Now updated! Your guide to the latest SOX legislation and compliance requirements

Sarbanes-Oxley

FOR DUMMIES®

2nd Edition

Strategies for staying public or going private

A Reference for the Rest of Us!®

FREE eTips at dummies.com®

Jill Gilbert Welytok, JD, CPA
Attorney and Sarbanes-Oxley Consultant

Now updated! Your guide to the latest SOX legislation and compliance requirements

Sarbanes-Oxley

FOR DUMMIES®

2nd Edition

Strategies for staying public or going private

A Reference for the Rest of Us!®

FREE eTips at dummies.com®

Jill Gilbert Welytok, JD, CPA
Attorney and Sarbanes-Oxley Consultant

Sarbanes-Oxley For Dummies, Second Edition

by Jill Gilbert Welytok, JD, CPA

Wiley Publishing, Inc.

Sarbanes-Oxley For Dummies, Second Edition®

Published by
Wiley Publishing, Inc.
111 River St.
Hoboken, NJ 07030-5774
www.wiley.com

Published by Wiley Publishing, Inc., Indianapolis, Indiana

Published simultaneously in Canada

Website may provide or recommendations it may make. Further, readers should be aware that Internet Websites listed in this work may have changed or disappeared between when this work was written and when it is read.

For general information on our other products and services, please contact our Customer Care Department within the U.S. at 877-762-2974, outside the U.S. at 317-572-3993, or fax 317-572-4002.

For technical support, please visit www.wiley.com/techsupport.

Wiley also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books.

Library of Congress Control Number: 2008920765

ISBN: 978-0-470-22313-0

Manufactured in the United States of America

10 9 8 7 6 5 4 3 2

About the Author

Jill Gilbert Welytok, JD, CPA, LLM, practices in the areas of corporate, nonprofit law, and intellectual property. She is the founder of Absolute Technology Law Group, LLC (www.abtechlaw.com). She went to law school at DePaul University in Chicago, where she was on the Law Review, and she picked up a Masters Degree in Computer Science from Marquette University in Wisconsin, where she now lives. Ms. Welytok also has an LLM in Taxation from DePaul. She was formerly a tax consultant with the predecessor firm to Ernst & Young. She frequently speaks on nonprofit, corporate governance, and taxation issues and will probably come speak to your company or organization if you invite her. You may e-mail her with questions you have about Sarbanes-Oxley or anything else in this book at jwelytok@abtechlaw.com. You can find updates to this book and ongoing information about SOX developments at the author's Web site, located at www.abtechlaw.com.

Dedication

To Dan.

Author's Acknowledgments

Several exceptional professionals (whom I call The SOX SWAT Team) contributed their time and expertise reviewing and making technical edits to this book. Feel free to e-mail or call them with questions you may have about Sarbanes-Oxley that weren't answered in this book.

Amy R. Seibel. Amy is an attorney and a CPA with Absolute Technology Law Group, LLC. Amy is an AV-rated attorney (highest rating available for lawyers) with more than 25 years of experience in legal, business, tax, and financial matters. She has practical experience as well, having previously served as CEO/CFO for two separate manufacturing businesses. More recently, she assisted several large public companies in the documentation, testing, and remediation phases of their SOX internal controls compliance initiatives. She also served as a technical editor for *Nonprofit Law & Governance For Dummies*. She is past president of the Association for Women Lawyers and past chairman of the Wisconsin and Milwaukee Bar Association Tax Sections.

Richard Kranitz, JD — Kranitz & Philipp. Rich has been an attorney in private practice since 1970, emphasizing securities, banking, and business law. He has served as venture capital consultant to, and director

of, various private companies and a number of professional, civic, and charitable organizations.

Ronald Kral, CPA, CMA — Candela Solutions, LLC. Ron knows auditing and consulting well, having assisted more than 200 clients as a Principal Consultant at PricewaterhouseCoopers and Managing Director of a statewide CPA firm, where he worked extensively with Ernst & Young. Ron is a nationally recognized speaker on governance, business ethics, internal controls, and the Sarbanes-Oxley Act of 2002, including the COSO and COBIT frameworks, NYSE and NASDAQ requirements, PCAOB standards, and SEC regulations. Ron is also a Director of Financial Executives International's Milwaukee Chapter. He can be reached at rkral@candelasolutions.com.

