

SOX TURNS 10: ANALYZING THE RELEVANCE OF THE  
SARBANES-OXLEY ACT IN 2012

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SARBANES-OXLEY ACT IN 2012

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## **ABSTRACT**

In the late 1990s, the nation experienced a string of corporate accounting scandals involving corporate heavyweights such as Tyco, WorldCom, and, of course, Enron. Investors lost billions of dollars, and public confidence in the financial sector was rattled. Clearly, change was needed.

Enter the Sarbanes-Oxley Act (or “SOX,” as it is affectionately referred to) of 2002. This federal law introduced an oversight board (the Public Company Accounting Oversight Board, or PCAOB) and brought about sweeping changes to the financial sector. Indeed, President George W. Bush described SOX as “the most far reaching reform of American business practices since the time of Franklin Delano Roosevelt.”

Reaction to SOX has been mostly positive, with many people agreeing that SOX has restored investor confidence and increased corporate accountability. However, there are many who oppose SOX, claiming that its high costs of compliance and the increase in complex regulations have done more harm than good. The constitutionality of the law (specifically, of the PCAOB) has even been called into question, resulting in a case heard by the United States Supreme Court.

Recently, the American economy has once again experienced crisis. Today’s financial environment, however, is markedly different from that of the 1990s, and the American economy has different needs as it moves toward recovery. This thesis will evaluate Sarbanes-Oxley in terms of its relevance in today’s financial environment, 10 years after it was enacted.

## **I. INTRODUCTION**

In the late 1990s, the American financial sector was plagued by high-profile accounting scandals. Fraudulent activity at corporate heavyweights such as Tyco, WorldCom, and, perhaps most infamously, Enron, shook the nation's securities markets. Investors lost billions of dollars, and public confidence in the financial sector was rattled. Senator Paul Sarbanes (D-MD) and U.S. Representative Michael Oxley (R-Ohio) led Congress in enacting a sweeping reform law that would eventually bear their names: the Sarbanes-Oxley Act of 2002. The Act itself states that its purpose is "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes" (Sarbanes-Oxley Act of 2002). In order to do so, the Act brought about many new rules and regulations. Indeed, President George W. Bush described the Act as "the most far-reaching reform of American business practices since the time of Franklin Delano Roosevelt" (Bumiller 2002)

### **SELECTED SECTIONS OF THE SARBANES-OXLEY ACT**

The Sarbanes-Oxley Act contains 66 sections, which are divided into 11 titles. This thesis will focus on Sections 302, 401, 404, 409, 807, 906, and 1107 of the Act, as well as Title I, which establishes the Public Company Accounting Oversight Board (PCAOB). Appendix A contains the full table of contents for the Act, listing each title and section by name.

## **Section 302: Corporate Responsibility for Financial Reports**

Section 302 of the Act holds the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) responsible for the accuracy and completeness of financial statements. In particular, Section 302 requires that, whenever a company files annual or quarterly financial reports, the principal executive officer(s) and principal financial officer(s)—usually the CEO and CFO—must certify the following: (1) they have reviewed the report; (2) to the best of their knowledge, there are no untrue statements or omitted facts of a material nature; (3) to the best of their knowledge, the report provides a fair representation of the financial condition of the company and of the results of operations of the issuer; (4) the officers have established, designed, maintained, evaluated, and held responsibility for effective internal controls, and have included their conclusions on the effectiveness of the company's internal controls; (5) all significant deficiencies or weaknesses in the internal controls, as well as any fraud (material or not) that involves management or other employees who pertain to the company's internal controls, are disclosed; and (6) any significant changes to the company's internal controls have been indicated in the report. These requirements prevent executives from claiming ignorance in the event that their financial statements are found to be inaccurate. Executives are essentially forced to play an active role in their company's financial statements, Furthermore, by bearing responsibility for the accuracy and completeness of their statements, executives are no longer in the position of pressuring their auditors into certifying unsatisfactory financial statements (as had sometimes been the case).

**Section 401: Disclosures in Periodic Reports**

Section 401 of the Sarbanes-Oxley Act amends Section 13 of the Securities Exchange Act of 1934, which pertains to financial reporting. Specifically, Sarbanes-Oxley adds two sections to the Securities Exchange Act: Section 13(i), “Accuracy of Financial Reports,” which requires all financial reports that contain financial statements and that are required by Generally Accepted Accounting Principles (GAAP) to be accurate; and Section 13(j), “Off-Balance Sheet Transactions,” which requires all material off-balance sheet transactions to be disclosed. Section 401 also mandates that pro forma financial information included in any report filed with the Securities and Exchange Commission (SEC) must not contain untrue statements or omissions of a material nature, and must agree with the financial condition and results of the issuer’s operations under GAAP. By improving accuracy and increasing the amount of material disclosed in financial reports, Section 401 increased corporate financial transparency and ultimately aided in the restoration of investor confidence. This move was likely in response to the blatant manipulation of financial standing that was achieved by many companies (including Enron) in the 1990s through the use of pro forma statements, special purpose entities, and off-balance sheet transactions.

**Section 404: Management Assessment of Internal Controls**

Section 404 of the Sarbanes-Oxley Act requires the inclusion of an internal control report within each annual financial report. This internal control report must state that management is responsible for establishing and maintaining sufficient internal control structure and procedures, and it must also contain an assessment of the effectiveness of

the internal control structure and procedures. Furthermore, Section 404 requires the report issuer's external auditor to attest to management's aforementioned assessment of internal controls. Like Section 302, Section 404 eliminates executives' ability to claim that they were unaware that their companies did not have adequate internal controls (or, in the case of Section 302, adequate financial statements). Executives must establish that the financial statements they certify are not based on faulty financial internal controls. While the requirements of Section 404 do not seem extensive, compliance with this section is often very costly and arduous for many companies. In fact, many companies usually think of (and dread) Section 404 when thinking of Sarbanes-Oxley compliance.

In 2007, the PCAOB released Auditing Standard 5 (AS5), which provides auditors with additional guidance on performing integrated audits (audits that focus on assessing both financial statements and internal controls). Guidance is also included for Section 404 compliance auditing in particular. Most notably, AS5 eliminates the requirement of auditors to evaluate *management's* assessment of internal controls, focusing instead on evaluating the internal controls directly.

### **Section 409: Real Time Issuer Disclosures**

Section 409 of the Sarbanes-Oxley Act is another amendment to the Securities Exchange Act of 1934, in this instance adding section 13(1), "Real Time Issuer Disclosures". This addition to the Securities Exchange Act requires that any additional information (which may include graphics and trend/qualitative information) that is necessary or useful to investors and the public, and that pertains to material changes in the financial conditions

or operations of a company, must be disclosed publicly on a “rapid and current basis” (SOX). The disclosure must also be made in “plain English”—or, in other words, must be easily understandable. Congress likely had the restoration of investor confidence in mind when writing Section 409, as the section provides the public with greater access to necessary (or just helpful) information regarding corporate financial standing. Additionally, Section 409 may be seen as an attempt to bring the Securities Exchange Act into the internet era, as technological advances have made it possible to achieve continuous disclosure (versus mere period disclosure, which was the expectation when the Securities Exchange Act was written).

