

The effects of SOX

How SOX impacts corporate governance for private and nonprofit organizations **Interviewed by Troy Simpson**

When the Sarbanes Oxley Act of 2002 (SOX) was passed, it was intended to address systemic and structural weaknesses affecting the capital markets, ultimately for the purpose of protecting investors by improving the reliability and accuracy of corporate financial reporting and disclosures made by public companies pursuant to the securities laws.

However, the SOX act simply raised a host of questions and concerns, leaving companies wondering what to do, when to do it, and how to do it, not only among the public companies required to adhere to the provisions of the Act, but also among private companies who wondered whether SOX could or should apply to them.

"While a few provisions of SOX do affect private and nonprofit organizations, such as the provisions related to criminal liability for document destruction and protection for whistleblowers, other provisions only apply to public companies," says Laura Freudenberger, an audit principal with Briggs & Veselka Co. "Still, there is no doubt that SOX is having an increasingly significant spillover impact on the private sector."

Smart Business spoke with Freudenberger about SOX and its affects on corporate governance for private and nonprofit organizations.

Why would a nonpublic company consider adopting corporate governance provisions similar to that of a public company?

Many nonpublic companies are starting to voluntarily adopt certain key provisions of SOX that are geared toward oversight of internal controls and the financial reporting process. They feel pressure from those outside the organization, such as donors, lenders, investors and insurers who evaluate corporate governance in assessing the cost and availability of capital, as well as pressure from independent auditors, who evaluate the quality of corporate governance in their client acceptance procedures. Plus, they face pressures within the organization. In many cases, board members of nonprofit companies frequently serve on boards of public companies and, as such, view a SOX-like audit committee as being best practice for all companies and organi-



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zations, public and private alike. Not to mention that many states have adopted or are considering adopting SOX-like requirements for nonprofit organizations.

Should all private companies and organizations seek to implement SOX-like corporate governance?

The cost of assessing and adopting provisions of SOX can be formidable. For a small organization that doesn't have the resources or the expertise, implementing SOX would probably not be very cost beneficial. Additionally, an organization that expends resources it does not have on implementing SOX-like controls and processes could lose credibility and suffer financially. Also, an organization that is unsuccessful in implementation or fails to adhere to its audit committee charter exposes itself to certain risk.

How should an organization assess which aspects of SOX should be adopted?

SOX contains a number of provisions designed to strengthen financial reporting, internal controls and audit committee over-

sight of the financial reporting process, including management and the internal and external auditors. Assessing which provisions, if any, should be adopted by a private or not-for-profit organization in an attempt to transition to more SOX-like corporate governance is a significant undertaking, but it can reap large benefits. It's certainly not a one-size-fits-all approach.

An organization will want to look at the provisions of SOX and assess the cost and benefits by considering what external or internal pressures will be mitigated by implementing SOX-like provisions; whether the board and/or audit committee members possess the skills, time and commitment to carry out the provisions; what improvements to financial reporting and/or internal control processes are sought; and what resources may be required to achieve the desired objectives.

What are the benefits of implementing SOX-like provisions?

Successfully implementing procedures that improve oversight of financial reporting and internal control processes should gain efficiencies along with greater credibility with access to the organization's donors, lenders, investors and others in the capital markets. It may put the organization ahead of its competitors in terms of quality of financial reporting and corporate governance, and in readiness for state SOX-like regulations, should they be ultimately be mandated.

What resources are available to assist companies?

The AICPA has created an Audit Committee Effectiveness Center through its Web site, www.aicpa.org/audcommctr, where it offers guidance and tools to audit committees. The tool kits are available for corporate public companies, nonprofit organizations and governmental entities. <<

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