DES REACTIONS IDEOLOGIQUES SUR LA LOI “ SARBANES-OXLEY ”

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Résumé :
La loi américaine « Sarbanes-Oxley » est perçue comme une réponse légitime à la crise importante dans les marchés financiers. Pas très reconnu est le fait que l'emphase de la loi sur la reconstitution de la crédibilité aux marchés financiers trahit un engagement idéologique profond à l'entretien du système capitaliste. Récemment, plusieurs mouvements réactionnaires émergeaient qui expriment leur opposition à la loi « Sarbanes-Oxley ». Ces efforts contredisent l'intention de la loi de reconstituer la crédibilité aux marchés financiers. Cet article décrit certains de ces mouvements réactionnaires et les arguments idéologiques avancés.

Mot clés : « Sarbanes Oxley Act », l'indépendance des commissaires aux comptes, l'idéologie

Abstract:
The American law called the "Sarbanes-Oxley Act of 2002" has been viewed as a legitimate response to a major crisis in the capital markets. Not often acknowledged is that the law's emphasis on restoring credibility to the capital markets betrays a deep ideological commitment to maintenance of the capitalist system. Recently, several reactionary movements have emerged which express their opposition to the Sarbanes-Oxley Act. These efforts appear to contradict the law's intent of restoring credibility to the capital markets. This paper describes certain of these reactionary movements and the ideological claims that are advanced.

***Key words**: Sarbanes Oxley Act, Auditor Independence, Ideology*

Introduction

An ideology can be defined as a comprehensive set of beliefs about political, economic, and social affairs which is held in common by a group of people within a society (Johnson, 2005). Ideologies claim to explain how political, economic, social and cultural institutions work and prescribe how they should work. For example, conservative ideologies seek to demonstrate a correspondence between 'the way things are' and 'the way things ought to be,' thus legitimizing the existing order (see for example, Watts and Zimmerman, 1978). Progressive ideologies, on the other hand, envision a more legitimate and supportable social-economic-political system and seek to demonstrate that the existing order does meet those standards, thereby de-legitimizing the existing system (Neu et al., 2001). In an ideological sense, the term reactionary has often been used to describe persons who are ideologically conservative, especially if they want to reverse (or prevent) certain forms of progressive social change. As a term of opprobrium, reactionary was used throughout the nineteenth century to refer to groups who wanted to preserve aristocratic privileges in the face of increasing republicanism and classical liberalism (Austin, 1922). Marxists have also used the term in a dialectical sense to refer to those who stand in opposition to revolutionary socialism (Lenin, 1972). In a more general sense, the term reactionary can be applied to any political actor who attempts to reverse progressive social change (Wikipedia, 2006). It is this latter sense that is employed in this paper.

It is important to recall that the Sarbanes Oxley Act of 2002 (SOX) was enacted by an ideologically conservative Republican Congress and an ideologically conservative Republican President in an attempt to calm the public's outrage over a series of highly publicized and politically sensitive business and accounting scandals (Bumiller, 2002). Despite its seemingly

conservative origin, SOX has been viewed as a piece of progressive legislation because it has helped to improve the transparency of financial reporting and the independence of auditors in the United States (Serwer, 2006). SOX will be five years old on July 30, 2007, and it is therefore a good time to review the impact and effects of this law. During the first several years after its enactment there was a considerable amount of criticism of the law, but there was little effort directed towards its repeal or modification. Now it appears that several groups have been mounting efforts to reduce the effects of SOX or to repeal it outright. This paper looks at the ideological positions of four different groups that are either opposed to or critical of SOX, including: financial executives, 'free-market' political forces, academic accounting researchers, and non-US based commentators. The efforts of these groups to reduce the effects of SOX will be discussed later in the paper. First, the basic provisions of the law will be summarized in order to set the stage for assessing the ideological positions of the different groups that have been mounting attacks against it.

The Scope of SOX

SOX has been described as 'ground breaking' legislation, both because for its creation of new institutional structures for the regulation of public accountancy, but also for its expansive scope, which touches upon many different actors in the capital markets (Stephens and Schwartz, 2006; Serwer, 2006). The law includes 11 titles comprising over 60 sections. Table 1 provides a summary of 9 of the 11 titles and 48 of the 60 sections. These titles and sections affect different actors in different ways. Among the various sections there are provisions dealing with auditors and public accounting firms, corporations and their officers and directors, the Financial Accounting Standards Board (FASB), financial analysts, securities lawyers, financial analysts

and investment banks. Perhaps the most important aspect of the law, from the perspective of the public accounting profession, is found in Title 1, which created the Public Company Accounting Oversight Board (PCAOB) (see Table 1).

