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The Application of **Sarbanes-Oxley** to Intercollegiate Athletics

By Gregory Naples, J.D., LL.M. and Michael D. Akers, Ph.D., CIA, CPA, CMA, CFE

Widely perpetuated in recent years has been an almost axiomatic belief that college and university presidents have exercised and determined initiative to reclaim institutional control of intercollegiate athletics, in order to eradicate perceived abuses and to reassert academic integrity. The degree to which that initiative has been successful, and the extent to which there has been broad-based commitment is subject to serious conjecture given the tawdry scenarios experienced at far too many institutions. Recent publicity about problems at the University of Colorado and University of Georgia illustrate the point. While the president of an institution ultimately must answer for the institution's activities, all involved parties (i.e., board of trustees, athletic director, and faculty) are, to some degree, responsible for the problems associated with intercollegiate athletics. Attempts to address such problems have occurred through federal legislation (The Equity in Athletics Disclosure Act of 1994), legislation by the National Collegiate Athletic Association, the NCAA certification program for Division I athletic departments and required audits where guidelines were established by the NCAA and the American Institute of Certified Public Accountants. Although some of these efforts have been successful, problems continue to exist with intercollegiate athletics. Perhaps it is time for the debate on intercollegiate athletics issues to consider some of the evaluation and assessment tools recently crafted (i.e., Sarbanes-Oxley Act of 2002) by reform-minded legislators who were forced into action by internal control failures in the corporate sector.



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While it might be argued that the Sarbanes-Oxley Act of 2002 does not apply to nonprofit organizations such as colleges and universities, the media's scrutiny of an institution's activities, specifically intercollegiate athletics, demands a review of the Act. There is also evidence that nonprofits might eventually be affected by requirements similar to the Sarbanes-Oxley Act. New York attorney general Eliot Spitzer has proposed requirements for nonprofits similar to those of the Sarbanes-Oxley Act. The purpose of this paper is to discuss how selected aspects of the Sarbanes-Oxley Act of 2002 can be used by colleges and universities to more effectively monitor intercollegiate athletics. We have identified four key areas of the Act (i.e., financial statement certification, internal control certification, audit committees and code of conduct) that we believe are relevant to institutions and athletic departments. For each area, we indicate the provision from the Act followed by a discussion of how the provision can be applied by institutions to intercollegiate athletics. The article concludes with some summary comments.

Financial Statement Certification by CEO and CFO

Provision of the Act

The chief executive officer and chief financial officer must issue a statement to accompany the periodic financial statements regarding the appropriateness of the financial statements and financial statement disclosures.

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Application

We suggest that college and university presidents, along with the chief financial officer, attest in writing as to the appropriateness of the institution's financial statements and related disclosures, as well as the appropriateness of the revenues and expenditures of the athletic department. Although not required by the Act, CEOs and CFOs of corporations often request that others within the organization (e.g., controllers and accounting managers) provide a similar type of assertion for their respective areas. Accordingly, we suggest that the president ask the athletic director to provide a written assertion regarding the presentation of intercollegiate athletics' revenues and expenditures and related disclosures. Athletic directors should consider a similar request from all coaches and staff personnel within the athletic department. We believe this recommendation forces additional accountability within the athletic department and provides the university/college president and chief financial officer with additional comfort regarding the revenues and expenditures associated with intercollegiate athletics.

The requirement of a written assertion from both coaches and staff sends a strong signal about the importance of reliable financial reporting.

Internal Control Certification by CEO and CFO

Provision of the Act

The CEO and CFO are required to provide a written assertion that internal controls have been reviewed for effectiveness.

Application

Almost every person within a college or university has some responsibility for internal control. For example, the president, along with the board of trustees/regents, establishes the "tone at the top" and thus provides the leadership and guidance to senior administrators such as the athletic director. The president and board are responsible for establishing the values and policies that demonstrate the commitment to maintaining a sound and effective internal control system. The athletic director has a responsibility for designing and implementing control systems within the athletic department. This type of responsibility is consistent with the fact that more and more athletic directors come from a business background rather than just an athletic background. Accordingly, we suggest that the college or university president, chief financial executive and athletic director provide a written assertion that the internal controls have been reviewed for effectiveness.

