SHOULD NONPROFIT ORGANIZATIONS ADOPT THE RULES OF SARBANES-OXLEY?

Much of a law designed for publicly held corporations may provide valuable guidance for tax-exempt organizations.

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Although most provisions of the Sarbanes-Oxley Act of 2002[1] (the "Act") apply only to publicly traded companies, it has had a significant impact on the nonprofit sector. For example, many nonprofit organizations have voluntarily adopted some of its provisions, watchdog groups have revised their standards, some states are considering legislation that would apply similar provisions to nonprofit organizations, and the IRS is considering the Act in connection with forthcoming guidance for exempt organizations. The result is that the Act may well be giving rise to new standards of "best practices" for nonprofit corporate governance. To insure that their practices are in compliance with these new standards, nonprofit organizations and their advisors should become familiar with the Act and consider whether they should make changes in their own corporate policies and practices.

Background

Enacted in response to financial and accounting scandals at several large publicly traded companies,[2] the purpose of the Act is to protect investors in such companies through provisions intended to ensure that financial statements are accurate, that directors and officers do not have conflicts of interest, and that the board of directors takes an active role in fulfilling its oversight role. These broad objectives are desirable for all corporations, whether stock or nonprofit, and whether publicly traded or privately held. For that reason, the Act deserves the attention of nonprofit organizations.

Nonetheless, it is important to keep in mind that the Act was passed to achieve these objectives in corporations with publicly traded stock, that these corporations are only a small portion of for-profit companies, and their auditors are only a small portion of auditing firms. Indeed, according to the SEC, there are only about 16,500 companies that are subject to the federal securities laws and fewer than 15% of the nation's accounting firms audit any public companies.[3] The Senate Banking Committee report said that state regulatory authorities, which regulate companies not subject to federal regulation, should not presume that the Act's standards apply to those companies.[4] Likewise, nonprofit organizations should not presume that Sarbanes-Oxley provisions should apply

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to them. Specific provisions of the Act may, or may not, be the best way for nonprofit corporations to achieve the highest standards in good corporate governance.

It also should be kept in mind that the nonprofit sector is quite diverse. There are public charities—such as hospitals, colleges, universities, and museums—that are intended to benefit the public at large. There are membership organizations formed to achieve common goals of their members. There are also private foundations that by their nature are typically run by a small group of people and are already subject to substantial regulation through the Internal Revenue Code.[5] Besides a diversity of purpose, nonprofit corporations range in size from small local organizations, such as garden clubs and soccer leagues run by volunteers with budgets of only hundreds or thousands of dollars, to multi-billion dollar organizations that more closely resemble for-profit companies in many aspects of management and corporate governance. Because of the diversity of the nonprofit sector, there is no single set of recommendations for adoption of Sarbanes-Oxley provisions that would be appropriate for all nonprofit organizations.

Each organization should view the Act as one benchmark or guide for evaluating its own corporate governance. It should consider whether adoption of any of the provisions of Sarbanes-Oxley would improve its own corporate governance. One thing a nonprofit organization's board should not do is pass a broad resolution to the effect that it is adopting the provisions of the Act. Not only is such a resolution not helpful, it could result in unintended harm to the organization and its directors by setting standards that are not fully understood and thus are not likely to be followed. Organizations that fall within a well-defined subsection of the nonprofit sector, such as trade associations, hospitals, and colleges and universities should look to associations of these organizations for helpful guidance and recommendations in considering whether to adopt provisions of the Act.

Criminal law provisions

As noted above, most provisions of the Act apply only to publicly traded companies. Nonprofit organizations should be aware that two criminal law provisions are directly applicable to nonprofit organizations and provide for stiff fines and prison sentences. The Act imposes criminal penalties on those who retaliate against whistleblowers and on those who alter or destroy documents under certain circumstances. These provisions apply to *any* person who engages in the prohibited conduct and thus apply to directors, officers, and other persons involved in the operations of nonprofit corporations. Accordingly, nonprofit organizations should adopt document retention and whistleblower policies that, at a minimum, require conformance with the requirements of the Act.

THE ACT MAY WELL GIVE RISE TO NEW STANDARDS OF 'BEST PRACTICES' FOR NONPROFIT CORPORATE GOVERNANCE.