***** Insert Table 1*****

The PCAOB is a quasi-governmental entity operating under the aegis of the US Securities and Exchange Commission (SEC). However, it supported by independent funding provided through fees charged to companies that issue securities according to the US federal securities laws (SEC issuers). Section 102 of SOX specifies that all public accounting firms engaged to audit SEC issuers must register with the PCAOB. The larger sized accounting firms (those with more than 100 audit clients) must have their audit practices inspected annually by the PCAOB. The PCAOB has the authority to censure, fine or suspend an accounting firm that violates its standards, rules or regulations. The PCAOB also has the power to issue auditing standards, quality control standards, independence standards and ethics standards for registered public accounting firms. In essence, SOX removed self-regulation from the American public accounting profession (Defond ad Francis, 2005). In addition, via a provision that has been controversial due to its extra-territorial nature, Section 106 of SOX requires any foreign accounting firm that audits an SEC issuer, or a subsidiary of an SEC issuer, to register with the SEC.

Title II of SOX addresses auditor independence by prohibiting certain types of non-audit services if they are provided to audit clients (e.g. bookkeeping; information systems design and implementation; actuarial services; appraisal or valuation; internal audit; human resources; investment banking; legal services)(section 201). Title II also requires mandatory audit partner rotation (section 203); mandatory audit reports to audit committees (section 204); and prohibits

auditors from being hired as financial officers of an audit client for a period of one year (section 206).

Title III of SOX focuses on corporate governance. Section 301 requires the creation of independent audit committees of boards of directors. Section 302 requires the Chief Executive Officer and the Chief Financial Officer to certify the annual and quarterly reports of the SEC issuer. This certification must cover not only the fair presentation of the company's financial condition and results of operations, but also any significant deficiencies in internal control and also any fraud. Section 303 makes it unlawful to influence, coerce or mislead an auditor. Section 306 prohibits officers and directors from purchasing or selling securities during blackout periods, and Section 307 requires the SEC to issues rules of profession conduct for attorneys practicing before the SEC.

Title IV of SOX has been the primary target of financial executives. Section 404 requires the annual report of each issuer to include an internal control report which acknowledges the responsibility of management for establishing and maintaining an adequate system of internal control and also a report on the effectiveness of the internal control. The auditor must issue an opinion on management's assessment of internal control, and an opinion regarding the effectiveness of the internal control.

In summary, the most significant attempts to modify or repeal SOX have come from corporations that are reluctant to implement effective internal control, or those that complain that the cost of implementing effective internal control is too high. Another type of attack comes from 'free-market' political forces that have allied themselves with smaller accounting firms, who in turn allege that the provisions of SOX hamper their business practices. A third type of

criticism comes from academic researchers who claim that there is no evidence to support the provisions of SOX and that the law was politically motivated. A final form of complaint comes from non-US based accounting professionals and regulators (principally British) who fear that SOX-like laws may be enacted in their countries, and who also claims that laws like SOX are not needed because of the superiority of their legal and regulatory structures. Many of these critics are also aware of the competitive advantage experienced by capital markets that are not required to comply with the high standards of financial reporting mandated by SOX. Each of these areas of critique will be discussed in the following sections.

Financial Executives' Criticisms of SOX

Criticisms of SOX from financial executives have been focused on Section 404 which requires public corporations to issue an annual internal control report clearly stating the responsibility of management to establish adequate internal control. The report must contain management's assessment of the effectiveness of internal control. The company's external auditors must issue an opinion regarding management's assessment of internal control, and the auditor must also issue an opinion regarding the effectiveness of internal control as part of the normal audit engagement. The Committee on Corporate Reporting (CCR) of Financial Executives International (FEI), an organization of Chief Financial Officers, Controllers, Treasurers, and other financial executives, has issued several comment letters criticizing Section 404. The following is an extract from one letter to the SEC dated April 1, 2005:

