Sarbanes-Oxley Act of 2002 Imposes New Rules for Corporate Governance and Reporting

By Jacqueline B. Stuart and Andrew Kamensky, *Bankruptcy Bulletin*, September 2002. © Weil, Gotschal & Manges LLP, reprinted with permission.

In response to public outcries over several high profile corporate and accounting scandals, President Bush signed the Sarbanes-Oxley Act of 2002 into law on July 30, 2002 after its passage by nearly unanimous votes in Congress (423-3 in the House of Representatives and 99-0 in the Senate). The most far-reaching government crackdown on business fraud in nearly 70 years, the Sarbanes-Oxley Act of 2002 (the "Act") is designed to combat the kind of corporate and accounting misdeeds that gave rise to the scandals facing some of the nation's largest companies and that helped to produce five of the ten largest bankruptcies in U.S. history during recent months. The Act is a lengthy and comprehensive measure that is designed to improve the quality and transparency of financial reporting, independent audits, and accounting services for public companies by creating a Public Company Accounting Oversight Board overseen by the Securities and Exchange Commission ("SEC") to enforce professional standards, ethics, and competence for the accounting profession; strengthen the independence of firms that audit public companies; increase corporate responsibility and financial disclosure; stiffen fines and criminal penalties for fraud, misrepresentation, and destruction of documents; protect the objectivity and independence of securities analysts; and enhance the SEC's enforcement of the securities laws.

The Act, which applies to both publicly-owned U.S. companies and to all other companies that have registered equity or debt securities with the SEC under the Securities Exchange Act of 1934 (the "Exchange Act"), establishes new or heightened regulations in four primary areas that directly affect public companies, their officers and directors: Corporate Governance, Enhanced Corporate Disclosure, Audit Practices and Procedures, and Enforcement and Penalties. The Act amends the Securities Act of 1933 (the "Securities Act") and the Exchange Act and makes conforming changes to other statutes, including the Employee Retirement Income Security Act of 1974 ("ERISA") and the Bankruptcy Code.

Effective dates for the many provisions of the new measure vary. Some took immediate effect on enactment of the legislation, others will become effective in the coming months, yet others will depend on SEC action. Many of the Act's provisions are not self-executing, and the SEC is obligated under the Act to promulgate implementing rules and regulations. Therefore, the full impact of the legislation will not be known until implementing regulations are adopted later this year and in 2003. Generally, if the effective date is prescribed in the Act and is not subject to rulemaking, it is noted in the summary below.

Additionally, the Act calls for several studies including: (1) by the SEC on the role and function of credit rating agencies; (2) by the General Accounting Office ("GAO") on the consequences of the consolidation of public accounting firms; (3) by the SEC on the possibility of replacing the present rules-based financial reporting system with a principles-based system; (4) by the GAO on the role of investment banking firms and financial advisers in the recent corporate financial scandals, the use of off-balance

sheet financing, and special-purpose entities; (5) by the SEC on the violation and enforcement of the federal securities laws; and (6) by the SEC on off-balance sheet transactions. Results of the studies are to be submitted to Congress, most by the end of January 2003 and some by the end of July 2003, thus possible additional legislation may follow.

Because the Act directly impacts the operations and reporting obligations of public companies, it should be fully understood by all publicly-traded and reporting companies. Moreover, the Bankruptcy Code does not exempt debtors from compliance with federal securities laws, and the Act provides no exemptions based on bankruptcy, investigations, or a change in senior management. Thus, debtors in possession and bankruptcy trustees need to be aware of the new responsibilities and potential penalties created by the Act as they exercise broad authority managing a debtor's affairs in the ordinary course of business. While corporate directors and officers will need the specific, individual advice of counsel to ensure their immediate compliance with the new regulations, the summary provided below outlines the principal provisions that impact companies, their officers and directors, whether in or out of bankruptcy.

Corporate Governance and Responsibility

Although corporate governance traditionally has been regulated by state corporation laws, the Act will force many companies to adopt significant changes to their internal controls and the roles played by their audit committees and senior management in the routine financial reporting process. A key provision of the legislation requires CEOs and CFOs to personally vouch for the accuracy of their companies' financial reports, exposing them to much greater potential liability. Indeed, passage of the Act has sent a seismic wave through corporate America. For corporate leadership, it is going to be increasingly difficult to argue, "I relied on the auditors." SEC Chairman Harvey Pitt has warned that CEOs and CFOs who falsely certify their company reports may be prosecuted and imprisoned.