Whistleblowers. Anyone who retaliates against a person who provides a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense may be fined or imprisoned for up to ten years.[6] Although this criminal provision is limited to information on federal offenses, nonprofit organizations should consider adopting broader whistleblower policies that provide a mechanism for employees to report wrongdoing or improprieties by the organization's officers, directors, or other employees. As discussed below, the Act requires audit committees of publicly traded companies to provide a mechanism for the anonymous reporting of accounting irregularities. Nonprofit organizations may wish to encourage reports by protecting the anonymity of employees who make such reports. Organizations that do so, however, should exercise care in developing mechanisms (and a corporate culture) that will enable them to deliver on their promises to whistleblowers. Otherwise, they may expose themselves to liability.

Document alteration and destruction. The Act provides for prison sentences of up to 20 years, fines, or both, for anyone who knowingly alters, destroys, mutilates, conceals, covers up or falsifies any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department

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[1] P.L. 107-204 (6/30/02), 116 Stat. 745.

[2] E.g., Enron, WorldCom, Adelphia, Tyco, Global Crossing, and others.

[3] S. Rep't No. 107-205, 107th Cong., 2d Sess. 57 (1986) ("Senate Report").

[4] Senate Report, *supra* note 3 at 2.

[5] Sections 4940-4946.

[6] Act section 1107.

or agency of the U.S. or any case filed under federal bankruptcy provisions.[7] The language of this provision is exceedingly broad and all officers, directors, and employees of nonprofit organizations should be apprised of their legal obligations through a well-drafted and informative corporate policy. Although not required by the Act, nonprofit organizations should also consider adopting document retention policies to ensure that they retain documents that may later be needed in case of an investigation or litigation.

Civil law provisions

The Act contains numerous provisions, discussed below, that collectively provide a framework for the interaction of a corporation's accounting firm, board of directors, and senior management. These provisions are intended to strengthen the independence of auditors, invigorate the role of the board of directors, and enhance the direct responsibility of senior management for financial reporting and the accuracy of financial disclosures.

EACH ORGANIZATION SHOULD VIEW THE ACT AS ONE BENCHMARK OR GUIDE FOR EVALUATING ITS OWN GOVERNANCE.

Auditor independence

One of the recurring factors in the corporate scandals was that of auditors who certified financial statements that turned out to be grossly inaccurate. In response, the Act includes a number of provisions intended to ensure that auditors will not be auditing their own work, or have conflicts of interest that compromise their independence.

The Act prohibits an accounting firm that audits a publicly traded corporation's financial statements from performing certain non-audit services for that corporation. According to the Senate Banking Committee Report, these provisions are based on the principles that an auditor should not audit its own work, that the accounting firm should not function as part of management or as an employee of the audit client, and the accounting firm should not act as an advocate of the audit client.[8] Consistent with these principles, prohibited non-audit services include all of the following:

- Bookkeeping and other services related to the accounting records or financial statements of the audit client.
- Financial information systems design and implementation.
- Appraisal or valuation services, fairness opinions, or contributions-in-kind reports.
- Actuarial services.
- Internal audit outsourcing services.
- Management functions or human resources.
- Broker or dealer, investment advisor, or investment banking services.
- Legal and expert services unrelated to the audit.[9]

Non-audit services, including tax services, may be performed by the corporation's auditor only if the audit committee of the corporation has expressly approved such activity and the audit committee's approval has been made public.[10] There is a de minimis exception from the pre-approval requirement for non-audit work that (1) constitutes 5% or less of the total amount of revenues paid by the corporation to its auditor during the fiscal year in which the non-audit services are provided, (2) is not recognized by the company at the time of the engagement to be non-audit services, and (3) is approved by the audit committee before the audit is completed.[11]

The Act does not require companies to rotate their audit firms, but recognizes the strong benefits that accrue when a new accountant "with fresh and skeptical eyes" evaluates the company periodically.[12] Accordingly, the Act requires rotation of the lead audit partner and lead review partner every five years.[13] The Act disqualifies an accounting firm from performing audit services for a publicly traded corporation if that company's chief executive officer, controller, chief financial officer, or chief accounting officer was previously employed by that accounting firm and participated in any capacity in that corporation's audit during the one-year period preceding the date of the initiation of the audit.[14]

Nonprofit organizations with paid management who operate the organization on a day-to-day basis—and do so largely independently of the board except for oversight through peri-