> "The Committee on Corporate Reporting (CCR) of Financial Executives International (FEI) is pleased to provide feedback regarding the implementation of Section 404 (Section 404) of the Sarbanes-Oxley Act (the Act) relating to internal control over financial reporting. Now that we have gone through the first run of this compliance effort, we agree that it's time to review what we have learned and identify ways to improve the annual process going forward. We are encouraged by the Commission's willingness to

> solicit such feedback. FEI was one of the first business associations that supported the Act. We believe that many aspects of the Act, including Section 404, have enhanced investor confidence in our financial reporting and disclosure practices, corporate governance and auditor independence. As one of the sponsoring organizations of COSO, FEI has long supported the notion that having effective internal controls over financial reporting is vital to the integrity of financial reporting. We do not see the need for an overhaul of the legislation, just greater balance in implementing the regulations and guidance. While this was a useful exercise in many respects, it cost much more than originally projected. In a March 2005 survey of 217 companies, FEI found member companies spent an average of $4.3 million for added internal costs and additional fees spent on Companies over $25 billion in revenue spent more, $14.7 million on average. According to the survey, employees logged an average of 26,758 hours to comply with the regulation, some dramatically more. Additionally, 94 percent of the respondents to our survey indicated that the costs far outweighed the benefits" (Brod, 2005).

This quotation contains several different ideological claims. First, the FEI committee stresses its willingness to support SOX and to cooperate with the SEC. They express the belief that many aspects of the law have enhanced investor confidence in financial reporting and auditor independence, thereby aligning themselves not only with the legal purposes of the SEC but also with the dominant capitalist ideology which focuses on the need to maintain confidence in the capital markets. However, FEI goes on to complain that the costs of implementing Section 404 far outweigh the benefits. Thus, it is a mixed ideological message which follows the refrain: 'the law is good, but it costs too much.' This is an interesting point, because if confidence in the capital market is important, how much should increasing this confidence costs? Apparently, FEI believes that the cost is too high, but they do not indicate what amount that would be sufficient or appropriate.

Partly in response to the ideological claims advanced by FEI, the big four accounting firms (i.e. Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP) engaged CRA International Inc. (CRA) to survey corporations about the costs of implementing

Section 404. The most recent survey was published in spring 2006. This survey includes an analysis of the costs of Section 404 and related audit fees, derived from proxy materials. Table 2 is adapted from the CRA survey. Table 2 indicates that the costs of implementing Section 404 have declined.

***** Insert Table 2*****

Thus, it can be seen that while the criticisms of Section 404 concerning the costs of implementing Section 404 may have been factual, the costs are actually declining, thereby raising questions about the argument of the FEI that the costs outweigh the benefits. In a counter-argument which defends SOX against those who have been critical about its cost, Senator Paul Sarbanes is quoted as saying:

> "These people have already forgotten what happened at Enron and WorldCom. People lost all their pensions and retirement savings. The bill is really about ensuring that public companies have a legitimate system of internal financial controls. To me that is a worthwhile cost" (Serwer, 2006).

It is evident that a very different ideological position is being advance by Senator Sarbanes. He is not interested in restoring credibility to the capital markets, but rather he is interested in establishing a legitimate system of internal control so that individuals do not lose their pensions and retirement savings. This is a more progressive ideological position than simply restoring credibility to the capital markets. While Senator Sarbanes might agree with the argument that confidence in the capital markets is important for the success of a capitalist society, he places his emphasis on the welfare of individuals who have been damaged by corporate scandals.

Attacks on SOX by 'Free Market' Forces

In February 2006, the Free Enterprise Fund (FEF), an advocacy group headed by Mallory Factor, a Republican fundraiser, filed a federal lawsuit in the United States District Court for the District of Columbia which characterized SOX as "a dramatic expansion of regulatory power that has ultimately failed in achieving the intended objectives" (Free Enterprise Fund, 2006). FEF has made no secret of the fact that the objective of its lawsuit is the repeal of SOX (Myers, 2006a). The lawsuit argues that the creation of the PCAOB was unconstitutional. In their complaint, the FEF stated that:

> "This is an action challenging the formation and operation of the Public Company Accounting Oversight Board (the Board), an entity created by the Sarbanes-Oxley Act of 2002 (the Act) to 'oversee the audit of public companies that are subject to the securities laws.' In carrying out this mandate, the Board is authorized to and does exercise broad governmental power, including the power to enforce compliance with the Act and the securities laws, to regulate the conduct of auditors through rulemaking and adjudication, and to set its own budget and to fund its own operations by fixing and levying a tax on the nation's public companies. As a result, and notwithstanding the Act's effort to characterize the Board as a private corporation, the Board is a government entity subject to the limits of the United States Constitution, including the Constitution's separation of powers principles and the requirements of the Appointments Clause. The Board's structure and operation, including its freedom from Presidential oversight and control and the method by which its members are appointed, contravene these principles and requirements. For this reason, the Board and all power and authority exercised by it violate the Constitution" (Free Enterprise Fund, 2006, page 2).

