# Has Firms' Form 8-K Filing Behavior Changed Since Section 409 of the Sarbanes-Oxley Act Became Effective?

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## ABSTRACT

Using a pre-Sox 1993 data set, Carter and Soo (1999) find that over 26% of Form 8-K filings are filed after the statutory due date. Negative filings for changes in certifying accountants and director resignations result in over 30% tardiness. Overall, their findings show that the timeliness of 8-K filings is critical to their informativeness. The purpose of my paper is to provide a descriptive follow-up to Carter and Soo's study in the period closely following the effective date of SOX Section 409 in order to gauge whether it has significantly changed management's 8-K filing behavior. Specifically, I investigate two research questions: 1) Has the passage of SOX Section 409 caused firms to file their Form 8-Ks in a timelier fashion? and 2) For Section 409 8-K filing violators, what form of public punishment has served as an enforcement mechanism?

Results indicate that firms' behavior has significantly improved with regard to timelier Form 8-K filings. Relative to the other events examined, Form 8-K filings are more likely to be late if they report board of director resignations. Other results indicate no discernable differences between the number of days to file within the four day requirement; no industry is more likely than another to be non-compliant; and disclosures of negative events are more likely filed late than for either positive or mixed (i.e., both positive and negative news in the same Form 8-K) events. No form of public enforcement is found for those who took over four days to file their Form 8-K. In sum, my findings should be of interest to the SEC, because it validates their effort (and that of SOX) to shorten the Form 8-K filing time and provide corporate information to investors in a more timely fashion.

## INTRODUCTION

Recent business failures and aggressive earnings management causing fraudulent financial reporting have led to the potential erosion of investor confidence (Williams 2005). In response, the U.S. Congress enacted the Sarbanes-Oxley Act of 2002 (SOX) in order to create new requirements for managers and audit committees of publicly traded firms to follow. "A major purpose of SOX is to protect investors by improving the accuracy and reliability of corporate disclosures," (Lobo and Zhou 2006, 58). While SOX Section 404 involving internal controls has garnered significant attention from firms, CPAs, and academics, Section 409 – involving Form 8-K filings – has dwelled in relative obscurity. SOX Section 409 expands the number of disclosures required to be submitted on the Form 8-K while decreasing the reporting deadline from 15 days (for most events) to only four business days after event occurrence. Some firms have suggested that Section 409 is the most challenging portion of SOX to comply with (Barrett 2004).

Using a pre-Sox 1993 data set, Carter and Soo (1999) find that over 26% of Form 8-K filings are filed after the statutory due date. Negative filings for changes in certifying accountants and director resignations result in over 30% tardiness. Further, they find a stock price reaction of 9% as early as one day before the 8-K filing, but no significant response on the filing date itself. This finding indicates a leakage of information in between the event and filing dates. Overall, their findings show that the timeliness of 8-K filings is critical to their informativeness. The purpose of my paper is to provide a descriptive follow-up to Carter and Soo's study in the period closely following the effective date of SOX Section 409 in order to gauge whether it has significantly changed management's 8-K filing behavior. Specifically, I investigate two research questions: 1) Has the passage of SOX Section 409 caused firms to file their Form 8-Ks in a timelier fashion? 2) For Section 409 8-K filing violators, what form of public punishment serves as an enforcement mechanism?

Results indicate that firms' behavior has significantly improved with regard to timelier Form 8-K filings. Overall, 95% of the sample complies with Section 409's four day requirement. The largest percentage of late filings is for the "change in certifying accountants" event. However, the percentage has decreased from 32.4% in 1993 (found by Carter and Soo 1999) to only 10.5% in the fourth quarter of 2004 (i.e., my paper's time period investigated). All of the other events examined have percentages less than 10% including no late filings for the "disposition of assets" event.

Relative to the other events examined, Form 8-K filings are more likely to be late if they report board of director resignations. Other results indicate no discernable differences between the number of days to file within the four day requirement; no industry is more likely than another to be non-compliant; and disclosures of negative events are more likely filed late than for either positive or mixed (i.e., both positive and negative news in the same Form 8-K) events. The last finding is consistent with Carter and Soo's (1999) findings.

