

The Law Changed Corporate America

By Michael W. Peregrine – July 24, 2012

Has Sarbanes-Oxley failed? Not at all! The law has made an enormous difference, but not in the way you might think.

The impact of Sarbanes-Oxley isn't necessarily found in the collective impact of its substantive provisions. Rather, it is found in the profound way the law has reshaped attitudes toward corporate governance.

The need for fundamental change in boardroom behavior was a message that transcended the text of the Sarbanes law. The old ways weren't working. That idea lit the corporate responsibility movement, igniting a more robust respect for corporate compliance, fiduciary duty to shareholders and ethical behavior.

When you zoom out to that level, the law has been spectacularly successful. Sarbanes-Oxley has forever changed the landscape of corporate governance. It has increased the accountability expectations we have of directors and officers, and their legal and accounting advisers as well.

Sarbanes-Oxley seized the center of corporate direction from the corner office and returned it to the boardroom, where it belonged. Moreover, the law encouraged the identification of "best practices" to guide boardroom conduct. It has helped to shape the focus of state courts and regulators on the proper application of other fiduciary duty laws. It has raised the public consciousness of corporate governance.

This much higher sense of fiduciary obligation has proved to be a powerful "check and balance" on corporate misconduct. We see the "Sarbanes DNA" beyond the requirements of the statute. It also appears in more attentive board oversight, decreased tolerance for ethical lapses, greater focus on corporate reputation and more intense awareness of enterprise risk. All of these are hallmarks of a more active, engaged and informed board.

The success of the Sarbanes-Oxley law is best measured by its extraordinary impact on fiduciary behavior. So celebrate its 10th birthday with a little bit of education on where we once were, how far we've come and how hard we still need to work. As recent headlines suggest, the job is not complete.