Public Company Audit Committees

The Act establishes several requirements pertaining to audit committees that supplement existing obligations and responsibilities, effectively mandating that each public company have an independent audit committee. Companies must authorize and provide funding for their audit committees to engage independent counsel and other advisors as the audit committee determines necessary to carry out its duties. It should be noted that there are no exemptions in the Act for companies in chapter 11 even though they are under the scrutiny of the bankruptcy court and the official creditors' committee, and despite the fact that they will incur additional costs to comply with the new requirements. Moreover, it will be difficult for companies in chapter 11 to attract independent persons to serve on a board and audit committee. For these reasons, the SEC should consider promulgating a rule exempting companies from these requirements throughout the chapter 11 case until confirmation of the plan when the reorganized company emerges from chapter 11.

Independence. The Act requires that the audit committee be composed entirely of independent directors. To be "independent" under the Act, an audit committee member may not accept any consulting, advisory, or other compensatory fee from the company, except in his or her capacity as a member of the board or a board

committee. Further, no member of the audit committee may be "affiliated" with the company, presumably meaning, subject to SEC rulemaking, that no one may be a member of the audit committee who has an influence, direct or indirect, over the management of the business or the affairs of the company or any subsidiary, or who is affiliated with a "controlling shareholder."

To ensure independence of the auditors, accounting firms may not provide audit services to a company if the company's CEO, CFO, controller, chief accounting officer, or any person serving in a similar position was employed by the accounting firm and participated in any capacity in the audit of the company during one year before the commencement of the audit.

Expertise. Companies will be required to disclose in their periodic reports whether or not the audit committee includes at least one member who is a "financial expert" as defined by the SEC and, if not, the reasons therefor.

Responsibilities. The Act provides that all national stock exchanges and associations must adopt rules requiring that the audit committee of a listed company, rather than management, is responsible for the appointment, compensation, and oversight of any audit work performed by any registered public accounting firm, and requiring that the auditor report directly to the audit committee.

To preserve the independence of a company's accounting firm, the company's auditors will be prohibited from providing most non-audit services, and the audit committee is required to pre-approve any permitted non-audit services, such as tax preparation. The amount paid for all non-audit services may not exceed 5% of the total amount paid to the auditor during the fiscal year in which non-audit services are provided.

The audit committee's responsibilities shall include consideration of required auditors' reports on the company's critical accounting policies and all decisions and ramifications related to alternative treatments of financial information permitted within generally accepted accounting principles ("GAAP"). The audit committee also is required to resolve any disagreements between management and the auditors regarding the company's financial reporting.

The Act requires the audit committee to establish rules for (1) the treatment of complaints received by the company regarding accounting, internal accounting controls or auditing matters, and (2) the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. The Act protects "whistleblowers" from discriminatory treatment or discharge.

Code of Ethics

Companies are required to adopt a code of ethics, applicable to their principal financial officer and comptroller or principal accounting officer, that meets the requirements set forth in the Act. If a company does not adopt an appropriate code of ethics, the periodic reports must disclose the reasons for not doing so. The code of ethics must include standards reasonably necessary to promote honest and ethical conduct, including the handling of actual and apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely and understandable disclosure in SEC periodic reports; and compliance with applicable governmental

rules. Changes in or waivers of the code of ethics must be immediately disclosed via Form 8-K, the internet, or other electronic methods.

Officer Certification Requirements

The Act prohibits any officer or director or any person acting under the direction of an officer or director from providing false or misleading information about the financial condition of the company to an accounting firm conducting an audit for the company. The Act contains two divergent provisions requiring certifications by CEOs and CFOs of periodic reports filed with the SEC. Section 302 of the Act is the principal certification requirement, requiring CEOs and CFOs of public companies to certify in each annual and quarterly report (10Ks and 10Qs) that: (1) they have reviewed the report; (2) to the officer's knowledge, the report does not contain any material misstatement or omission; (3) to the officer's knowledge, the financial statements and other information fairly present, in all material respects, the company's financial condition and results of operations; (4) they are responsible for establishing and maintaining internal controls, have designed them to ensure that material information is made known to them, have evaluated their effectiveness within the 90 days before the report, and have presented their conclusions about that effectiveness in the report; (5) they have disclosed to the company's auditors and the board of directors' audit committee all significant deficiencies in the design or operation of internal controls and any fraud, even if not material, involving management or other employees who have a significant role in the internal controls, and have identified any material weakness in the controls; and (6) they have indicated whether or not there were any significant changes in internal controls or in other factors that could significantly affect those controls since their last evaluation, including any corrective actions regarding significant deficiencies and material weaknesses. The officer certification concerning internal controls complements new requirements separately imposed on public companies by the Act to perform an annual assessment of the effectiveness of their internal controls and financial reporting procedures.

