



FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

SEC Orders Officer Certification of Reports

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The SEC recently announced two actions designed to restore investor confidence in the accuracy of reports filed with the SEC – by requiring CEOs and CFOs to certify the accuracy of public company reports. Most recently, the SEC issued an unprecedented order, effective immediately, requiring the CEOs and CFOs of 945 public companies with revenues greater than \$1.2 billion to provide to the SEC sworn statements attesting to the accuracy of their company’s SEC reports from the latest Form 10-K to the present. The certifications will generally be filed by August 14, 2002 and will be made public. This order in effect accelerates for these particular companies the effectiveness of the SEC rule proposal published for comment last month, which is likely to be finalized and go into effect for public companies generally in coming months.

Order Requiring Principal Officers of 945 Large Public Companies to Provide Immediate Certifications of SEC Reports

On June 28, 2002, the SEC issued an unprecedented order requiring the principal executive officer and the principal financial officer of 945 of the largest public companies (those with revenues greater than \$1.2 billion in the last fiscal year) to file a sworn statement with the SEC attesting, to the best of the officer’s knowledge, based upon a review of the company’s most recent Form 10-K report and all subsequent proxy materials and reports on Form 10-Q and Form 8-K, and any amendments (“covered reports”), that:

- No covered report contained an untrue statement of a material fact;
- 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; and
- That the officer has (or has not) reviewed the contents of the sworn statement with the Audit Committee or independent directors of the company.

If the officer cannot make such a statement about the truth and completeness of the covered reports, the officer must file a sworn statement describing the facts and circumstances that would make such a statement incorrect, and declare whether or not the contents of that statement have been reviewed with the Audit Committee or independent directors.

These sworn statements must be delivered in writing no later than the first date that a Form 10-K or Form 10-Q of the company is due on or after August 14, 2002. The order is effective immediately. There is no comment period.

The stated purpose of the order is to restore investor confidence. In announcing the order, SEC Chairman Harvey L. Pitt, stated, "We are demanding that CEOs and CFOs swear that the numbers they've reported in their financial reports are correct and that they've left nothing important out." To view the full text of the order, click here:

<http://www.sec.gov/news/press/2002-96.htm>.

Proposed Rules for Officer Certification and Establishment of Disclosure Procedures for SEC Reports

On June 17, 2002, the SEC proposed changes to the public company disclosure requirements intended to enhance both the quality of disclosure and investor confidence. These changes, if adopted, would apply to all publicly reporting U.S. companies, regardless of size. To view our earlier Corporate & Securities Law Update on this subject, click here:

http://www.fenwick.com/pub/corp_pubs/SEC_Proposes_New_Rules/SEC_6_19_02.htm.

The major elements of the rule proposal are:

- To require a company's principal executive officer and principal financial officer to certify that, to their knowledge, the information in the company's quarterly and annual reports is true in all important respects and that the reports contain all information about the company of which they are aware that they believe is important to a reasonable investor; and
- To require a company to establish and maintain procedures such as creating a "disclosure committee" to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's quarterly and annual reports, as well as current reports on Form 8-K, and also to require periodic review and evaluation of these procedures.

The comment period on this proposal will be open until August 19, 2002, and we would be happy to assist you if you wish to comment on the proposals. To view the full text of the proposed rules, click here: <http://www.sec.gov/rules/proposed/34-46079.htm>.

If you have any questions about this latest release, please contact Horace Nash, (hnash@fenwick.com), Rob Freedman, (rfreedman@fenwick.com) or Gordon Davidson, (gdavidson@fenwick.com) all of whom helped prepare this update. You may also contact any member of your Fenwick & West team, or <mailto:fwcsu@fenwick.com>.