



Corporate Board Member

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Cover Story

Living With An 800-Pound Law
by Rob Norton

Directors say Sarbanes-Oxley has done more good than harm—but it still needs fixing.

Back when the Sarbanes-Oxley Act was signed into law in 2002, most board members predicted, all too presciently, that it would seriously complicate their jobs. But another widespread prediction—that the new law would do little good and might cause lots of harm—appears to have been wrong. As we approach Sarbanes-Oxley's second birthday, the majority of directors are concluding that the good outweighs the bad. According to a recent survey of 153 directors by Corporate Board Member, more than 60% think the effect of the law has been positive for their companies, and nearly 70% see it as positive for their boards.

"I'm a guy who was very skeptical at the outset," says Bernard G. Rethore, chairman emeritus of Flowserve Corp. in Irving, Texas, and a board member of Belden Inc., Dover Corp., Maytag Corp., and Walter Industries. "But with a year of hindsight, I've got to say that Sarbox looks better than I thought." J. Michael Cook, retired chairman and CEO emeritus of Deloitte & Touche and a director of Comcast, Dow Chemical, Fidelity, International Flavors & Fragrances, and Northrop Grumman, agrees. "Overall," he says, "you have to say it has had a good effect. Sarbanes-Oxley got people focused on financial reporting and quality, and concerned with the consequences of not getting it right."

What individual directors think about the new law can be seen on the following pages. Most say they've been able to implement the majority of Sarbanes-Oxley's provisions on governance, financial reporting, and board independence with reasonable smoothness. But even those who largely approve of the law's effects agree that it's creating problems. Their biggest single concern is the provision governing internal auditing, known as Section 404 and scheduled to go into effect this year, which is proving far more burdensome and expensive than had been generally expected. Many are uneasy about the costs of Sarbanes-Oxley compliance, which continue to mount. Many are also concerned about the law's unintended consequences. Particularly worrisome is its effect on small and midsize companies, which complain, with some justification, that they are overwhelmed by the complexity and costs of a law designed with big corporations in mind. A large number of board members would like to see some changes made in Sarbanes-Oxley, but few are confident that any will be forthcoming, at least in the near future.

Most companies have already complied with the bulk of Sarbanes-Oxley's requirements, including new rules for board independence, executive certification of quarterly and annual reports, stricter standards for external-auditor independence, tighter time frames for filing 10-Q's and 10-K's, pre-approval by the audit committee of audit and various non-audit services, and greater disclosure of off-balance-sheet arrangements.

The majority of companies have come to terms with the requirement for a "financial expert" on the audit committee, initially one of the more draconian features of Sarbanes-Oxley. As the law was originally written, many experts interpreted it to mean that only a former CFO or auditor would qualify for the committee, which would have made filling the seats a real challenge. But then the Securities and Exchange Commission stepped in, redefining the required qualifications so that others with relevant experience can also serve as audit committee "experts." Even so, some board members still think the definition is too restrictive.

A lot of the other Sarbanes-Oxley requirements that seemed vague have been clarified by the SEC's rulemaking. One provision still unresolved is Section 307, which deals with the responsibilities of in-house and outside lawyers. Attorneys have complained that the legislation, which requires in-house lawyers to report potential problems up the chain of command, would destroy the client-attorney relationship. The interpretation of the rule, and the fate of an amendment proposed by the SEC, remain uncertain. The SEC has delayed publication of a final rule.

Directors also say there is still uncertainty about the so-called whistleblower provisions: Should complaints ultimately go to the chief counsel, the chief internal auditor, or the audit committee chair? Another provision that continues to cause uncertainty is Sarbanes-Oxley's blanket ban on loans to top executives. Because the SEC has failed to provide clarification, many companies are abstaining from routine transactions such as loans from 401(k) programs, relocation loans, and broker-assisted exercises of stock options, even though it seems unlikely that those are the kinds of transactions the law intended to prohibit.

Complying with Sarbanes-Oxley has certainly added to board members' workload, especially if they're on audit committees. But the law has also strengthened their hand. "There were a number of boards where it was not the habit for the directors to meet in executive session without the CEO present," says Joseph L. Bower, a professor of business administration at Harvard Business School and a board member at Anika Therapeutics, Brown Shoe Co., Loews Corp., and Sonesta International. "My impression—an anecdotal one—is that people are pleasantly surprised by the contribution these sessions make. It gives the board members an opportunity to surface things that are on their minds and find a way of expressing them that can be very helpful to the CEO." Says Robert Mittelstaedt Jr., vice dean of the Wharton School and a director at Innovative Solutions & Support Inc. and Laboratory Corp. of America: "It has tremendously empowered boards, much to the chagrin of the CEO in some cases, and absolutely changed the tone in the boardroom. You now regularly hear board members saying, 'Look, guys, we have a legal responsibility here that we can't shirk.' People are not afraid to be inquisitive, and confrontational if necessary."