Section 906 of the Act calls for CEOs and CFOs of all SEC-registered companies to certify in each periodic report containing financial statements that the information in the report fairly presents, in all material respects, the financial condition and results of operation of the company and that the report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act. The first half of this two-part certification is similar to, but not identical with, certification 3 above under Section 302. Perhaps most significantly, this certification lacks the "knowledge" qualifier of its counterpart under Section 302. Knowing and willful violations of this certification requirement are subject to criminal penalties.

The certifications required under both sections 302 and 906 are currently effective. The certification requirement applies to companies that file periodic reports under Sections 13(a) or 15(d), even if they do so only because they have outstanding publicly-held debt securities or offered such securities so as to be subject to Section 15(d). It may apply to companies that, by reason of bond or other covenants, submit periodic reports with the SEC, even though not required to do so by statute.

The Act creates a harsh felony with imprisonment of up to 10 years and a fine of up to $1 million when a CEO or CFO knowingly certifies a false financial statement. Those who willfully certify statements that are false will face fines of as much as $5 million

or as many as 20 years in prison, or both.

Prohibition on Loans to Executives

Effective on enactment, the Act prohibits companies from making or renewing, directly or indirectly, including through any subsidiary, personal loans to board members or executives, other than certain consumer credit transactions (such as home improvement or credit card loans) of a type and on terms no more favorable than the company offers to the general public in the ordinary course of business. Existing loans are grandfathered, provided there are no material revisions to any term or any renewal of the credit.

Forfeiture of Bonuses and Stock Sales

Effective immediately, if a company is required to prepare an accounting restatement as a result of material noncompliance with the SEC's rules and regulations, the CFO and CEO shall be required to reimburse the company for (1) any bonus or other incentive-based or equity-based compensation such person received from the company during the 12-month period following the first public issuance or filing with the SEC of the financial document that did not comply with the financial reporting requirement; and (2) any profits realized from the sale of securities of the company during that 12-month period. There is no provision requiring that the CEO or CFO have any culpability in the misconduct, nor does the Act specify the level of misconduct (e.g., negligent, knowing, or willful) required for imposition of this penalty. However, the Act permits the SEC to exempt any person from the application of this provision as it deems "necessary and appropriate."

Restrictions Related to Pension Fund Blackout Periods

Included in the Act are provisions to prevent the abuse by insiders of pension fund blackout periods. The Act defines a "blackout period" as a period of more than three consecutive business days during which 50% or more of the participants or beneficiaries under a company's individual retirement plans are temporarily prohibited from trading company stock held in those plans. The Act prohibits directors and officers from purchasing, selling, or transferring any equity security of the company that the director or officer acquired in connection with his or her employment as a director or officer during any pension fund blackout period. Any profit earned by such prohibited trading may be recovered by the company or by a shareholder, if the company fails to diligently pursue the action, irrespective of the intention of the executive in engaging in the transaction. Certain exceptions to this rule are made for merger and acquisition activity, transactions pursuant to automatic dividend reinvestment programs, or
purchases or sales made pursuant to advance election.

The Act also requires employers to provide employee-participants in individual pension account plans with at least 30 days advance notice of any blackout period. The provisions of the Act related to pension fund blackout periods become effective 180 days after enactment, on January 27, 2003.

