of the contract that apparently sought blanket protection for Oracle if certain products didn't work. "The asterisks loosely said that Oracle is under no obligation to deliver a functioning product," the PurchasePro source said.

Similar disclaimers were included in documents for a project with another customer, corporate housing company Oakwood Worldwide. A footnote accompanying Oracle software listed as "scripting and bill presentation and payment products" read: "This program is not currently available in production release. If and when such program is made available in production release, we shall deliver the program to you pursuant to the Miscellaneous section. You have not relied on the potential availability of this program in entering into the payment obligations in this Ordering Document. We are under no obligation to change current availability."

Former executives familiar with the Oracle clause say it is designed to ensure that the database giant will be able to book revenue from a contract even if one portion of the software never operates or is never delivered, rather than void the entire agreement and all the revenue that comes with it.

Oakwood spokesman Robert Philips said the company is "happy with our relationship with Oracle" and would not comment further.

More headaches

Problems with Oracle products have not been confined to CRM software. The Tri Valley Growers agricultural cooperative sued Oracle for breach of contract and expects to go to trial in November over allegations that its ERP software didn't work, the company misrepresented its functionality, and it failed to provide support.

Tri Valley Growers purchased half a dozen software products from Oracle in September 1996.

Oracle received these modules from partner companies and

was planning to integrate them on the co-op's system, said Peter Sipkins, an attorney with Dorsey & Whitney, which is representing Tri Valley Growers.

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But the organization terminated the contract and halted further payments after spending $20 million on software, support and new hardware when Oracle said it would take much longer to integrate the software on Tri Valley's existing computers.

Tri Valley is seeking $20 million and damages in its lawsuit, Sipkins said, and Oracle has countersued for lack of payments and is seeking $400,000. He noted that Oracle in 1998 announced it would no longer rely on partners to supply its ERP products, which is now bundled with its CRM software in the 11i package.

Arvindh Balakrishnan, CEO of MetricStream and a former Oracle manager, sympathizes with customers who encounter problems with corporate software because they often look to these systems as a core part of their businesses. To that end, when they are shopping around, they are really looking for a partner that has their best interests in mind.

"It's not like buying a car," he said. "It's like part of the family."

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The system: Searching for solutions

For years, customers and investors have turned to the courts in an effort

to reform what they believed were rampant abuses in the corporate software industry--often with disappointing results.

The most common types of legal action are breach-of-contract lawsuits, aimed at software manufacturers that promised more than they delivered, and shareholder suits leveled at companies accused of misleading investors about their revenues. But such cases are lengthy and expensive procedures that can forever poison a relationship with a powerful manufacturer.

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Oracle 9i's benefits over IBM

Larry Ellison, CEO, Oracle

"The industry is famous for putting out software that is of questionable quality," Forrester analyst Laurie Orlov said, citing previous bug-infested versions of Microsoft's Windows operating systems as one example. "But the software industry seems immune to quality-related lawsuits."

Many believe that the only true hope at changing the system is a complete overhaul of the way software companies do business, starting with the bottom line. Critics say that disingenuous sales pitches and expensive services are just symptoms of a much larger issue: the way investors assess the strength of these companies.

The primary engine driving Silicon Valley's sales juggernaut is on the opposite side of the country, in Manhattan, where financial analysts hold companies accountable for every dollar in revenues and earnings, projected or real. And if either number is missed, the result can devastate a company's stock price and send a chill throughout the rest of the markets.

"THE SOFTWARE INDUSTRY SEEMS IMMUNE TO QUALITY-RELATED LAWSUITS."

—Forrester's Laurie Orlov

Even meeting estimates isn't always enough to sate the relentless demands of Wall Street. Instead, *growth* is the magic word that inspires confidence among investors, however fleetingly--and in an increasingly saturated corporate software market such as databases, that means expanding into new businesses like customer-relationship management software.

