

Good example of research paper on intermediate finance

[Business](#), [Company](#)



1. 0 Introduction

In the 1980s, serious corporate scandals were witnessed forcing scholars, researchers and other stakeholders to wonder whether the existing regulations were adequate to maintain the stability of companies. The need to reconsider the manner in which companies are regulated was further enhanced by an increase in the number of corporate scandals between 2001 and 2002. Due to corporate scandals involving highly esteemed companies like Enron and Arthur Andersen made regulatory agencies among other stakeholders to come up with regulations that would be affective in curbing such scandals. The Sarbanes-Oxley Act was signed in 2002, and the Dodd-Frank legislation was passed after the 2008 financial crisis with the main objective of preventing the occurrence of such costly scandals. In this paper, the author discusses why there is need for more regulations in corporate governance, proposing the kind of regulation which ought to be implemented to achieve this objective. The paper is composed of three parts. The first section is a presentation of three articles whose authors propose that more regulations should be implemented, arguing in favor of the Sarbanes-Oxley Act the Dodd-Frank legislation. The section of the paper examines the arguments of five authors who are opposed to increased regulation of company. In the last section, the author this paper offers a personal opinion on the validity of the theories presented by the previous authors.

2. 0 Arguments for the Sarbanes-Oxley Act and the Dodd-Frank Legislation

According to Prentice (2012), the effective implementation of the SOX Act would contribute significantly to an improvement in compliance with regulations especially regarding the reporting of a company's financial

performance. This author proposed that more regulations should be enacted because the frauds involving public companies like Enron occurred as a result of few regulations regarding the reporting of financial statements. The securities frauds involving companies like Enron occurred because the companies' CEOs and CFOs did not adhere to the federal securities laws especially on the provisions regarding mandatory disclosures. The SOX Act therefore sought to regain investor confidence through requiring the CEOs and CFOs in public companies to adhere to all the regulations regarding disclosure of financial statements. Section 302 of the SOX Act requires CEOs and CFOs to certify the company's financial statements present a true and fair picture of its financial position and that the statements do not contain material misstatements or omissions. The company's managers must also ascertain their responsibility for internal controls and affirm that they have designed in the most effective manner. According to section 906 (a) of the Act, managers would be criminally liable for certifying financial statements that are inaccurate. Moreover, section 404 of the Act requires the managers to file a report ascertaining that the internal financial controls are reliable. This report must be attested by an external auditor. Prentice (2012) proposes the effective implementation and adherence to this Act. This is because when the Act and all its provisions are observed by officers in public companies, there would be an improvement in the manner in which a company's financial statements prepared. The managers would seek to reduce or even completely eliminate material statements and omissions in order to escape the criminal liability that is presented in section 906 (a) of the SOX Act.

In Mitchell's (2003) article, the Sarbanes-Oxley Act seeks to bring change corporate governance in the three main ways. The first role of the Act in corporate governance is to make the work of gate keepers like the auditors and lawyers more relevant in the decision making regarding presentation of the company's financial reports. Indeed, these professionals have a very important role to play in enhancing corporate governance but their influence was previous insignificant. The SOX Act therefore seeks bring these officers' work an integral part of the company's management decision making. The second role of the Act is to emphasize the fact that the chief executive officer and audit committee are working together to enhance corporate governance. The third of role of this Act is to ensure that necessary restrictions have been put in place to prevent the conflict of interest from interfering with the ethical practice in corporate governance. The Act also requires the chief executive officer and the audit committee to exercise a duty of care in performing their functions in the company.

Prior to the enactment of the SOX Act, the managers in public companies were more concerned about the short term goals like an increase in stock prices over the profitability of the company in the long run and its long term financial viability. The provisions of the Act seek to shift the manager's attention from short term goals to the long term financial welfare of the company. One of these provisions of the Act is the requirement for senior executives of the company to certify that the financial statements have been prepared in such a way that the present a true and fair view of the company's financial performance and financial position. The act also requires that any financial information that has not been prepared in accordance with

the GAAP guidelines is clearly explained. Lastly, the senior executives are also required to prepare explain the off-balance sheet financing and resultant liabilities. This provision plays a very important role in preventing senior executives of a company from concealing the company's liabilities in order to portray the company as being financially stability when in reality this is not the case. The Sarbanes-Oxley act also warns against influencing external auditors to provide more favorable opinion regarding the accuracy of the financial reports and the certification of the internal controls administered by the corporation. It also warns against the use of off-balance sheet instruments that could be used for fraudulent transactions, similar to what Enron used before its abrupt fall .

