



A Roadmap to Capital Market Reforms

How do the recently-issued U.S. and Canadian rules relate to the Sarbanes-Oxley Act

(Last Updated: April 2009)

The Sarbanes-Oxley Act of 2002 represents a significant effort toward reform in the capital markets in the aftermath of high-profile cases of corporate, management, accounting, and auditing failures. The provisions of the Act significantly affect the level of responsibility and accountability of executive management and the audit committee.

In the U.S., several ruling activities have taken place since 2002 to implement the Sarbanes-Oxley Act provisions. Similar activities have also taken place in the Canadian capital market.

These changes, aimed at restoring investor confidence, broadly impact a number of stakeholders and constituencies in the marketplace, including management of public companies, public accounting firms, audit committees, and others including regulators and standard setters, investors, investment firms and analysts, and attorneys.

11 sections of the Sarbanes-Oxley Act

This roadmap provides an overview of all the new rules to help you understand how they relate to the 11 sections of the Sarbanes-Oxley Act, which are:

1. Public Company Accounting Oversight Board
2. Auditor Independence
3. Corporate Responsibility
4. Enhanced Financial Disclosures
5. Analyst Conflicts of Interest
6. Commission Resources and Authority
7. Studies and Reports
8. Corporate and Criminal Fraud Accountability
9. White Collar Crime Penalty Enhancements
10. Corporate Tax Returns
11. Corporate Fraud and Accountability

Inventory of ruling activities

The following table inventories various ruling activities – both in the United States and Canada – arising from the adoption of the Sarbanes-Oxley Act of 2002.

	United States	Canada
1. Public Company Accounting Oversight Board		
PCAOB Appointments (Section 101)	SEC Announces Founding Members of Public Company Accounting Oversight Board (October 25, 2002)	The Canadian Public Accountability Board (CPAB-CCRC) (July 2002)
Principles-Based Accounting (Section 108 (d))	Adoption by the United States Financial Reporting System of a Principles-Based Accounting System (SEC/FASB, July 25, 2003)	-
2. Auditor Independence		
Auditor Independence (Sections 201, 202, 203, 204, 206)	<p>Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (SEC, March 8, 2006, PDF)</p> <ul style="list-style-type: none"> Rulemaking Docket 017: Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees (PCAOB) <p>Strengthening the Commission's Requirements Regarding Auditor Independence (SEC Final Rule, January 28, 2003)</p> <ul style="list-style-type: none"> SEC's FAQ 	<p>CICA Independence Standard (October 8, 2003)</p> <p>CSA Multilateral Instrument 52-110 - Audit Committees (CSA, March 26, 2004)</p> <p>Section 204:</p> <ul style="list-style-type: none"> CICA Section 5135, Auditors' responsibility with regards to fraud and error (March 2002) CICA Section 5751, Communications with those having oversight responsibility for the financial reporting process (November 2004)
Mandatory audit rotation (Section 207)	Potential Effects of Mandatory Audit Firm Rotation (GAO, November 2003, PDF)	-
3. Corporate Responsibility		
Audit Committee Standards (Section 301)	<p>Notice of Filing of Proposed Rule Change to Modify the Cure Period Available to an Issuer that Loses an Independent Director or Audit Committee Member (SEC/Nasdaq, June 5, 2006, PDF)</p> <p>Standards Relating To Listed Company Audit Committees (SEC Final Rule, April 9, 2003)</p> <p>Section 303A Corporate Governance Listing Standards (NYSE, November 3, 2004)</p> <ul style="list-style-type: none"> Updated FAQs (PDF) <p>NASDAQ Corporate Governance - Summary of Rules Changes (November 19, 2003, PDF)</p> <ul style="list-style-type: none"> FAQ <p>Amex Board Approves Enhanced Corporate Governance Rules (December 1, 2003)</p>	<p>Canada's Securities Regulators Develop Governance Regime for Investment Funds (CSA, July 28, 2006)</p> <ul style="list-style-type: none"> Notice National Instrument Notice of National Instrument Updated Memorandum from Carol Hansell on IRC member liability <p>CSA National Instrument 58-101, Disclosure of Corporate Governance Practices (CSA, June 2005)</p> <p>National Policy 58-201, Corporate Governance Guidelines (CSA, June 2005)</p> <p>CSA Multilateral Instrument 52-110 Audit Committees and Companion Policy 52-110CP (CSA, June 2005)</p> <p>CBCA s. 171 / Business Corporations Act (Ontario) s. 158</p> <p>CBCA s. 162 / Business Corporations Act (Ontario) s. 149</p>