The provision in Sarbanes-Oxley that's causing the most trouble is Section 404, which requires CEOs and CFOs to assess the adequacy of their companies' internal controls. This simply stated goal turns out to require a vast amount of work, so much so that some managers have likened it to earlier efforts to get ready for Y2K. To comply, companies have to inventory internal controls and assess their adequacy, document the whole exercise and any steps taken to remedy deficiencies, and then wrap up the entire process in a formal report. In many cases, this is leading them to do massive overhauls of their information-technology systems, often at huge expense (see the following story).

"As managements and boards have gotten their arms around this in the past several months, they are understanding how broadly internal controls reach and how far they need to go," says Richard M. Steinberg, principal of Steinberg Governance Advisors in Westport, Connecticut, and formerly corporate governance leader at PricewaterhouseCoopers. While managers may have thought that only their companies' detailed control procedures were at issue, he says, they are finding that they must also look at the broader control environment. This involves monitoring management, internal audit, and information systems and includes the procedures managers use to make the estimates and judgments that go into financial statements. "That's all part of the internal-control system," says Steinberg.

Companies have been significantly expanding their conception of what 404 compliance entails in recent months. During most of 2003, according to AMR Research, a Boston analysis firm, more than half of some 70 companies surveyed thought that complying with 404 would involve only financial processes. But by the year's end, AMR reports, nearly 80% had concluded that they'd need to include finance, operations, and IT processes as well.

Many managers and directors consider Section 404 regulatory overkill and feel that the SEC made things even more burdensome when it wrote the enabling regulations. Perhaps realizing this, the commission extended its original deadlines for compliance with Section 404. Companies with market capitalization of more than \$75 million now have until November 15, 2004. Smaller companies and foreign outfits have until July 15, 2005.

Some board members say they've had unofficial discussions with lawmakers about revisiting Sarbanes-Oxley to relax Section 404, and some lobbying groups, notably the Business Roundtable, have been pushing for adjustments. But few directors think it's likely that any change will come soon. Says Wharton's Robert Mittelstaedt: "Truth is, there's been too much damage to people from Enron and other situations for the average person in the street to understand why you should back off." Richard Steinberg agrees, and notes that the SEC favored more stringent requirements concerning internal controls for decades.

Even the seemingly onerous provisions of Section 404 may not seem so bad once companies have survived the initial shock. Says consultant Barbara T. Alexander, a board member at Burlington Resources, Centex, and Harrah's Entertainment: "It's a clear headache, but it's not radically dissimilar to many requirements that were put in banking a decade ago. And bankers tell me that while those were painful in the first year, they were not so later. It's largely a one-time cost, and the best companies I know are using this as an opportunity not just to document current controls but also to ask whether they can use them to augment what they have."

A number of board members still aren't sure just how much attention the audit committee needs to expend on compliance with Section 404. "It's a new issue this year," says retired Deloitte & Touche chairman Michael Cook. "I would be interested to know the opinion of the regulators with respect to audit committee involvement in 404 compliance."

The costs of complying with Section 404 may be the biggest factor driving the surge in what companies are spending to carry out the provisions of Sarbanes-Oxley. According to AMR Research, the total tab in 2004 will be about \$5.5 billion. Where's the money coming from? A recent survey of 75 publicly traded companies by Gartner Inc., a Stamford, Connecticut, research firm, gives an indication. The respondents said they were offsetting increased compliance costs by making cuts in areas like external consulting (cited by 53%), enterprise resource planning (36%), and merger-and-acquisition activity (32%). Gartner reported that as of last September a majority of the companies said they did not have an official budget for Sarbanes-Oxley compliance and seemed to be spending in an ad hoc fashion.

Compliance has had broad impact and mixed benefits. "I think the law has served a useful purpose," says Thomas D. Clark Jr., a professor at Louisiana State University's E.J. Ourso College of Business Administration and a board member at Dynegy. "But if this goes too far, you begin to make U.S. businesses less globally competitive because of the increased costs of reporting and structure."