FEF went on to describe itself on page 4 of the complaint as follows:

> "FEF is a non-profit public-interest organization under Section 501(c)(4) of the Internal Revenue Code with offices in the District of Columbia. FEF promotes economic growth, lower taxes, and limited government through television and radio issue advertising campaigns, providing timely and tactical policy guidance to members of Congress and publishing strategic game plans on vital economic and fiscal issues. In bringing this lawsuit, FEF seeks to vindicate the interests of its members, who are subject to the Board's authority and have been injured by the regulations imposed by the Board" (Free Enterprise Fund, 2006, page 4).

While it is clear from this quotation that FEF supports a neo-liberal ideological position, its position has been masked by the argument that the PCAOB is unconstitutional. This is a legal argument which will be decided ultimately by the federal court. The PCAOB has asked the court to dismiss the lawsuit (Myers, 2006b). On June 29, 2006 a federal judge heard arguments in the case (Wutkowski, 2006). There has been no resolution to date.

While FEF is a political advocacy group with a neo-liberal ideological agenda, and consequently it might expected that it would oppose SOX purely on ideological grounds, the second plaintiff in the lawsuit is a public accounting firm named Beckstead and Watts. On page 5 of the complaint, Beckstead and Watts described itself as a firm that specializes in audits of small publicly traded corporations (Free Enterprise Fund, 2006, page 5). On page 18, Beckstead and Watts claims the following:

> "Seven inspectors from the PCAOB visited Beckstead and Watt's offices over a two-week period, from May 17 to 28, 2004. These inspectors evaluated Beckstead and Watts's audits in the same manner that one would evaluate the audits of a Fortune 1000 company, notwithstanding the costs issues and the relative benefits (or lack thereof) to the investing public of applying such strict standards to this segment of the marketplace. Applying the Board's standards in such a manner, the Board's inspectors identified numerous auditing deficiencies with respect to Beckstead and Watts's audits of its clients. The Board prepared a draft inspection report and permitted Beackstead and Watts to comment upon it. In an effort to remedy some of the defects identified by the Board, Beckstead and Watts reduced the number of clients with which it had an auditor relationship from over sixty SEC-reporting companies to just over ten. This reduction in Beckstead and Watts's public company client base led to a further reduction in Beckstead and Watts's revenues and profits for the fiscal year ended 2005 as compared to the fiscal year ended 2004" (Free Enterprise Fund, 2006, p. 18).

The ideological position expressed in this quotation differs from that of FEF. Whereas, FEF is primarily concerned with promoting 'free-enterprise' and 'limited government' (a neo-liberal ideological position), Beckstead and Watt is concerned with its own financial future. The firm describes the high costs of complying with the law, and they assert that these costs outweigh the

benefits from applying strict standards to small audit firms and small companies. Again, this is a mixed ideological message. On the one hand, there is an argument that costs outweigh the benefits. This is an argument without supporting evidence, because no effort has been made to assess the benefits derived from greater confidence in the capital markets. Furthermore, there is a logical inconsistency in arguing that smaller companies should be exempted from regulation. This argument presupposes that the users of small company financial statements are not entitled to have confidence in the reliability of financial statements, and that only the shareholders of large companies are entitled to such confidence.

