

Regulation Overview

Sarbanes-Oxley Act (SOX)



SARBANES-OXLEY ACT (SOX) – Records management and retention policies for all public companies.

In 2002, due to unregulated accounting activity by major global corporations such as Enron, Worldcom, and their accounting firms such as Arthur Anderson, the Sarbanes-Oxley Act was enacted to increase regulatory visibility and accountability of public companies and their financial health.

WHO IS AFFECTED BY SOX?

All corporations that fall under the jurisdiction of the U.S. Securities and Exchange Commissions are subject to SOX requirements. This essentially means any publicly traded company must abide by SOX. The Act directly affects all publicly traded companies, financial services companies, CPAs and CPA firms, as well as attorneys of publicly traded companies. Certain private firms, whether interested in going public or potential targets of mergers and acquisitions by public firms, will also fall under SOX scrutiny ensuring compliance of the final entity.

WHEN IS SOX LAW?

Sarbanes Oxley is currently law. The first section to be enacted was Section 302, on July 30, 2002.

DECEMBER 16, 2006: Deciding not to act on recommendations from its advisory committee to exempt smaller firms, the SEC has announced that all public corporations will have to comply with Section 404 of Sarbanes-Oxley for fiscal years beginning on or after Dec. 16, 2006. However, the SEC will work to improve the guidance given for compliance, and in the process will seek advice from the auditing profession. Guidance will especially be sought from the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The SEC promised future guidance will be scalable to smaller firms and responsive to individual circumstances (<http://www.itcinstitute.com/display.aspx?id=1758>).

WHAT ARE THE PENALTIES FOR SOX NON-COMPLIANCE?

Penalties differ depending upon the section violation. SOX takes specific note of violations involving destruction or falsification of documents or records related to any federal investigation or bankruptcy proceeding. Penalties range from fines of up to \$1,000,000 to prison sentences of not more than 20 years for "whoever knowingly alters, destroys, mutilates" any record or document with the intent to impede an investigation.

On Oct 25 2006, using SOX provisions, the SEC started repaying WorldCom victims. The SEC announced that the first installment of payments to victimized investors in the WorldCom financial fraud would begin immediately. Under the provisions of Sarbanes-Oxley, the entire \$750 million penalty levied against WorldCom was placed in a repayment fund, and the first \$150 million is now being paid out. Prior to SOX, such fines went to the US Treasury general fund. So far there have been 450,000 claims, from 110 countries, in 10 languages.

WHAT ARE THE REQUIREMENTS OF SOX?

There are many sections to Sarbanes-Oxley. Currently, the most relevant sections of Sarbanes-Oxley and their corresponding ZL Technologies solution are listed below:

• Section 302: Corporate Responsibility for Financial Reports

This section requires that CFOs and CEOs to personally certify and be accountable for their firms' financial records and accounting. This section has been highlighted due to its link to top management.

ZL Technologies Solution: Apart from signing their financial results, retention of email and instant messaging records leading up to final approval will be important for reconciling and verification of claims made in a company's financials .

- ZL Technologies Unified Archive: Compliance and Discovery

• Section 303: Improper Influence on Conduct of Audits

This section states that it shall be unlawful for any officer or director of an issuer to take any action to fraudulently influence, coerce, manipulate, or mislead any auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.

ZL Technologies Solution: ZL Technologies provides a full auditor application, which enables internal or external auditors to capture specific mails and generate an annotated thread for tracking the entire review lifecycle. ZL Technologies' platform tracks and accounts for all preserved data and the manner by which mail data is stored within electronic media. ZL Technologies' archive platform generates a full log and audit trail of admin defined that take place within the system and require tracking.

- ZL Technologies Unified Archive: Compliance and Discovery

• Section 404: Management Assessment of Internal Controls

This requires auditors to certify the underlying controls and processes that are used to compile the financial results of a company. It also directs the SEC to require each issuer to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of that code, and also directs the SEC to revise its regulations concerning prompt disclosure on Form 8-K to require immediate disclosure "of any change in, or waiver of," an issuer's code of ethics.

ZL Technologies Solution: Due to the ubiquity of email communication and its extensive use as a tool in transmission of documents and correspondence between businesses and their outside consultants, accounting and audit firms, tight management of email and file attachments will be important.

- ZL Technologies Unified Archive: Compliance and Discovery

• Section 409: Real-time Issuer Disclosures

Regarded as the most demanding of all requirements, Section 409 requires that companies provide real-time disclosures of any events that may affect a firm's stock price or financial performance within a 48 hour period.

ZL Technologies Solution: The real-time requirement and the broad nature of this section requires powerful and deep integration of reporting tools into email, messaging, and other applications within the enterprise network.

- ZL Technologies Unified Archive: Compliance and Discovery
- ZL Technologies Unified Archive: End-User Content Management and Storage Offloading

• Section 802: Criminal Penalties for Altering Documents

As a result of the document destruction by various businesses and their accounting firms, most notably Enron and Arthur Anderson, Section 802 (currently applies only to CPAs of public companies) provides stiff penalties for "whoever knowingly alters, destroys, mutilates" any record or document with intent to impede an investigation. Penalties include monetary fines and prison time.

ZL Technologies Solution: SOX specifies minimum retention periods for all accounting records, work papers, communications, file attachments, and documents whether transmitted via email, instant messaging, or other messaging modes. The proper retention and storage of these documents in a secure and controlled manner are critical in satisfying SOX.

- ZL Technologies Unified Archive: Compliance and Discovery
- ZL Technologies Unified Archive: End-User Content Management and Storage Offloading

As the requirements for each section within SOX are interpreted, technological innovations to address them will have to be developed. To do so effectively and at minimal cost, businesses will require a highly flexible, platform based solution such as ZL Technologies' comprehensive messaging management platform.

ABOUT ZL TECHNOLOGIES

Established in 1999, ZL Technologies, Inc. (ZL) provides cutting-edge enterprise software solutions for email archiving, regulatory compliance, litigation support, corporate governance, content management, file archiving, and secure email. ZL's flagship product, the Unified Archive, offers comprehensive email and file archiving and management for companies using Lotus Notes/Domino, Microsoft Exchange, Bloomberg, and others. The suite provides a highly flexible framework that is fully scalable, enabling organizations of all sizes to meet legal discovery, compliance, and storage management requirements. With a proven track record and an impressive list of clients, including Walgreens, Bank of New York Mellon, Pacific Life, and Morgan Keegan, among other top global institutions, ZL has emerged as the premier provider of email archiving and compliance solutions. For more information, please visit www.ZLTI.com

To learn more about how ZL Technologies can help you take control of your data, call us at 408.240.8989 or visit us online at www.ZLTI.com