Small-cap and midcap companies have been hit hard by Sarbanes-Oxley. Those surveyed by Foley & Lardner, a national law firm headquartered in Milwaukee, estimated that the costs of being a public company will rise more than 90% because of the new law and other governance reforms. Responding to detailed questionnaires, senior managers at 32 companies with revenues of less than \$1 billion said they're expecting compliance to cost their companies dearly. They look for increases of 105% in accounting expenditures, 98% in board compensation, 94% in directors' and officers' insurance, and 90% in legal services.

The burden Sarbanes-Oxley puts on smaller companies has had a number of unintended consequences. Among them: a sharp uptick in the number of public companies announcing privatization plans. In the 16 months following the law's enactment, the number of companies going private rose 30% over that in the previous 16 months, from 92 to 120, according to the Chicago-based accounting firm Grant Thornton International. Many market observers also think Sarbanes-Oxley will chill initial public offerings and could lead to a slowdown of mergers and acquisitions. "A lot more due diligence is going to be needed," says Barbara Alexander. "Given the Section 404 requirement, for instance, a company looking to make an acquisition this year will not only need to make sure the acquisition has good internal controls—which you would do in the normal course of due diligence—but will also need to make sure it can document them and test them so that it satisfies its own auditors."

A more significant unintended consequence of Sarbanes-Oxley, many board members feel, is that it may institutionalize a checklist mentality. “Now that we’ve got most of the regulations in place, what you’ve got is a real rules-based system, a lot of specific requirements being applied in an area that doesn’t necessarily lend itself to objective standards,” says Morgan Burns, an attorney at Faegre & Benson in Minneapolis. “Sometimes you’re better off just stepping back and asking, ‘Does this smell right? Are we doing the right thing here?’ than relying on standards and tests.” Says former Flowservice chairman Bernard Rethore: “The danger is that too much of a focus on checklists can obfuscate the more important things. You want a board that can step away and look at the enterprise as a whole, and ask the important questions: ‘Do we have a strategy that makes sense, and are we executing it well?’ and ‘Is the CEO doing his job?’ That’s where board members really add value.”

The single most interesting question about Sarbanes-Oxley’s effects is whether the law produces what was its primary intended consequence: the elimination of the kinds of massive companywide abuses that rocked U.S. business in 2001 and 2002—the Enrons, Global Crossings, Tyco Internationals, and WorldComs. For many board members and others, the jury remains out. Says Paul Lapidès, who heads the corporate governance center at Kennesaw State University and sits on the board of Sun Communities: “I think Sarbanes-Oxley has been good for shareholders, good for companies, and good for governance, and that the costs, in the larger scheme of things, are insignificant. But if it doesn’t stop bad people from doing bad things, then its primary purpose won’t have worked.”

That verdict won’t be rendered for several years at least, and by then U.S. companies will have had to learn to live with Sarbanes-Oxley, warts and all. In the meantime, the path toward better governance could be smoothed significantly if SEC rulemakers supplied even more clarity and if Congress could ease some of the requirements smaller companies face.

What Directors Think Of Sarbanes-Oxley

What’s Working . . .

The most beneficial elements of Sarbanes-Oxley are those that have caused the audit committee and the external auditor to work together more closely. The law also has caused the audit committee to meet more regularly and have longer, more productive meetings. You may still have the same number of agenda items as you did two years ago, but the participation and discussion are more in-depth. I’m more confident now that we are doing all the necessary things we should be doing. I like getting my sleep, and Sarbanes-Oxley has made it easier for me to sleep at night.

John B. Vander Sande, 60

Cecil and Ida Green Distinguished Professor, MIT, Cambridge, Massachusetts
Outside directorship: American Superconductor

Sarbanes-Oxley has forced board members to look at their role of shareholder representative more thoroughly. It has become a double-edged sword of sorts. The board must look after the best interest of the shareholder. However, that best interest is connected to having a solid management operation in place so the organization can survive. The board has the responsibility of being supportive of management without being a so-called rubber stamp. We have to find that proper balance.

Robert R. Furgason, 68

President, Texas A&M University, Corpus Christi
Hanover Compressor

The law has increased directors’ sense of responsibility. The responsibility was always there, but too many board members abdicated their authority to management over time. That sense of being responsible to shareholders was somehow lost. Sarbanes-Oxley has forced board members to reacquaint themselves with their true roles in the company.

Take Enron, for example. There were some bright people on that board, but they were so enthused by what Ken Lay was doing that they felt he didn't need supervision. If any of them had scratched the surface, they would have been able to see what was going on. Management was so powerful because the board put itself on cruise control. Sarbanes-Oxley drives the point home that this won't be tolerated in the future.

