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From: Stephen H. Hoving

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RE: PL299 Assignment 7.1

Corporate Ethics and the Sarbanes-Oxley Act

Corporate Ethics and the Sarbanes-Oxley Act

The Sarbanes-Oxley Act of 2002 was the first piece of legislation concerning the regulation of publicly held companies since 1940. The Act is also called SOX or the 'Public Company Accounting Reform and Investor Protection Act' (in the Senate) and 'Corporate and Auditing Accountability and Responsibility Act' (in the House). It enhances corporate responsibility and financial disclosures, prevents corporate fraud and accounting misrepresentations to the public, and created the PCAOB aka the Public Company Accounting Oversight Board. The purpose of the act is to hold corporations accountable and prevent major scandals such as Enron, Tyco, and WorldCom which cost investors billions when the companies affected had devalued share prices and nearly caused a stock market crash similar to the crash of 1929. Corporations must comply with the Act as seen in Section 802(a) of the SOX.

18 U.S.C. § 1519 states: Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

“...minimum standards of professional conduct for attorneys...(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief executive officer of the company; and (2) if the counsel or officer does not appropriately respond to the evidence ...requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to

another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.” (15 USC 7245 SEC 307 Rules Of Professional Responsibility For Attorneys.) Although not expressly addressed there is implied a duty for supervising attorneys to make associates and staff aware of the changes in regulations and their duty to abide by the new U.S.C. statutes.

The provisions of this Act can affect attorney-client privilege to some extent because the U.S. Attorney General and states’ Attorneys General along with “the appropriate Federal functional regulator” and any appropriate State regulatory authority can gain access to confidential and privileged information in the course of accomplishing the purposes of the Act or to protect investors. Each of these persons or entities is charged with maintaining the privilege and confidentiality of the information.

I do not feel this Act gives the SEC authority over the ethical responsibilities of lawyers because the information is still to be regarded as confidential. The ethical responsibilities of lawyers are governed by the Model Rules of the ABA and the various State Bar associations so the control and governance of the legal profession by the legislature is still a matter of court rules concerning evidence and attorney-client privilege.