Creative accounting

This has led to some "creative accounting" by companies seeking to portray their businesses in the best possible light to investors, especially where growth is concerned. Although shuffling numbers among various reporting categories is not necessarily illegal, accounting irregularities

SOME ADVICE FOR CUSTOMERS

Former enterprise software sales representatives offer advice on steps to take when purchasing software.

- During the demo, frequently ask whether the features are part of the core software or would need to be customized.
- Always seek out demos from more than one supplier. Competition is good for keeping suppliers on their toes.
- Ask for references of customers who have installed the same application and have used it for the same purpose you are seeking. If the supplier doesn't have a list of companies that have successfully implemented the software, that's a red flag.
- After purchasing the software, companies need to realize they usually have to change their business processes--such as relearning a way to enter financial data for a particular type of software--to make it work.
- Beware running upgrade patches if you have customized the core software. Often the patch will break the old software and require a consultant to fix the problem.

Source: CNET research

can sometimes lead to investigations by the U.S. Securities and Exchange Commission. In recent months, for example:

• The SEC opened a formal investigation into the accounting practices of Lucent Technologies in February after the telecommunications equipment maker announced it would revise its fourth-quarter revenue figures. Part of the case involves a senior sales executive who gave unauthorized discounts to a customer.

• The SEC began investigating Critical Path that same month after the e-mail software company said it would revise its fourth-quarter results. Like the Lucent case, part of the Critical Path inquiry focuses on possible sales misstatements. The company's stock price, which had hit a 52-week high of nearly $80, now hovers around the $1 mark.

• Legato Systems said last August that SEC regulators would investigate its 1999 financial restatement. The restatement stemmed from Legato's sales team offering unauthorized payment terms to distributors that purchased and resold its data storage software.

Oracle's business practices put it at odds with authorities in 1993, when the SEC filed a high-profile lawsuit accusing the company of double-billing and charging customers for work that was never performed. Without admitting guilt, Oracle agreed to pay a $100,000 fine.

The growth factor is what drives a company to go the extra mile, from its sales practices to accounting procedures.

Typically, companies and investors are drawn to businesses deemed to have high growth potential. For instance,

investors would prefer buying stock in Oracle if it derives most of its revenue from the fast-growing business of customer-relationship management, rather than from the slow-growing database market.

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"CRM is considered one of the highest-growth categories and has been for several years in the software market," said Jim Pickrel, an analyst with J.P. Morgan H&Q. "Oracle has tried to convince Wall Street it's a player in CRM, so its overall growth rates look better."

This type of strategy, however, depends on the eventual success of the product itself.

Slapped with lawsuits

Oracle has been hit with a number of shareholder lawsuits since the start of the year, prompted by allegations that the company maintained a strong financial outlook when it knew its prospects were questionable. Oracle's problems with CRM were cited specifically as a factor in dragging down the company's stock price.

In March, law firm Milberg, Weiss, Bershad, Hynes & Lerach filed a class-action lawsuit in U.S. District Court alleging that Oracle assured investors that its new 11i package required no programming systems integration to get the software to work and that the company had saved $1

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"THE PROBLEM IS THERE ARE SOME HONEST PEOPLE, AND THEN THERE ARE SOME LESS-THAN-HONEST PEOPLE WHO WANT TO MAKE THE COMPANY APPEAR MORE PROFITABLE THAN IT IS."

– Fred Isquith, an attorney with Wolf, Halbenstein, Adler, Freeman & Herz in New York

billion when it used its own CRM software.

The lawsuit charges that Ellison knew the 11i package was "fraught with massive technical problems, including giant gaps in its CRM modules." The lawsuit also alleges that Oracle's $1 billion in savings resulted from cutting more than 2,000 positions, rather than from using the software. The suit centers on Ellison's sale of nearly $900 million in stock in the two months before Oracle announced its quarterly warning.

The courts have consolidated 19 class-action lawsuits, according to Milberg Weiss, and a joint complaint is expected to be filed by early August. Milberg Weiss, which specializes in such shareholder suits and has taken action against many other Silicon Valley companies, will act as lead law firm in the consolidated complaint.

Attorneys representing Oracle did not return calls seeking comment on this case and others.

