

# NETWORK

## New York London



Summer 2003

### Corporate Governance Reform – The Status of Sarbanes-Oxley in the European Union

*This is an excerpt from an article which will be published in the upcoming International Law and Practice Section Newsletter of the New York State Bar Association.*

Multi-national corporations which do business in the European Union ("EU") are also impacted by the global mandate for regulation under the Sarbanes-Oxley Act ("SOA") enacted in the United States on July 30, 2002. The EU is following America's lead to closely scrutinize the corporate decision-making process with the goal of making it more accountable - albeit at a more cautious pace.

The EU is developing a paradigm for reform under the Financial Services Action Plan (FSAP), established in 1999 to review existing codes of corporate governance. The European Commission has already begun providing for the implementation of international accounting standards for all listed EU companies by 2005. In May 2002, the Commission proposed a code of conduct on the independence of auditors, and member states endorsed the Market Abuse Directive to harmonize and toughen rules against insider trading.

In addition, the Commission also mandated the High Level Group of



Scott D. Brenner



Arete H. Koutras

Company Law Experts ("Group") to develop a policy on corporate governance and European company law. The Group published a report in November 2002 that recommended a strong and effective role for independent non-executive or supervisory directors, a choice between a unitary versus a two-tier board structure to be made by shareholders of listed companies, and greater financial disclosure through the implementation of a cross-border legal framework. However, the Group cautioned against the creation of a single European Code of corporate governance since the underlying company laws in the member

states are not harmonized in various key areas.

In response to the Group's report, the European Commission recently published its Communication on Company Law (May 21, 2003) which advocates strengthening shareholders' rights, fostering efficiency and competitiveness of business, and restoring investor confidence by increasing transparency and access to information.

The EU, while concerned over issues of fraud and accountability, has not responded with the same sense of urgency as has the United States under SOA. Nevertheless, the EU has made significant progress at its own carefully navigated pace.

*Scott D. Brenner  
Senior Corporate Attorney  
Barton Barton & Plotkin, LLP  
E-mail: sbrenner@bartonesq.com*

*Arete H. Koutras  
Barton Barton & Plotkin, LLP  
E-mail: arete@bartonesq.com*