Prentice and Spence (2007) outline some of the criticisms directed at the SOX and propose remedies to these criticisms. Some scholars like Romano have criticized the SOX Act, claiming that it was enacted in a hurry because the Congress was under pressure from public. Owing to this pressure, the critics have argued that the law was not enacted in manner that would enhance exemplary performance in the country's capital markets. One of the provisions of the SOX Act that has received massive criticism is the section 404. This section requires a public company's senior executives to file a report certifying that the company internal financial controls are reliable and that this report must be attested by an external auditor. Critics argue that the implementation of this provision very expensive and that the benefits that accrue to its application are not may not surpass the cost of compliance. The authors propose that in order to address these concerns, the SOX Act should not be written but rather the Congress could be given time to review

the Act and make necessary amendments. This is important because the many provisions of this Act are important in order to curb security fraud public companies. Section 906 (a) for instance provides for punitive measures for managers who condone material misstatements in the financial statements.

According to Prentice and Spence (2007) even though critics insist that the Congress ignored empirical evidence when formulating the SOX Act, this evidence actually shows that capital markets can only perform at their optimal level if the stringent and effective securities regulations are out in place. One of the provisions of the Act does not allow Audit firms to provide non-audit services to audit clients. This tends to interfere with auditor's independence. According to the authors of this article empirical evidence shows that when audit firms offer non-audit services to their clients, it undermines their independence and therefore they are likely to be biased in their assessment of the company's financial reporting standards. The section 302 of the Act which requires the executive certification of the financial statements and section 404 which requires highly effective financial internal controls have proved to be very useful especially in enhancing the efficiency of the capital markets.

3. 0 The Limits and Danger of Regulations of Corporate Governance

Romano (2005) argues that laws which are enacted in a hurry and in response to pressure by the public are never beneficial to the parties affected. Such laws are enacted quickly without giving adequate consideration to the role of empirical evidence on the impact that the laws would have on the parties in question. This is exactly what happened with

the enactment of the Sarbanes-Oxley Act. One of the criticisms directed towards this Act by Romano (2005) is that the requirement that companies should be composed of audit committees entirely independent directors is not worthwhile. The provision on the independent audit committees is found in section 301 of the SOX Act. The author goes ahead to prove that having an audit committee composed of entirely independent directors is not profitable to the company.

Having an independent audit committee as defined by the Congress does not improve the performance of the company. Section 201 of the Act prohibits audit firms from offering non-audit services like brokerage, investment banking among other services to audit clients. This is believed to compromise the auditor's independence. Romano (2005) however argues against this provision by emphasizing the fact that offering non-audit services to audit clients does not interfere with the firm's work as an auditor. Section 402 is also criticized for banning extension of loans to executives in a public company. According to Romano (2005) extending loans to managers increase their ownership of stock in the company thus aligning their interests to the interests of the company. This further motivates them to perform better. It is therefore a public policy error to prohibit extension of loans to executives.

The Sarbanes-Oxley Act has caused US corporations to be at a disadvantage in relation to foreign firms. With the additional cost layers imposed by this law, US firms are less competitive in the global market place. In addition, the law has caused companies to delist and register in other securities and exchange markets (such as the London Stock Exchange). The compliance

costs are significant and are forcing companies to either move to other locations or to pass on the additional costs to the American consumer. This law was also blamed for the low incidence of Initial Public Offerings (IPOs) in the United States from 2007 to 2010, the periods covered by the recent financial crisis in the country

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into federal law last July 21, 2010. Championed by current United States President Barack Obama, the Dodd-Frank Act was envisioned to change the financial regulations of the United States by helping the federal government's regulating agencies and the adjunct financial services industries evolve (Paletta and Lucchetti). The law was sent to the United States Congress in June 2009 and was revised by Barney Frank, the US House of Representatives Financial Services Committee Chairman and by Chris Dodd, the Senate's Banking Committee Chairman.

The Dodd-Frank Act was crafted primarily to promote financial stability by improving transparency in the United States' financial system. It was designed to ensure that companies account for their actions such that no more bail-outs were to be expected thus protecting the American taxpayer (United States House of Representatives). In addition, the Dodd-Frank Act changes the United States' regulatory structure in a variety of ways. This included the merging of some regulatory agencies, the deletion of some regulatory agencies and even the creation of new ones. This law also amended the Federal Reserve Act. Most importantly, the law was created to provide an early warning system if in case the United States economy becomes unstable (Bainbridge). The Dodd-Frank Act also required

investment advisers to become more transparent (Bainbridge). Previously, investment advisers were not required to register with the United States Securities and Exchange Commission if they had fewer than 15 clients in the last 12 months. The law required that all financial advisers register with the SEC (Rooney). The law states that non-banking financial institutions register as well and shall be supervised by the United States Federal Reserve Agency.

Many critics believe that the Dodd-Frank Act is one of the most onerous aspects of the Federal law of the United States and is a threat to the country's economy, to private businesses, and to bottom-line productivity and profitability (Protest). The law is about 2,300 pages and regulates almost all aspects of the banking industry. It takes aim at what used to be, lucrative sections of banking such as betting a bank's own money on securities, derivatives trading and credit rating activities. Thus the Dodd-Frank Act was met with severe hostility from Wall Street. Lobbyists from Wall Street are fighting the law head on and have utilized considerable monetary resources to reverse the effects of the law upon full implementation. Because of these lobbying efforts, the Dodd-Frank Act has not been implemented because of considerable delay in the publication of interpretative rules of the law. According to Protest, only one third of the law has been completed while the remaining parts of the law are still in the proposal stage of enactment.