Enhanced Company Disclosures

The Act contains numerous provisions that will change significantly the way that public companies have traditionally reported information to the marketplace. The provisions of the Act relating to disclosure obligations are intended to enhance the

quality and timeliness of the information made publicly available by companies and their insiders. Since the Act does not expressly exclude foreign companies that file periodic reports with the SEC, absent further clarification, it should be assumed that the additional disclosure requirements also apply to non-U.S. companies, despite the difference in corporate governance systems. Requirements for disclosures regarding insider trading, not currently applicable to foreign companies, remain unchanged by the Act. Notably, the Act provides that within 270 days after its enactment, the SEC shall establish rules requiring the national securities exchanges and associations to de-list any company that is not in compliance with the Act.

Disclosures Required in Periodic Reports

The Act requires that all financial reports filed with the SEC that are required to be prepared in accordance with GAAP must reflect all material correcting adjustments that have been identified by the company's independent auditors. In addition, companies must reconcile any "pro forma" financial information with the financial condition and results of operations as presented under GAAP. The new rules apply to pro forma information regardless of whether it is contained in a report filed with the SEC, a press release, or any other public disclosure. Since the Act does not limit this mandate to written statements, until any clarification in SEC rules, it arguably may cover oral communications made by any officer or director.

In each annual and quarterly report, companies will be required to disclose, in accordance with regulations adopted by the SEC, all material, off-balance sheet transactions, including contingent obligations and any relationships with any unconsolidated subsidiaries or persons, that may have a material current or future effect on the company's financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses. Additionally, as mentioned above, companies are now required to include in their annual reports an "internal control report" that sets forth management's responsibility for establishing and maintaining adequate internal controls and assessing the effectiveness of the internal control structure on an annual basis.

Insider Trading Disclosure

Another significant revision to existing corporate disclosure law involves an amendment to Section 16 of the Exchange Act. The amendment now requires officers, directors, and beneficial owners of more than 10% of a class of the company's equity securities ("insiders") to disclose their purchases or sales on an accelerated basis. Such disclosure will generally be required within two business days of the trade, as compared to ten days after the close of the calendar month in which the transaction occurred, as required under prior law. These insider trading reporting requirements became effective on August 30, 2002.

The Act also requires that all reports must be filed on EDGAR, the SEC's electronic filing system, and the SEC must publish the information on its publicly accessible internet site within one business day following the filing. If the company has a website, it must make the information available on its own website as well within one business day of filing with the SEC. The electronic filing requirements will become effective no later than July 30, 2003.

Real Time Disclosures

In addition to the other disclosure requirements, the Act requires companies to disclose to the public "on a rapid and current basis" any additional information concerning material changes in the financial condition or operations of the company, which may include trend and qualitative information and graphic presentations, as the SEC may determine by its rulemaking to be necessary or useful for the protection of investors and in the public interest.

Enforcement and Penalties

Because the Act creates significant additional oversight and enforcement responsibilities for the SEC, it provides supplementary funding to enable the SEC to add at least 200 more professionals to provide oversight of auditors and audit services and improve investigative and enforcement efforts to combat corporate malfeasance. It establishes a systematic review by the SEC of the periodic reports filed with it including a requirement that every company's filings will be reviewed at least once every three years. It makes any violation of the Act a violation of the Securities Exchange Act, authorizes the SEC to promulgate rules and regulations to further the effectiveness of the Act, and gives the SEC authority to determine what constitutes GAAP for purposes of enforcement of the securities laws.

Effective immediately, the Act makes criminal several acts of misconduct relating to financial reporting or the impeding of SEC investigations (some of which may already have been illegal under more general provisions of law), and it significantly increases the criminal penalties that may be imposed for violations of the securities laws.

Securities Fraud Violations

The Act establishes new monetary sanctions and increases criminal penalties for securities fraud violations involving accounting irregularities and financial fraud, including sanctions specifically applicable to directors, officers, and professionals such as accountants, lawyers, investment bankers, and others who have committed or aided and abetted the commission of securities fraud violations.

For those found guilty of committing securities fraud, debts arising from such fraud are made specifically nondischargeable in subsequent bankruptcy proceedings. The Act amends the Bankruptcy Code to make nondischargeable: judgments, consent orders, settlement agreements, fines, penalties, restitutionary payments, disgorgement payments, attorneys' fees, court costs, and any other debts arising from a federal or state securities law violation.

The Act also lengthens the applicable statute of limitations for private causes of action that involve claims of fraud, deceit, manipulation or contrivance in contravention of a regulatory requirement concerning the securities laws to the earlier of two years after discovery of the facts constituting the violation or five years after the violation. There is no exception for statutes with their own limitations periods. These increased penalties and other remedies are effective immediately.