[7] I.e., Title 11 of the U.S. Code. Act section 801.
[8] Senate Report, *supra* note 3 at 18.
[9] Act section 201(a).
[10] Act sections 201(a), 202.
[11] Act section 202.
[12] Senate Report, *supra* note 3 at 21.
[13] Act section 203.
[14] Act section 206.

odic meetings—should carefully review the auditor independence provisions of the Act and consider adopting them as policy. As in the publicly traded companies that are subject to the Act, paid management in large nonprofits operates in an environment where close relationships between management and the auditors are likely to develop. This environment can impair auditor independence and lead the auditor to feel more beholden to management than to the public and the board of directors. In considering adoption of the Act, nonprofit organizations should consider whether a strict ban on non-audit services is appropriate or whether approval of non-audit services by the board would be sufficient. One consideration is the degree to which the organization uses accounting firms for non-audit services.[15] If this happens frequently, a strict ban would be more appropriate. If the board approval approach is adopted, the board should approve services on a case-by-case basis and not adopt general policies approving a class of services. Relevant considerations for the board might include the availability of services from other firms, whether it would be cost-effective to use another firm, the size and significance of the non-audit service, and whether the nature of the service is likely to impair the auditor's independence.

As with for-profit enterprises, nonprofit organizations would benefit from rotating the lead audit partner on a regular basis and considering periodic rotation of the audit firm. Nonprofits may, however, find that many audit firms have a limited number of partners who are familiar with nonprofit organizations, and that there is a trade-off between rotating the lead partner and having the benefit of the firm's best and most experienced judgment. In such situations, a nonprofit may decide it is in its best interest to retain the same lead partner. Alternatively, it may find it is in its best interest to rotate auditing firms in order to obtain a "fresh look" without sacrificing the leadership of a partner experienced with nonprofit organizations.

Nonprofit organizations that receive federal funding of $500,000 or more in a year must also comply with General Accounting Office (GAO) government auditing standards in filing annual audit reports required by OMB Circular A-133.[16] The GAO issued new independence standards in January 2003. These standards adopt two "overarching principles" that are similar to the principles underlying the auditor independence provisions of the Act. First, auditors should not perform management functions or make management decisions. Second, auditors should not audit their own work or provide non-audit services in situations where the amounts or services involved are significant or material to the subject matter of the audit.[17]

Role of the audit committee

Another recurring pattern in the corporate scandals that led to enactment of the Act was boards of directors not taking an active role in overseeing the audit of financial statements, and often lacking the skills, information, and resources to fulfill such a role. The Act seeks to remedy this situation through a series of provisions regarding the role and composition of audit committees. These provisions are intended to ensure that board audit committees are independent, capable, and competent, and that they have adequate resources to do their jobs properly.[18]

ACT PROVISIONS PROVIDE A FRAMEWORK FOR THE INTERACTION OF AN ORGANIZATION'S ACCOUNTANTS, BOARD, AND SENIOR MANAGEMENT.

The audit committee provisions of the Act reflect four basic principles:

- The board, not management, should hire and fire the auditor.
- The board audit committee must be informed of underlying issues in the financial statements.
- The audit committee should be independent of management.
- The audit committee should have at least one financial expert on it.

Duties. Section 301 of the Act provides that the audit committee of a publicly traded company is directly responsible for the appointment, compensation, and oversight of the auditor's work (including resolution of disagreements between management and the auditor regarding financial reporting), and that the auditor

[15] The Senate Banking Committee noted that in 1988, 55% of the average revenues of the top tier accounting firms came from accounting and auditing services, and 22% came from management consulting services. By 1999, the figures for accounting and auditing services had fallen to 31%, while that for management consulting services had risen to 50%. Recent data showed that 73% of their total fees came from non-audit services. Senate Report, *supra* note 3 at 15.

[16] The threshold for audit under OMB Circular A-133 was increased from $300,000 to $500,000, effective for fiscal years ending after 2003. 68 Fed. Reg. 38,401 (1/27/03).

[17] U.S. General Accounting Office, Government Auditing Standards, GAO-03-673G, 3.13 (2003).

[18] Senate Report, *supra* note 3 at 23.

reports directly to the audit committee. This provision is intended to make it clear that the auditor's main responsibility is not to management, but to the board of directors or its audit committee.[19] The Act gives the audit committee authority to retain independent counsel and other advisors as necessary to carry out its duties, and requires the corporation to provide appropriate funding for payment of compensation to such advisors and to the corporation's regular audit firm. The auditor must report to the audit committee:[20]

THE ACT INCLUDES A NUMBER OF PROVISIONS INTENDED TO ENSURE THAT AUDITORS WILL NOT BE AUDITING THEIR OWN WORK.