Jose L. Ferrer Jr., 44

Physician, San Juan, Puerto Rico
First BanCorp of Puerto Rico

Compliance is taking a lot more time, but the amount of time is decreasing as people become more focused and comfortable with the obligations. Overall, I don't think the law changed things so much as it made certain things unquestionably clear. In the past, I think there was a tendency for auditors to get distracted by revenue generation and focus less on their auditing duties. The law makes it perfectly clear that the auditors work for the board.

Jock Patton, 58

Private Investor, Phoenix
Hypercom, JDA Software Group

I think Sarbanes-Oxley is widely regarded as a "check the box" regulatory wave, with no discrimination between what is important and what is not and with no regard to cost relative to a company's size. However, there is no question that boards feel more empowered and, in fact, duty-bound to take a more assertive position relevant to governance issues. That includes everything from board process to board-member selection, from strategy assessment to performance monitoring, and from CEO evaluation to key-manager compensation. Scrutiny at audit committees is up, although most of it is entwined with burdensome compliance issues.

Arthur Marks, 59

General Partner, Valhalla Partners, McLean, Virginia
Mobius Management Systems

Speaking generally, there was a serious signal sent out that directors must establish a tough, independent position with the management of a company. Board members must recognize that society expects directors to be accountable for the broad-scale performance of the company. I think there's a consensus that one of the main reasons the scandals happened was due to inadequate skepticism on the part of directors. I think the majority of directors realize this, and even those with a bone or two to pick with the law support the general idea that there needs to be an increased sense of independence and skepticism.

William B. Ellis, 63

Retired Chairman and CEO, Northeast Utilities, Hartford, Connecticut
Catalytica Energy Systems

The law's biggest impact is making sure the decisions by the board and management are well documented. If the board is approaching anything with the appearance of potential impropriety, members are making sure that extra effort is put forth to make sure the letter and spirit of the law are being adhered to. Everyone has a heightened sense of awareness, and that's a positive.

Martin Heimbigner, 45

CFO, Tatum CFO Partners, Seattle
City Bank

Like a lot of companies, we feared the requirements were going to be onerous, but that's not the case. Functions of the law—audit committee requirements, the restatement of the code of ethics, the code of conduct, and the whistleblower policy—forced you, if you hadn't already done so, to go back and make sure your standards meet the requirements of Sarbanes-Oxley. What we've found is, we're doing **things under the law the same way we've always done them.**

Howard Kelley, 62

President, Sally Corp., Jacksonville, Florida
Environmental Tectonics

Sarbanes-Oxley has been a wake-up call to all boards and individual directors. If there were any questions about what the responsibility of directors was, the law eliminated them. Now it is very clear that if you don't act responsibly, you will pay for it. That has spawned better communication between directors and management. I think if you surveyed directors of public companies, you would see that members today have a more intimate knowledge of the company than they did 10 years ago. They're more vigilant, and that's a very good thing.

Stephen M. Davis, 49

Attorney, Heller Ehrman White & McAuliffe, New York City
National RV Holdings

... *What isn't Working* ...

I would say the sensation of the last 18 months or so has pulled the board away from the business of the business to digest all these new regulations. I understand it's a role of the board now, but there's no sense having oversight if there's no business to oversee at the end of the day. Boards have become mini-regulatory agencies, and that has cut the time members have to spend on company strategies. I realize there is an adjustment phase and companies will have to strive to regain that balance. However, that's going to be very hard to do for companies with limited resources.

Mark Leslie, 58

Managing Director, Leslie Ventures, Portola Valley, California
Outside directorships: Avaya, Veritas

Because of the wide-ranging size of public companies, compliance presents a major issue. I suspect that in smaller companies a significant percentage of earnings potential is being spent on legal and accounting bills. They're spending more to establish what the earnings are than they are on actually making the money. There was malfeasance on the part of a few companies, and now the rest of us are getting nailed with excessive costs to prove ourselves innocent. It has been a boon to public accounting and law firms.

Peter T. Kissinger, 59

Chairman and CEO, Bioanalytical Systems, West Lafayette, Indiana

Sarbanes-Oxley does not deal with the fundamental issues that gave rise to the Enron scandal. The root cause is the investment-analyst community's demands for performance that force companies to make decisions that are not in the long-term best interest of the company. Decisions are made to make sure this 90-day period isn't worse than the last 90 days. Corporate America must make good strategic, long-term decisions for the long-term viability of the company, basing them on its individual agility and strength—the analysts be damned.

