Sarbanes-Oxley Reflections Two Years Later

Stephen L. Sapp
Locke Liddell & Sapp LLP

Southern Methodist University
Edwin L. Cox School of Business
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Sources Of New Laws, Rules And Regulations

- Sarbanes-Oxley Act of 2002
- Rule-making by SEC
- Rule-making by NYSE/NASDAQ

The Sarbanes-Oxley Act of 2002

- Represents the most significant change in securities regulation since the enactment of the Securities Exchange Act of 1934
- Designed, in the wake of the Enron, WorldCom and Tyco debacles, to restore investor confidence and reduce fraud
- “The problem with viewing Enron as an indication of any systematic governance failure is that its core facts are maddeningly unique”
  - Dennis Beresford
    Former FASB Chairman

The Sarbanes-Oxley Act of 2002

- Foley & Lardner survey of 200 senior executives of public companies disclosed that 60% of them think SOX went too far… while 73% said the government’s focus on corporate governance was appropriate”

- “The most serious effect will be to discourage risk … executives will naturally become ultra-cautious, even timid. Bold new [ventures] will be shunned … By penalizing risk, certification threatens chronic economic paralysis.”
    - Alan Reynolds

      Senior Fellow, Cato Institute

The Sarbanes-Oxley Act of 2002

- 2004 Global CEO survey of 1,400 CEO’s conducted by PriceWaterhouseCoopers reports 11% and 46% of respondents stating that the current business climate is making companies excessively or somewhat risk-averse.

- “The [Sarbanes-Oxley Act] may well succeed in stopping the next Enron – but it could crib-kill the next Cisco, Microsoft and Starbucks … Cash-starved startups may have to dump three engineers for one lawyer.”
    - Rich Karlgaard
      Forbex publisher

The Sarbanes-Oxley Act of 2002

- “Under a new policy, which I think is critical to making accountability and deterrence work, when you’re sent over to the SEC you cannot be insured, you cannot be indemnified, you cannot have tax deductibility for it. Individuals and entities have to suffer the penalties themselves. The idea is to make sure it’s not going to happen again and that everyone gets the message.”
  - Harvey Goldschmid
    Securities and Exchange Commission

The Sarbanes-Oxley Act of 2002

- Transparency and quality accounting are “part of the price of being a public company. If you don’t want to pay the price, go private.”
  - Lynn Turner
    Former SEC Chief Accountant

- “In the old days, a board just cooked the sausage … Today, we want to know what’s in the sausage and how it’s made.”
  - Warren Batts
    Former Tupperware CEO, current mememember of Compensation Committee, Methode Electronics

Who Is Affected By These Laws and Regulations?

- Public Companies
- Officers/Directors of Public Companies
- Auditors for Public Companies
- Attorneys for Public Companies (in-house/outside)
- IT and Related Compliance Vendors

Effects of Sarbanes Oxley – So Far

- Decrease in M&A Transactions, IPO's
- Increase in "Going Private" Transactions
- Substantially Increased Costs of Compliance and Systems
    - Accounting
    - Audit
    - Legal
    - IT

Effects of Sarbanes Oxley – So Far

- Audit Committees and Compensation
- Increased Records Management Costs
- Effect on Private Companies
- “Trickle-On” Accountability
- D&O Insurance Underwriting
- Accelerated Disclosure – The Practical

Effects of Sarbanes Oxley – So Far

- Educational Impact
- Auditing the Auditors – PCAOB
- Non-Audit Services/Knowledge Base
- Attorney Conduct – “Noisy Withdrawal”
- CIO versus CFO – Automated Systems
- SEC Enforcement

Sarbanes Oxley and Beyond

- "Formal Sarbanes-Oxley has some very specific things that need to get done. What I find is that a lot of people are talking about lower-case sarbanes-oxley, which is effectively a label for this whole new generation of legislation," including HIPAA, the Gramm-Leach-Bliley and Patriot Acts, and even edicts from the International Organizaton for Standardization. "Uppercase Sarbanes-Oxley is specific and somewhat narrow in what it touches. Lowercase is a hornet's nest."
  - Scot Klimke

    CIO Network Appliance