

SOX for private companies?

Voluntary compliance could pay off

LARGE PUBLIC COMPANIES SPEND millions of dollars annually on Sarbanes-Oxley Act (SOX) compliance, generally viewing compliance costs as little more than a regulatory nuisance. Small public companies, however, often have insufficient resources and financial sophistication to implement SOX.

In fact, the high price tag associated with SOX compliance has left many small public companies considering delisting or relisting in foreign countries. Looming SOX costs are even deterring some large private companies from accessing the public markets.

It's easy to understand, therefore, why private companies may be reluctant to adopt SOX rules voluntarily. Nevertheless, business owners may want to consider voluntarily complying with some SOX provisions.

3 cost-effective provisions

To be clear, private companies probably don't need to abide by every single SOX rule. Most are likely best off focusing on three of the law's more cost-effective provisions:

1. **Audit committees.** SOX requires public companies to create an independent audit committee that includes at least one financial expert qualified to interpret external audit reports and ask relevant technical questions.

Companies must provide adequate funding to compensate audit committee members for additional efforts and to pay for independent legal and financial advice. But these funding requirements are minimal compared with the compliance costs associated with other SOX provisions, such as the much-maligned Section 404 internal control implementation, assurance and documentation mandates.

To assure auditor allegiance to the audit committee, rather than to company management, companies must permit their audit committees to meet with external auditors without management.

2. **Prohibited services.** Section 201 of SOX prohibits auditors from providing certain consulting services — such as bookkeeping, appraisals, fairness

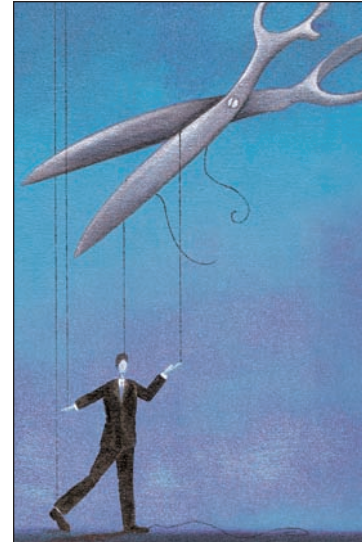
opinions and internal audits — for their public audit clients. The law also requires audit committee approval for other nonaudit services that exceed 5% of external audit fees.

Nonaudit services falling in this “gray area” include transfer pricing studies, tax-only valuations, and tax

compliance and planning. This provision prevents companies from relying too heavily on one CPA firm for financial expertise.

Additionally, consulting fees for nonaudit services not only generate higher profit margins but also tend to dwarf audit fees. Simply by using separate firms for their consulting and audit needs, your borrowers minimize potential conflicts of interest and maximize your confidence in their financial reports.

3. **Management accountability.** Under SOX's Section 302, top executives must sign off on public company financial statements. This provision goes beyond the standard audit representation letter,



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requiring management to pay attention to financial statement contents, including disclosures. It also holds executives formally accountable for misrepresentations.

Voluntary and mandatory SOX adoption is also common among nonprofits these days.

Other worthwhile SOX-inspired ideas for private companies include implementing a formal code of ethics, a whistleblower hotline and internal audit functions. Each of these practices specifically targets fraud — giving investors and lenders greater confidence in financial controls.

Better SOX candidates

Some private companies tend to be better SOX candidates than others. Those planning to go public, for example, may

want to tackle compliance early to avoid post-IPO costs and delays. And those contemplating a merger or acquisition with a public company are more likely to sell for a premium if they're SOX-compliant.

Voluntary and mandatory SOX adoption is also common among nonprofits these days. The Nonprofit Integrity Act of 2004, for example, requires California NPOs to prepare audited financial statements and create an audit committee that approves contracts for nonaudit services.

Smart business

Some SOX provisions are cost prohibitive for private companies, but many are just smart business. Virtually every company could benefit from stronger internal controls and fraud prevention policies. Lenders who help their customers adopt a practical cost-benefit approach to SOX compliance are likely to reap substantial benefits. ■

To boost accountability, nonprofits turn to board member agreements

A NOT-FOR-PROFIT'S BOARD OF DIRECTORS plays an integral role in the overall financial and operational health of the organization. Yet how can a nonprofit ensure that its board members know what's expected of them? Many are turning to nonbinding board member agreements for precisely this purpose.

These agreements can be signed either at the start of a board member's tenure, annually or both. And while they aren't legally binding, the agreements may help a nonprofit increase accountability within its board.

Commonly addressed areas

Some of the areas commonly addressed in an agreement include:

Attendance. The agreement discusses the type of participation expected from board members in terms of meetings and special events. For example, is attendance at special events mandatory? Many agreements specify rules for each type of meeting or event.