Herbert D. Montgomery, 61

Executive Vice President, CFO, and Director, Media Arts Group, Morgan Hill, California

There is overkill in the amount of bureaucracy required of the board. It's straining the resources of smaller companies and diverting management and board attention from strategic issues. At the end of last year, we had a four-hour meeting and spent three and a half of those hours on Sarbanes-Oxley. Hopefully, this is just part of the learning curve and eventually it will be one of those things running quietly in the background. But right now we're spending 85% of our time on these kinds of things, and that leaves no time to spend on the strategy of the company. That is not in anyone's best interest and won't help increase shareholder value in the long run.

Rosina B. Dixon, 61

Consultant, Bernardsville, New Jersey
Cambrex, Church & Dwight, Enzon Pharmaceuticals

On the positive side, the law has raised awareness of the responsibilities of public companies and strengthened the roles of the audit committees and public accounting firms. However, for almost all boards there has been an inordinate amount of time spent on compliance with the Sarbanes-Oxley Act. It has

diverted directors from other aspects of board service. I think clearly a certain amount of time was required to bring boards to the level they need to be, but there's a lot in the act that is overkill.

Dorothy K. Light, 66

Consultant, Eden Prairie, Minnesota
New Jersey Resources

The SEC leaves each company to interpret the gray areas, which results in delays and uncertainty. If you want to do something not entirely clear by the way the law is written, the SEC hasn't given any guidance. They are relying on the courts to make the distinction. So if there's anything subject to interpretation, companies will not approach it, because they don't want to be involved in potential legal actions. That can hamper the growth of a business.

Christine Koski, 46

Founder, Koski Consulting Group, Dallas
Sun Hydraulics

There is a danger that a "watch the back" mentality will set in, and as a result we may end up spending too much time on form over substance.

Kathleen A. Cote, 55

Consultant, Boston
Forgent Networks, RadView Software, Western Digital

The implementation of the financial-control disciplines is an onerous expense to public corporations. It is essentially to the benefit of the Big Four accounting firms, all for questionable returns in terms of accounting accuracy or reduced fraud. I don't think this section of Sarbanes-Oxley adds much value.

Gregory Davies, 57

President, CEO, and Director, Wabtec, Wilmerding, Pennsylvania

It's administratively cumbersome. Audit committee members have in some cases quadrupled their workloads. Their meetings have gone from four per year to as many as eight to 12. There is also the burden of additional shareholder cost, incurred primarily with auditors and consultants for Sarbanes-Oxley and Financial Accounting Standards Board compliance issues.

Kevin W. Lynch, 50

Principal and Co-founder, Townsend Group, Cleveland
First Industrial Realty Trust, Lexington Corporate Properties Trust

The multiple requirements of the legislation risk producing a checklist mentality at the board level. Board oversight is not a checklist process; it requires directors to exercise sound judgment.

Charles J. Thayer, 60

Chairman and Managing Director, Chartwell Capital, Fort Lauderdale, Florida
Republic Bancshares

I think there's a general feel in the corporate world that Sarbanes-Oxley is taking a hell of a lot of time away from running the business. It's healthy to set standards and let people know they will be held accountable for misleading the public. However, the law requires a lot of paperwork and produces a lot of unproductive discussions between directors and businesspeople who would never think of deceiving anyone. There are also highly complex accounting rules that put more power in the hands of the accounting firms that hurt us in the first place. It's discouraging a lot of good companies from going public. Essentially, companies are being held captive by these accounting and law firms that shouldn't be running American businesses.

Marc Heilweil, 58

President, Spectrum Advisory Services, Atlanta
AMLI Residential Properties Trust

... And What Needs To Be Fixed Now

We need to scale it back. Governance principles are fine for all companies, but compliance requirements need to be less expensive for smaller companies. There needs to be harmonization of the regulations and definitions between the various exchanges and Sarbanes-Oxley.

H. L. Kotkins Jr., 55

Chairman and CEO, Skyway Luggage, Seattle
Outside directorships: ABM Industries, Cutter & Buck

Sarbanes-Oxley needs to be refined, especially in consideration of the size of the company being regulated. [It] is far too costly for smaller companies. Most are already in compliance, but they have to make costly expenditures just to prove it.

