Dodd-Frank and Sarbanes-Oxley

The Two Statutes That Reshaped Board Oversight of Financial Reporting and Pay

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01 Two Statutes, One Theme

Each was enacted after a crisis and pushed oversight onto the board

SARBANES-OXLEY (2002)

- Enacted after Enron and WorldCom to restore confidence in financial reporting
- Centers on financial-statement accuracy and internal controls
- Requires management to personally certify results
- Empowers a fully independent audit committee

DODD-FRANK (2010)

- Enacted after the 2008 financial crisis to address misconduct and systemic risk
- Centers on executive pay, incentives, and whistleblowers
- Creates SEC bounty awards for reporting violations
- Expands shareholder voice and pay governance

02 Sarbanes-Oxley: Core Board Duties

SOX made financial-reporting integrity a board-level obligation

CERTIFICATION AND CONTROLS

- § 302: the CEO and CFO personally certify each periodic report
- § 404: management assesses internal control over financial reporting
- § 906: knowing false certification is a crime
- § 802: destroying or altering records is a federal crime

AUDIT COMMITTEE AND OVERSIGHT

- § 301: the audit committee must be fully independent
- § 301: the committee oversees the outside auditor
- § 301: confidential channels for accounting concerns
- § 806: whistleblower protection against retaliation

Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745.

03 Dodd-Frank: The Boardroom Impact

Dodd-Frank reached directly into executive pay and governance

EXECUTIVE COMPENSATION

- § 951: shareholder advisory vote on pay (say-on-pay)
- § 952: independent compensation committee rules
- § 953: pay-versus-performance and pay-ratio disclosure
- § 954: clawback of erroneously awarded incentive pay

WHISTLEBLOWER PROGRAM

- § 922: SEC awards of 10 to 30 percent of sanctions over $1 million
- Awards for original information leading to enforcement
- Strong anti-retaliation protection
- A direct incentive to report to the SEC

Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); 17 C.F.R. § 240.10D-1.

04 The Whistleblower Dynamic

A strong internal program is the board's best defense against the bounty

WHY EMPLOYEES GO TO THE SEC

- Awards can reach tens of millions of dollars
- No requirement to report internally first
- Fear of retaliation despite legal protection
- A sense that internal concerns are ignored

WHAT THE BOARD SHOULD EXPECT

- A trusted, well-publicized reporting channel
- Prompt, independent investigation
- Visible enforcement of non-retaliation
- Regular trend reporting to the audit committee

The Board’s Oversight Agenda

Five areas where these statutes place accountability on directors

1. **Audit Committee Independence** An independent committee over the auditor, controls, and complaints.
2. **Certification and ICFR** Management certifications and control assessments under §§ 302 and 404.
3. **Clawback Enforcement** A compliant recovery policy for erroneously awarded incentive pay.
4. **Compensation Governance** Independent pay committee, say-on-pay, and required disclosures.
5. **Speak-Up Culture** An internal reporting program that competes with the SEC bounty.