### **Section 807: Criminal Penalties for Defrauding Shareholders of Publicly Traded Companies**

Section 807 of the Sarbanes-Oxley Act amends the United States Code (USC), which is the official compilation of United States federal law. Specifically, Section 807 of Sarbanes-Oxley adds Section 1348 (“Securities Fraud”) to Chapter 63 (Mail Fraud and Other Fraud Offenses) of Title 18 (Crimes and Criminal Procedure) of the USC. This addition to the USC mandates criminal penalties for defrauding (or attempting to defraud) “any person in connection with any security of an issuer” with a class of registered securities. Most notably, Section 807 of Sarbanes-Oxley does away with the previous requirement that fraud must occur in connection with the sale or purchase of securities in order to classify as a federal crime. Criminal penalties are also established for fraudulently obtaining “money or property in connection with the purchase or sale of any

security” from an issuer with a class of registered securities. The penalties are fines or imprisonment (or both) of not more than 25 years.

### **Section 906: Corporate Responsibility for Financial Reports**

Similar to Section 807 of the Sarbanes-Oxley Act, Section 906 amends Chapter 63 of Title 18 of the United States Code. In this instance, Section 1350 (“Failure of Corporate Officers to Certify Financial Reports”) is added to the USC. This addition requires the CEO and CFO of any company filing financial reports with the SEC to include a written statement certifying that the reports fully satisfy the requirements of the Securities Exchange Act of 1934, and that the information in the report provides a fair representation of the financial condition of the company and of the results of its operations. Furthermore, criminal penalties are established for certifying a financial report that does not meet the requirements outlined previously in the section. The penalties depend on whether or not improper certification was willful, with a fine of not more than \$1,000,000 or imprisonment of not more than 10 years (or both) for unwillingly or unknowingly certifying unqualified reports, and a fine of not more than \$5,000,000 or imprisonment of not more than 20 years (or both) for willful and knowing certification.

### **Section 1107: Retaliation Against Informants**

Section 1107 of the Sarbanes-Oxley Act amends Chapter 73 (Obstruction of Justice) of Title 18 of the USC by adding Subsection E to Section 1513 (“Retaliating Against a Witness, Victim, or an Informant”). Subsection E establishes a criminal penalty for

knowingly taking harmful action, with the intent to retaliate, against a “whistleblower” (a person who provides law enforcement with truthful information regarding a federal offense). Interference with livelihood or lawful employment are both cited as examples of such action, and penalty for such action can include fines or imprisonment of not more than 10 years, or both. The inclusion of Section 1107 in the Sarbanes-Oxley Act goes a long way toward establishing the importance of whistleblower protection.

### **The Public Company Accounting Oversight Board**

Title I of the Sarbanes-Oxley Act establishes and describes the Public Company Accounting Oversight Board (PCAOB). The PCAOB is a private, nonprofit corporation and functions as a regulatory body for the accounting industry in general and the auditing industry in particular. The SEC maintains authority over the PCAOB and ultimately approves, among other things, the Board’s budget, rules, and standards. The Board itself states that its purpose is to “oversee the audits of public companies in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports” (Public Company Accounting Oversight Board 2012). The establishment of the PCAOB created a regulatory entity for the accounting profession, which was previously self-regulated. Thus, for the first time in history, US public company auditors became subject to independent and external oversight following the creation of the PCAOB. The Sarbanes-Oxley Act also requires the PCAOB to annually audit public accounting firms that regularly provide audit reports to more than 100 issuers, with frequency dropping to triennial audits for firms that provide audit reports to less than 100

issuers on a regular basis; these inspections have led to the PCAOB being affectionately known as “Peekaboo.”

The PCAOB has been a topic of controversy and its constitutionality was recently called into question, culminating in a case heard by the United States Supreme Court (as discussed further in Chapter 3).

## **II. ARGUMENTS FOR SARBANES-OXLEY**

When the Sarbanes-Oxley Act was enacted in 2002, many businesses were worried about how they were going to comply with the law's new regulations—and how much compliance was going to cost them. Professional accounting journals from the mid-2000s, filled with articles that tried to prepare their readers for uncertain times ahead, portray an environment of frenzy and anxiety. While compliance did prove to be hectic and costly for many firms—indeed, many incurred costs that were much higher than initially estimated—it has become apparent that, 10 years after being signed into law, Sarbanes-Oxley has brought about many benefits to the financial sector. The law, which was once dreaded and viewed negatively by much of corporate America, now seems to have won its general approval. In fact, a recent study by Grant Thornton found that, out of over 300 chief audit executives surveyed, nearly 90 percent do not believe that Sarbanes-Oxley should be repealed (Kim 2011).

### **RESTORING INVESTOR CONFIDENCE**

One of the main objectives Congress had in mind while constructing the Sarbanes-Oxley Act of 2002 was restoring investor and public confidence in the nation's financial sector. By requiring publicly held companies to improve their internal controls, vouch for the independence of external auditors, and take responsibility for the accuracy of their financials, Sarbanes-Oxley enhances the integrity of financial statements and makes

financial reporting more reliable as a whole. This increase in reliability, in turn, fosters investor confidence by assuring investors that they are receiving adequate information to assess a company's financial standing. Don Nicolaisen, former chief accountant of the U.S. Securities and Exchange Commission (SEC) and former partner with PricewaterhouseCoopers, further explains the link between strong internal controls and investor confidence:

I believe that, of all of the recent reforms, the internal control requirements have the greatest potential to improve the reliability of financial reporting. Our capital markets run on faith and trust that the vast majority of companies present reliable and complete financial data for investment and policy decision-making (Miller and Rittenberg 2005).

By making financial statements more reliable and understandable, Sarbanes-Oxley also promotes increased corporate transparency. A corporation that does not fully disclose sufficient information on their financial statements or conceals negative aspects of its financial standing can create distrust and uncertainty for investors; therefore, transparency is an important principle in increasing investor confidence (McClure 2010). In addition, a study conducted by the University of Amsterdam found that firms subject to Sarbanes-Oxley became significantly more transparent, relative to firms not subject to Sarbanes-Oxley (Arping 2010).

By emphasizing that corporations have a responsibility to be ethical, transparent, and reliable, and by aiming to restore confidence in the securities market, Sarbanes-Oxley solidifies the notion that corporations ultimately answer to investors and shareholders. Alan Greenspan, former Chairman of the Federal Reserve, echoes this sentiment by noting that Sarbanes-Oxley "importantly reinforced the principle that shareholders own

our corporations and that corporate managers should be working on behalf of shareholders to allocate business resources to their optimum use” (Greenspan 2005).

### **Lower Cost of Borrowing**

A study conducted by Ashbaugh-Skaife, Collins, Kinney Jr. et al. (2009) found that investors perceive firms that comply with Sarbanes-Oxley (and, thus, have effective internal controls) as having less risk; a firm with less risk can obtain debt for a lower cost than a firm with high risk, translating into a lower cost of borrowing. Dr. Paul Lowengrub (2005) illustrates this principle with the following example: “...individuals with a poor credit record may not be able to lease an apartment; likewise, companies that fail to comply with SOX [Sarbanes-Oxley] are not desirable to investors and banks.” It can be inferred that the opposite (companies that do comply with Sarbanes-Oxley are desirable to investors and banks) holds true as well.