Destruction, Alteration, or Falsification of Records

The Act makes it a crime for anyone to knowingly destroy, conceal, alter, or falsify company records or documents with the intent to impede, obstruct, or influence the investigation or administration of any matter within federal jurisdiction, including bankruptcy cases. Penalties for such actions shall include up to 20 years

imprisonment, fines, or both. The Act also prohibits such conduct in relation to or contemplation of any such matter or case, such as records tampering in contemplation of a bankruptcy filing. In addition, the new legislation creates a new felony with a maximum term of 25 years for the knowing commission of a fraud involving securities issued by a public company. Criminal violations of Rule 10b-5 now allow for a 20-year maximum prison term and a maximum $25 million fine for corporations. These penalties dramatically reinforce the importance of scrupulous attention to document preservation practices during, in anticipation of, or even if suspicions arise about the possibility of, government investigations.

Corporate Whistleblower Protection

A new crime labeled "Retaliation Against Informants" is included in the Act, making it all the more imperative that corporate officials ensure that employees reporting suspected corporate wrongdoing are protected. Effective immediately, anyone with the intent to retaliate against a corporate whistleblower, who commits acts deemed harmful, including interference with work, may be fined and/or prosecuted as a felon and may face a 10-year prison sentence. Specifically, the Act prohibits companies from discharging, demoting, or otherwise discriminating against any employee who lawfully provides information regarding any conduct the employee reasonably believes constitutes a violation of the securities laws or financial fraud statutes (1) to any governmental authority, (2) by testimony or otherwise in any proceeding pending or about to be commenced concerning such a violation or (3) to any person with supervisory authority over the employee or authorized by the company to investigate such conduct. Accordingly, company executives must exercise caution when disciplining or terminating employees who may be privy to any information, arguably related to any federal offense, even if the information is only partially true.

White Collar Criminal Penalties

The Act also increases the penalty for persons who commit mail and wire fraud. Previously punishable by a maximum of 5 years imprisonment, the Act increases the possible maximum sentence to 20 years. This new measure also provides that any persons who attempt to commit crimes under this chapter shall be treated under the law as if they had committed the crime.

Corporate Fraud Accountability

A portion of the Act entitled the "Corporate Fraud Accountability Act of 2002" amends the Exchange Act by giving the SEC authority to seek a court-ordered temporary freeze of any "extraordinary payments (whether compensation or otherwise)" when it is investigating possible violations of the federal securities laws by a company, its directors, officers, partners, controlling persons, agents, or employees, and believes such payments are about to be made to any of the foregoing parties. The freeze order can be extended to as long as 90 days with court permission. Clearly, this new measure greatly expands the SEC's power to exert control over companies and executives subject to investigations. Another new provision provides that anyone who corruptly tampers with a record, or obstructs or attempts to obstruct an official proceeding, shall be fined or imprisoned up to 20 years, or both.

Bankruptcy Code Provides Limited "Safe Harbor" From Securities Law Violations

Bankruptcy law cuts across many areas of law, including the securities laws.

Naturally, the intersection of two statutes with different purposes produces conflicts and uncertainty. One conflict that arises as a result of the interplay of the Act with the Bankruptcy Code concerns the potential exposure to liability of officers, directors, and professional advisors of a chapter 11 debtor at different stages of a bankruptcy case.

As noted previously, filings made by a company in bankruptcy are subject to the increased disclosure requirements and heightened criminal penalties provided by the Act. Thus, a plan of reorganization filed as an attachment to an SEC periodic filing will be subject to the Act. Since CEOs and CFOs of public companies may incur heavy fines and imprisonment for certifying the accuracy of financial statements filed with the SEC if those statements contain false or misleading information, the increased penalties also would apply to false or misleading statements in the financials supporting a plan of reorganization filed as an attachment to a periodic report.

A dichotomy arises because section 1125(e) of the Bankruptcy Code contains a "safe harbor" provision exonerating any person who participates, in good faith and in compliance with the provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security under a plan of reorganization, from liability under the securities laws. Section 1125(e) was intended to protect from liability under the securities law antifraud provisions, creditors, creditors' committees, counsel, or any person who participates in the offer or sale of a security under a plan of reorganization in good faith reliance on the court's approval of the disclosure statement. The exemption is from the antifraud provisions of federal and state securities laws and provides protection for any bankruptcy plan proponents from both legal and equitable liability. In contrast, the securities laws provide that, regardless of good faith intentions, a person that offers or sells securities is subject to absolute liability if there was any failure to state a material fact in connection with the offer or sale of the securities.