Also consistent with Carter and Soo's (1999) results is the lack of public enforcement for violators. No form of public punishment is found for those who took over four days to file their Form 8-K. Although non-public fines or other reprimands from the SEC and other firm stakeholders cannot be ruled out, this finding indicates that perhaps management's trepidation with regard to SOX or other public consequences (e.g., increased cost of capital or class action lawsuits from stockholders) outweighs actual punishment.[1]

In sum, I find evidence consistent with SOX Section 409 resulting in increased timeliness of Form 8-K filings: both overall and for all events investigated. This finding should be of interest to the SEC, because it validates their effort (and that of SOX) to shorten the Form 8-K filing time and provide corporate information to investors in a more timely fashion. Additionally, this finding can be interpreted as evidence of increased conservatism in financial reporting. Lobo and Zhou (2006, 59) state that practitioners believe increased conservatism might be an additional effect of SOX. Thus, it adds to the extant literature examining financial reporting behavior of public firms pre and post-SOX (e.g., Lobo and Zhou 2006; Cohen et al. 2005; Heflin and Hsu 2004).

The next section provides background of Section 409 and of the Form 8-K filing requirements. The sample selection and descriptive results follow. The paper concludes with a summary of findings and suggestions for future research.

## BACKGROUND

### *SOX Section 409*

SOX Section 409 (2002) requests the SEC to require publicly traded firms in the U.S. to disclose material changes in their financial standing on a "rapid and current basis." The goal is to help avoid more corporate accounting scandals, which have occurred in recent years (e.g., Enron, WorldCom, etc.), by keeping investors better informed about the activities of firms as events develop. In order to achieve this goal,

[1] Carter and Soo (1999, 122) discuss the rarity of SEC enforcement actions solely based on untimely Form 8-K filings. They suggest that these are part of a broader enforcement action or class actions. However, as I will mention later, no such broad actions were found.

SOX Section 409 creates two major changes in Form 8-K filing: 1) it requires significantly quicker filing replacing the prior five business day or 15 calendar day time limits with a new four business day limit; and 2) it adds new events that must be filed on a Form 8-K. The new events include: creating a material direct financial obligation or material obligation under an off-balance sheet arrangement; entering into or finishing a material non-ordinary course agreement; or changes to previously released financial statements, audit reports, or interim reviews. Further, unregistered sales of securities and changes to the rights of securities holders will have to be included on a Form 8-K. In aggregate, Section 409 increases the number of reportable events from nine to 22.

Whereas Section 409 can be valuable to investors and other firm stakeholders due to increasing the breadth and timeliness of reporting material events, it is more than simply an inconvenience to firms. According to a recent survey (2003) of U.S. financial executives, 67% indicate their firms are not able to report material events in the required time. Even though software currently exists to assist in the filing of Form 8-Ks (Loftus 2005), the time involved can create substantial compliance costs. Bernstein (2004) estimates that the number of additional filings Section 409 imposes on firms would add 20-30 hours per filing at an annual cost of $450 million for larger firms. This number is substantially larger than the SEC's (2002, 38) estimated $44 million in additional filing costs.[2]

Section 409 may increase total costs of compliance above and beyond those of currently estimable costs. For example, "the new rules accelerate disclosure and give greater prominence to information that used to appear as much as three months later in

[2] The SEC acknowledges that there could be additional compliance costs.

exhibits to the next 10Q or 10-K. Companies may have to disclose information piecemeal, too, before they have the whole story…or gloss over inconvenient events," (O'Hara 2004). The point is requiring firms to disclose incomplete, yet detailed information (because the entire reportable event has not reached fruition) is not only complicated, but also potentially dangerous to firms. If the disclosed information is later found to contain material inaccuracies, the firm has subject itself to potentially devastating litigation.

There are penalties for firms choosing not to comply with Section 409. Gale (2004, 5) cites the most significant consequence of noncompliance "as perhaps the awkward disclosure faced by management when it is required to discuss the effectiveness of the company's disclosure controls and procedures." Section 409 does not materially alter the general SEC enforcement procedure for noncompliance consisting of a fine of up to $100 per day the Form 8-K is late and potential trading suspension. However, the latter penalty has rarely been enforced in the case of solely timeliness-related firm noncompliances (Carter and Soo 1999). Further, failure to comply with Section 409's four business day filing requirement will not cause the firm to be ineligible to file a registration statement on Form S-3 or S-2 if the firm corrects the delinquency at the time of filing the registration statement. Thus, management has to add these potential types of penalties in their consideration of whether or not to comply with Section 409's reporting requirements.