- All critical accounting policies and practices used by the client that have been discussed with management.
- All alternative treatments of financial information, ramifications of such use, and the treatment preferred by the auditor.
- Other material written communication between the auditor and management, such as the management letter or schedule of unadjusted differences.

This provision insures that the audit committee will be aware of key assumptions underlying the financial statements and of any disagreements between management and the auditor, so that the audit committee can take an active role in overseeing the audit.[21]

The Act requires the audit committee to establish a procedure for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, or auditing matters; and also for the confidential, anonymous submission by employees of the corporation of concerns regarding questionable accounting or auditing matters.

Composition. Act section 301 also requires that the audit committee must be composed entirely of directors who are "independent." Thus, a member of an audit committee may not, except in his or her capacity as a director of the corporation, (1) accept any consulting, advisory or other compensatory fee from the corporation or (2) be an affiliated person of the corporation or of any of its subsidiaries. The Act also requires that at least one member of the audit committee be a "financial expert," as that term is defined in SEC regulations promulgated under the Act.[22] In defining the term "financial expert," the Act directs the SEC to consider whether a person has, through education and experience, (1) an understanding of generally accepted accounting principles and financial statements, (2) experience in the preparation or auditing of financial statements and the application of generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves, (3) experience with internal accounting controls, and (4) an understanding of audit committee functions.[23] If a corporation does not have a financial expert on its audit committee, the corporation must explain the reason for the absence of such an expert.[24]

Audit committee charters. The Act requires the SEC to direct national stock exchanges and national securities associations to prohibit the listing of any security of a corporation that fails to comply with the audit-related requirements of Act section 301. In response, the New York Stock Exchange (NYSE) and the NASDAQ revised their listing rules, and the SEC approved those changes on 11/4/03.[25] Among other requirements, the NYSE and NASDAQ now require that the audit committees of listed companies have written charters, and that the charters contain specific provisions.[26]

Unlike the publicly traded companies that are directly subject to these provisions, nonprofit organizations need not have audited financials, need not make their financial statements public (other than through Form 990),[27] and do not have investors who rely on financial statements to make decisions concerning their own finances. (Some have suggested that donors are analogous to investors, but donors do not expect a financial return. Furthermore, while an organization's financial management is not irrelevant to donors, a belief in the mission of the organization is more likely to be a paramount factor in their decisions to make donations.)

Nonetheless, accurate financial statements are fundamental to good management and good corporate governance. At a minimum, the audit committee provisions of the Act should serve as a reminder to all directors of nonprofit

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[19] Senate Report, *supra* note 3 at 24.

[20] Act Section 204.

[21] Senate Report, *supra* note 3 at 21.

[22] Act section 407(a).

[23] Act section 407(b).

[24] *Id.*

[25] See 68 Fed. Reg. 64,154 (11/12/03).

[26] See NYSE, Listed Company Manual, section 303A(7)(c); The NASDAQ Stock Market, Inc., Corporate Governance, Rule 4350(d).

[27] Publicly traded companies must make quarterly and annual reports to the SEC.

organizations that they have a duty to exercise care in fulfilling their obligations as board members. Accordingly, directors should not "rubber stamp" the organization's financials. They should be sure that they understand them, should have an opportunity to communicate directly with the person who prepares them and, if the financial statements are audited, to communicate with the auditor.

Several factors will determine how desirable it is to adopt the audit committee provisions as a way to help the board fulfill its obligations. They include the size and complexity of the organization's finances, whether the organization has paid management that operates the organization on a day-to-day basis largely independent of the board of directors, and whether the organization serves constituencies, such as the public or members, that are not involved in its governance.

Large nonprofit organizations, such as public charities and trade associations, would most likely benefit from adoption of the audit committee provisions. As noted above, in a large organization with a paid management and a board that meets only several times a year, there is a tendency for the board to become dependent on management for information and to lack the independence and resources to be an active overseer. This is true among nonprofits as well as publicly traded companies. The NYSE and NASDAQ requirements for a written charter serve as a useful checklist of issues for a nonprofit organization to consider in tailoring the requirements of the Act to its own needs. Existing or newly formed audit committees should use these requirements as a starting point for drafting their own audit committee charters. A written charter serves as a tool for reaching agreement on the role of the committee, ensuring continuity over time, and establishing procedures that should serve the audit committee well if it faces difficult times or challenges to its authority.

