

HOW TO USE EXISTING SARBANES-OXLEY METHODOLOGY FOR IMPLEMENTING THE LIVING WILLS REQUIREMENT UNDER TITLES I & II OF THE DODD-FRANK ACT

EXISTING SOX REQUIREMENT	APPLICATION TO LIVING WILLS
<p>The SEC’s rules under Section 302 of Sarbanes-Oxley requires management to:</p> <ul style="list-style-type: none"> • establish and maintain a system of disclosure controls and procedures; • ensure that such system is designed so that issuers can record, process and report information (both financial and non-financial) in a timely manner; • ensure that such information is reported up to senior management; and • disclose material information in the issuer’s periodic and current reports. <p>The rules also require that every CEO and CFO certify, among other things, the following:</p> <ul style="list-style-type: none"> • that they are responsible for establishing and maintaining internal controls and disclosure controls; • that they have performed all required actions with respect to the internal controls and disclosure controls such as disclosing to the audit committee any significant deficiencies or material weaknesses in the company’s internal controls; and • present in their SEC reports their conclusions about the effectiveness of the disclosure controls and procedures. <p>The SEC does not mandate that issuers must follow any particular process to implement these rules but allows each issuer to establish a system that is consistent with its business, internal management structure and supervisory practice.</p>	<p>Suggested Approaches:</p> <ul style="list-style-type: none"> • Identify existing procedures in place for governance and oversight; • Identify existing framework within the company for Sarbanes-Oxley reporting up obligations; • Identify key business segments and or entities based on jurisdiction, place of business or other criteria; • Indentify key personnel that are responsible for reporting up within each segment or unit; • Integrate the process for creating Living Wills with existing Sarbanes-Oxley and other regulatory processes; • Define clearly the goals of the Living Will Program; • Focus on risk as a common element for both Sarbanes-Oxley reporting and the Living Will requirement; • Various departments such as accounting, finance, legal and operations will likely coordinate and use the same tools for both Sarbanes-Oxley reporting and for creating the Living Will.
<p>Section 404 requires both management and auditors to report on the adequacy of the company’s internal control over financial reporting. Section 404 requires public companies to include, in their annual reports, the effectiveness of their companies’ internal control for financial reporting. In quarterly reports, certain disclosures regarding significant changes in internal controls need to be reported.</p>	<p>A Living Will needs to be monitored and updated regularly as changes occur within each organization. In addition, when material changes to the Living Will occur, senior management will need to evaluate whether the changes warrant disclosure under the SEC rules. As a result, materiality thresholds will need to be established and integrated within the framework.</p>