According to the SOX Act is likely to have a negative impact on the public companies. One of the challenges associated with this Act is the presence of provisions which overlap and even at times contradict the provisions of the

state corporate law. This ambiguity is likely to increase manager's exposure to lawsuits. As a result of this, CFOs and CEOs spend the organization's resources in protecting themselves from potential lawsuits. This costs the company's performance. This has also discouraged qualified people from joining board committees. Secondly, SOX has led to increased rigidity in regulations promoted by Federal regulation and legislation. This is opposed to the flexible corporate governance. Consequently companies would either go private while the private firms would be discouraged from going public. This would negatively affect the performance of the capital markets in the economy (Holmstrom and Kaplan 2003).

Some researchers believe that the act has helped transfer listing of corporations from the New York Stock Exchange to the London Stock Exchange. This is believed to be due to a less rigid financial regulatory system in London compared to New York. According to the Alternative Investment Market, a London-based advisory group, the growth in listing is due to the enactment of the Sarbanes-Oxley Act which caused concern with Federal authorities such as New York mayor Michael Bloomberg and United States senator Charles Schumer (Bloomberg and Schumer). The effect of the Sarbanes-Oxley Act on foreign firms cross listing in the securities and exchange markets in the United States is different depending on whether the originating country of the foreign firms is a developed nation or a developing nation. Studies showed that a foreign firm that is entering the United States securities and exchange markets that is coming from a developing country benefit from the higher costs of compliance and the resulting credit rating these companies acquire as a result of complying with the Sarbanes-Oxley

act in the United States.

Foreign companies that come from highly developed nations are penalized in that they have to incur additional compliance costs while not receiving benefits from the higher credit rating due to the fact that the requirements for financial reporting transparency in their originating countries are considerably high as well. In addition, researchers have found that those companies listing in the London Stock Exchange are smaller in terms of economic scale. This is explained by the fact that the Sarbanes-Oxley Act adds another cost layer that small companies may find prohibitive if they wish to enter the United States' public securities and exchange markets (Piotrosky and Srivinasan).

Public companies are owned by people who do not directly participate in their management. This creates an agency problem because managers who are charged with the responsibility of managing the organization tend to pursue their individual goals as opposed to those seeking the welfare of the company and its respective shareholders. It becomes therefore necessary for effective measures to be taken to control the activities of managers. One of the measures is through the election of a board of directors. This board monitors and control activities of the managers. If the board fails to effect necessary controls, the shareholders are at will to come up with a proxy fight in which they vote in the people they believe can perform better as an oversight board (Hart 1973). If managers to continue to pursue their selfish interests at the expense of the company's financial wellbeing, then they can be threatened with a takeover. This is effective because it would help discharge underperforming managers so that only those who would be

reporting exemplary performance are allowed to continue holding their positions in the company.

4. 0 My Opinion

I believe that because of the many corporate scandals that have plagued the United States in the last decade and the failure of the United States financial system to address the issues that led to the financial crisis of 2007 – 2010, that the laws enacted by the United States Congress, particularly the Sarbanes-Oxley Act and the Dodd-Frank Act are needed to regulate and reform the United States financial sector. The visions for these laws are noble. These laws were created to influence transparency, accountability and accuracy in the financial industry by promoting accountability and fairness. However, these laws and regulations may not be as effective as initially conceptualized. Instead of stopping fraud, these laws may have stopped growth. Instead of creating transparency, these laws may have scared potential players into participating in the American economic market. Instead of providing confidence, these laws may have reversed the perspective of a stable US economy.

Could these laws be the reason why jobs in the United States remain scarce?

Jobs are created when economic opportunities arise and are filled up by business organizations. These business organizations have the resources to capitalize on the business ideas. With the state of the American corporations grasping for profitability due to heightened competition and stiffening sources, America should assist the formation of new players into the economic market to participate in capitalizing these opportunities. These new players are most likely foreign. Entry to the United States market may

be a difficult task given the enactment of these new laws.

According to an article in the Wall Street Journal, the new laws and regulations have killed entrepreneurial spirit and financial creativity in the country (Protest). There are marked reductions in IPOs and there are significant migration of companies to other securities and exchange markets. The United States is failing on capturing the renewed vibrancy of the global economy and it could be because of the enactment of these laws.

5. 0 Conclusion

While I believe in the noble pursuits instituted by these laws, I believe in Adam Smith approach to market regulations. The free-hand-of-the-market is still the best regulator of economies. Scandals and frauds pepper economic history but these are due to failures in acting on detected signals, not on the failure of the entire system. It is therefore more important to detect and react than to just prohibit market growth and evolution by sticking a hand into every aspect of business transactions. I think that the best approach is still to find a common ground, a place where businesses thrive, entrepreneurship is promoted and trust and transparency is maintained.

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