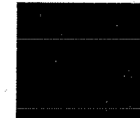
Audit committees of nonprofit organizations should consider reviewing the organization's Form 990 as well as its financial statements. The Form 990 is analogous to a publicly traded company's financial statements in that it is a report to a government agency and is publicly available.[28]

Conduct of executive officers and directors

The stories that filled news coverage of the corporate scandals were the stories of individuals, their actions, and their inactions. Thus, it is hardly surprising that the Act addresses the roles of individual officers as well.

Certification of financial statements. Under the Act, the chief executive officer (CEO) and chief financial officer (CFO) of a publicly traded corporation each must certify in each quarterly and annual report filed with the SEC that he or she has reviewed the report. In addition, each must certify, based on his or her knowledge, that (1) the report does not contain any untrue statement of a material fact or omit a material fact necessary to make the statements in the report not misleading, and (2) the financial statements and other financial information included in the report fairly present in all material respects the financial condition and results of operations of the corporation as of, and for, the periods presented in the report.[29]

Internal controls. In addition to certifying the accuracy of the corporation's financial statements, the signing officers must certify that they have designed and established internal controls to ensure that material information relating to the corporation and its consolidated subsidiaries is made known to the signing officers by others within the corporation, and that the signing officers have evaluated the effectiveness of these internal controls within 90 days prior to the report.[30] The results of the officers' evaluation of the corporation's internal controls must be presented in the report.[31] The report must indicate whether there have been any significant changes in the internal controls, or any other factors that could significantly affect the internal controls subsequent to the date of their evaluation.[32] In addition, the signing officers must certify that they have disclosed to the corporation's auditors and the audit committee all significant deficiencies in the design or operation of the internal controls that could adversely affect the corporation's ability to record, process, summarize, and report financial data, and that they have identified for the corporation's auditors any material weaknesses in the internal controls.[33]



NONPROFITS SHOULD CONSIDER WHETHER A STRICT BAN ON NON-AUDIT SERVICES IS APPROPRIATE.

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[28] See Sections 6033, 6104(d).
[29] Act section 302(a)(1)-(3).
[30] Act sections 302(a)(4)(B), (C).
[31] Act section 302(a)(4)(D).
[32] Act section 302(a)(6).
[33] Act section 302(a)(5)(A).

Finally, the signing officers must certify that they have disclosed to the corporation's auditors and the audit committee any fraud, whether or not material, that involves management or other employees who have a significant role in the corporation's internal controls.[34] The Act makes the signing officers personally responsible for the corporation's internal controls and makes knowing or willful certification of incorrect information a crime.[35]

Signing corporate tax returns. Section 1001 of the Act embodies the sense of the Senate that the federal income tax returns of publicly traded corporations should be signed by their CEOs. The Act does not expressly require such signatures.

The Act's requirements that the CEO and CFO certify the company's financial statements are intended to hold management responsible for the financial representations of their companies.[36] These provisions also contribute to the Act's objective of ensuring the accuracy of financial statements that serve as the basis of investors' decisions. Because these requirements, and the penalties for false certifications, do not apply to the CEOs and CFOs of nonprofit organizations, these provisions cannot be adopted in a meaningful way by nonprofit organizations.

THERE IS A TRADE-OFF BETWEEN ROTATING THE LEAD PARTNER AND HAVING THE BENEFIT OF THE FIRM'S MOST EXPERIENCED JUDGMENT.

The lesson that nonprofit CEOs can draw from these provisions is that they should not fully delegate responsibility for financial management of the organization to the CFO. For CFOs, the Act provides a reminder of the importance of good internal controls. Nonprofits should review their internal controls and make changes as necessary to strengthen them. Nonprofit audit committees should inquire about the effectiveness of internal controls, and auditors should review internal controls and report their findings to the audit committee as part of the audit. Finally, nonprofit audit committees should require management to report any fraud that involves management or other employees with a significant role in the organization's system of internal controls.

