



FENWICK & WEST LLP
A LIMITED LIABILITY PARTNERSHIP

SWEEPING GOVERNANCE REFORMS ADOPTED FOR PUBLIC COMPANIES: THE SARBANES-OXLEY ACT OF 2002

Executive Summary

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002. This new law makes sweeping reforms in the laws governing public companies and their boards, audit committees, executive officers and others. A more detailed discussion of the provisions of the Act follows this executive summary.

Actions, Disclosures and Prohibitions Targeted at Officers and Directors

- ***CEO and CFO Personal Certifications of SEC Reports***

The Act requires CEOs and CFOs of all public companies to make certifications in connection with certain SEC filings. One certification accompanies SEC filings made after July 30, 2002 that contain financial statements, such as a Form 10-Q. It requires statements that the report complies with the securities laws and fairly presents the company's financials. The other certification, about which the SEC must adopt final rules by August 29, 2002, will require statements that the report contains no known material misstatement or omission, to the officer's knowledge fairly presents the financial condition of the company, and includes disclosure about the company's internal controls. These certifications are in addition to those proposed by the SEC on June 17, 2002 and required for certain large companies by order of the SEC on June 27, 2002.

- ***Loans to Officers and Directors Prohibited***

It is now unlawful for public companies to make loans to executive officers or directors. Existing loans may remain outstanding, but their terms may not be materially changed.

- ***Forfeiture of Bonuses and Stock Profits if Accounting Restatement Due to Misconduct***

If a company restates its financial statements as a result of misconduct, CEOs and CFOs must repay the company any bonus or other incentive-based or equity-based compensation received, and disgorge any profits realized from their stock sales, during the 12-month period following the first public issuance of the original financial statements.

- ***Accelerated Filing of Forms 4***

Effective August 29, 2002, Forms 4 must be filed within two business days after a stock transaction, unless the SEC determines that the two-day period is not feasible. In addition, beginning July 30, 2003, these forms must be filed electronically with the SEC and posted on the company's web site within one business day after filing with the SEC.

- ***Codes of Ethics for Senior Financial Officers***

The SEC will issue rules requiring companies to disclose in their periodic reports whether or not they have adopted a code of ethics for senior financial officers, or changed or waived the application of such an ethics code.

- ***Trading Restrictions During Pension Fund Blackout Periods***

Directors and executive officers are prohibited from purchasing or selling company stock during "blackout periods" of company pension funds that purchase shares of the company's stock.

- ***Improper Influence on Audits by Officers and Directors Prohibited***

- ***Changes in Professional Conduct Rules for Public Company Attorneys***

- ***Protections Provided for Whistleblowers***

Actions and Disclosures Targeted at the Audit Committee

- ***Changes in Audit Committee Requirements***

Audit committee members must all be "independent" directors. The Audit committee must be directly responsible for appointing, compensating and overseeing the company's audit firm.

- ***Pre-Approval and Disclosure of Audit and Non-Audit Services***

All audit services and permitted non-audit services must be pre-approved by the audit committee. Approval of non-audit services must be disclosed in SEC filings.

- ***Establish Procedures for Complaints***

Audit committees must establish a mechanism to receive and address complaints received by the company regarding accounting matters, including anonymous complaints by employees.

- ***Financial Experts on Audit Committees***

Companies must disclose whether any member of the audit committee member is a "financial expert."

Other New Disclosure and SEC Review Requirements

- ***Pro Forma Financial Information***

The SEC is required to issue final rules providing that any pro forma financial information is presented in a way that is not misleading and is reconciled to the company's GAAP financial statements.

- ***Off-Balance Sheet Transactions***

The SEC is required to issue final rules requiring that each Form 10-K and Form 10-Q disclose all material off-balance sheet transactions, obligations or relationships with unconsolidated entities or other persons that may have a material effect on the company

- ***Disclosure of Correcting Adjustments to Financial Statements and Report on Internal Controls***

Material audit adjustments will need to be identified in a company's financial report. Companies will also be required to include an internal control report with their Form 10-K.

- ***Accelerated Real-Time Disclosure of Financial Information***

The SEC was directed to adopt rules to require disclosure of information concerning material changes with respect to a company on a "rapid and current" basis.

- ***Enhanced SEC Review of Public Company Filings***

The SEC must review a company's filings and disclosures at least once every three years.

Changes in Oversight and Standards Relating to Audit Firms

- ***Regulation of the Auditing Industry***

- ***Audit Firm Independence Requirements***

The Act will prohibit auditors from providing many non-audit services to their audit clients. These prohibited services include, among others: bookkeeping services, financial information systems design and implementation consulting services; and appraisal or valuation services.

Audit partners must rotate from an account every five years. Audit firms with former employees employed as the CEO, CFO, controller or other similar position at a client may be subject to restrictions on their audit services.

Changes Related to Punishment for Rule Violations

- ***Changes in Criminal Penalties***

Criminal penalties were enhanced for various crimes including: obstruction of justice; securities fraud; violations of the certification requirements of the Act; mail fraud;

whistleblower retaliation; and other similar crimes. In addition, the SEC now has a lower standard for barring individuals from serving as officers or directors of public companies.

- ***Liability for Securities Fraud not Dischargeable in Bankruptcy***
- ***Statute of Limitations for Securities Fraud Lawsuits Extended***
- ***SEC May Temporarily Freeze Extraordinary Payments to Employees and Others During Investigations***

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Please contact your relationship partner or any of the individuals listed below if we can be of assistance regarding these important developments.

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