Anna Klement. Anna has completed coursework in computer engineering at the Milwaukee School of Engineering and also has a journalism degree from the University of Wisconsin-Milwaukee. Anna also has three years of experience as an IBM applications developer at a major Milwaukee-based food manufacturing firm, along with various freelance projects including Web and graphic design and technology consulting.

Daniel S. Welytok, JD, LLM — Whyte Hirschboeck Dudek S.C. Dan is a partner in the business practice group of Whyte Hirschboeck Dudek S.C., where he concentrates in the areas of taxation and business law. Dan advises clients on strategic planning, federal and state tax issues, transactional matters, and employee benefits. He represents clients before the IRS and state taxing authorities concerning audits, tax controversies, and offers in compromise. He has served in various leadership roles in the American Bar Association and as

Great Lakes Area liaison with the IRS. He can be reached at dsw@whdlaw.com.

Publisher’s Acknowledgments

We’re proud of this book; please send us your comments through our Dummies online registration form located at www.dummies.com/register/.

Some of the people who helped bring this book to market include the following:

Acquisitions, Editorial, and Media Development

Project Editor: Natalie Faye Harris

(Previous Edition: Tim Gallan)

Acquisitions Editor: Lindsay Lefevere

(Previous Edition: Kathy Cox)

Copy Editor: Jessica Smith

(Previous Edition: Elizabeth Rea)

Editorial Program Coordinator: Erin Calligan Mooney

Technical Editor: Amy Seibel

Editorial Manager: Christine Beck

Editorial Assistants: Leeann Harney, David Lutton, Joe Niesen

Cartoons: Rich Tennant (www.the5thwave.com)

Composition Services

Project Coordinator: Kristie Rees

Layout and Graphics: Stacie Brooks, Alissa D. Ellet, Melissa K. Jester, Christine Williams

Proofreaders: John Greenough, Todd Lothery, Toni Settle

Indexer: WordCo Indexing Services

Publishing and Editorial for Consumer Dummies

Diane Graves Steele, Vice President and Publisher, Consumer Dummies

Joyce Pepple, Acquisitions Director, Consumer Dummies

Kristin A. Cocks, Product Development Director, Consumer Dummies

Michael Spring, Vice President and Publisher, Travel

Kelly Regan, Editorial Director, Travel

Publishing for Technology Dummies

Andy Cummings, Vice President and Publisher, Dummies Technology/General User

Composition Services

Gerry Fahey, Vice President of Production Services

Debbie Stailey, Director of Composition Services

Contents

: Further Reading

Introduction

Welcome to *Sarbanes-Oxley For Dummies,* 2nd Edition. Whether you're a CEO or CFO, governance officer, CPA, manager, entrepreneur, file clerk, or cleric, this book is for you. It's designed to tell you where you fit into the grand scheme of corporate compliance and why you're being asked to do what you do by your board of directors, banker, customers, and clients.

Having the big picture straight in your mind helps ensure that you won't lose track of the minutiae and details that accompany the sweeping piece of legislation that is Sarbanes-Oxley, whether you're gearing up for initial compliance or attempting to streamline in subsequent years. If you're part of a private company or not-for-profit, I offer special congratulations to you. After all, you're savvy enough to know that Sarbanes-Oxley is here to stay and that it's becoming the gold standard for fair, ethical, and efficient business practices (whether you're obligated to comply or not).

About This Book

The Sarbanes-Oxley Act, or SOX as it's affectionately called in the world of corporate governance, is a responsive piece of legislation. Like the securities laws passed in the 1930s, SOX was passed in response to a

real crisis and to genuine public outrage. It sailed through Congress on a wave of bipartisan support surprisingly free of lobbying and loophole legislating. Instead, Congress left the details to the Securities and Exchange Commission (SEC) and the newly created Public Company Accounting Oversight Board (PCAOB). This book walks you through SOX's rather piecemeal rules and pronouncements and gives you a sense of how to anticipate future trends and traps in this area of the law.

