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DEPARTMENT: ACCOUNTING

TOPIC: MAIN GOVERNANCE ASPECT OF THE SARBANES –OXLEY ACT

After a prolonged period of corporate scandals in the United States from 2000 to 2002, the Sarbanes-Oxley Act (SOX) was enacted in July 2002 to restore investors' confidence in the financial markets and close loopholes that allowed public companies to defraud investors. The act had a profound effect on corporate governance in the U.S. The Sarbanes-Oxley Act requires public companies to strengthen audit committees, perform internal controls tests, make directors and officers personally liable for accuracy of financial statements, and strengthen disclosure. The Sarbanes-Oxley Act also establishes stricter criminal penalties for securities fraud and changes how public accounting firms operate.

Its primary emphases were to enhance the quality and transparency of corporate disclosure and force changes in the auditing of publicly traded companies. These objectives were achieved in a number of ways by the passing of the Sarbanes-Oxley Act.   
SOX corporate governance guidelines include:  
• An increase in the direct responsibility of senior corporate managers for the quality of their company’s financial reports and disclosures.  
• An increase in the audit committee’s independence from the company and its responsibility regarding the company’s auditors.  
• Limitations on the types and nature of services that auditors can provide to a publicly traded, audit client.  
• The creation of an independent Board to oversee auditing practices regarding publicly traded companies.  
While there was an initial corporate outcry, particularly about the expense of compliance which is proving valid, corporate attitudes generally have shifted. As corporations investigated and implemented responses to the Sarbox Act, they are recognizing that compliance can result in improved processes, both financial and operational, increased efficiency better and more timely planning information and that more transparency enhance access to capital and capital at lower cost.  
A Brief Sarbanes-Oxley Act Overview   
The following is intended as brief overview of the Sarbanes-Oxley Act and not as a detailed summary or commentary on the Act or its intentions. Specifically, the items selected are intended for consideration by those involved with and responsible for a public company’s internal governance and generally ignore the Sox’s efforts at limiting the actions of analysts and investment bankers.  
  
The SOX Act increases the direct responsibility of senor corporate managers for the quality of their company's financial reports and disclosures.  
Among other things, the Sarbanes-Oxley Act:  
1. Requires the Chief Executive Officer and the Chief Financial Officer to certify that the company’s financials fairly present the company’s financial condition.   
2. Requires forfeiture and return to the company of any bonus, stock or option compensation received in the twelve months following a misleading financial statement that subsequently results in a restatement.  
3. Requires accelerated reporting by insiders – such transactions must now be reported by the second day following the transaction  
4. Requires the company to report all off-balance sheet transactions.  
5. Requires that if the financials contain any pro forma disclosures they must be more straight-forward.  
6. Requires that all annual reports filed with the SEC include a statement by management asserting that it is responsible for creating and maintaining adequate internal controls and assessing the effectiveness of these controls.   
7. Requires a statement as to whether or not the company has adopted an ethics code for senior financial officers and if not, why not.   
8. Precludes corporate loans to officers and / or directors.  
9. Requires that an attorney who is aware of a material violation of the law must report it to the senior attorney or the company’s Chief Executive Officer. If the person on notice does not move to fix the violation, the attorney must report his findings to the audit committee or the board of directors.   
10. Establishes a new federal crime for securities fraud, the Corporate and Criminal Fraud Accountability Act of 2002, which includes a lengthy prison term upon conviction.  
The Sarbanes-Oxley Act makes the audit committee more independent of the company ad increases its responsibility regarding the company's auditors.  
Among other things, the Act:  
1. Requires that all audit committee members must be independent directors and not affiliated with the company other than in their capacity as directors.  
2. Makes the audit committee directly responsible for the appointment, compensation and oversight of the work of the auditors.  
3. Requires that audit committee members must have free reign to interview and question auditors without the company’s executive officers being present.  
4. Requires that the audit committee develop procedures for addressing complaints regarding the audit process.  
5. Requires that the audit committee include at least one competent financial person.  
6. Bars members of the audit committee from accepting consulting fees from the Company.  
The Sarbanes-Oxley Act limits the types and nature of services that auditors can provide to a publically traded, audit client.  
Among other things, the Act:  
1. Precludes an audit firm providing the following non-audit services to a publicly traded client contemporaneously with the audit including:  
a. Bookkeeping or other services related to the accounting records or financial statements of the audit client;  
b. Design or implementation of the financial information systems;  
c. Appraisal or valuation services, fairness opinions or contributions in kind;  
d. Actuarial services;  
e. Internal audit outsourcing services;  
f. Management functions or human resources;  
g. Broker dealer, investment advisor or investment banking services;  
h. Legal services and expert services unrelated to the audit;  
i. Any other service that the Board determines by regulation is impermissible.  
  
2. If a service offered by the auditors to the company is not on the list then the auditors must seek pre-approval of the audit committee.  
3. Requires that the coordinating partner and reviewing partner must rotate at least every five years.  
4. Requires the auditors to discuss with the audit committee:  
a. Any and all specific accounting disputes that it may have with management;  
b. All critical accounting practices or policies being implemented or changed;  
c. All alternative treatments of financial information within GAAP that have been discussed with management.  
5. Precludes an audit firm approaching or taking as a client a public company that has hired as the CEO, CFO, Controller or chief accounting officer, or person in an equivalent position who left the audit firm within one year preceding the audit.  
The Sarbanes-Oxley Act creates and independent board to oversee auditing practices regarding publically traded companies.  
Among other things, this new Board, The Public Accounting Oversight Board, will:  
1. Be responsible to the SEC.  
2. Have supervisory powers over the audit process of publicly traded companies. Thus it is not intended to conflict with state regulation and supervision of accountants serving private clients.  
3. Be made up of five persons each appointed for a five year term by .Two of whom will be cpas and three of whom cannot be cpas  
4. Be funded by fees from all publicly traded companies thus better assuring its independence from the accounting industry.