Apart from the direct assault on SOX contained in the FEF lawsuit, there have recent been political efforts by certain American Congressmen to reduce the effects of SOX (Rothstein, 2006). Representative Tom Feeney (R-Florida), a member of the House Financial Services Committee, and Representative Pete Sessions (R-Texas), who sits on the House Budget Committee, expressed the intention to introduce legislation in 2007 when Senator Sarbanes and Representative Oxley were no longer in Congress. Because the control of Congress changed hands in the November 2006, these congressmen were not able to introduce their proposed legislation. The legislation would have made Section 404 voluntary for companies with market capitalizations less than $700 million. The legislation would have also required the SEC to set the materiality threshold for the identification of significant deficiencies in internal control at five percent of a company's gross sales. These two provisions would exempt most SEC issuers from complying with Section 404. The ideological positions of the two Representatives were based on the belief that complying with SOX would be too costly for small businesses. In a forum held by FEF in April 2006, the Representatives stated that the effect of SOX's internal

control accounting requirements on small businesses was a 'crisis that can no longer be ignored' (Rothstein, 2006). They went on to state:

> "Capital is fleeing America largely because of Sarbanes-Oxley. The London Stock Exchange, to their credit, travels the world and advertises itself as Sarbanes Oxley free. Their No. 1 selling point is 'we're SOX free' (Rothstein, 2006).

Again, this is a mixed ideological message because the Representatives claim that the costs of complying with SOX are too high for small businesses, while at the same time they assert that there is unfair competition coming from countries with less stringent laws. The first part of the message argues that there should be relief from the provisions of SOX for smaller companies because the costs are too high. This argument appeals to the idea of fairness, with the implicit assumption that there would be little damage done to capital markets as a result of providing relief for smaller companies. In contrast, the second part of the message argues that foreign capital markets permit companies to issue financial statements without proper internal controls, and that to be competitive, US companies should be allowed to issue financial statements without proper internal controls. The first part of the message asserts that the costs outweigh the benefits (a testable assumption), while the second part of the messages says, 'everyone else is doing it, so why not us'. This latter argument is morally repugnant.

Finally, with respect to attacks on SOX by 'free-market' forces, it should be recalled that the current chairman of the SEC, Christopher Cox, was a Republican member of Congress for 17 years before being appointed to be the SEC Chairman by President George Bush. Chairman Cox has a record of supporting conservative and neo-liberal ideological positions. Given the combination of a federal lawsuit claiming that SOX is unconstitutional, the possible emergence of legislation that would exempt most companies from complying with Section 404 of SOX, and

an SEC Chairman with a neo-liberal ideology, it seems probable that there may be modifications to SOX in the near future.

Criticisms of SOX by Academic Accounting Researchers

As, Tinker et al. (1982, 1991) and Williams (1987) have pointed out, accounting researchers are not neutral with respect to the subject matter of their research efforts. Accounting and auditing researchers have often reached conclusions that support the positions of large accounting firms and corporations in general. For example, with regard to audit research focusing on SOX, DeFond and Francis make the following comment:

> "While historically the auditing profession is often intensely criticized following boom-bust economic cycles, the criticism embodied in SOX is unusually intense and appears to be partially motivated by political expedience and often based on anecdotes" (Defond and Francis, 2005, p. 6).
>
> "We believe that the SOX provision that bans most nonaudit services is at best misguided, and at worst politically-motivated" (Defond and Francis, 2005, p. 6).
>
> "There are no theories that explain why boards of directors exist, much less why audit committees exist" (Defond and Francis, 2005, p. 7).
>
> "Section 404 of SOX is anticipated to increase audit fees by 50-100 percent. Are there measurable benefits in audit quality that would justify these fee increases?" (Defond and Francis, 2005, p. 8).

These accounting researchers have criticized SOX, asserting that its provisions are misguided or politically motivated and that there is a lack of evidence supporting the efficacy of the provisions. However, the measure of efficacy that the researchers employ is the relevance of the provisions to the capital markets. This is an ideological position because the underlying premise is that the only reason for SOX to exist is to provide more reliable information to the capital markets. Even if this premise is correct, the type of methodology employed by these researchers (i.e. investigation of relationships between archived economic data and accounting data) is often

incapable of detecting market reactions to new regulations, such as management certification of the effectiveness of internal control (Bhattacharya et al., 2002), rotation of audit partners (Myers et al., 2003), prohibition of non-audit services (Frankel et al., 2002), and independent audit committees (Bhagat and Black, 1999). The reason for the inability to detect share price reactions is that the methodology cannot distinguish between a market reaction to the new regulation and other types of noise in the capital markets. Accounting researchers rarely employ sociological or political science research methods that might be better for investigating questions pertaining to the efficacy of laws and regulation, consequently the researchers are often unable to answer the questions that are of most interest to public policy makers. Moreover, a complete reliance on the criterion of market relevance ignores a principal motivation of Senator Sarbanes when proposing the law, which was to prevent corporations from fraudulently destroying the pension rights of employees.

