

## Viewpoint: Sarbanes Oxley Meets the Private Company (Or, Fear and Loathing in the Small Company Boardroom)

By John Santa

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*We're from the government and we're here to help you!* Now there is a statement sure to instill fear in the heart of any entrepreneur. In the past two years, one particular form of “help” that we have received is in the form of the Sarbanes-Oxley Act (SOX) and the compliance nightmare that it has sired. But smaller, private, and closely held corporations have considered themselves beyond the scope of interest of these particular governmental compliance cops. My advice to those firms would be to proceed with some caution, as well as substantial reflection, before dismissing the implications of SOX in their world. The purpose of this piece is to proffer some thoughts for consideration to those smaller firms as to why they might either fear SOX (even though it is designed for public firms) or might welcome SOX mandates as an outstanding governance and growth opportunity.

Probably the greatest reason for fear is the well-known “camel’s nose in the tent” syndrome. The fact is that the government is already in the business of regulating boardroom and director activity. It’s only a question of time before they do more of it in different places. And then we have the compliance mandates . . .

This is where the fear factor for the private firm really goes elliptical: What if the reports are huge? Or what if they require attorneys, accountants, and experts of one type and another? What about insurance and risk exposure? Just imagine the valuable staff time being burned up! All of these fears are real and substantial. And they are well known to those smaller independent firms who already must comply with OSHA, COBRA, DOT, and all of the other acronymic monsters that eat up their hard-earned profits. So if this opportunity of government “help” can pass, it might be a good thing. But are all the SOX implications bad for private firms? Perhaps not.

Consider this: Best practices are best practices no matter what size firm employs them. For instance, independent directors should always act independently, irrespective of the size of the firm, or the board or the director’s fee. When they don’t, shareholders can get hurt, can’t they? So, let’s remember that SOX is not entirely Byzantine bureaucratic blather; it actually encompasses and mandates many boardroom activities that are both proactive and helpful to corporate health and well being.

Secondly, smaller firms that more likely rely on private or banking sources for funding will find that credit

grantors take substantial comfort in knowing that the private firm is going the extra mile with its boardroom discipline. It helps those lenders to know that their money is being very well cared for, and will therefore be much more likely to return to its rightful owner in a timely fashion—accompanied by the requisite rental fees.

Finally, a good SOX-minded (if not SOX-compliant) private company may be contemplating going public. Having conducted themselves in this manner, they will find the transition much less shocking and onerous as they venture out into the deep blue sea of public offerings.

Living and acting upon some, many, or most SOX mandates will inevitably lead to effective governance and board member activity. This will substantially encourage ethical and effective boardroom behavior. In turn, that will help corporate endurance and success, and the very likely increase in shareholder value. And that’s what it is all about, isn’t it?

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**Ed. Note:** Viewpoints express the opinions of individual NACD members and do not necessarily reflect the views of NACD, its directors, officers, or other members.