It is important to note that section 1125(e) provides a safe harbor only for participation in the offer, issuance, sale, or purchase of securities under a court-approved plan. Thus, a dual standard results. Parties who certify financial statements during the course of a bankruptcy case are absolutely liable for inaccuracies contained in those statements, regardless of fault. However, parties who participate in good faith in the offer or sale of securities under an approved plan are shielded from liability under the securities laws by section 1125(e). It may be argued that the dual standard reflects the conflicting purposes of the divergent statutes. The securities laws are intended to protect innocent parties from fraud in the marketplace, while the Bankruptcy Code is intended to facilitate the reorganization of financially troubled companies, some of which would be unable to reorganize and continue to operate if they could not offer new securities in exchange for debt or equity interests. It makes no sense, however, to argue that a reorganized debtor should be able to promulgate inaccurate financial statements any more than a company that is not in bankruptcy, especially in light of recent events.

Conclusion

In a year of massive accounting scandals, huge bankruptcies, handcuffed company executives, and plunging stock markets, the Act should have the salutary effect of

creating a new ethic of corporate responsibility by adopting tough new provisions to deter and punish corporate and accounting fraud and corruption, ensuring justice for wrongdoers, and protecting the interests of employees and shareholders. The Act, moreover, will spur additional regulation flowing from the specific and extensive rule-making required by the Act and the numerous studies in the next 6 to 12 months by the SEC and GAO with recommendations to Congress for further legislation.

Companies should move quickly to adopt business practices to ensure that they are in compliance with the provisions of the Act as they become effective, including any new SEC rules promulgated under the Act and any of the recent measures being adopted by the national stock exchanges. Even before passage of the Act, corporate officials who signed reports that were filed with the SEC had potential civil and criminal liability for material errors or omissions and, in certain circumstances, there could be liability for misstatements or omissions even in the absence of a signature. In the current environment, the SEC and the Department of Justice may enforce the securities laws and prosecute offenders more zealously. The certification requirements may provide procedural advantages to the government and private plaintiffs bringing actions against perceived violators based on misstatements and omissions in periodic reports, and may increase the likelihood and frequency of such lawsuits.

CEOs and CFOs should follow a reasonable and explicit process designed to demonstrate the executive's diligent attempt to satisfy himself or herself as to the accuracy and completeness of the report and the integrity and reliability of the internal systems that yielded the information being certified. Among other things, companies should undertake to insure that all sales and financial staff within the company understand the requirements of the company's revenue recognition policy, reflecting the company's commitment to accurate financial reporting. If a company does not have a comprehensive, written revenue recognition policy, it should consider implementing one as part of an effective internal control system.

In light of the prohibition against loans to executives or directors, companies should reexamine compensation arrangements, including cashless-exercise option programs and company advances of tax withholdings. The so-called split-dollar life insurance policy, under which companies pay the vast majority of the premiums on lucrative insurance policies that benefit top executives may likely be viewed as a loan. The Act does not address the treatment of a loan made by a private company if, while the loan is outstanding, the company becomes public. Another interpretive issue that will arise is whether a loan that was extended to an employee before he or she became an executive officer or director must be repaid when the person is promoted to one of those positions. In structuring executive compensation packages in the future, companies will need to avoid any arrangements that can be construed as loans.

The Act also contains a number of provisions aimed at providing greater protection to benefit plan participants and curbing some executive benefits that are perceived as abusive in the current environment. Benefit plan sponsors and administrators will need to focus on the new requirements, and where necessary, modify their administrative practices to comply with the new rules.

The complexity of this legislation and the speed with which it was drafted and passed raises many questions that will require analysis and consultation between public

company clients and legal counsel. Although the requirements of the Act are clear in broad measure, in many cases as noted above, the details of how the Act will affect corporations and the financial services industry will not be known until implementing regulations are issued over the course of the next year. It is expected that certain provisions of the Act will be refined during the regulatory process and that Congress may also make clarifying amendments.

Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).