To summarize, Section 409 can provide significant benefits to investors and other stakeholders. Those benefits may spill over to firms in the form of a lower cost of capital. However, the potential benefits can come at a significant cost. It is, therefore, uncertain as to whether firms will comply with Section 409, and open themselves to potentially new sources of litigation, or fail to comply and be punished by the SEC (and other stakeholders (e.g., shareholder litigation)). Given this uncertainty, I investigate the following two research questions in this paper:

**RQ1: Has the passage of SOX Section 409 caused firms to file their Form 8-Ks in a timelier fashion?**

**RQ2: For Section 409 8-K filing violators, what form of public punishment serves as an enforcement mechanism?**

*Form 8-K*

The Form 8-K "plays a critical role in the periodic reporting system, which is intended to provide investors with a continuous stream of corporate information," (SEC Accounting Series Release No. 306 1982). The combination of Section 409 and Sections 13 and 15 of the Securities Act of 1934 require that a Form 8-K be submitted to the SEC for the following events, if not previously reported on Form 10-K or 10-Q: change in registrant's certifying accountants (item 1); resignation of registrant's directors (item 2); resignation of registrant's officers (item 3); changes in control (item 4); material disposition of assets (item 5); material acquisition of assets (item 6); bankruptcy or receivership; and a variety of "other" exhibits (e.g., those related to financial statements of a recently acquired business). Form 8-K rules encourage firms to disclose other unspecified events deemed important by the registrant (e.g., lawsuits, securities issuances, and credit-rating changes).

Under rules in existence prior to Sox Section 409, the Form 8-K was required to be filed within 15 calendar days after the occurrence of an item 4, 5, 6 event, bankruptcy, or change in fiscal year. The deadline was five business days for events from items 1, 2, and 3. Post Section 409, as previously stated, all events are required to be filed on a Form 8-K within four business days after event occurrence. There is no change in the reporting of voluntary disclosures from what Carter and Soo (1999) state (i.e., no filing deadline, although "prompt" reporting is encouraged). There are almost no filing extensions granted to Form 8-K's, with the lone exception being information related to submissions of financial statements of acquired businesses.

## METHODOLOGY

### Sample Selection

I am interested in examining the Form 8-K filing behavior of firms for the first full quarter following SOX Section 409's effective date. Therefore, I obtained the Form 8-Ks for the six events listed above filed in the fourth quarter (October 1 – December 31) of 2004. The data comes from two sources: *Lexis-Nexis Academic* and the SEC's Web site. In order to be in the sample, a firm had to have both its Form 8-K filing date and event date within the fourth quarter. Having one of those dates fall outside of the quarter could skew the results. I chose the six items 1) to be consistent with Carter and Soo's (1999) data; 2) because those specific events are the most common; and 3) they can be categorized easily (as opposed to "other" important events or exhibits summarized by Carter and Soo). Their frequency of occurrence is a more useful measurement of consistent firm behavior as opposed to less frequent reporting events (e.g., bankruptcy).

Table 1 displays the frequency related to the length of time firms took to file their Form 8-Ks after the reported event occurred. There appears to be no discernable pattern between filing the Form “right away” (i.e., after one day; 103 times) and waiting until the last day possible (i.e., at the fourth day; 104 times). Table 2 summarizes the frequency of filing events. In aggregate, there are 462 reportable events filed on a Form 8-K (some of which included multiple events) and 23 Section 409 violations (20 unique firms). Disclosures involving officer resignations occur in 30.3% of the filings, followed by resignation of directors (27.5%), acquisition of assets (21.6%), changes in certifying accountants (8.2%), disposition of assets (6.3%), and changes in control (6.1%).

[Insert tables 1 and 2 about here]

The median filing time varies by event. For both resignation events, change in control, and acquisition of assets, the median time is two days. However, for changes in certifying accountants and disposition of asset events the median time is three days. The relatively longer filing time for the disposition of asset events is consistent with Carter and Soo’s (1999) data. However, Carter and Soo’s reasoning for the differences in median filing times for events (i.e., variable mandated filing dates) does not apply, since all events are now subject to the four day reporting requirement. The key point with the data is that all event types have median filing times less than four days. Overall, 95% of the sample complies with Section 409’s four day requirement.