### **Decline in High Profile Accounting Scandals**

Fortunately, there has not been another Enron-level accounting scandal since the enactment of Sarbanes-Oxley<sup>1</sup>. While it is not possible to prove that Sarbanes-Oxley is the reason for this decline in accounting scandals, and while unethical behavior can never be fully eradicated, the law does promote moral and ethical behavior in a corporate setting (Lowengrub 2005). The Act has helped uncover scandals in some cases as well. In fact, when HealthSouth’s CFO resigned shortly after the enactment of Sarbanes-Oxley, there was speculation that his resignation was a bid to avoid certifying HealthSouth’s

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<sup>1</sup> Some readers may point to the high profile scandal orchestrated by Bernard Madoff. It is important to keep in mind that Madoff operated a Ponzi scheme—an investment fraud that is not a matter of fraudulent accounting.

financial statements. This led to the investigation that ultimately uncovered HealthSouth's massive fraudulent accounting scandal. Furthermore, there is evidence that Sarbanes-Oxley encouraged at least one whistle-blower, former Value Line employee John R. Dempsey, to come forward with allegations of wrongdoing by Value Line. An article in the New York Times (Glater 2008) states that

Mr. Dempsey said he went to the S.E.C. after the company asked him in November 2004 to sign an internal code of ethics, adopted in the wake of Sarbanes-Oxley legislation on corporate governance, stating that he did not know of any misconduct at the company. "I said to myself, I can't sign that," Mr. Dempsey said. He said he took his concerns to a member of the company's board but was rebuffed. Then he went to the S.E.C.

Sarbanes-Oxley also provides protection to whistleblowers, which may have been an additional factor in Mr. Dempsey's decision to come forward.

### **STRONGER INTERNAL CONTROLS**

While firms are legally required to be in compliance with Sarbanes-Oxley, they benefit from realizing that the processes involving compliance strengthen their business processes as well. Much of the compliance work that firms were faced with involves section 404 of Sarbanes-Oxley, which pertains largely to internal controls; therefore, in order to comply with Sarbanes-Oxley, companies had to reevaluate and improve their internal controls. Understandably, firms also paid greater attention to what was going on within their organizations after Sarbanes-Oxley assigned executives with the legal responsibility of signing off on the validity of their financial statements and internal controls. During the reevaluation process, many companies found unexpected weaknesses and issues within their organizations. As Sam DiPiazza, former CEO of

PricewaterhouseCoopers, states, “[Businesses] are finding that the focus on internal controls is uncovering problems at the best of companies” (Miller and Rittenberg 2005).

### **Documentation**

Many firms updated their business process documentation (for example, operations manuals, policy statements, control process descriptions) to improve their internal controls (Dittmar 2006). Investment firm BlackRock found that by updating job descriptions (as part of improving their documentation processes), they were able to reduce employee turnover by quickly filling job openings; increase employee understanding of workflow and operations by better defining position responsibilities; and better understand how tasks can be improved and performed more efficiently (Dittmar 2006). Other firms have also found that improved documentation can support training, enhance evaluation, and provide guidance (Miller and Rittenberg 2005).

### **Standardization**

Many businesses also discovered an opportunity to reap the benefits of standardization after reviewing their internal controls in order to meet Sarbanes-Oxley requirements. A large clothing manufacturer, for example, realized that each of its divisions conducted business differently in regard to its accounts receivable policies; standardizing these policies improved the reliability of the firm’s consolidated financial statements (Dittmar 2006).

Kimberly-Clark is another firm that benefited by standardizing certain processes as a result of shortcomings discovered during Sarbanes-Oxley compliance work. By standardizing its journal entry process (which, it realized, formerly entailed hundreds of different methods varying across its separate divisions), Kimberly-Clark was able to improve the reliability and consistency of its data, as well as reduce the amount of time and resources required to accomplish the task (Dittmar 2006).

Other firms have found that, by standardizing certain processes, they are able to cut down risk of error, redundancy, and inconsistency within areas such as data entry. Many of these discoveries were not made until the firms began reviewing their internal controls in order to become compliant with Sarbanes-Oxley (Dittmar 2006).

### **Automation**

Evaluating internal controls proved to be an arduous task for many organizations. Some companies saw an opportunity to incorporate more automation into their business processes in order to reduce the resources needed to verify related controls in the future (Miller and Rittenberg 2005). These companies benefited from this automation by reducing the potential for human error (such as during data entry), as well as reallocating workers who were previously in charge of the manual process in question. As Dittmar and Wagner (2005) point out, manual processes are what most auditors “consider to be the weakest aspect of internal control.” Therefore, automating these manual processes strengthen internal controls. Companies can also cut down on the amount of testing that needs to be done to ensure that controls are up to par by using automated controls, which

are more reliable and only require a single sample of the activity being tested (Dittmar 2005).

### **Strengthened Control Environment**

Dittmar and Wagner (2005) point out that external auditors take into consideration the state of a firm's control environment—consisting of “the attitudes and values of executives and directors and the degree to which they recognize the importance of method, transparency, and care in the creation and execution of their company's policies and procedures”—as part of their assessment of the firm's internal controls. Therefore, in order to achieve a successful external audit assessment, (and, as a result, comply with Sarbanes-Oxley), companies must develop their control environment. Firms benefit from the components of a strong control environment, such as leadership that serves as a role model for behavior, fosters ethical values, and provides structure and discipline (Dittmar 2005). Miller and Rittenberg (2005) also found that many companies indicated that they experienced an improvement in the control environment that was directly caused by their Sarbanes-Oxley compliance work. Specific areas of improvement included audit committee involvement and knowledge; monitoring controls; board knowledge and role in controls; internal auditing; and greater acceptance of codes of conduct (Miller and Rittenberg 2005).

### **Increased Audit Committee Involvement**

Sarbanes-Oxley delegated new responsibilities—as well as legal liabilities—to members of corporate audit committees. Many companies experienced a change in board members

in order to accommodate the new law (particularly Section 302)'s requirements, such as the absence of financial and personal ties to the company and the inclusion of at least one member designated as a "financial expert" (Dittmar 2006). A substantial change in the nature of the audit committee's level of involvement seems to have taken place in many firms as well, evidenced by longer and more frequent committee meetings, a heavier workload, and a deeper level of engagement (Dittmar 2006). Section 301 of Sarbanes-Oxley also increases the objectivity of audit committees by requiring all members to be independent of the company. Furthermore, a recent survey found that, of 171 companies, over 70% experienced an increase in the knowledge and involvement of their audit committee; furthermore, respondents consistently indicated that their entire board (not just the audit committee) exhibited a greater awareness and responsibility regarding controls (Miller and Rittenberg 2005).

### **Improved Controls Over Often-Manipulated Areas**

A survey of 171 companies found that there was great improvement in the controls of accounting areas that are often manipulated. These areas consist of revenue recognition<sup>2</sup> issues, earnings management<sup>3</sup> involving cookie-jar reserves and unusual journal entries, and issues in the closing process<sup>4</sup> (Miller and Rittenberg 2005). According to Miller and Rittenberg, the closing process in particular has historically been overlooked by auditors due to its complexity (as auditors generally tend to focus on routine transactions), and

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<sup>2</sup> Revenue recognition: the principle that determines when income can be recognized as revenue

<sup>3</sup> Earnings management: the manipulation of a company's apparent financial condition through the under- or overstatement of earnings; sometimes achieved by discretely depositing excess earnings into a "cookie-jar reserve" that can be dipped into later on in order to bolster earnings in periods of lower performance

<sup>4</sup> Closing process: the process of closing out temporary accounts (such as revenues and expenses) at the end of the fiscal year in order to prepare financial statements

therefore was in great need of improvement of controls. Again, the companies surveyed indicated that the improvement in the controls of these often-manipulated areas were a direct result of the process of becoming compliant with Sarbanes-Oxley.

### **Improvement of Routine Controls**

Surprisingly, a significant number of the companies surveyed by Miller and Rittenberg (2005) indicated that their Sarbanes-Oxley compliance work led to improvement in the controls of routine accounting areas as well, such as record retention (audit trail); asset safeguarding; and expense classification. Since these areas involve routine transactions, many companies already have strong controls for these items in place; nevertheless, companies saw an improvement in these controls. Record retention saw the most improvement, and benefits companies by providing an audit trail that will provide support for journal entry discrepancies, customer questions, and, of course, proving compliance with regulations such as Sarbanes-Oxley. The performance of basic controls, such as segregation of duties<sup>5</sup>, periodic reconciliation of accounts, and authorization processes also increased in companies that had formerly implemented these controls but had started to overlook them or fall behind on maintenance.

