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CLIENT ALERT

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## SARBANES-OXLEY FOR NONPROFITS

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Since the enactment of the Sarbanes-Oxley legislation applicable to publicly traded companies, there has been a great deal of discussion about whether similar standards might be relevant to nonprofit organizations. This could occur either through voluntary compliance by nonprofit organizations with Sarbanes-Oxley type standards or through legislation. It now appears that the application of Sarbanes-Oxley type rules to nonprofit organizations will occur in both these forms.

### Voluntary Adherence to Sarbanes-Oxley Standards

Most exempt organizations recognize that the Sarbanes-Oxley standards dealing with effective governance, a culture of compliance, better oversight of audit functions and conflicts of interest are relevant to nonprofit organizations. A number of organizations dedicated to nonprofit issues, such as Independent Sector, have promoted the idea that nonprofit organizations should assess the Sarbanes-Oxley rules and begin to follow those or similar standards in their operations. We believe this is an advisable course of action because as increased scrutiny is brought to bear on nonprofit governance practices, compensation levels and use of charitable assets, nonprofit organizations should be prepared to show that in all these areas they have followed "best practices." It is likely that in determining exactly what are the "best practices," the Sarbanes-Oxley standards will be held up as a model.

### Legislative Initiatives

The Senate Finance Committee recently released a discussion draft of proposals for "reforms and best practices" in the areas of tax-exempt organizations. This broad-ranging list of proposals includes items such as periodic review of an organization's qualification for tax-exempt status,

applying private foundation type self-dealing rules to public charities, increasing taxes designed to discourage interested transactions, establishing new standards for executive compensation and imposing Sarbanes-Oxley type requirements that address:

- required signatures by CEO's on tax returns
- penalties for failure to file or accurately complete 990's
- independent auditor review of a 990
- increased disclosure of related organizations and insider transactions and increased availability of tax and other documents.

In addition, the Senate proposal would encourage "strong governance" and "best practices" among exempt organizations by establishing standards for board members and board composition and encouraging governance in accordance with best practices.

Exempt organizations are well advised to monitor carefully developments with respect to these legislative proposals. What is certain is that some type of change is coming. Exactly how that change takes shape and its effect on nonprofit organizations will be determined in part by the level of input exempt organizations have in the process and whether the IRS determines that exempt organizations' are voluntarily promoting a "culture of compliance."

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