Table 3 displays the frequency and number of Section 409 violations by primary SIC code. The financial and high technology industries are excluded from analysis due to industry differences cited by Bonner et al. (1998), Carter and Soo (1999), and Bannister and Wiest (2001). The data in table 3 indicates that the business services industry (169 (36.6%)) has the most Form 8-K filings over the sample period. The support services industry is next with 91 (19.7%) filings, followed by natural resources (69 (14.9%)), manufacturing (59 (12.8%)), retail and wholesale (48 (10.4%)), and food, apparel, and textiles (26 (5.6%)).

[Insert table 3 about here]

## RESULTS

### Section 409 Compliance by Event Type

Carter and Soo (1999) report resignation of directors (44.7% late) and changes in certifying accountants (32.4% late) as the events most likely to be filed late, excluding bankruptcy. The regulation at the time required both disclosure events to be filed within five business days of occurrence. Table 2 reports that these two items are still the most likely to be filed late, although, the order is reversed. Specifically, Form 8-K filings for changes in certifying accountants (item 1) are 10.5% late and filings for resignation of directors (item 2) are 9.4% late. Despite the decreased required reporting time relative to Carter and Soo's data set, the late occurrences for these two events are significantly less than before.

All events previously reported by Carter and Soo (1999) have decreased in late filing occurrences. Changes in control decreases from 28.5% late to only 3.6% late. Acquisition and disposition of assets declines from 22.6% late to only 1.0% and 0.0% late, respectively. The reporting requirement for all three of these events changes from a 15 calendar day requirement to Section 409's four day requirement. Form 8-K filings for resignation of officers' events (not previously individually reported by Carter and Soo) have 3.6% late filings.

Using a two-way Chi-square test, I conduct an analysis investigating whether any particular event is more likely to be filed late relative to the other events. Specifically, 'violation' (a dummy variable where 0 = no violation of Section 409 and 1 = violation) is the "dependent variable" and 'event type' (labeled according to item number from table 2) is the "independent variable." A two-way Chi-square test is appropriate when both dependent and independent variables are categorical (Mendenhall and Sincich 1996). The Chi-square results are significant ($\chi^2 = 13.41$, *p*-value = 0.02), indicating at least one of the event types is more likely to be filed late than the others.[3]

In order to assess which event(s) is (are) more likely to be filed late, I re-conduct the Chi-square analysis six times removing a different event type each analysis. Results provide non-significance only when item 2, resignation of directors, is removed. I also test the data using logistic regression with the same variables.[4] Only the resignation of directors' event type is significant (*p*-value < 0.01 for this event and > 0.10 for all other events). Therefore, the resignation of board directors' event is more likely to be filed late on a Form-8K than any of the other events examined. Perhaps, given the scrutiny of board members after the passage of SOX (see Williams 2005), firms are reluctant to immediately publicize their resignations, relative to the other events analyzed.

**Section 409 Compliance by Primary SIC Code**

One area not reported by Carter and Soo (1999) is potential industry differences. Specifically, firms in one industry may not be as apt to file a Form 8-K as timely as firms

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[3] All statistical analyses use an alpha of 0.05 to test for significance.
[4] Two-way Chi-square tests are not robust if at least one cell size is less than five (Mendenhall and Sincich 1996), as is the case with this sample related to the 'violation' variable.

in other industries, perhaps due to political visibility (see Watts and Zimmerman 1978). In order to investigate this phenomenon, I use the same dependent variable as the prior section and use 'SIC' (a categorical variable incorporating each industry from table 3) as the "independent variable" in another two-way Chi-square test.

Results indicate no differences between industries ($\chi^2 = 5.33$, *p*-value = 0.38). Similar to the prior section, there are fewer than five observations in some of the 'violation' cells. Thus, I also conduct the analysis using logistic regression (same variables as the two-way Chi-square). The results agree with the Chi-square results (*p*-value = 0.42). Therefore, no industry is more likely to include late filing firms than other industries.