Criticisms of SOX by Non-US Commentators

Prior to the enactment of SOX, the government of the United Kingdom lobbied the US Government in order to try to limit the effects of the law. The ideological implications of these lobbying efforts were revealed in the following exchange that took place in the House of Lords on July 29, 2002,

> **Lord Sharman:** My Lords, I beg leave to ask the question standing in my name on the Order Paper. In so doing, I declare an interest as a paid adviser to KPMG. The question is as follows: 'To ask Her Majesty's Government whether they will make representations to the United States government to limit the extraterritorial effect of Senator Sarbanes' bill regarding the regulation of auditors.'
>
> **The Parliamentary Under-Secretary of State, Department of Trade and Industry (Lord Sainsbury of Turville)**: My Lords, high-level representations were made to the United States Government about the extra-territorial effect of the proposed Sarbane bill by the United Kingdom Government and by the European Commission. The Accounting

> Bill, which combines elements of both the Sarbanes and the Oxley bills, is expected to be signed by President Bush this week. We believe that our lobbying has had some success, but concerns about the legislation remain. We are therefore continuing to pursue these matters at national and European level with the US administration.
>
> **Lord Sharman**: My Lords, I thank the Minister for that very helpful reply. Does he agree, however, that the proven system of regulation in operation in the banking industry—so-called host country regulation—is much preferable to the extra-territorial application of any state's legislation?
>
> **Lord Sainsbury of Turville**: My Lords, without wishing to give a definitive view about the Government's approach to international regulatory matters, I should say that we do not want to see extra regulatory burdens piled on British companies. In particular, we do not want an additional layer of regulatory burden to be placed on UK audit firms which are already subject to an extensive regulatory regime in the UK (Lord Sharman, 2002).

This exchange reveals several different ideological perspectives. The first perspective is demonstrated by Lord Sharman's revelation that he was a paid adviser to KPMG. Any statements made after this revelation could be seen as self-serving representations by an accounting firm which did not want to be constrained by SOX. Compounding this self-serving ideological perspective was the response of the UK government which sought to assure Lord Sharman that the government was trying its best to make sure that UK firms would not be subject to the provisions of SOX. One might then ask, if an accounting firm were seeking to perform an audit of a company with shares listed in the United States, why should they not be subject to US regulation? Are the users of the financial statements of a US based multinational company not entitled to the same level of protection as the shareholders of a strictly domestic company? The argument that UK audit firms and companies are subject to an extensive regulatory regime in the UK is misleading because of the ample evidence of lower levels of regulatory stringency in certain London based capital markets. Moreover, the London Stock Exchange has been aggressively marketing its Alternative Investment Market to both US and

non-US companies by advertising the lower levels of regulation required for listing in the UK (McLachlan, 2006).

The ideological perspectives underlying criticisms of SOX by non-US commentators can also be seen in a position paper published by the Institute of Chartered Accountants in England and Wales (ICAEW) in which it was stated:

> "The principle underpinning the UK financial reporting regime is intuitively more straightforward as it relates to the furtherance of the aims of the corporation. The accounting disclosure question to be answered is 'what would the shareholder want to know about how well a company is being run on its resources?' This is very different, legally and economically, from the US principle of fraud on the market. To comply with the 1933 Securities Act the question to be answered is 'what does the market need to know?'" (Bush, 2005).

The author of the ICAEW position paper criticizes the ideological perspective underlying SOX and other US securities laws which concentrates on maintaining the credibility of capital markets. However, the author does not recognize his own ideological perspective which elevates the 'aims of the corporation' and 'what the shareholder wants to know' above the interests of others in society, including participants in the capital markets. The author admits that there is no easy way under British Common Law for capital market participants to sue for loss of market value arising from fraudulent or misleading financial statements (Bush, 2005, p. 55). One might therefore ask, what is the purpose of regulating the issuance of audited financial statements under British law?