### **Improvement in Information Technology Controls**

In reviewing and evaluating their internal controls, many businesses discovered vulnerabilities and shortcomings in their information technology (IT) controls. These discoveries allowed companies to make better decisions about resource allocation in

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<sup>5</sup> Segregation of duties: an internal control concept that separates custody, approval, and recording duties among different employees. For example, an employee with access to a cash register (custodial duty) is not the same employee that records the amount of cash in the register at the end of the shift.

order to make improvements to their IT internal controls. According to Miller and Rittenberg (2005), the five most common IT control improvements were better information system security; better understanding and improvement of segregation of duties; improved access controls/monitoring; improved testing procedures and program change management; and improved processes to document policies, procedures, and controls. These improvements will benefit organizations by enhancing IT performance and operations.

### **Enhanced Awareness and Understanding of Controls**

Sarbanes-Oxley requires that management at the executive level takes responsibility for ensuring that internal controls are sufficient. As a result, there has been an increase in the awareness of internal controls within the company, as well as an understanding of the need for internal controls and their relationship to operations and other aspects of the business, and a better understanding of the business itself (Miller and Rittenberg 2005). Companies benefit greatly from this increased awareness because management is able to support the activities of the business that pertain to monitoring and following internal controls. Additionally, when understanding and awareness of internal controls increase within all levels of the organization, the different levels are able to work together in a manner that supports the achievement of the internal controls.

### **Anti-Fraud Controls**

Prior to Sarbanes-Oxley, many companies did not have anti-fraud controls in place, or had anti-fraud controls that did not reach far enough (Miller and Rittenberg 2005). In

order to achieve compliance, companies had to establish specific procedures for implementing, monitoring, and auditing anti-fraud controls such as protection of whistleblowers (Miller and Rittenberg 2005). Companies benefit from establishing anti-fraud controls by better protecting themselves from the occurrence of fraud, which is costly at best and could destroy the organization at worst. Furthermore, increases in fraud would likely lower investor confidence yet again, resulting in indirect costs related to an unstable securities market.

Some firms will choose to be Sarbanes-Oxley compliant by meeting the minimum requirements in order to save time or resources, or out of fear of legal consequences. However, they will be at an advantage if they use the compliance concepts to enhance their business processes. As Dittmar and Wagner (2006) point out, “fear can be a powerful generator of upstanding conduct. But business runs on discovering and creating value. [Businesses] need to start viewing the Sarbanes-Oxley Act of 2002 as an ally in that effort.”

### **III. ARGUMENTS AGAINST SARBANES-OXLEY**

While the Sarbanes-Oxley Act of 2002 did bring about many benefits, there have been many criticisms of the Act as well. A 2009 editorial in the Wall Street Journal calls it “the last great Congressional overreaction” (Wall Street Journal 2009). Companies (especially smaller businesses) were faced with compliance costs that were much higher than expected. Sarbanes-Oxley was blamed for a drastic decrease in IPOs, and sentiments toward the Act turned especially negative during the financial meltdown of 2008.

#### **COSTS OF COMPLIANCE**

Perhaps the most pressing concern voiced by opponents of Sarbanes-Oxley is the high cost of compliance. Financial Executives International (FEI) found in a 2007 survey of Sarbanes-Oxley compliance that the average total cost of complying with Section 404 was \$1.7 billion. Respondents of the survey were 185 companies with average annual revenues of \$4.7 billion; 168 of the companies had market capitalizations above \$75 million (FEI 2007). While the survey results from 2007 showed a decline in costs from previous years, the average cost is still much higher than the SEC had originally estimated.

### **Disproportionate Costs for Small Businesses**

The fixed costs associated with Sarbanes-Oxley compliance—especially when first enacted—translate into a higher proportion of cost to revenue for smaller businesses. Former Speaker of the House Representative Nancy Pelosi addressed this issue through a spokesperson, stating that “we cannot afford to disadvantage small companies with overly burdensome regulatory requirements” (Gerlach 2006). An article co-authored by Newt Gingrich and David Kralik stated that, while the SEC initially estimated that the costs of complying with Sarbanes-Oxley would average about \$91,000 per company, compliance ended up costing small companies around 50 times more (Gingrich 2008). The SEC later revised this estimate to \$2.87 million per company.

### **COMPETITIVE DISADVANTAGE**

Another argument against Sarbanes-Oxley is that the increased regulation brought about by the Act has caused U.S. companies to be at a disadvantage when competing with foreign firms in the global market. This suggests that the U.S. is placed at a competitive disadvantage when attempting to obtain new companies to register on its stock exchanges. High costs and numerous rules to follow can act as hurdles for new U.S. public companies, to the point of discouragement. The financial sector has not been shy in expressing this viewpoint. In fact, an editorial in the Wall Street Journal states that Sarbanes-Oxley “has essentially killed the creation of new public companies in America, hamstrung the NYSE and NASDAQ (while making the London Stock Exchange rich), and cost U.S. industry more than \$200 billion by some estimates” (Malone 2008). The article cites statistics from the National Venture Capital Association stating that just 6

companies “went public” (became a publicly held company, commonly through an Initial Public Offering, or IPO) in 2008—a dramatic decrease from 269 IPOs in 1999, 272 IPOs in 1996, and 365 IPOs in 1986 (Malone 2008).

### **CALL FOR REPEAL BY PROMINENT POLITICIANS**

Many prominent politicians have called for the repeal of Sarbanes-Oxley. In fact, the Act—or, more specifically, *disdain* for the Act—has been a recurring topic of discussion among candidates of the 2012 Presidential Election. Many 2012 U.S. Republican Party presidential nomination candidates, including Texas Governor Rick Perry, former Governor of Massachusetts Mitt Romney, and former CEO Herman Cain, have spoken out against Sarbanes-Oxley (Berlau 2011). A few candidates, such as Former Speaker of the House Newt Gingrich, Congressman Ron Paul, former Governor of Arkansas Mike Huckabee (candidate during the 2008 election), former Governor of Utah Jon Huntsman, and Congresswoman Michele Bachmann have gone so far as to call for Sarbanes-Oxley to be repealed. Support for Sarbanes-Oxley is not evenly divided by party lines, however; House Minority Leader Nancy Pelosi, who has been described as “one of the chamber's most liberal Democrats” (Rosen 2011), had this to say about Sarbanes-Oxley: “I don't think you need the whole package” (Rosen 2011). It is also important to note that Senator Paul Sarbanes is a member of the Democratic party; Representative Michael Oxley is a Republican; the Act was passed—almost unanimously—by a Republican-headed House and a Democratic-headed Senate and signed into law by a Republican president; and amendments have been made to Sarbanes-Oxley through the Dodd-Frank Act, which was signed into law by a Democratic president.