**Likelihood of Noncompliance Due to Reason for Filing**

Consistent with Carter and Soo (1999), I also examine the potential relationship between direction of Form 8-K event and noncompliance. The direction of event was defined as "negative news" (resignation of director or officer, change in certifying accountant not to a "Big 4" CPA firm, and change in control), "positive news" (acquisition of assets, change in certifying accountant to a "Big 4" CPA firm from a non-Big 4 firm, appointment of a new director or officer) or "mixed news" (a Form 8-K filing containing examples of both negative and positive news).[5]

Out of the 23 violations, there are 14 categorized as negative, 6 as positive, and 3 as mixed. A Chi-square test where 'direction of reason' for violation is the "independent variable" and 'violation' is the "dependent variable" indicates statistical significance ($\chi^2 = 8.44$, *p*-value = 0.015). Therefore, consistent with Carter and Soo's (1999) findings,

[5] The classification involving "Big 4" CPA firms is consistent with the extant audit quality literature (see Bannister and Wiest 2001 for a summary). The lone change of control related violation is coded as "negative news," because it involved the firm as a hostile takeover victim.

negative news Form 8-K disclosures are more likely to be filed late than either disclosures containing positive or mixed news.

**Enforcement**

SOX Section 409 calls for "real-time" disclosures of information on material changes in the financial condition or operations of publicly held companies (Murthy 2004). As a consequence, firms are more concerned with the timeliness of financial information. But should they be concerned about enforcement actions from the SEC or other stakeholders (e.g., investors)?

Pre-Sox, Carter and Soo (1999) maintain that SEC penalties solely based on timeliness issues are rare (see footnote 1). Further, Friedland (2004) suggests that due to a very limited amount of resources, the SEC's Division of Enforcement has to be very selective in who they pursue. For non-CPA firm violators, those more in the public eye (i.e., Fortune 100 companies) are more likely to be pursued for enforcement. However, SOX provides a boost to the SEC's resources, which could permit a wider variety of firms to be subject to SEC enforcement actions.[6]

The prior enforcement literature focuses on the SEC's Accounting and Auditing Enforcement Release (AAER) series and the Accounting Service Release series when considering various SEC enforcement issues (e.g., Bannister and Wiest 2001; Carcello and Palmrose 1994; Jones and Weingram 1996; Bonner et al. 1998). Carcello and Palmrose also examine financial reporting frauds through litigation and non-SEC regulatory action. Consequently, I search the following sources for potential enforcement actions against Section 409 violators: the SEC's AAER series (for SEC regulatory

[6] None of the "violators" from my sample are from the Fortune 100.

actions); *Business Newswire* and *Legal Newswire* (for non-SEC litigation); and *Lexis-Nexis Academic* (for any form of public reprimand/enforcement).

Using a search period from the date of Form 8-K filing that resulted in a violation through June 1, 2006, I do not find any public actions against the Section 409 violators from my sample. This includes being part of a broader enforcement action. My finding is consistent with the earlier discussion (regarding the SEC not penalizing firms for timeliness violations alone) and extends this concept to include non-SEC stakeholders (e.g., stockholders). Although no public reprimand is found, I cannot rule out the possibility of non-public enforcement actions against the violating firms.

## CONCLUSION

The passage of SOX Section 409 represents a large step in improving the financial reporting timeliness of public firms. Section 409 expands the number of events required to be reported on the Form 8-K, while also significantly reducing the Form's filing deadline. Carter and Soo (1999) investigate the Form 8-K filing behavior of firms from 1993 and find over 25% filing tardiness, as well as up to 9% information leakage pre-Form 8-K filing. The purpose of my paper is to provide a descriptive follow-up to Carter and Soo's study in the period closely following the effective date of SOX Section 409 in order to gauge whether it has significantly changed management's 8-K filing behavior. Specifically, I investigate two research questions: 1) Has the passage of SOX Section 409 caused firms to file their Form 8-Ks in a timelier fashion? 2) For Section 409 8-K filing violators, what form of public punishment serves as an enforcement mechanism?

Results indicate that firms' behavior has significantly improved with regard to improving the timeliness of Form 8-K filings. Overall, 95% of the sample complies with Section 409's four day requirement. The largest percentage of late filings is for the "change in certifying accountants" event. However, the percentage has decreased from 32.4% in 1993 (found by Carter and Soo 1999) to only 10.5% in the fourth quarter of 2004. All of the other events examined have percentages less than 10% including no late filings for the "disposition of assets" event.