The author of the ICAEW position paper goes on to compound his lack of insight into his own ideological position by claiming that: "Major differences exist between the United States and the *rest* of the world regarding both the preparation of financial statements and corporate governance matters" (Bush, 2005, p. 2), thus implying that the UK system of audit regulation and corporate

governance is comparable to that of the rest of the world. That this assertion is not correct can be easily demonstrated by reference to an article in *Comptabilité-Contrôle-Audit*, the journal of the Francophone Accounting Association, in which it was observed that the French *Law of Financial Security of August 1, 2003*, was enacted after SOX with the express purpose of restoring trust in the capital markets (Cappelletti, 2006). The *Law of Financial Security* (LFS) introduced a new set of shareholder reporting obligations focusing on the internal controls of French corporations (Cappelletti, 2006, p. 28). Many of the provisions of LFS are similar to those of SOX. For example, LFS requires the CEO of a French company to issue a report on the company's internal control in a separate report attached to the audit report. The external auditors must also provide a report on the CEO's internal control report in an attachment to their audit report.

Commenting on the similarities between SOX and LFS, Cappelletti quotes Wirtz (2005), who argues that both SOX and LFS are evidence of a growing trend towards international standardization of financial reporting and corporate governance practices whereby companies are experiencing diverse pressures that seek to obtain conformity with 'best practices' of corporate governance. Thus, there appears to be a greater degree of convergence between French and American law and regulations regarding financial reporting and corporate governance than in the UK. This may be because the recent trend toward regulatory *legalism* in the United States has been present in France for many years (Puxty el al., 1987). In summary, there appears to be a considerable amount of international standardization of financial reporting and corporate governance practices, with SOX often serving as a model for such convergence.

Conclusion

The Sarbanes-Oxley Act of 2002 has been generally viewed as a progressive piece of legislation which was enacted in response to a significant crisis in the capital markets. At the same time, the law's primary emphasis on restoring credibility to the capital markets reveals a deep ideological commitment to maintaining the capitalist system. Somewhat surprisingly, several reactionary movements have emerged in recent years in opposition to SOX. These movements have advanced positions which are contradictory to the law's intent of restoring credibility to the capital markets. This paper has described several of these reactionary movements and the ideological claims that have been advanced. These claims are generally supportive of the increasing confidence in the capital markets in order to facilitate and maintain the capitalist system. However, beyond these claims, the authors of SOX intended the law to be a progressive piece of legislation which would contribute to increased levels of transparency in financial reporting and a greater level of independence for auditors. These goals may be viewed as self-serving measures intended to protect the interests of capital, but they can also be seen as beneficial to society in a larger sense. Credible financial reporting and independence of auditors helps to provide greater societal control over corporations. Without explicit multinational structures to reign in corporate power, it is difficult to conceive of effective control mechanisms without effective systems of financial reporting and corporate governance. This is the overall importance of the Sarbanes-Oxley Act.

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TABLE 1
SUMMARY OF KEY PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002

Title	Section	Provision
I		**Public Company Accounting Oversight Board**
	101	Creation of the Public Company Accounting Oversight Board
	102	Requires public accounting firms to register with the PCAOB if they audit companies that have publicly traded securities (SEC registrants).
	103	Authorizes the PCAOB to issue auditing standards, quality control standards and ethics standards for registered public accounting firms.
	104	Requires quality control inspections of public accounting firms registered with the PCAOB.
	105	Provides for sanctions against registered public accounting firms for violations of rules or standards. Penalties may include temporary or permanent suspension of practice, fines, or censure.
	106	Specifies that if a foreign public accounting firm audits an SEC registrant) it must register with the PCAOB in the same manner as a domestic firm. This provision also includes foreign public accounting firms that audit a subsidiary of an SEC registrant.
	107	Provides for SEC oversight of the PCAOB.
	108(b)	Provides for recognition of FASB accounting standards by the SEC.
	108(d)	Requires the SEC to report on the feasibility of adopting a principles-based accounting system.
	109	Specifies that the PCAOB and the FASB will be supported by fees charged to SEC registrants.
II		**Auditor Independence**
	201	Lists 7 types of services that public accounting firms are prohibited from providing to clients that are SEC registrants.
	202	Requires all audit and non-audit services to be pre-approved by the audit committee of the SEC registrant.
	203	Requires that the lead audit partner of the public accounting firm must rotate off of the audit after 5 years.
	204	Requires the public accounting firm to report accounting policies and practices and the firm's preferred choices to the audit committee of the client.
	205	Amends the Securities and Exchange Act of 1934 to replace the term "independent public accountant" with "registered public accounting firm".
	206	Prohibits the CEO, CFO, Chief Accounting Officer or Controller of an SEC registrant to have been employed by the company's auditor during a 1-year period preceding the audit.
	207	Requires a study by the Government Accountability Office regarding the potential effects of requiring the mandatory rotation of audit firms.

