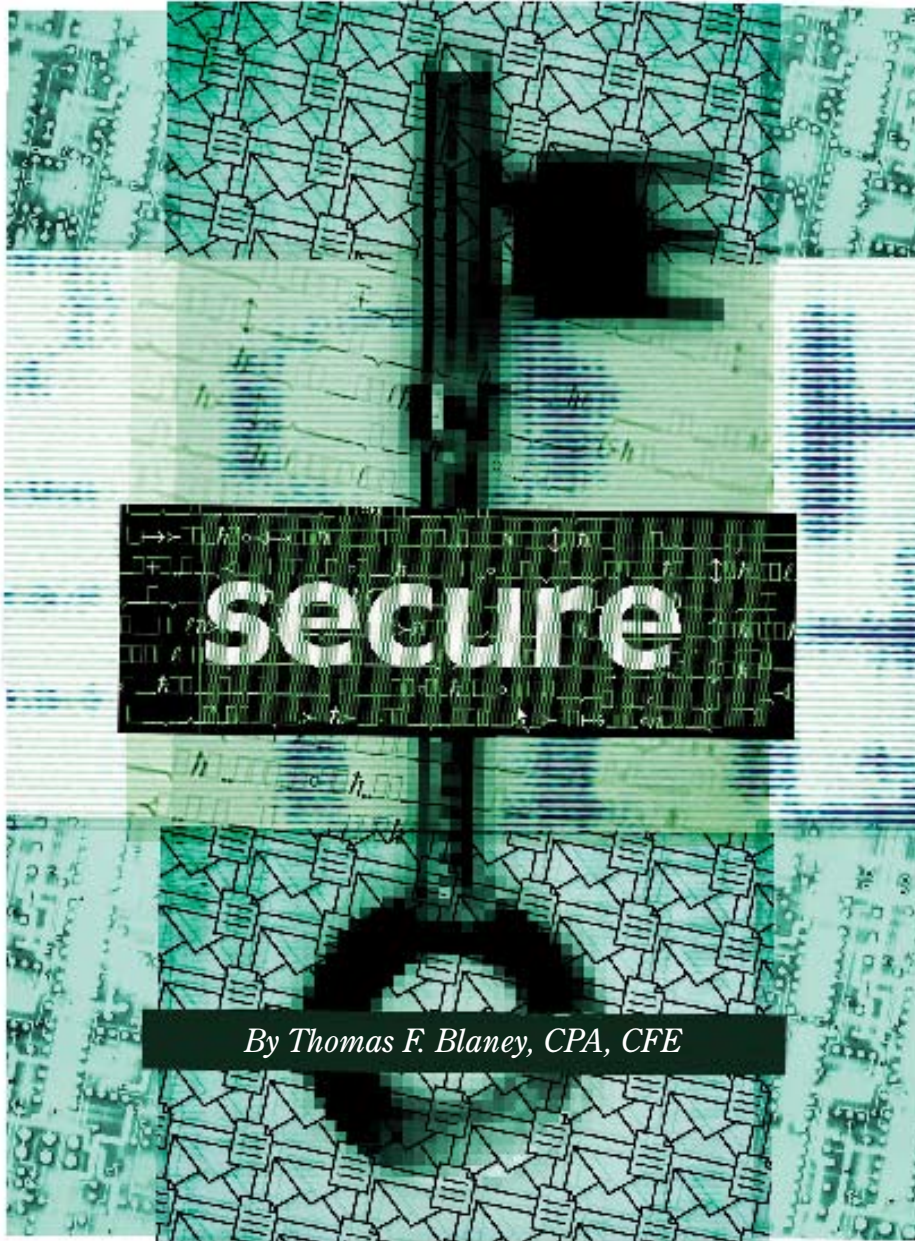


THE SARBANES OXLEY ACT

How Does it Affect Clubs?



By Thomas F. Blaney, CPA, CFE

While the Act is aimed at publicly traded corporations, certain provisions may be adopted as prudent policies by the club industry. Board members, club managers and club controllers should review the provisions of the Sarbanes Oxley Act to determine which, if any, of the provisions their club may voluntarily adopt.

During July 2002, Congress passed the Sarbanes-Oxley Act in primary response to accounting scandals that rocked the corporate world. While the Act is aimed at publicly traded corporations, certain provisions may be adopted as prudent policies by the club industry.

boardmembers, club managers and club controllers should review the provisions of the Sarbanes-Oxley Act to determine which, if any, of the provisions their club may voluntarily adopt. Sarbanes-Oxley requires that public companies have an audit committee, and that at least one member of the audit committee be a “financial expert.” Many clubs do not have a formal audit committee, but instead have a finance committee or executive committee that functions like an audit committee. It is now probably prudent and practical, especially from a pure perception point of view, for a club to establish a formal audit committee. The establishment of an audit committee may require an amendment to the club’s bylaws. If the club files a 990 tax return, this amendment may have to be attached to the federal form 990 tax return in the year of the amendment. The club should also verify that there is adequate comprehensive liability insurance for audit committee members.