Relative to the other events examined, Form 8-K filings are more likely to be late if they report board of director resignations. Other results indicate no discernable differences between the number of days to file within the four day requirement; no industry is more likely than another to be non-compliant; and disclosures of negative events are more likely filed late than for either positive or mixed (i.e., both positive and negative news in the same Form 8-K) events. The last finding is consistent with Carter and Soo's (1999) findings.

Also consistent with Carter and Soo's (1999) results is the lack of public enforcement for violators. No form of public punishment is found for those who took over four days to file their Form 8-K. Although non-public fines or other reprimands from the SEC and other firm stakeholders cannot be ruled out, this finding indicates that perhaps management's trepidation with regard to SOX or other public consequences (e.g., increased cost of capital or class action lawsuits from stockholders) outweighs actual punishment. However, the exact enforcement mechanism is, as of yet, unknown.

In sum, I find evidence consistent with SOX Section 409 resulting in increased timeliness of Form 8-K filings: both overall and for all events investigated. This finding should be of interest to the SEC, because it validates their effort (and that of SOX) to shorten the Form 8-K filing time, as well as provide corporate information to investors in a more timely fashion. Additionally, this finding can be interpreted as evidence of increased conservatism in financial reporting. Thus, it adds to the extant literature examining financial reporting behavior of public firms pre and post-SOX.

There are numerous future research opportunities. Researchers should expand both the number of event types (e.g., bankruptcy) and the time period of investigation to at least one year after the effective date of SOX Section 409 in order to gauge more longitudinal effects. Further, market reactions to the Form 8-K filings post Section 409 should be examined in order to assess whether information leakage decreased relative to the magnitude reported by Carter and Soo (1999). Finally, since the exact enforcement is still unknown, penalties against Form 8-K filing violators should be examined more closely, perhaps ex-ante, to find out the impact (if any) it has on management's Form 8-K filing behavior.

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**Table 1**
**Number of Days to File the Form 8-K and their Frequencies**

| *Business Days After Event to File* | *Frequency of Filings* |
|---|---|
| 0 | 69 |
| 1 | 103 |
| 2 | 79 |
| 3 | 84 |
| 4 | 104 |
| 5 | 9 |
| 6 | 4 |
| 7 | 1 |
| 8 | 2 |
| 9 | 1 |
| 12 | 2 |
| 13 | 1 |
| 16 | 1 |
| 18 | 1 |
| 20 | 1 |

**Table 2**
**Sample Statistics on Fourth Quarter 2004 Form 8-K Filings by Type of Event**

| *Event* | *Number* *(%)* | *Median Filing Time* | *% Late* |
|---|---|---|---|
| All items | | | 5.0% |
| Item 1: Changes in Certifying Accountants | 38 (8.2%) | 3 days | 10.5% |
| Item 2: Resignation of Directors | 127 (27.5%) | 2 days | 9.4% |
| Item 3: Resignation of Officers | 140 (30.3%) | 2 days | 3.6% |
| Item 4: Changes in Control | 28 (6.1%) | 2 days | 3.6% |
| Item 5: Disposition of Assets | 29 (6.3%) | 3 days | 0.0% |
| Item 6: Acquisition of Assets | 100 (21.6%) | 2 days | 1.0% |

**Table 3**
**Sample Statistics on Fourth Quarter 2004 Form 8-K Filings by Primary SIC Code**

| *Primary SIC Code* | *Frequency* (%) | *# Violations* (%) |
|---|---|---|
| 1000-1999 Natural Resources | 69 (14.9%) | 4 (6.0%) |
| 2000-2999 Food, Apparel, Textiles | 26 (5.6%) | 2 (7.7%) |
| 3000-3999 Manufacturing | 59 (12.8%) | 2 (3.4%) |
| 5000-5999 Retail and Wholesale | 48 (10.4%) | 5 (10.4%) |
| 7000-7999 Business Services | 169 (36.6%) | 8 (4.7%) |
| 8000-8999 Support Services | 91 (19.7%) | 2 (2.2%) |