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THE IMPACT OF SARBANES-OXLEY ON PRIVATE COMPANIES

2004 NATIONAL DIRECTORS INSTITUTE

Presented by:

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EXECUTIVE SUMMARY

- More than three-quarters (77%) of the private organizations responding to the study indicated that the Sarbanes-Oxley Act or other corporate governance reform requirements have impacted their organizations.

- While a majority of these private organizations said that the governance standards were self-imposed, other common factors influencing the decision to adopt these standards included pressure from board members or auditors.

- Many private organizations planned to adopt or have already adopted several measures in response to the Sarbanes-Oxley Act:

  - CEO/CFO financial statement attestation (44%)
  - Establishment of whistle-blower procedures (40%)
  - Board approval of non-audit services by auditors (43%)
  - Adoption of corporate governance policy guidelines (40%)

- More than three-quarters (83%) of private organizations responding to the survey felt that corporate governance reform is “about right,” while 67% of the respondents to our study of public companies felt that the reforms are “too strict.” This may be because 60% of the private organizations surveyed had self-imposed the corporate governance reforms they had adopted, while the public companies surveyed have had more extensive corporate governance reforms imposed on them.

VERBATIMS

On why corporate governance rules and standards are being implemented by their organizations…

- *We feel that although SOX does not apply to private businesses, professionals who are involved with our business will insist on our compliance as a condition for association. Those might be directors, pension oversight regulators, auditing firms, etc. Some SOX regulations just make good sense.*

- *What we plan to implement is viewed as good governance best practices.*

- *We are a private company, but bigger than many public companies, so we want to be in step with governance best practices.*

- *Partly in the expectation of a public offering someday, and partly because they just seem right.*

- *Improvement in quality of financial reporting, which translates into higher comfort levels for lenders, investors and customers.*

PRIVATE ORGANIZATION SURVEY

In April of 2004, Foley & Lardner distributed a survey to 9,000 CEOs, CFOs, General Counsel, Chief Compliance Officers, Board Members, Directors and other corporate executives of public companies and private organizations. A total of 30 surveys were returned from private organizations. The results below reflect the input of 8 non-profit organizations and 22 for-profit private companies (Please Note: due to rounding, not all percentages will add up to 100%).

- Three-quarters (77%) of the private organizations surveyed feel that the Sarbanes-Oxley Act or other corporate governance reform requirements have impacted their organizations.

  - Has the Sarbanes-Oxley Act or other corporate governance reform requirements impacted your company?

	2004
Yes	77%
No	23%
Don't know/No Answer	-

- More than half (60%) of the private organizations surveyed have self-imposed corporate governance reforms. A substantial number of respondents also indicated that board members and outside auditors have caused them to adopt new corporate governance requirements.

  - What groups have caused your company to adopt new corporate governance requirements? (Check all applicable boxes.)

	2004
Customers	13%
Lenders	13%
Insurance companies	7%
Equity investors/donors	10%
Auditors	37%
State government	13%
Board members	43%
Self-imposed	60%
Other	7%
Don't know/No Answer	17%

PRIVATE ORGANIZATION SURVEY (CONTINUED)

- The most common aspects of Sarbanes-Oxley that private organizations have implemented or plan to implement in response to the regulations on public companies are:

    - CEO/CFO financial statement attestation (44%)
    - Establishment of whistle-blower procedures (40%)
    - Board approval of non-audit services by auditors (43%)
    - Adoption of corporate governance policy guidelines (40%)

- A majority (53%) of the private organizations surveyed do not plan to restrict executive compensation in response to the Sarbanes-Oxley Act.

- Most of the private organizations surveyed say they have already implemented several governance reform measures prior to the establishment of the Sarbanes-Oxley Act, including:

    - Audited financial statements (87%)
    - Establishing independent directors (63%)
    - Disclosure of critical accounting policies and estimates (57%)
    - Disclosure of off-balance sheet and contingent liabilities (63%)

    - For each of the following corporate governance practices listed below, please indicate whether your company has implemented that practice prior to SOX, implemented in response to SOX, plan to implement in response to SOX, or do not plan to implement that practice. (Check all applicable boxes.)

	Implemented prior to SOX	Implemented or plan to implement in response to SOX	Do not plan to implement	Don't know/ No Answer
a) Audited financial statements	87%	-	10%	3%
b) Establishing independent directors	63%	10%	20%	7%
c) CEO/CFO financial statement attestation	13%	44%	40%	3%
d) Audit committee oversight of auditors	57%	20%	20%	3%
e) Establishment of corporate ethical code	53%	24%	17%	7%
f) Establishment of whistle-blower procedures	17%	40%	40%	3%
g) Increasing internal audit functions	30%	37%	30%	3%
h) Outside audit of internal financial controls	17%	44%	33%	7%
i) Approval of non-audit services by auditors	20%	43%	33%	3%
j) Restricting executive compensation	30%	10%	53%	7%
k) Independent director approval of related-party transactions	37%	23%	33%	7%
l) Adoption of corporate governance policy guidelines	37%	40%	20%	3%
m) Disclosure of critical accounting policies and estimates	57%	20%	20%	3%
n) Disclosure of off-balance sheet and contingent liabilities	63%	20%	13%	3%

PRIVATE ORGANIZATION SURVEY (CONTINUED)

- More than three-quarters (83%) of private organizations responding to the survey felt that corporate governance reform is "about right," while 67% of the respondents to our study of public companies felt that the reforms are "too strict." We believe this may be because 60% of the private organizations surveyed have self-imposed the corporate governance reforms they have adopted, while the public companies surveyed have had more extensive corporate governance reforms imposed on them.

  - Taking into account any corporate governance reforms you have recently adopted or plan to adopt, do you feel your corporate government procedures are:

	2004
Too strict	13%
About right	83%
Not strict enough	3%
Don't know/No Answer	-

- The voluntary corporate governance measures private organizations have implemented have come at a cost to those organizations. Private organizations estimated an average price tag of $50,000 on corporate governance procedures, representing an increase of 13% over 2002.

  - Please **estimate** the increased annual cost to your organization as a result of additional corporate governance practices adopted since the Sarbanes-Oxley Act was enacted in July 2002, both in approximate dollar amount and as a percentage increase to the cost of your corporate governance practices prior to July 2002.

	2004
Mean approximate dollar amount	$50,000
Mean percentage increase	13.17%

- Private organizations were split as to whether the benefits of additional corporate governance initiatives outweigh the costs for their organizations. The most popular answer was that the benefits were equal to the costs associated with the standards and practices.

  - Do the benefits of additional corporate governance initiatives outweigh the costs for your organization?

	2004
Benefits outweigh costs	23%
Benefits = costs	40%
Costs outweigh benefits	27%
Don't know/No Answer	10%

METHODOLOGY

Working with a third-party research organization, KRC Research, in April of 2004, Foley & Lardner distributed a survey to 9,000 CEOs, CFOs, General Counsel, Chief Compliance Officers, Board Members, Directors and other executives of both public companies and private organizations. Recipients were asked to complete the study that applied to their organization, based on their standing as either a public company or private organization. The survey was distributed to and completed by private organizations via an interactive Web site.

A total of 30 surveys were returned from private organizations. The results reflect the input of 8 non-profit organizations and 22 for-profit private companies.

Due to rounding, not all percentages contained in the study results will add up to 100%.