The provision of the Act that best lends itself to adoption by nonprofit organizations is the sense of the Senate that CEOs should sign companies' tax returns. There have been recent complaints from the IRS that many nonprofit organizations are filing Form 990s that are incomplete. Requiring CEOs to sign Form 990s would be one way to encourage review of the returns at the highest level. As noted above, because the Form 990 is the primary source of public information about a tax-exempt organization, the audit committee should also consider reviewing it in the same manner that it reviews the organization's financials.

Conflicts of interest. The Act requires the SEC to issue regulations requiring each publicly traded corporation to disclose whether or not such corporation has adopted a code of ethics for its senior financial officers and if not, why not.[37] The Act defines "code of ethics" as "such standards as are reasonably necessary to promote":[38]

1. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.
2. Full, fair, accurate, timely, and understandable disclosure in the corporation's periodic reports.
3. Compliance with applicable governmental rules and regulations.

Another provision aimed at heading off conflicts of interest prohibits publicly traded corporations from extending credit in the form of personal loans to their executive officers and directors.[39] The prohibition does not apply to home improvement loans, consumer credit, charge cards, and certain other types of credit.

Because it is a response to corporate financial and accounting scandals, the Act focuses on the need for ethical behavior by financial officers. Like other provisions of the Act, one of the objectives of these provisions is to restore the public's confidence in the accuracy of financial information released by publicly traded companies. Nonprofit organizations should, of course, expect ethical behavior, not only of their financial officers, but of all their officers, directors, and employees. Thus, nonprofit organizations considering adoption of this provision may want to take a broader view of the issue than the Act. Nonprofit organizations should give consideration to each of the three components of the code of ethics required by the Act.

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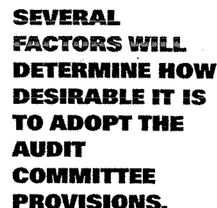
[34] Act section 302(a)(5)(B).
[35] Act sections 302(a)(4)(A), 906(c).
[36] Senate Report, *supra* note 3 at 25
[37] Act section 406(a).
[38] Act section 406(c).
[39] Act section 402(a).

First, organizations should have conflicts of interest policies that require disclosure of conflicts of interest by directors, officers, and employees, and should have a process for dealing with conflicts. Typically, a conflicts of interest policy requires that those whose independent judgment in a matter could be affected (or appear to be affected) by other interests may not participate in discussions and decisions on such matter.[40] Second, for nonprofit organizations, the requirement of full, accurate, and timely disclosure in periodic reports should be adapted to apply to Form 990. As noted above, Form 990 is the federal filing requirement for tax-exempt organizations and must be made available to the public. As such, it is already analogous to reports filed with the SEC by publicly traded companies. Third, it would seem to go without saying that nonprofit organizations should comply with applicable governmental rules and regulations. Adoption of policies that embody these standards can be helpful in removing any doubt as to an organization's expectations and standards.

Personal loans to officers and directors of nonprofit corporations are already governed by a number of laws and regulations. Several state statutes prohibit nonprofits from making loans to officers and directors.[41] Further, loans to officers and directors may violate the federal income tax law prohibition against private inurement.[42] Finally, a loan to an officer or director that is not properly justified as compensation or otherwise as payment for goods or services may lead to imposition of intermediate sanctions on the recipient of the loan and the officers and directors who approved it.[43]



SEVERAL FACTORS WILL DETERMINE HOW DESIRABLE IT IS TO ADOPT THE AUDIT COMMITTEE PROVISIONS.

Conclusion

Although most provisions of the Sarbanes-Oxley Act are not directly applicable to nonprofit corporations, the Act seems destined to have an impact on nonprofit corporate governance. Adoption or adaptation of many of the Sarbanes-Oxley provisions will contribute to improved corporate governance of nonprofit organizations, particularly of large organizations with professional management. Nonetheless, nonprofit organizations should be attentive to the policies underlying the Sarbanes-Oxley Act, and to the differences between the publicly traded companies to which it applies and nonprofit organizations. Before adopting any provisions of the Act, a nonprofit organization should be satisfied that doing so will truly contribute to improved corporate governance. ■

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[40] See www.irs.gov for a sample conflicts of interest policy for a heath care organization.

[41] See, e.g., D.C. Code section 29-301.28; Ala. Code section 10-3A-45; Fla. Stat. tit. xxxvi, section 617.0833; N.Y. Not-for-Profit Corporation Law, Section 716.

[42] Section 501(c)(3); Reg. 1.501(c)(3)-1(c)(2).

[43] See Section 4958.