The goal of *Sarbanes-Oxley For Dummies,* 2nd Edition, is to give you a helicopter view of the regulatory terrain while helping you focus a beam on the key details of the legislation. This book is intended to give you a sophisticated understanding of the purpose and structure of the legislation as it affects many disciplines and areas of the law. This book is sure to empower you with the level of insight you need for practical, cost-effective decision-making. It will assist you with the following:

- **Understanding why SOX was passed:** Looking at the kind of conduct SOX was intended to combat can help you create meaningful standards for the company with which you work or are affiliated.
- **Instituting cost-effective compliance with SOX:** This book's practical view of the legislation can keep you from becoming bogged down in regulatory details and allowing lawyers and accountants to go off on expensive tangents that have little to do with the essence of SOX.

- **Finding answers on specific SOX issues:** This book explains how and where to find SEC rules and pronouncements that are critical to implementation of SOX and translates those rules into plain English.
- **Avoiding lawsuits and regulatory actions:** This book, although not intended to be a substitute for a good securities lawyer or a CPA, takes a hard look at who gets sued under SOX and how you can avoid having your company or yourself added to the list of litigants.
- **Anticipating future rules and trends:** SEC rules and PCAOB pronouncements under SOX continue to be issued with regularity. But with a comprehensive understanding of what the law is designed to do, you'll be less surprised by what's ultimately issued.

Conventions Used in This Book

It's unfortunate, but understanding SOX means that you're going to run into lots of legal jargon and accounting minutiae. To give you a jump start, I define some legal and accounting terms in this book and use *italic* font to make such terms stand out a bit. I also use **boldfaced** words to highlight key words in bulleted lists and numbered steps. `Monofont` indicates Web addresses, which I refer to often.

When this book was printed, some Web addresses may have needed to break across two lines of text. If that happened, rest assured that we haven’t put in any extra characters (such as hyphens) to indicate the break. So, when using one of these Web addresses, just type in exactly what you see in this book, pretending as if the line break doesn’t exist.

What You’re Not to Read

I occasionally wander off-topic to discuss something historical, technical, or interesting (or, at least, interesting to me!). In these instances, I set the discussions apart by placing them in sidebars, which are the gray boxes you’ll see from time to time throughout the book. Because the text in sidebars is nonessential, feel free to skip it if it doesn’t interest you.

Foolish Assumptions

When writing this book, I had to make a few assumptions about who my readers would be and what kind of information they’d be looking for. This section explains those assumptions. For example, I assume you want to understand the Sarbanes-Oxley Act in a way you can’t achieve by suffering through the 80-some pages of the statute and 1,000 or so pages of related congressional hearings. You want to make sure you have a handle on

the important aspects of the legislation, how it affects you and your company, and how companies can comply most cost-effectively.

Additionally, if you're a service provider such as a lawyer or CPA, I assume that you're looking for insight into the following tasks — insights you would glean from the legal and accounting professionals involved in writing this book (whose credentials and accomplishments are listed on the acknowledgments page):

- Recognizing and creating a legally effective, fully compliant corporate governance framework
- Determining what aspects of SOX apply to your company or should be voluntarily adopted by your company (whether it's publicly traded, privately held, or not-for-profit)
- Managing and streamlining Section 404 compliance as well as seizing opportunities and benefiting from information resulting from the unprecedented testing and documentation of business processes all across the United States
- Interpreting media accounts, court cases, and economic projections involving SOX

How This Book Is Organized

Sarbanes-Oxley is an extremely broad piece of legislation, spanning legal, accounting, and information technology disciplines, so this book is chock-full of information. But not to worry: The index and table of contents will help you find your way. The chapters in this book treat each topic independently without assuming you've read previous chapters (as a textbook might), so you can use them as references and jump around to find what you need. This book is divided into six parts, which I explain in the following sections.

Part I: The Scene Before and After SOX

This part of the book starts at the beginning, explaining why SOX was passed and taking you on a tabloid tour of the corporate scandals that inspired it — Enron, WorldCom, Adelphia, Global Crossing, and more. These chapters shock you with tales of greed and manipulation and walk you section-by-section through the legislation, explaining what each provision is intended to accomplish.