## **Newt Gingrich**

Former Speaker of the House and 2012 Presidential Candidate Newt Gingrich co-authored an article with David Kralik in the San Francisco Chronicle stating that Sarbanes-Oxley should be repealed. The pair stated that “Sarbanes-Oxley went too far in regulating corporate governance” and that “...there is growing evidence that [Sarbanes-Oxley] has done more harm than good, and is undermining the venture-capital industry in Silicon Valley” (Gingrich 2008). In their article, Gingrich and Kralik identified three instances of harm done by Sarbanes-Oxley. First, they state that Sarbanes-Oxley failed to prevent bankruptcies and accounting insufficiencies in troubled firms such as Merrill Lynch, AIG, Lehman Brothers, and Bear Stearns. They also noted that that the introduction of criminal penalties for corporate board members has made it more difficult for companies to find experienced members for their boards. Second, Gingrich and Kralik argue that Sarbanes-Oxley created “a movement among smaller public companies to return to private status or merge” (Gingrich 2008). The pair cites a 2006 survey by law firm Foley and Lardner LLP which found the following: out of 114 public companies surveyed, 21% were considering going private, 10% were considering selling the company, and 8% were considering a merger. It is also noted that most of these companies had annual revenue of less than \$1 billion. Gingrich and Kralik suggest that these respondent companies were considering going private, selling out, or merging because they were finding it too difficult to deal with the burden of increased costs and regulation brought on by Sarbanes-Oxley. Third, Gingrich and Kralik postulate that Sarbanes-Oxley encourages those companies that do choose to go (and stay) public to

register on foreign stock exchanges rather than U.S. exchanges. Their article cites a 2005 report by the London Stock Exchange which found that, out of the international companies surveyed, only around 38% responded that they considered registering in the U.S.; of this percentage, 90% stated that the new regulations imposed by Sarbanes-Oxley made the London Stock Exchange the more attractive choice. Furthermore, Gingrich and Kralik state that it will now take the average company 12 years (as opposed to five years, as was the case prior to Sarbanes-Oxley) to be able to successfully issue an IPO due to the “estimated \$4.36 million hidden tax in yearly compliance costs” (Gingrich 2008). In addition, the article maintains that the Sarbanes-Oxley Act’s effect on the venture capital industry (particularly Silicon Valley) has been “especially dramatic” (Gingrich 2008). Gingrich and Kralik warn that if Sarbanes-Oxley is not repealed, the nation “could see Silicon Valley's status as a hotbed of innovation erode and see more and more of the future invented outside of the United States” (Gingrich 2008). The pair concludes by identifying the essence of what they consider to be wrong with Sarbanes-Oxley, as well as what should be done regarding the Act: “Economic growth in a sound market economy requires smart regulation, not destructive regulation that hurts economic growth. Sarbanes-Oxley fails that test. It should be repealed” (Gingrich 2008).

### **Ron Paul**

Congressman Ron Paul, known for his advocacy of limited government, has expressed a staunch opposition to Sarbanes-Oxley. In a 2005 speech before the U.S. House of Representatives, Paul urged for the Act (particularly Section 404) to be repealed, saying “financial analysts have identified Section 404 [of Sarbanes-Oxley] as the major reason

why American corporations are hoarding cash instead of investing it in new ventures” (Paul 2005). He stated that Section 404 in particular “has raised the costs of doing business, thus causing foreign companies to withdraw from American markets and retarding economic growth,” adding that it “also undermines the rule of law and individual liberty” by “criminalizing inadvertent mistakes and exceeding congressional authority” (Paul 2005). Paul even went as far as introducing a bill entitled the Due Process and Economic Competitiveness Restoration Act, which would repeal Sarbanes-Oxley. The bill was introduced and referred to committee, but never became law (H.R. 1657).

### **Mike Huckabee**

Mike Huckabee, former Governor of Arkansas and 2008 presidential candidate, has also suggested that Sarbanes-Oxley be repealed. In a blog entry posted on the website of his political action committee, Huck PAC, Huckabee expressed his disappointment and disgust over the way the economic meltdown was handled. He holds that Sarbanes-Oxley was partly responsible for the meltdown, stating that “some of what contributed to this disaster is too much government in the form of Sarbanes-Oxley” (Huckabee 2008) and that “[Sarbanes-Oxley] has failed. It was supposed to prevent this. It didn’t. Kill it” (Huckabee 2008). Huckabee closes by providing some suggestions to Congress regarding how to take action. One of the suggestions listed is simple and straightforward: “Repeal Sarbanes-Oxley” (Huckabee 2008).

**Jon Huntsman**

Jon Huntsman, former Governor of Utah and 2012 presidential candidate, outlined a jobs plan as part of his platform during his presidential run. One of the proposed items of action in the plan, as published on his campaign website, is to repeal Sarbanes-Oxley. Huntsman states that the Act “has only added a massive compliance tax on companies without providing any real measures to prevent corporate fraud, which is still rampant (Huntsman)”. He adds that Sarbanes-Oxley “did nothing to avoid today's financial difficulties, and has caused unintended consequences by driving companies elsewhere or into the private market” and was “hastily written” (Huntsman).

**CONSTITUTIONALITY OF THE PUBLIC COMPANY ACCOUNTING  
OVERSIGHT BOARD (PCAOB)**

A key result of the enactment of Sarbanes-Oxley was the creation of the Public Company Accounting Oversight Board (PCAOB). In 2006, a lawsuit was filed questioning the constitutionality of the PCAOB. The suit, *Free Enterprise Fund v. Public Company Accounting Oversight Board*, centers on the fact that members of the PCAOB are appointed by the SEC and not by the President. The Appointments Clause of the United States Constitution notes that “senior executive-branch officials should be appointed by the president and confirmed by the Senate” (Freeman 2009). Even more importantly, since Sarbanes-Oxley does not contain a severability clause, the entire Act could be invalidated if one section is found to be unconstitutional. An editorial in the Wall Street Journal explains that “a decision to uphold the PCAOB would open the door for Congress to create any number of equally unaccountable regulators across the economy,” while, on

the other hand, “a ruling against the PCAOB could bring down the whole law” (Wall Street Journal 2009) due to the aforementioned lack of a severability clause. Judge Brett Kavanaugh, of the Washington, D.C. Circuit panel that oversaw the appeals case, called the case “the most important separation of powers case in 20 years” (Wall Street Journal 2009). In 2010, the U.S. Supreme Court upheld the constitutionality of the PCAOB.

#### **IV. “CONTEMPORARY SOX”: SARBANES-OXLEY IN TODAY’S FINANCIAL ENVIRONMENT**

Ten years after Sarbanes-Oxley was enacted, the American financial sector is markedly different. However, the nation’s economy is still recovering from another financial crisis, this time on a much larger global scale than the crisis that plagued the country in the early 2000s. While the causes behind the two crises are different, both caused damage to the American economy, both inspired new legislation seeking financial reform, and the US is once again in a time of low investor confidence and economic instability.

##### **SARBANES-OXLEY AND THE 2008 FINANCIAL CRISIS**

While Sarbanes-Oxley was enacted largely in response to the financial crisis of the early 2000s, critics of the Act feel that it should have done more to prevent the 2008 economic meltdown. It is important to reiterate that the foundations of the two crises were different. Investor confidence was further shaken by accounting scandals and corporate fraud, which added to the damage of the dot-com bubble bust and September 11 terrorist attacks that triggered the early 2000s crisis; while fraudulent accounting did play a part in the late 2000s crisis, it was not at the crux of the crisis triggered in 2008 by subprime mortgage lending policy failures. Nevertheless, there remain some areas of the late 2000s crisis that many feel Sarbanes-Oxley should have been able to mitigate.