TABLE 1 (continued)
SUMMARY OF KEY PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002

Title	Section	Provision
III		**Corporate Responsibility**
	301	Requires each member of an audit committee to be independent.
	302	Requires both the CEO and the CFO of the SEC registrant to certify that they have reviewed the annual report and that the report does not contain any untrue statement or omit any material facts and that the financial statements and disclosures fairly present in all material respects the operations and financial condition of the company.
	303	Prohibits fraudulent influence, coercion, manipulation or misleading of the auditor.
	304	Requires forfeiture of bonus by CEO and CFO if there is material misconduct resulting in violation of financial reporting requirements under the securities laws.
	306	Prohibits purchase or sale of shares by officers and directors during periods when trading is not allowed by others.
	307	Requires attorneys to report material violations of securities laws.
	308	Provides that civil penalties collected by the SEC may be paid to the victims of a violation.
IV		Enhanced Financial Disclosures
	401(a)	Financial reports must disclose all material correcting adjustments and all material off-balance sheet transactions.
	401(b)	Pro forma financial information cannot contain an untrue statement or omit to state a material fact that would make the pro forma financial information misleading. Pro forma information must be reconciled with GAAP.
	401(c)	Requires the SEC to study off-balance sheet disclosure rules.
	402	Prohibits the SEC registrant from making a loan to a director or officer.
	403	Requires the reporting of related party transactions to the SEC.
	404	Requires management to issue an annual report which assesses the effectiveness of the internal control structure and procedures of the company.
	406	Requires SEC registrants to disclose whether they have adopted a code of ethics for senior financial officers.
	407	Requires SEC registrants to disclose whether at least 1 member of its audit committee is a financial expert (as defined by the law).
	408	Requires enhanced disclosures in financial reports.

TABLE 1 (continued)
SUMMARY OF KEY PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002

Title	Section	Provision
V		**Analyst Conflicts of Interest**
	501	Requires securities exchanges to adopt conflict of interest rules for research analysts.
VI		**Resources and Authority**
	601	Increased SEC budgetary appropriation and number of employees.
	602	Allows the SEC to censure or bar a person from practice before the SEC for violation of professional standards, rules and regulations.
VII		**Studies and Reports**
	701	Requires the GAO to study the effects of consolidation in the practice of public accounting**.**
	702	Requires the SEC to study the role and function of credit rating agencies in the function of securities markets.
	703	Requires the SEC to study how many public accountants and other securities professionals have violated laws.
	704	Requires SEC to study SEC enforcement actions.
	705	Requires the Comptroller General of the United States to student whether investment banks assisted public companies in manipulating earnings.
VIII		**Corporate and Criminal Fraud Accountability**
	801	Name: The Corporate and Criminal Fraud Accountability Act of 2002
	802	Makes it a felony to destroy documents or to impede or obstruct a federal investigation. Auditors are required to maintain all work papers for five years.
	803	Protects whistleblowers.
	804	Increases length of imprisonment for securities fraud up to 25 years.
IX		**White-Collar Crime Penalty Enhancements**
	901	Name: The White-Collar Crime Penalty Enhancement Act of 2002
	903	Maximum penalties for fraud increased to 20 years.
	904	Federal Sentencing guidelines to be revised.
	905	Penalty for failure to certify financial statements set at up to 20 years and $5,000,000 fine.

TABLE 2

COMPARISON OF YEAR-ONE AND YEAR-TWO SECTION 404 IMPLEMENTATION COSTS AVERAGE PER COMPANY (ROUNDED)

	Year Two in 000s ($)	Year One in 000s ($)	Percent Change
Section 404 Audit Fees	1,570	2,020	-22.3%
Internal Issuer and Third-Party 404 Costs	3,200	6,490	-50.7%
Total Section 404 Costs	4,770	8,510	-43.9%
Average Company Revenue	8,820,000	7,920,000	
Total Section 404 Costs as a Percentage of Revenue	0.05%	0.11%	
Section 404 Audit Fees as a Percentage of Revenue	0.02%	0.03%	

Source: CRA International (2006), page 10.