

Sarbanes-Oxley and the Privately Held Company

As a result of the much-publicized failures of Enron and WorldCom to protect its investors and financial markets by grossly manipulating and falsifying their reported earnings, the Sarbanes-Oxley Act was signed into legislation. The focus of this legislation is to restore investor confidence in the U.S. capital markets.

This legislation has raised new barriers and substantial costs for companies subject to SEC reporting and for those eyeing entry into the public markets as a means to raise needed growth capital. Section 404 of the Act requires companies to fully document and test their internal accounting controls. Auditors will now have to sign a separate report attesting to the adequacy of these controls. The work involved with documentation, testing and remediation to prepare for compliance is no small task.

In addition to these new requirements, CEOs and CFOs are required to certify their SEC financial and internal control reports. Misstatement of financial results now brings substantial personal liability to these executives.

While expressly applicable to public companies, the Act should have an almost equivalent effect on privately held companies to the extent the latter expect to:

- raise money
- be acquired
- go public
- need directors and officers insurance
- borrow money/ need line of credit
- work with large customers who may require Sarbanes Oxley standards from suppliers

The dates for publicly traded companies to comply with rules under the Securities Exchange Act of 1934 that were adopted on June 5, 2003, pursuant to Section 404 of the Sarbanes-Oxley Act have been extended. Under the new compliance schedule, a company that is an "accelerated filer" defined as a U.S. company that has equity market capitalization over \$75 million and has filed at least one annual report with the SEC, must begin to comply with 404 for its first fiscal year ending on or after Nov. 15, 2004 (originally June 15, 2004). A non-accelerated filer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2005 (originally April 15, 2005).

The SEC similarly has extended the compliance date for related requirements regarding evaluation of internal control over financial reporting and management certification requirements, including certification and related requirements applicable to registered investment companies.

If you need assistance with your Sarbanes-Oxley compliance requirements, please contact Harvest CFO Consulting by telephone 724-934-4752, or e-mail dhillier@harvestcfo.com. Also, please visit our website at www.harvestcfo.com.

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