	United States	Canada
3. Corporate Responsibility (cont'd)		
Management Certification (Sections 302 and 906)	<p>Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports (SEC Final Rule, June 5, 2003)</p> <p>Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms (SEC Final Rule January 27, 2003)</p> <p>Certification of Disclosure in Companies' Quarterly and Annual Reports (SEC Final Rule, August 2002)</p>	<p>CSA Multilateral Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings (CSA amended Rule, October 24, 2008)</p> <p>CSA Multilateral Staff Notice 57-302 Failure to File Certificates Under Multilateral Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings (CSA, February 27, 2004, PDF)</p> <p>Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)</p>
Improper Influence on Audits (Section 303)	Improper Influence on Conduct of Audits (SEC Final Rule, May 20, 2003)	Securities Act (Ontario) s. 122 (1)
Insider Trading During Blackout Periods (Section 306)	<p>Insider Trades During Pension Fund Blackout Periods (SEC Final Rule, January 22, 2003)</p> <p>DOL "blackout period" interim final rules (U.S. Department of Labor, October 18, 2002)</p>	Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)
Responsibilities of Attorneys (Section 307)	Implementation of Standards of Professional Conduct for Attorneys (SEC Final Rule, August 5, 2003)	LSUC Rules of Professional Conduct s. 2.01(1), (2), & 202 (5)
Fair Funds For Investors (Section 308(c))	Report Pursuant to Section 308(c) of the Sarbanes-Oxley Act of 2002	-
4. Enhanced Financial Disclosures		
Off-Balance Sheet Transactions (Section 401(a))	Disclosure in MD&A About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments (SEC Final Rule, January 28, 2003)	<p>CSA National Instrument 51-102, Continuous Disclosure Obligations - Consolidated Version (December 31, 2008)</p> <p>CICA Management's Discussion and Analysis: Guidance on Preparation and Disclosure (CICA, May 2004)</p>
Pro Forma Disclosures (Section 401 (b))	<p>Conditions for Use of Non-GAAP Financial Measures (SEC Final Rule, January 22, 2003)</p> <ul style="list-style-type: none"> Use of Non-GAAP Financial Measures (SEC FAQ) <p>Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date (SEC Final Rule, March 16, 2004)</p>	<p>Improved Communication With Non-GAAP Financial Measures – General Principles and Guidance For Reporting EBITDA and Free Cash Flow (CICA, PDF)</p> <p>CSA Staff Notice 52-303, Non-GAAP Earnings Measures (CSA, January 7, 2002)</p>
Special Purpose Entities (Section 401(c))	FIN 46R, Consolidation of Variable Interest Entities (FASB)	AcG-15, Consolidation of Variable Interest Entities (CICA, September 1, 2004)
Personal Loans (Section 402)	-	Business Corporations Act (Ontario) s. 20(2)
Insider Reporting (Section 403)	Ownership Reports and Trading by Officers, Directors and Principal Security Holders (SEC Final Rule, August 27, 2002)	Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)

	United States	Canada
4. Enhanced Financial Disclosures (cont'd)		
Electronic Reporting by Insiders (Section 403)	<p>Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5 (SEC Final Rule, May 7, 2003)</p> <ul style="list-style-type: none"> • Frequently Asked Questions (SEC) 	<p>Securities Act (Ontario) s. 108 & Regulation s. 167</p> <p>Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)</p>
Internal Control Reports (Section 404)	<p>Amendments to Rules Regarding Management's Report on Internal Control Over Financial Reporting (SEC, August 27, 2007)</p> <p>Definition of a Significant Deficiency (SEC's proposals, July 18, 2007)</p> <p>Management's Report on Internal Control Over Financial Reporting (SEC Guidance, June 27, 2007)</p> <p>Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That is Integrated with an Audit of Financial Statements (PCAOB, May 24, 2007)</p> <p>Internal Control Over Financial Reporting In Exchange Act Periodic Reports Of Non-Accelerated Filers And Newly Public Companies (SEC, December 15, 2006, PDF)</p>	<p>Agreed-upon Procedures Regarding Internal Control over Financial Reporting (CICA Handbook Section 9110, May 2007)</p> <p>CSA Multilateral Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings (CSA amended Rule, October 24, 2008)</p> <p>Staff Notice 52-315, Certification Compliance Review (CSA, September 22, 2006)</p> <p>Staff Notice 52-316, Certification of Design of Internal Control Over Financial Reporting (CSA, September 22, 2006)</p> <p>Regulators Release Proposals on Harmonized Internal Control Reporting Requirements</p> <ul style="list-style-type: none"> • Staff Notice 52-313
Internal Control Reports (Section 404) - cont'd	<ul style="list-style-type: none"> • Rule 3201T: Temporary Transitional Provision • PCAOB FAQ: <ul style="list-style-type: none"> – Questions 1 - 26 – Questions 27 - 29 – Questions 30 - 36 – Question 37 – Questions 38 - 55 • SEC FAQ <p>Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports (SEC Final Rule, June 5, 2003)</p>	
Code of Ethics (Section 406)	<p>Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002 (SEC Final Rule, January 23, 2003)</p>	<p>CSA National Policy 58-201, Corporate Governance Guidelines (CSA, June 17, 2005)</p> <p>CSA Staff Notice 58-302 - Implementation of Corporate Governance Policy and Related Disclosure Instrument (CSA, January 21, 2005)</p>
Audit Committee Financial Experts (Section 407)	<p>Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002 (SEC Final Rule, January 23, 2003)</p>	<p>CSA Multilateral Instrument 52-110 - Audit Committees (CSA, March 26, 2004)</p>
Triennial SEC Review (Section 408)	-	<p>OSC Staff Notice 51-703, Implementation of Reporting Issuer Continuous Disclosure Review Program, Corporate Finance Branch (OSC, June 16, 2000)</p> <p>Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)</p> <p>TSX Company Manual to be amended</p>