### **Lehman Brothers and Off-Balance Sheet Transactions**

In 2008, Lehman Brothers Holdings collapsed in what became the largest bankruptcy in U.S. history with \$613 billion in debt against \$639 billion in total assets; WorldCom—one of the major firms that fell after its own accounting scandal was exposed during the financial crisis of the early 2000s—held the previous largest bankruptcy at \$104 billion in assets (Mamudi 2008). It was discovered that Lehman Brothers had been misrepresenting its financial standing to the tune of billions of dollars through the use of off-balance sheet transactions (including the now-infamous instrument Repo 105). As previously discussed, Section 401 of the Sarbanes-Oxley Act requires (among other things) all material off-balance sheet transactions to be disclosed, and it seems that Lehman Brothers violated this requirement. However, no Sarbanes-Oxley-related criminal charges have been filed against Lehman Brothers (or any of the firms that were involved in the near-meltdown of the financial sector during the late 2000s). This has led many to question the effectiveness of Sarbanes-Oxley and whether or not it should have done more to stop the financial crisis of the late-2000s. The PCAOB's effectiveness was also questioned; many felt that Lehman Brothers' external auditing firm, Big 4 firm Ernst & Young, must have been aware of Lehman Brothers' use of off-balance sheet transactions, and that the PCAOB should have done a better job of 'auditing the auditor' to uncover Ernst & Young's role in the fraud. This brings to mind the scrutiny that accounting firm Arthur Andersen faced (and which ultimately led to its downfall) regarding its knowledge of Enron's fraudulent accounting, including alleged efforts to help Enron cover up its fraud by shredding incriminating documents.

## **TODAY'S FINANCIAL ENVIRONMENT**

Ten years after Sarbanes-Oxley was enacted, most companies have come to accept it. The high initial costs of compliance have decreased as businesses set up internal controls (and systems to document them). However, today's economy is markedly different from that of the early 2000s, and the nation's changing needs have led some to question whether or not Sarbanes-Oxley is still relevant in today's financial environment. Even Representative Michael Oxley has recognized that Sarbanes-Oxley may need some changes in order to stay relevant, saying that "we didn't write [the Act] in stone...I think it's highly likely and probably a good thing that you'd have some revisions" (Rosen 2011).

### **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Much in the same way that Sarbanes-Oxley was largely in reaction to the financial troubles and accounting scandals of the *early* 2000s, Congress reacted to the financial crisis of the late 2000s with a new federal statute. On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. There are many parallels to Sarbanes-Oxley and Dodd-Frank; in fact, Margaret Tahyar, a partner at law firm Davis Polk, described Dodd-Frank as "Sarbanes-Oxley on steroids," referring to the "exponentially greater volume of regulation" and "sheer number of rules" (Jones 2011) brought about by the Dodd-Frank Act. Many of the complaints of Dodd-Frank's critics are similar to those posed by critics of Sarbanes-Oxley—too many new rules, too costly, too much work in order to comply. Indeed,

according to the Wall Street Journal, the Dodd-Frank Act contains 849 pages; in comparison, Sarbanes-Oxley's 66 pages amount to a mere 8% of Dodd-Frank's length.

The Dodd-Frank Act directly affects Sarbanes-Oxley in many ways. Perhaps most significant is section 922 of Dodd-Frank, which bolsters whistleblower protection through amendments to Sarbanes-Oxley. In particular, Dodd-Frank provides whistleblowers with additional anti-retaliation protection; lengthens the statute of limitations for filing whistleblower complaints; expands Sarbanes-Oxley's "reasonable belief" clause (which only protected whistleblowers who "reasonably believe" that the information they provided constitutes misconduct "relating to fraud against shareholders") to protect whistleblowers regardless of reasonable belief of shareholder fraud; and extends whistleblower coverage to "any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company", not just those who work in publicly-traded companies (Dodd-Frank Wall Street Reform and Consumer Protection Act 2010).

#### **Small Companies and Section 404**

In late 2011, Congress passed the Startup Expansion Investment Act. This act amends Sarbanes-Oxley to exempt firms whose total market capitalization is less than \$1,000,000,000 from Section 404. Firms that decide to take this exemption must disclose within their next financial report that they are doing so. This exemption is a welcomed relief for many small firms that struggled with the disproportionately high costs associated with complying with Section 404 (as discussed previously in Chapter 3).

Furthermore, it demonstrates that these small firms' complaints did not fall onto deaf ears and suggests that Congress does not want Sarbanes-Oxley to do more harm than good.

### **Enforcement**

In 2005, Richard M. Scrushy, founder and former CEO of HealthSouth, was the first executive to be charged under Sarbanes-Oxley for certifying HealthSouth's fraudulent financial statements. However, in what the Wall Street Journal calls an "embarrassing defeat" (Bauerlein 2007) for the federal government, Scrushy was acquitted on all charges brought against him in relation to HealthSouth's \$2.7 billion accounting fraud. Nevertheless, lead prosecutor Alice Martin does not believe that failing to convict Scrushy makes Sarbanes-Oxley worthless. She explains that "just because you have a not-guilty on Sarbanes-Oxley, it doesn't mean the statute loses any of its teeth" (Carrns 2005).

After the Scrushy case, several executives that were involved in the accounting scandals of the early 2000s were prosecuted. In 2005, Bernie Ebbers, former CEO of WorldCom, was sentenced to 25 years in prison (Scannell Searcy and Young 2005). Tyco's former CEO, L. Dennis Kozlowski, was given a sentence of up to 25 years in prison after a trial that played out publicly in a media maelstrom; he has since been approved for a work-release program (El-Ghobashy 2012). Perhaps most famous of all was former Enron CEO Jeff Skilling's lengthy trial, which found him guilty of 19 counts (including fraud and conspiracy) and sentenced him to more than 24 years in prison (Emshwiller 2008). However, there have not been any Sarbanes-Oxley related charges brought toward any of

the executives or firms that were involved in the late-2000s financial crisis. An article in the Boston Review postulates that “the Department of Justice doesn’t seem to have the appetite to apply Sarbanes-Oxley to these cases” (McKenna 2011), referring to the aforementioned major players involved in the late-2000s financial crisis (such as Countrywide, Lehman Brothers, and Citigroup). This perceived lack of enforcement leads some to question whether future legislation will be enforced (or even enforceable, based on worries that political opponents may attempt to underfund the SEC in order to limit its power). The same Boston Review article states that “a closer examination of the history of [Sarbanes-Oxley’s] provisions does not inspire confidence that new financial laws passed by Congress—Dodd-Frank—will be enforced” (McKenna 2011).

### **Other Considerations**

A 2007 case involving a lawyer charged with destroying evidence raised many interesting questions regarding the extent of Sarbanes-Oxley’s reach. Section 802 (“Criminal Penalties for Altering Documents”) of Sarbanes-Oxley—likely inspired by the alleged shredding of thousands of documents during Enron’s infamous scandal—establishes penalties for altering documents or destroying evidence in order to obstruct an investigation. When lawyer Philip Russell destroyed a computer belonging to his client (who was facing child pornography charges), Russell was charged with violating Sarbanes-Oxley by destroying evidence (Weiss 2007). The charge was controversial and brought into question whether or not Sarbanes-Oxley applied to non-corporate situations (like that of Philip Russell); however, the charge was eventually dropped and no ruling was made regarding whether or not Sarbanes-Oxley applied in the case.