Gerald J. Yakatan, 61

President, CEO, and Director, Avair Pharmaceuticals,
San Diego

The really well-run larger and smaller companies have been ahead of the curve on a lot of these things for a long time. For a lot of companies, while there may have been a little tweaking, there was almost no need for change. All Sarbanes-Oxley did was require us to jump through regulatory hoops. A lot of what the law does now is require long, sometimes mundane meetings at a greater cost to companies. There is nothing emanating from those meetings to advance the business of the company. These laws came quickly on the heels of the recent corporate scandals; they were inevitable. But now Congress and the proper regulatory agencies must go back and reexamine the law, and take corrective action where necessary.

Clayton Yeutter, 73

Attorney, Hogan & Hartson, Washington, D.C.
Danielson Holding Corp., Weyerhaeuser

My greatest concern arises not directly from Sarbanes-Oxley, but indirectly as it relates to the nomination process for directors. The legislation spawned a stream of regulations from the SEC allowing for an easier process of shareholder nominations. I don't believe that was the intent of the law, but it was definitely one of the fallouts. If it becomes a virtual free-for-all, I believe that many of the most able directors will decide board service is not worth the aggravation, and that's precisely the inverse of the desired effect.

Barbara T. Alexander, 55

Consultant, Monarch Beach, California
Burlington Resources, Centex, Harrah's Entertainment

The audit committee compliance issue requiring a certain type of financial expert could force unwelcome and inexperienced outsiders to become engaged in company business just to fulfill the requirement as written. I have run privately held companies for years, for example, but because I've never held that CEO or CFO position in a public company, I was disqualified. Serving 34 years on a board and 20 on an audit committee while serving as the CEO of a major private company should count for something under these requirements.

Donald R. Brenner, 67

Vice Chairman, Trust Co. of New Jersey, Jersey City

I'm on the board of an early-stage biopharmaceutical company. With meager finances, we try to plow all our resources into the discovery of new drugs. The attention of our management also has to be dedicated to that purpose. Now, with the additional regulations, we've found that our legal bills have doubled. That's money that should be used for innovation and the discovery of drugs that could save human life. These rules and regulations are driving us crazy. Right now our government is putting an unreasonable cost and time burden on small companies, and killing innovation in the process.

Frederick Wackerle, 64

Former President, Fred Wackerle Inc., Chicago
Immtech International

The problem I have is with the role of the major accounting firms. They are essentially a monopoly with no price constraints. We've lost control over them. There's no way to control the cost of compliance, and that is particularly burdensome to smaller companies.

Patrick M. Murray, 61

CEO and Director, Dresser Inc., Addison, Texas
Harvest Natural Resources, Precision Drilling

I'm one who thinks that Sarbanes-Oxley is a good thing in its spirit and intention. However, an unfortunate byproduct of the law, I think everyone would agree, is that it's manifesting itself in the mere filing of forms. I don't think simply filling out forms changes behavior, especially when the forms are being passed down the corporate food chain.

Richard C. Kimball, 63

Executive Vice President and Director, Rock of Ages, Concord, New Hampshire

There is a belief that shareholders are best served by "independent" directors, as opposed to a proper mix. Familiarity with a company is invaluable so boards don't lose an understanding of an organization's capabilities. I believe companies cannot be run properly in the long run with all insiders, but the pendulum has swung too far to the other side, resulting in more wasted time and cost at the expense of the shareholders. It takes a lot of time to get new directors up to speed. You run a risk of removing people who have the experience and knowledge that would make outside directors even more valuable.

William A. Searles, 60

Consultant, Atlantic Highlands, New Jersey
American Physicians Service Group, Prime Medical Services

Some of the changes to the criminal law seem out of proportion. For example, when you sign and certify that reports and filings are accurate, it's not just limited to that officer's knowledge. They must be acutely aware of everything in the filings, because if something is not right, they could face a million-dollar fine and 10 years' imprisonment. In a large company, all those documents are prepared by someone else.

I think the penalties are a little rough for someone who doesn't control the documents. Now, for Ken Lay and Jeff Skilling, the penalties are probably appropriate. But the way the law is written, those kinds of harsh penalties could be handed down for minor infractions. It's at the discretion of the Justice Department whether to prosecute. You hope they'll be reasonable and rational, but that's not guaranteed. If the purpose is to put the fear of God into company officials, that's one thing—prosecutors now have the power and the weapons to do that. Let's just hope they have the proper judgment to use the power appropriately.

Raymond Groth, 57

Adjunct Professor of Business Administration, Fuqua School of Business, Duke University, Durham, North Carolina
CT Communications

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