	United States	Canada
4. Enhanced Financial Disclosures (cont'd)		
Real Time Disclosures (Section 409)	Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports (SEC Final Rule, September 5, 2002 - Technical amendments) Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date (SEC Final Rule, Mar. 16, 2004) -- Correction	Already addressed by securities legislation (Securities Act (Ontario) s. 75) and TSX requirements (TSX s.408)
7. Studies and Reports		
Consolidation of public accounting firms (Section 701)	Consolidation and Competition of Public Accounting Firms (GAO, July 2003, PDF)	-
Study And Report On Violators And Violations (Section 703)	Violations by Securities Professionals (SEC, January 24, 2003)	-
Study of Enforcement Actions (Section 704)	Report Pursuant to Section 704 of the Sarbanes-Oxley Act of 2002 (SEC, January 24, 2003)	-
8. Corporate and Criminal Fraud Accountability		
Audit Records (Section 802)	Auditing Standard No. 3. Audit Documentation and Amendment to Interim Auditing Standards (PCAOB Final Rule, June 9, 2004) Retention of Records Relevant to Audits and Reviews (SEC Final Rule, January 24, 2003)	CBCA s. 20 (2.1) / Business Corporations Act (Ontario) s. 140 (2)
Private Securities Litigation Statute of Limitations (Section 804)	-	Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)
Criminal Penalties (Section 807)	2004 Federal Sentencing Guidelines Manual (United States Sentencing Commission, October 15, 2004)	Civil Liability for Secondary Market Disclosure (OSC, August 2005) Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)
11. Corporate Fraud and Accountability		
SEC Sanctions (Sections 1105, 304, 1103)	-	Section 304, No equivalent. Section 1103, Addressed by current securities legislation
Increased Fines (Section 1106)	Statement of the Securities and Exchange Commission Concerning Financial Penalties (SEC, January 4, 2006) 2004 Federal Sentencing Guidelines Manual (United States Sentencing Commission, October 15, 2004)	Bill 198, Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 (Ontario Government, December 9, 2002)
Whistleblower Protections (Sections 1107, 806)	-	CSA Multilateral Instrument 52-110, Audit Committees (CSA, March 26, 2004) Section 806, OSC Staff Notice 15-702, Credit for Cooperation (OSC, June 28, 2002)

	United States	Canada
Other Ruling Activities Enhancing Financial Reporting Transparency		
MD&A	Disclosure in Management's Discussion and Analysis of Critical Accounting Policies (SEC Proposed Rules, May 10, 2002)	CICA Management's Discussion and Analysis: Guidance on Preparation and Disclosure (CICA, May 2004) CSA National Instrument 51-102, Continuous Disclosure Obligations - Consolidated Version (December 31, 2008) <ul style="list-style-type: none"> • CSA Staff Notice 51-311 - FAQs Regarding 51-102 OSC Staff Notice 51-716 - Environmental Reporting
Public Filings	Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP (SEC, December 21, 2007) Mandated EDGAR Filing for Foreign Issuers (SEC Final Rule, May 14, 2002)	
Executive Compensation	Interpretive Guidance on the New Executive Compensation Rules (SEC, August 8, 2007, PDF) SEC Votes to Adopt Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters (SEC Final Rule, July 26, 2006) <ul style="list-style-type: none"> • Download the final rule Executive Compensation and Related Person Disclosure (amended) • Amendments (Proposed rules, December 22, 2006, PDF) 	2008 Proposals: Canadian Securities Regulators Propose Improvements to Executive Compensation Disclosure (CSA, February 22, 2008) CSA Staff Notice 51-314 - Retirement Benefits Disclosure (January 14, 2005) CSA National Instrument 51-102, Continuous Disclosure Obligations - Consolidated Version (December 31, 2008) CSA Staff Notice 51-304, Report on Staff's Review of Executive Compensation Disclosure (November 5, 2002, PDF) CSA Staff Notice 51-320 – Options Backdating (September 8, 2006) Form 51-102F6 – Statement of executive compensation (September 18, 2008)
Shareholder proposals	Shareholder Proposals Relating to the Election of Directors (SEC, December 6, 2007)	
Use of Web sites	Internet Availability of Proxy Materials (SEC, March 17, 2008) Electronic Shareholder Forums (SEC, January 18, 2008)	

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