## V. CONCLUSION

The American and global financial economies are significantly different than they were when Sarbanes-Oxley was enacted; however, the principles behind the act—particularly the protection of whistleblowers, executive responsibility, and certification of financial statements and internal controls—are still very important and relevant today for three main reasons. First, another string of fraudulent accounting scandals similar to those of the early 2000s would be a terrible blow—not just to the American economy but, because we live in a much more globalized economy than we did a decade ago, to the *global* economy. It is important, therefore, to communicate that such fraud is unacceptable and to implement deterrents by establishing penalties. Second, Sarbanes-Oxley made significant progress in successfully restoring investor confidence; a reversal in this restoration of confidence could prove very dangerous to as the American economy strives to recover. Lastly, by repealing legislation such as Sarbanes-Oxley, we are at risk of what Secretary of the U.S. Treasury Tim Geithner calls “financial crisis amnesia” (Geithner 2012). If we as a nation remove reform legislation such as Sarbanes-Oxley, we are apt to forget the reasons why Congress felt it was necessary to pass such legislation in the first place and history may easily repeat itself. Additionally, it is imperative that employees who discover fraudulent activity within their corporations feel safe reporting it; according to the Association of Certified Fraud Examiners’ 2002 Report to the Nation, “the most common method for detecting occupational fraud is by a tip from an employee, customer,

vendor or anonymous source” (ACFE 2002). While it is clear that the Sarbanes-Oxley Act has drawbacks and shortcomings, many agree that its benefits outweigh its costs overall. On the other hand, however, the lack of enforcement has led many to conclude that the Act is no longer strong enough to stand on its own. Michael Oxley, co-architect of the Sarbanes-Oxley Act, does not believe that this should discourage society from supporting the Act. As he explains:

It is very difficult to regulate a relatively free market with a lot of innovations and some folks who don't necessarily want to play by the rules. But that doesn't mean we should stop trying to regulate and prosecute wrongdoers. We have laws against homicide and people kill one another every day. That doesn't mean that you back off and stop fighting (Benner 2010).

Within the decade that has passed since Sarbanes-Oxley's enactment, the government, financial sector, and public have had the opportunity to glean insight into what aspects of the Act work and what aspects do not work. Completely repealing Sarbanes-Oxley is not the answer. The correct course of action is to monitor the negative (and positive) effects of the legislation and analyze this feedback to make changes as needed. This is one of the greatest strengths of our legal system—legislation can be changed. The amendments to Sarbanes-Oxley through the Dodd-Frank Act (bolstering whistleblower protection) and the Startup Expansion Investment Act (relieving smaller companies of the financial burden associated with Section 404 compliance) are steps in the right direction.

Perhaps the best perspective when looking at the drawbacks and costs of Wall Street reform legislation (such as Sarbanes-Oxley and the Dodd-Frank Act) is that of U.S. Secretary of the Treasury Tim Geithner. While he admits that “these reforms are not perfect, and they will not prevent all future financial crises,” he posits this advice to opponents of financial reform: “Remember the [2008] crisis when you hear complaints about financial reform...Are the costs of reform too high? Certainly not relative to the costs of another financial crisis...Are these reforms complex? No more complex than the problems they are designed to solve” (Geithner 2012).

APPENDIX A: SARBANES-OXLEY ACT TABLE OF CONTENTS

H. R. 3763

One Hundred Seventh Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,  
the twenty-third day of January, two thousand and two*

An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Sarbanes-Oxley Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

## TITLE II—AUDITOR INDEPENDENCE

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

## TITLE III—CORPORATE RESPONSIBILITY

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods.
- Sec. 307. Rules of professional responsibility for attorneys.
- Sec. 308. Fair funds for investors.

## TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.
- Sec. 402. Enhanced conflict of interest provisions.
- Sec. 403. Disclosures of transactions involving management and principal stockholders.
- Sec. 404. Management assessment of internal controls.
- Sec. 405. Exemption.
- Sec. 406. Code of ethics for senior financial officers.
- Sec. 407. Disclosure of audit committee financial expert.
- Sec. 408. Enhanced review of periodic disclosures by issuers.
- Sec. 409. Real time issuer disclosures.

## TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

## TITLE VI—COMMISSION RESOURCES AND AUTHORITY

- Sec. 601. Authorization of appropriations.
- Sec. 602. Appearance and practice before the Commission.
- Sec. 603. Federal court authority to impose penny stock bars.
- Sec. 604. Qualifications of associated persons of brokers and dealers.

## TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.
- Sec. 702. Commission study and report regarding credit rating agencies.
- Sec. 703. Study and report on violators and violations
- Sec. 704. Study of enforcement actions.
- Sec. 705. Study of investment banks.

## TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

- Sec. 801. Short title.
- Sec. 802. Criminal penalties for altering documents.
- Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
- Sec. 804. Statute of limitations for securities fraud.
- Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
- Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

**TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS**

- Sec. 901. Short title.
- Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
- Sec. 903. Criminal penalties for mail and wire fraud.
- Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
- Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
- Sec. 906. Corporate responsibility for financial reports.

**TITLE X—CORPORATE TAX RETURNS**

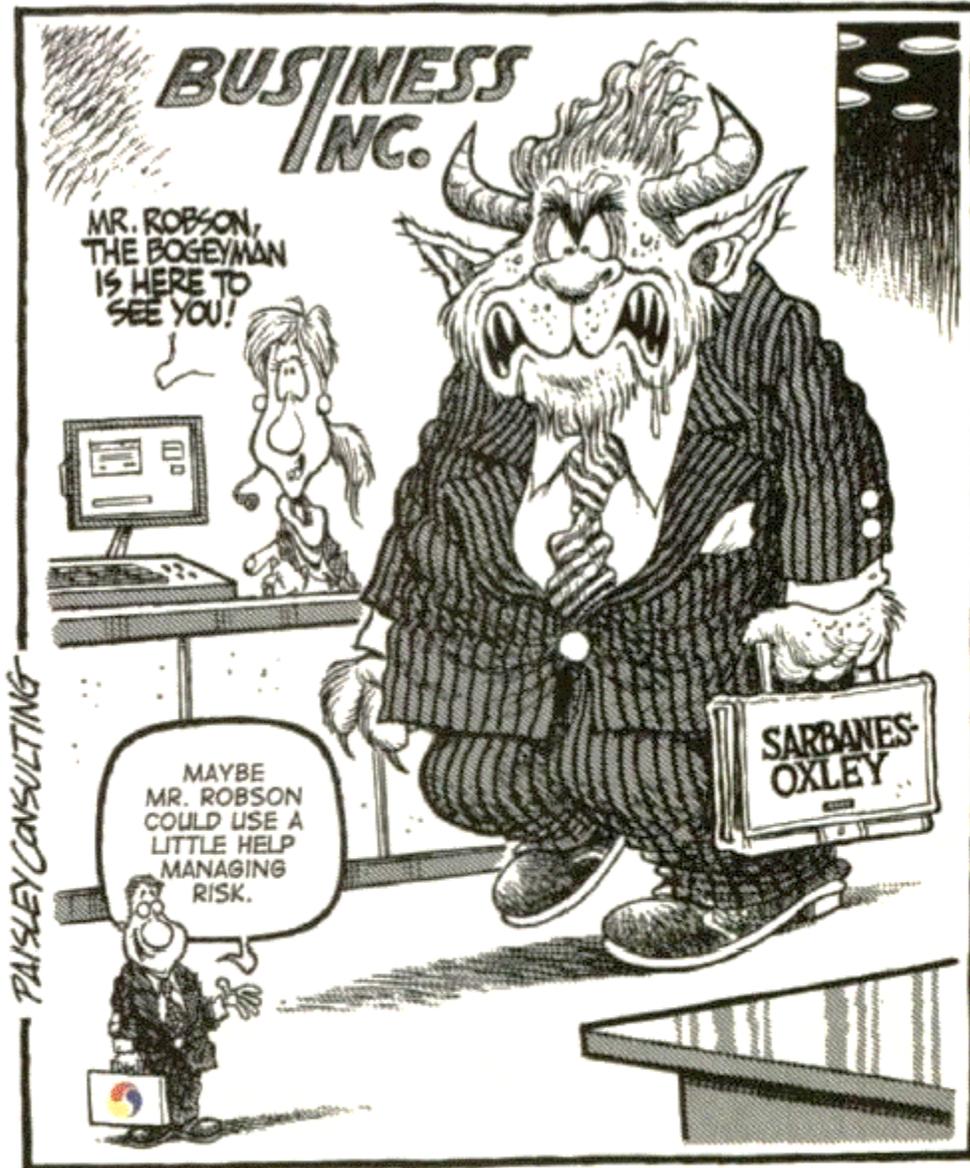
- Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

**TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY**

- Sec. 1101. Short title.
- Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
- Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 1104. Amendment to the Federal Sentencing Guidelines.
- Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
- Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
- Sec. 1107. Retaliation against informants.