Audit Committees

Ideally, the audit committee should be comprised of board members who have no financial or conflicting interest with the club. Although most clubs do not compensate their board members, some clubs allow their members, and even board members, to do business with the club. For example, it is not uncommon in the club industry that the club’s insurance agent be a member of the club. At some clubs, the club’s banker, lawyer or food purveyor may also be a club member. Any board member that performs any type of business with the club should not be on the audit committee. Furthermore, at least one member of the audit committee should be considered a “financial expert” by having sufficient experience in the financial world.

The primary purpose of the audit committee will be to assist the club’s board of directors in fulfilling their duties to oversee the reliability and integrity of the accounting and financial reporting and

disclosure practices at the club. The audit committee should also monitor the club's internal controls and oversee the club's annual financial statement audit.

The auditing committee should select an auditing firm that has the experience to apply auditing procedures to the club. Sarbanes-Oxley requires that at a minimum, the engagement partner and reviewing partner of the auditing firm rotate off the audit every five years. While it is probably a prudent act to change the engagement and reviewing partner every five years, it probably is unadvisable to rotate the club's auditors. The reason for this is that since club board members frequently change, an auditing firm can sometimes supply some of the background and history of a particular issue or a past event. Of course, if the auditing firm is not responsive to the club's needs or there is dissatisfaction with fees, a review of the auditing firm may be in order.

Whistle-blower Protection

Provisions of the Sarbanes-Oxley act provide protection to employees who report illegal or unethical activities in a corporation. A club should develop procedures for addressing complaints from employees. It is illegal for the club to punish the whistle-blower in any manner, even if the complaint is unfounded. It is also a prudent policy to have an organization

chart whereby the club controller's reporting requirements are delineated. The club controller has a dual reporting requirement. The club controller should furnish the general manager with timely financial information, but must also be the eyes and ears of the board. Simply stated, the club controller should report to both the general manager and the board. However, it is imperative that the ultimate hiring or firing of a club controller be performed by the club treasurer or a representative of the board.

Conflict of Interest Policy and Disclosure

It is also prudent for a club to adopt a conflict of interest policy. (See attached example of a conflict of interest policy for a private club). Many types of organizations (public companies and nonprofit organizations) are requiring their board members and management employees to annually sign a conflict of interest statement. Some clubs go a step further and include in their bylaws a provision forbidding the club from doing business with members. In order to attract certain key employees (i.e. general managers and green superintendents) some clubs have begun offering loans for housing. These loans should be approved by the Board. The amount and terms of the loan should be contained in a formal document that

is signed by both the club employee and a board officer. Furthermore, if the club files a federal form 990 tax return, the details of the loan may have to be disclosed.

Preservation of Documents

Provisions of Sarbanes-Oxley address the destruction of documents that may be used in litigation. Clubs should have in place a documented record retention system. Nowadays, record retention policies should also contain guidelines for handling electronic filings, including e-mails. Keep in mind that it is a crime to destroy or alter any document that may be used in a federal or state investigation.

Conclusion

Although Sarbanes-Oxley does not apply directly to private clubs, there is a growing sentiment in the private club industry to adopt many of its provisions as "best practices." State legislatures may also pass legislation applying certain provisions of Sarbanes-Oxley to nonprofit organizations. Although this legislation will initially be aimed at charitable organizations (i.e., hospitals, schools, etc.) it would probably be prudent for nonprofit private clubs to also adopt. Boards that are proactive in adopting provisions of Sarbanes-Oxley will strengthen their internal organization and dramatically improve the club's oversight responsibilities. ■

Example: Conflict of Interest Policy for a Private Club

Board members and management employees of the Club shall exercise their responsibilities with loyalty and care to the Club and shall not use their positions for personal advantage or for the advantage of their families. To serve loyally, each board member and employee shall identify and be conscious of conflicts between personal interests and the Club's interests and act with candor and care in disclosing and resolving conflicts. Each board member and employee shall acknowledge and discharge his or her duty to disclose actual and potential conflicts of interest. The following guidelines will assist board members and employees in discharging their duties of loyalty and care.

1. Board members and employees shall not receive any payment, commercial benefit or gifts in excess of \$_____ annually from any entity or person providing services or products to the Club or seeking to provide such services unless approved by the Board.
2. Board members and their immediate family members shall not provide paid service or product to the Club unless approved by the Board.
3. Board members and employees shall disclose any professional or personal relationship with any company doing business with the Club.
4. In the normal course of business, board members and employees shall be sensitive to any personal or business interest in a decision to be made.

To ensure compliance with the conflict of interest policy, each board member and management employee shall agree to comply with this policy and complete a conflict of interest statement every year.

The board will have responsibility for ensuring compliance with this policy administering the annual questionnaire and making decisions as required to avoid actual conflicts of interest. The board will also review and revise this policy as needed.

I have read and reviewed this policy and I agree to comply. (The employee needs to sign and date this statement.)