The requirement of a written assertion from both coaches and staff sends a strong signal about the importance of reliable financial reporting.

Although the responsibility for the establishment of an internal control system rests with the president, along with the board, and the application of the internal controls is the responsibility of other administrators and staff (i.e., athletic director, coaches and staff), an internal audit department can be used to test the effectiveness of an institution's internal control system, including the controls within the athletic department. Considering the large amount of resources generated and expended by many colleges and universities and the potential risks associated with NCAA fines and penalties, as well as the public embarrassment from such problems, we

believe every institution with revenues from intercollegiate athletics over a particular amount (e.g., \$50-75 million) should have an internal auditor. Prior research (Akers and Naples, 1993, 2004) shows that internal auditors are almost never (less than 3%) denied access to the athletic department and restrictions on internal audits of athletic departments are minor (less than 5%). Results of internal

audit testing of controls for both the institution and the athletic department will assist the president and chief financial officer with the written assertion regarding internal controls and assist the board with its oversight responsibility.

Audit Committees

Provisions of the Act

The audit committee is responsible for the oversight of the work of the external public accounting firm. Each member of the audit committee is to be independent and a member of the board of trustees/regents. Each entity must disclose whether one member of the audit committee is a financial expert as defined in the Act.

Application

These provisions can be applied four specific ways. First, each institution should have an audit committee that is part of the institution's board. The members of the audit committee should be independent. Second, the audit committee should have at least one member who is a financial expert, using the criteria of the Act. Third, the audit committee should have at least one individual who is familiar with intercollegiate athletics. Fourth, the audit committee should have oversight responsibility for all aspects of internal control and financial reporting for the institution and the athletic department. Accordingly, we recommend that a summary of all audit reports, internal and external, be provided to the audit committee. Research (Akers and Naples, 1993, 2004) indicates that internal audit reports of athletic departments are often received more frequently by the athletic director than the board

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of trustees/regents for some institutions. The adoption of these four recommendations would enhance the stature of the board by improving both the objectivity and expertise of its members.

Code of Conduct

Provision of the Act

Entities are required to disclose whether they have adopted a code of ethics for senior financial officers.

Application

While many institutions and athletic departments have a conflict of interest policy, we are not aware of any evidence that indicates widespread use of a code of conduct for senior administrators and the athletic department. Our recommendation is that each institution adopt a code of conduct for both its senior administrators and athletic department. This code should address such items as the personal conduct of university representatives (i.e., administrators, coaches and staff) and use of resources generated either by the university or by third parties. Each institution also needs to closely monitor compliance with the code of conduct. This responsibility could be assigned to the compliance officer, and the internal audit department could test the effectiveness of such monitoring. The adoption of a code of conduct that is closely monitored by the institution sends a strong signal to senior administrators and athletic department personnel regarding ethical behavior.

Concluding Comments

Should colleges and universities adopt the requirements of the Sarbanes-Oxley Act of 2002? We believe that selected aspects of the Act, as discussed above, can and should be adopted by these institutions and their respective athletic departments. Although colleges and universities are not encountering the fraudulent embezzlement of funds at the level occurring in corporations, several institutions are facing NCAA sanctions that affect them financially, as well as public embarrassment from the actions of athletic department personnel and athletes. We also believe the recommendations are cost-effective and would enhance the financial reporting and internal controls associated with intercollegiate athletics. While we can only speculate as to whether nonprofit organizations will ever face the same re-

quirements that the Sarbanes-Oxley Act imposed on public companies, it is our opinion that institutions and their athletic departments should be proactive rather than reactive. Considering the apparent lack of institutional control in intercollegiate athletics at some institutions, the adoption of these recommendations could enhance public perception that institutions are serious about regaining control of the activities associated with intercollegiate athletics.

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