Fundraising. There is sometimes a disconnect between many nonprofits and their boards when it comes to

fundraising. By stating fundraising duties in an agreement, this confusion is often alleviated. Some nonprofits stipulate in their agreements items such as:

- Whether members are expected to make personal contributions and at a certain level each year,
- How active board members need to be with fundraising activities, and
- How many donors they are expected to recruit each year.

Ethics. Many agreements include language about conflicts of interest and representing the organization in public, such as, "I will withdraw from any votes where I would have a conflict of interest," or "I will always act in the best interests of the organization and act responsibly when representing the organization in public."

Many agreements go one step further and explain what steps will be taken if the board member doesn't perform his or her responsibilities. Consequences can range from a simple discussion with the board president to a request for resignation.

A good start

For many, if not most, nonprofits, the issue of accountability probably won't be magically solved by a signed piece of paper. Nonetheless, having a nonbinding board member agreement in place is often a good start. ■



Why it's critical to name a beneficiary for your traditional IRA

OWNING AN IRA NOT only allows you to save for retirement, but also may lead to the accumulation of substantial amounts of wealth that you can pass along to your heirs.

Unfortunately, that legacy may be burdened with a huge tax liability if your IRA is a traditional one, not a Roth. With careful planning, however, you and your heirs can stretch a traditional IRA's tax-deferred growth for years — or even decades — while minimizing the tax impact.

Understand the difference

Inherited IRAs are treated differently from other assets. For example, if you leave appreciated stock or real estate to a loved one, your heir's cost basis is equal to the asset's fair market value on the date of your death. If he or she immediately sells the asset, no taxable gain will be recognized.

But there is no such "stepped-up" basis with an IRA.

Instead, distributions to your heirs are taxable at their ordinary income tax rates — as high as 35%. And with estate tax rates currently topping out at 45%, taxes can quickly consume a substantial portion of your nest egg.



Recognize the risk

From an estate planning perspective, the primary risk of a traditional IRA is dying without a beneficiary.

By designating one or more beneficiaries, you'll enable your heirs to stretch distributions over their own life expectancies.

For example, if you've already started taking your required minimum distributions, which is mandatory by April 1 of the year following the year you reach age 70½, and pass away without having named a beneficiary, your heirs must take distributions based on your remaining life

expectancy at the time of your death. If you haven't reached your required beginning date, your heirs must withdraw the entire account balance, subject to ordinary income taxes, within five years.

By designating one or more beneficiaries, you'll enable your heirs to stretch distributions over their own life expectancies, spreading the taxes over many years and allowing the IRA to continue growing tax-deferred for as long as possible.

Spouse beneficiaries face three primary options

If you decide to name your spouse as the beneficiary of your traditional IRA, which is often a logical choice, he or she will have three primary options:

1. Take all of the funds and pay income tax on the withdrawal,
2. Leave the IRA in your name, or
3. Roll the funds over into a new or existing IRA in his or her name.

Which option to choose depends largely on the spouse's age. If he or she is under age 59½ and needs the funds for living expenses, it's probably best to leave the IRA in your name. That way, your spouse can take money out without paying a 10% early withdrawal penalty.

If your spouse is older than age 59½ or doesn't need the money right away, it's preferable to roll the funds into an IRA in his or her name. This way, your spouse can name new beneficiaries and defer his or her required minimum distributions until he or she reaches age 70½.

Name someone

To avoid negative tax consequences, name a primary beneficiary and one or more contingent beneficiaries. You can name anyone as beneficiary of your IRA including your spouse, children, grandchildren, friends, trusts and charities. ■

BBR Client Profile

Hospice of the East Bay

(formerly Hospice and Palliative Care of Contra Costa)

HOSPICE OF THE EAST BAY (Hospice) was formed in 1977 to enhance the quality and dignity of life for terminally ill patients of all ages by meeting their medical, emotional, spiritual, practical and bereavement needs. Such comprehensive services are offered at “home,” which may be the patient’s own home; that of a friend or relative; an assisted living, residential care or skilled nursing facility; or the Hospice’s Bruns House inpatient facility.



Hospice care is provided by teams of professionals who work with each patient’s primary care physician. Team members include physicians, nurses, pharmacists, home health aides, medical social workers, chaplains, bereavement counselors and volunteers.



The team brings physical and emotional relief to the patient, helps ensure adequate rest time, and provides emotional support to caregivers and bereavement support to family members. Volunteers offer companionship to patients, as well as assistance with house-keeping, shopping, meal preparation and transportation to medical appointments. On-call nursing advice and/or visits are available 24 hours a day, seven days a week.

The aim of all hospice programs and services is to care for the needs of patients until life’s end, easing physical and emotional pain and ensuring that patients and their families retain control over their personal and medical choices. ■

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