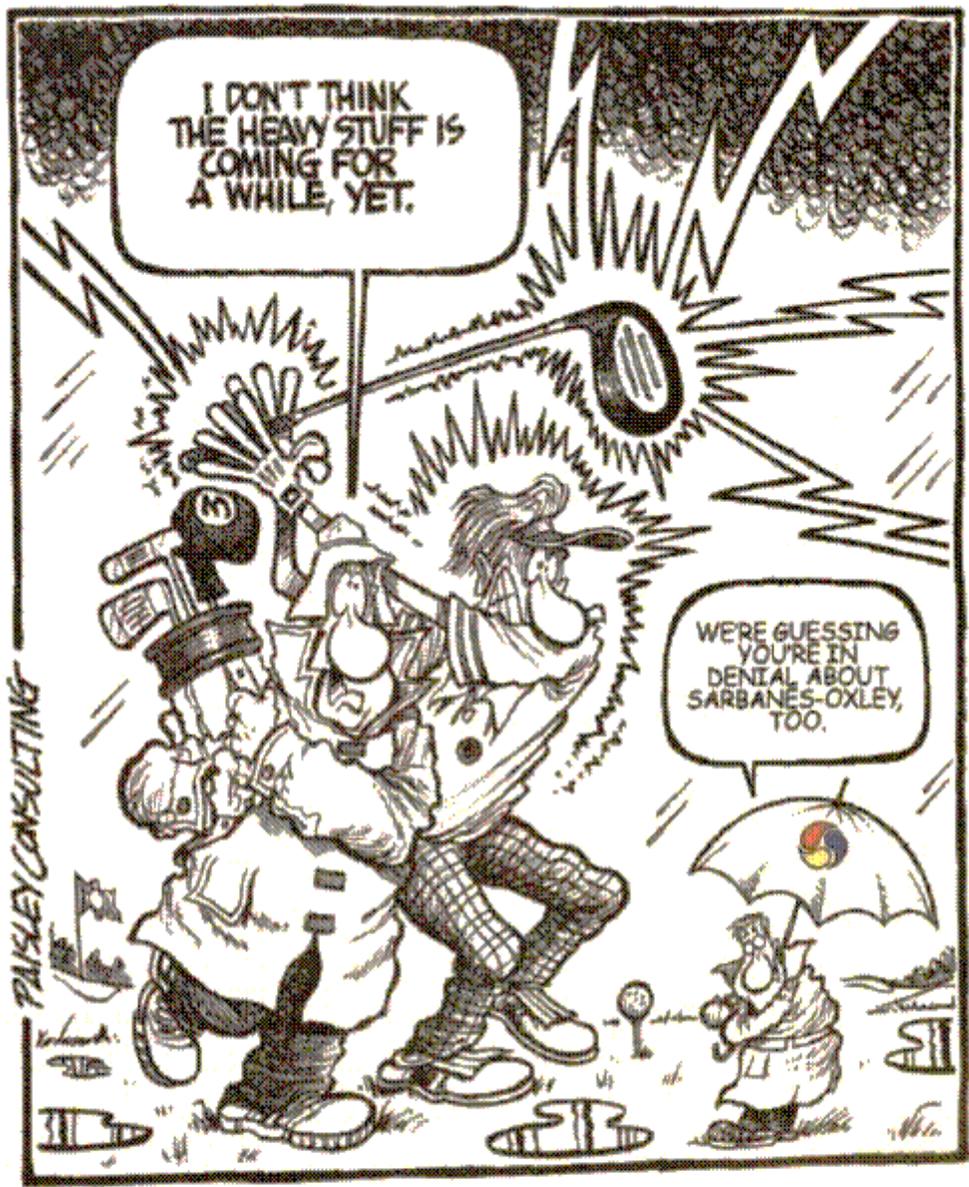
## APPENDIX B

The following are advertisements, found in issues of the CPA Journal from 2004, by consulting firm Paisley Consulting. The advertisements do an excellent job of conveying, in a humorous way, the state of panic and frenzy that many companies felt themselves falling into while preparing for Sarbanes-Oxley compliance—as well as the fact that there were some businesses (like Paisley Consulting) who tried to capitalize on this fear.



Maybe you could use Risk Navigator™ software. It's a complete risk management solution. From Sarbanes-Oxley documentation and testing, to assessing operational risks and controls, Risk Navigator provides a single information source, all summarized for decision-makers in a personalized executive dashboard. Risk Navigator puts everyone — auditors, risk management group, SOX team and senior management — on the same page. It's comprehensive, scalable, customizable and ready to go. Join the more than 50 Fortune® 500 companies that rely on Risk Navigator. Call 888.288.0283 or visit [www.paisleyconsulting.com](http://www.paisleyconsulting.com).

Business accountability software. It's what we do.  
**PAISLEY CONSULTING**



*Risk Navigator™ software can get you past the denial stage. It's a complete risk management solution. From Sarbanes-Oxley documentation and testing to assessing operational risks and controls, Risk Navigator provides a single information source, all summarized for decision-makers in a personalized executive dashboard. Risk Navigator puts everyone — auditors, risk management group, SOX team and senior management — on the same page. It's comprehensive, scalable, customizable and ready to go. Join the more than 50 Fortune® 500 companies that rely on Risk Navigator. Call 888.288.0283 or 320.286.5870. Or visit [www.paisleyconsulting.com](http://www.paisleyconsulting.com).*

Business accountability software. It's what we do.  
**PAISLEY CONSULTING**



Better get Risk Navigator<sup>®</sup> now, before you land yourself in big trouble. It's complete risk management software. From Sarbanes-Oxley documentation and testing to assessing operational risks and controls, Risk Navigator provides a single information source, all summarized for decision-makers in a personalized executive dashboard. Risk Navigator puts everyone — auditors, risk management group, SOX team and senior management — on the same page. It's comprehensive, scalable, customizable and ready to go. Join the more than 50 Fortune<sup>®</sup> 500 companies that rely on Risk Navigator. Call 888.288.0283 or 320.286.5870. Or visit [www.paisleyconsulting.com](http://www.paisleyconsulting.com).

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There's a better solution. Focus Control Assurance Software™ Focus is designed specifically to address Sarbanes-Oxley Sections 404 and 302 compliance requirements. It's Web-based for easy management. It documents all your risks and controls, identifies gaps, tracks action plans and provides for management certification. It even provides industry-specific process, risk and control templates to get you up and going fast. Focus has everything you need in one easy package. Quit the high wire act. Call 320.286.5870. Email [sales@paisleyconsulting.com](mailto:sales@paisleyconsulting.com). Or visit [www.paisleyconsulting.com](http://www.paisleyconsulting.com).



Here's the cure for what you've got.

**Focus Control Assurance Software™** is designed specifically to address Sarbanes-Oxley Sections 404 and 302 compliance requirements. It's Web-based for easy management. It documents all your risks and controls, identifies gaps, tracks action plans and provides for management certification. It even provides industry-specific process, risk and control templates to get you up and going fast. Focus has everything you need in one easy package.

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