

**SEC REQUIRES CEOs AND CFOs TO CERTIFY
THE ACCURACY OF SEC REPORTS --
What should you do to get ready?**

On June 27, 2002, the SEC issued an order requiring the principal executive officer and principal financial officer of almost 1,000 public companies to certify under oath the accuracy and completeness of their respective companies' SEC reports. This order, responding to the recent reports of accounting irregularities at public companies, follows initiatives by the SEC, the NYSE and Nasdaq to mandate similar certifications of SEC reports, improve SEC disclosure, strengthen corporate governance procedures and ensure auditor independence. A copy of the order, including the list of companies to which it applies, is available at www.sec.gov/rules/other/4-460.htm. A copy of the required certification is attached hereto as Exhibit A.

Pursuant to the order, the CEO and CFO must each personally certify that, to the best of his or her knowledge, the company's most recent Form 10-K and subsequently filed Form 10-Qs, Form 8-Ks and proxy materials did not either (1) contain an untrue statement of a material fact or (2) omit a material fact necessary to make the statements in the report not misleading. If each officer cannot make such a certification, he or she must file a statement, under oath, describing the facts and circumstances that would make such a certification incorrect. In either case, the officer must also state whether or not the contents of the statement have been reviewed with the company's audit committee. For most companies, the filing must be made on August 14, 2002. Once filed, the SEC will make the certifications publicly available.

As noted above, this is a personal certification by the executive with respect to all recent SEC filings, in contrast to certain other SEC filings that officers sign "on behalf of the registrant" or that need not be signed by the CEO at all. Although the officers are already subject to liability for securities fraud, the certification now exposes them to criminal charges of perjury. It also makes it more difficult for a CEO to claim unfamiliarity with the company's basic financial information, as some have recently claimed. In today's politically charged atmosphere, we expect the SEC to demonstrate that they take this new requirement seriously.

In order to be in a position to make such a certification, we recommend that CEOs and CFOs:

- ***Start the process now.*** With only about a month left before the certification is due, officers must develop a schedule that ensures that the work gets done on a timely basis. As the deadline approaches, CEOs and CFOs will have to focus on their second quarter earnings release and 10-Q and may have less time to devote to reviewing previous filings and making the necessary inquiries.

- ***Go back and review all covered SEC filings.*** Before making the certification, each CEO and CFO should go back and reread the filings, making sure that he or she understands the matters disclosed. Particularly with respect to quarterly reports and 8-Ks where the CEO may have relied on the CFO and others in the company to ensure their accuracy, the CEO should make sure he or she has thoroughly reviewed the disclosure. In addition, the order does not distinguish filings made before the officer joined the company or reached his or her current position. Thus, the officer would need to review those reports in detail and make the appropriate inquiries.
- ***Determine what level of inquiry is necessary to be able to deliver the certification.***
 - Although the statement is made “to the best of [the officer’s] knowledge,” the order does not discuss what level of inquiry is required. The previous SEC release proposing similar SEC rules states that “while these corporate officers would not have to undertake a separate inquiry as to information not known to them, their critical review of a report would necessarily include other inquiries where appropriate, including . . . regarding disclosures they do not understand or [as to] the materiality of information” they already know. No such qualification appears in the short SEC order. However, one would be hard-pressed to make the requisite critical review without making some reasonable level of inquiry.
 - The steps necessary to understand a company’s disclosure and assess its accuracy and completeness differs from industry to industry and from company to company. The *quality* of these discussions will be what counts, not mere quantity.
 - The CEO and CFO should convene meetings with other members of management to discuss in detail the company’s disclosure. Persons responsible for the company’s major businesses, geographic areas, accounting and auditing functions and legal affairs should be included. How far down the corporate chain these discussions should go -- whether to division heads or regional vice presidents -- depends on the particular circumstances.
 - The CEO and CFO should also meet with the company’s independent accountants to obtain their views of the disclosure in the company’s SEC reports, its financial statements and its accounting policies.
 - Someone should be assigned to review board materials and other memoranda and materials provided to the CEO or CFO to ensure that they are consistent with the public disclosure.
 - In conducting this review process, the CEO and CFO should make it clear that they want candid answers to their inquiries about the company’s SEC reports and disclosure practices, even if the information is negative and could adversely affect

the company's stock price. Employees intimidated from providing honest and complete information would limit the benefit of the review process.