Even if their practices do not violate any laws, companies routinely walk a fine ethical line in the obsessively competitive corporate software environment, according to ethics professors.

"Generally, the higher the level of competition in an industry, the more incentives salespeople have to cut corners on their ethics, such as telling customers a product will be available earlier than they know it will be, or touting certain qualities they know it may not have," said Manuel Velasquez, executive director of the Markkula Center for Applied Ethics at Santa Clara University. "This is a regular strategy used to ward off competitors. That is why the word *vaporware* was coined."

That description has been applied to Oracle's marketing practices as well, most recently involving its customer-relationship management software.

Money for vaporware

"When CRM came out, one customer bought a site license, or 'pool of funds' license. They could either use the money to get CRM or database software--however they wanted to slice it up. Oracle announced they had made this major CRM sale, but in the end the customer ended up using it all for database," former Oracle executive Craig Ramsey said. "CRM was absolute vaporware."

The company used this "pool of funds" license in its contract with PurchasePro last year, according to another former Oracle salesman. The condition allowed Oracle to count revenue from the contract even if some of the software could not be delivered or didn't work, as PurchasePro had complained, the source added.

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Other former Oracle executives and analysts say such practices are common in the corporate software industry. Pickrel noted that the SEC requires accuracy in the total revenue amount and does not seek a line-by-line breakdown of product, service or geographical sales figures.

As part of their sales packages, some corporate software companies have been known to give away products for free but count them as purchases on the books. The accounting lists other products in the contract with discounted prices, so the bottom-line cost to the customer remains the same. Sources say this practice allows companies to show artificial revenue growth in a product that customers never agreed to pay for.

In another tactic, a software company and a customer agree to buy equal amounts of products from each other. The de facto trades are then counted as sales that contribute to revenue growth tallies for both companies.

"Whether I'm an analyst or a shareholder, I want to know that the business I'm involved in has a future or not. So just knowing the total revenue figure is not good enough," said Fred Isquith, an attorney with Wolf, Halbenstein, Adler, Freeman & Herz in New York. "The problem is there are some honest people, and then there are some less-than-honest people who want to make the company appear more profitable than it is."

Solution in sight?

SEC spokesman John Heine said no specific regulations govern the content of company statements such as press releases but cautioned that broad anti-fraud regulations can be applied if companies go too far. Still, that has proven easier said than done in many cases.

"The solution to this is stronger enforcement of securities laws. That's where the problem has been," Isquith said. "The SEC rules are fairly straightforward, so if accountants aren't abiding by them, tightening them up won't help. Accountants should be held responsible, and the courts need to have greater understanding of how these financial statements are produced."

Beyond accounting, however, others are skeptical about the government regulators' ability to fundamentally change industry practices, saying that dubious product promises, vague service estimates and other corner-cutting measures are a natural part of doing business in this cutthroat environment.

"I don't see how you can do a workable law on vaporware. A company can always claim they thought the software would have those qualities," Velasquez said. "Customers will just have to rely on their memories of how they were treated by these companies."

"THE WHOLE INDUSTRY, TO A CERTAIN EXTENT, TURNS A SLIGHTLY BLIND EYE TO THESE ABUSES."

– Joshua Greenbaum, Enterprise Applications Consulting

Joshua Greenbaum of Enterprise Applications Consulting agrees. "Everybody is very desperate to succeed in this market," he said. "The whole industry, to a certain extent, turns a slightly blind eye to these abuses."

Moreover, the same practice can be seen as ethically questionable by some and effectively competitive by others. Greenbaum and others say the best form of protection for customers is doing their homework and viewing every pitch with a skeptical eye. Former sales representatives say that even senior executives put too much faith in product demonstrations that promise the world.

They recommend that customers frequently ask if features presented during a demo are included in the boxed software or if they will need to be customized.

"It's important to say the imperative is always on the buyer to beware," Greenbaum said. "That was true thousands of years ago and is still true today."

News.com's Melanie Austria Farmer contributed to this report.