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# ADVISER

## Helping Public Companies

*From assisting you with your IPO to compliance with SEC and Sarbanes-Oxley regulations, Holtz Rubenstein Reminick has been helping middle market companies succeed. We are one of the leading CPA firms in the country serving SEC registrants.*

# SOX Compliance

**Beyond the Financial Statement**

Most companies focus their Sarbanes-Oxley Act (SOX) compliance efforts on Section 302, which requires CEOs and CFOs to certify the accuracy of financial statements, and Section 404, which requires management to annually evaluate the effectiveness of internal controls over financial reporting. These two sections are indeed critical, but you shouldn't overlook SOX's lesser-known provisions, particularly those dealing with whistle-blowing and document destruction.

### The rights of whistle-blowers

Section 806 of SOX prohibits public companies, as well as their officers, employees and agents, from retaliating against employees who report suspected fraud to:

1. A supervisor or other company representative,
2. A federal regulatory or law enforcement agency, or
3. Congress.

Unlawful retaliation includes termination, demotion, suspension, failure to promote, harassment or any other form of discrimination. Employees who allege retaliation can file a complaint with the Secretary of Labor or sue the company for damages.

It's important to understand that whistle-blowers don't have to be right about their allegations to receive this protection. Employees are protected so long as they reasonably believe that the company's conduct violated federal fraud laws or regulations. A separate SOX provision, Section 1107, makes it a federal crime to knowingly retaliate against an employee who reports a violation of any federal law to a law enforcement officer.

To protect employees -- and your company -- establish a formal process for receiving employee complaints and preventing retaliation. Make employees aware of the process and train supervisors to recognize SOX complaints and handle them appropriately.

To prove a violation of Sec. 806, employees must show that they engaged in protected activity, that the employer knew about it and that whistle-blowing was a contributing factor in their termination or other unfavorable treatment. You can avoid liability by

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## A View from the Top

The more things change the more they change!

Enclosed are three articles relating to SOX, IFRS, and flexible budgeting. All relate to the changes coming and how you can best deal with them.

As always, if you have any questions just let me know.

Larry Waldman

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# Get Ready – Here Comes IFRS

In November 2008, the SEC published its proposed "roadmap" for the transition to International Financial Reporting Standards (IFRS), with the goal of moving U.S. companies from U.S. Generally Accepted Accounting Principles (GAAP) to IFRS over the next six to eight years. That may seem like a long time, and it's possible that the SEC will push back the transition date. Nevertheless, public companies should begin developing an IFRS strategy now.

## Hitting the milestones

The timing of the transition to IFRS will depend on the achievement of certain milestones, including:

> Improvements in accounting standards,
> The accountability and funding of the International Accounting Standards Committee Foundation,
> Improved ability to use interactive data (XBRL) for IFRS reporting,
> Improved education and training in the United States, and
> Limited early use of IFRS by certain companies.

Based on progress toward these milestones, the roadmap calls for the SEC to decide in 2011 whether to move forward with IFRS. However, the new SEC chairman, Mary Schapiro, has said she won't be bound by the roadmap, and the SEC has extended the comment period on it by two months. If the SEC does follow the roadmap's timetable, large accelerated filers (companies with a public float of $700 million or more) will be required to adopt IFRS for fiscal years ending on or after Dec. 15, 2014. Other accelerated filers (those with a public float of $75 million or more) follow one year later and nonaccelerated filers (including smaller reporting companies) one year after that, in 2016.

The SEC's roadmap would permit early adoption (for fiscal years ending on or after Dec. 15, 2009) by U.S.-based companies that are among the 20 largest companies worldwide in their industries and meet certain other requirements, such as using IFRS more than any other basis of reporting. The SEC also outlined two alternative proposals under which companies that elect to adopt IFRS early would disclose U.S. GAAP information during the transition to mandatory IFRS reporting.

## Mapping a strategy

Mandatory adoption of IFRS is several years away, but the sooner you begin preparing for the transition, the better. For starters, the SEC expects that it will require that all years presented in the first year of IFRS reporting be IFRS-compliant. That means companies will need to keep two sets of books and records - one each in GAAP and IFRS - and implement internal controls with respect to IFRS for up to three years before IFRS reporting begins.

In addition, the transition to IFRS may require you to retool your IT systems, retrain your accounting staff, and modify policies and procedures. You'll also need to evaluate the potential impact of IFRS on activities such as budgeting, compensation and benefits, tax planning, long-term contracts, debt covenants, and even corporate governance. By beginning to address these issues now, you increase your chances of a smooth transition when you're required to make the move.

## Change in philosophy

Making the transition to IFRS will take time, but preparing for the new accounting regime involves more than learning a new set of accounting standards. IFRS represents a major shift in accounting philosophy. h

## Have a Question? Contact an HRR Partner

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# Uncertain Times Demand Flexible Forecasts

The credit crisis, volatile markets and uncertain prices for supplies and raw materials are making it extremely difficult for companies to forecast financials. In a recent CFO Magazine survey, 70% of respondents said they couldn't forecast more than one quarter out. Of those, 25% said they couldn't forecast more than two weeks ahead and another 25% claimed they were "in the dark."

But a difficult economic environment doesn't mean you should give up on forecasting. Instead, take steps to improve the accuracy of your forecasts and strengthen your ability to respond quickly to changing circumstances.

The first step is to identify the key performance drivers in your company -- factors such as raw material prices, direct labor hours, customer conversion rates, inventory availability, new product innovation, global sales or customer service levels. Next, ensure you have systems in place to track these drivers and communicate the results quickly throughout your organization. By monitoring this data in real time -- or at least something close -- and updating your forecasts frequently, you'll be in a better position to respond to any developing trends.

That said, even the best forecasts have limited value in a volatile economy. So it's important to develop greater flexibility to react quickly to events using techniques such as scenario modeling, which analyzes possible outcomes of various plausible combinations of operational strategies and economic conditions. Contingency planning, which involves evaluating the impact of sudden market changes on your company and developing strategies for responding to them, is another technique to consider.

Whichever approach you choose, the key to success is to develop your strategies before you need them. That way, you can respond quickly when the time comes.

# SOX Compliance

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demonstrating that you would have taken the same action regardless of an employee's whistle-blowing. So be sure to thoroughly document the reasons behind all personnel decisions.

**Rules of document retention**

Section 802 of SOX imposes criminal penalties on anyone who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object" with the intent to obstruct a federal investigation or bankruptcy proceeding. Documents aren't limited to hard copies; they include digital files, e-mails, voicemail messages and other electronic records.

Although SOX doesn't require your company to keep documents forever, you should have well-designed, written document retention policies and procedures to help ensure that you preserve the documents you need while disposing of unneeded documents. Don't forget to include procedures for backing up, archiving and purging electronic documents.

To avoid allegations that documents were destroyed in bad faith, train employees to apply your document retention and destruction policies consistently. And develop a mechanism for placing a "litigation hold" on the destruction of documents that may be relevant to a federal investigation or a legal proceeding.

**A comprehensive law**

SOX is a comprehensive law that touches virtually every aspect of a public company's business. To stay in compliance and avoid potential civil - or even criminal - penalties, you must look beyond your company's financial statements.

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