

# **Boiled SOX: The Document & Records Management Requirements Of The Sarbanes Oxley Act**

For most organizations it was just enough to comply with the Sarbanes-Oxley Act (SOX) through brut force the first year. Will you continue using spreadsheets, Word documents, and file shares to manually organize the documentation, controls testing and issue remediation going forward? And how do you deal with outdated or multiple versions of this critical information? Complying with Sarbanes-Oxley is a continual process. Not only does this process repeat again next year, but the controls and documentation must change as an organization's processes change or the requirements imposed change.

Many organizations are storing their SOX documents and documentation in network file shares but this does not address the records management requirements called out very specifically in SOX Sections 301, 302, 403, 802, and 1102. Most notably, Section 1102 has the teeth that states that "someone who knowingly alters or destroys documents or records shall be fined or imprisoned not more than 20 years, or both." Although not called out specifically in many sections of the Act, there are significant document and records management requirements called out in many sections.

The following White Paper highlights the specific sections in the Sarbanes-Oxley Act which identify requirements for document and records management.

## ***TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD***

### ***SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.***

- (2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—
- (A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—
    - (i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;
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    - (iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

- (I) the findings of the auditor from such testing;
- (II) an evaluation of whether such internal control structure and procedures—
  - (aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

#### **SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.**

(e) **RECORD RETENTION**.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

#### **SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.**

(b) INVESTIGATIONS.—

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

### **TITLE II—AUDITOR INDEPENDENCE**

#### **SEC. 202. PREAPPROVAL REQUIREMENTS.**

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

“(i) PREAPPROVAL REQUIREMENTS.—

“(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

#### **SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.**

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

“(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

“(1) all critical accounting policies and practices to be used;

“(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

“(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.”.

### **TITLE III—CORPORATE RESPONSIBILITY**

#### **SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.**

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

“(4) COMPLAINTS.—Each audit committee shall establish procedures for—

“(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

“(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

#### **SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.**

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer’s knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer’s knowledge, 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 issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

## ***TITLE IV—ENHANCED FINANCIAL DISCLOSURES***

### ***SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.***

#### **“SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.**

##### **“(a) DISCLOSURES REQUIRED.—**

“(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

##### **“(4) ELECTRONIC FILING AND AVAILABILITY.—**

Beginning not later than 1 year after the date of enactment of the Sarbanes Oxley Act of 2002—

“(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

“(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

“(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.”

## **TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY**

### **SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.**

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

“§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in 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 or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

“§ 1520. Destruction of corporate audit records

“(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

“(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

“(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

“(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

“**1519.** Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

“**1520.** Destruction of corporate audit records.”.

## **TITLE XI—CORPORATE FRAUD ACCOUNTABILITY**

### **SEC. 1101. SHORT TITLE.**

This title may be cited as the “Corporate Fraud Accountability Act of 2002”.

### **SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.**

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

“(c) Whoever corruptly—

“(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or

“(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.”.