- Some commentators have suggested obtaining written certifications from other members of management as to the sections of SEC reports within their particular expertise. Before making such a request, we recommend that the CEO and CFO assess whether the request will have a negative impact on their relationship with such other officers and whether the goal can be achieved through detailed discussions without the need for a written certification.
- ***Ensure appropriate audit committee review.*** As noted above, the certification must also include a statement that the executive has reviewed its contents with the audit committee. Sufficient time must be scheduled to give the audit committee time to review the company's SEC reports, raise any questions it may have and, if necessary, investigate any concerns raised. This meeting should be scheduled early enough in the process so that the officers can incorporate any of the committee's suggestions for conducting the review process.
- ***Review internal auditing and compliance mechanisms.*** As part of its release proposing similar disclosure certification requirements, the SEC also proposed that registrants annually evaluate the effectiveness of its procedures that ensure the gathering and disclosure of both financial and non-financial information required to be disclosed in SEC reports. The proposal recommends the creation of a committee responsible for "considering the materiality of information and determining disclosure obligations on a timely basis." Thus, CEOs and CFOs, together with other members of senior management and the audit committee, should
 - Review and update any internal checklists and procedures used in connection with the preparation of periodic and other reports.
 - As part of this process, make sure to review recent management audit letters, particularly for weaknesses in the company's internal control procedures.
- ***Assess what additional information, if any, may be necessary to be able to make the required certification.*** The lead-in to the certification states: "except as corrected or supplemented in a subsequent covered report." This provides an issuer with the opportunity to include any corrections in an amendment to its previous filings or in its second quarter 10-Q, which must be filed before the certification. However, we caution you to consider the possible impact of any such amendment to a report that is already in full compliance with applicable legal standards.
 - ***Pay particular attention to MD&A disclosure.*** Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") has been the focus of a series of recent SEC releases proposing additional disclosure regarding critical accounting policies, off-balance sheet arrangements, derivatives

and other matters. In its statements, the SEC has suggested that much of this disclosure is already required as part of the MD&A analyses under current rules. Officers should pay particular attention to MD&A to ensure that it adequately “identif[ies] and address[es] the key variables and other qualitative factors necessary for an understanding and evaluation of the company.”

- *Consider including recent developments.* Although the certification speaks only as to the accuracy of the reports as of the end of the period covered (for 10-Ks and 10-Qs) and the date of the report (for 8-Ks and proxy materials), you should consider including a discussion of recent developments. These new developments may be indicative of a “known trend” whose disclosure is required.
 - *No new “duty to update.”* This certification does not impose a new “duty to update” previous disclosure. We would be happy to discuss with you the need to disclose updated financial information, negotiations regarding a pending transaction or other sensitive information.
- ***Get out in front on this issue.***
- *Consider adopting “best” disclosure and governance practices.* Public companies are being scrutinized by the investment community and the investing public as to the transparency of their disclosure and the adequacy of their corporate governance practices. SEC filings, press releases and other public statements should be as clear as possible to avoid any hint of evasion. You should consider adopting disclosure and governance practices, even if not technically required, to maintain your and your company’s credibility and its reputation for following “best practices.”
 - *Even if your company is not covered by the order, consider following similar review procedures.* Anticipate being questioned about this at your upcoming quarterly earnings call. Some public companies, particularly large foreign companies which are not covered by the order, have publicly announced that they will even voluntarily comply with this certification.
- ***Keep a record of your review process.*** Keep a record of whom you spoke with and what you did as part of this review process. This record may be invaluable as part of a defense in a potential criminal investigation. We would be happy to discuss with you the appropriate record-keeping practices to follow in connection with this certification.

WILLKIE FARR & GALLAGHER

If you wish to obtain additional information regarding this new SEC certification, or assistance in developing a detailed program to help ensure compliance, please contact John S. D'Alimonte (212-728-8212, jd'alimonte@willkie.com), Jeffrey S. Hochman (212-728-8592, jhochman@willkie.com), Michael R. Young (212-728-8280, myoung@willkie.com) or the partner who regularly works with you.

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July 15, 2002

Exhibit A
(Corrected)

OMB Number: 3235-0569
Expires: January 31, 2003

Statement Under Oath of Principal Executive Officer and Principal Financial Officer Regarding Facts and Circumstances Relating to Exchange Act Filings

I, [Name of principal executive officer or principal financial officer], state and attest that:

(1) To the best of my knowledge, based upon a review of the covered reports of [company name], and, except as corrected or supplemented in a subsequent covered report:

- no covered report contained an untrue statement of a material fact as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed); and
- no covered report omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed).

(2) I [have/have not] reviewed the contents of this statement with [the Company's audit committee] [*in the absence of an audit committee*, the independent members of the Company's board of directors].

(3) In this statement under oath, each of the following, if filed on or before the date of this statement, is a "covered report":

- [identify most recent Annual Report on Form 10-K filed with the Commission] of [company name];
- all reports on Form 10-Q, all reports on Form 8-K and all definitive proxy materials of [company name] filed with the Commission subsequent to the filing of the Form 10-K identified above; and
- any amendments to any of the foregoing.

[Signature*]
[Name]
[Date]

Subscribed and sworn to
before me this ____ day of
_____ 2002.

/s/ _____
Notary Public

My Commission Expires:

[* Separate statements to be signed by each of the Principal Executive Officer and the Principal Financial Officer.]