

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

## SEC ISSUES FINAL CEO/CFO CIVIL CERTIFICATION RULES

By Curtis R. Hearn and Allison C. Bell

On August 29, 2002, the SEC issued final rules implementing the CEO and CFO civil certification requirement mandated by the Sarbanes-Oxley Act of 2002. The final rules, adopted as new Exchange Act Rules 13a-14 and 15d-14, require that quarterly reports on Form 10-Q and annual reports on Form 10-K be accompanied by a separate CEO and separate CFO certification.

The SEC's certification rules *became effective on August 29th* and, accordingly, the required certifications must be included in companies' *next* Exchange Act filings on Form 10-Q or 10-K and *all subsequent* 10-Q and 10-K filings (Forms 20-F and 40-F for certain foreign issuers).

Under the certification requirement, which will be subject to *civil* enforcement by the SEC, CEOs and CFOs will each be required to certify:

- that the signing officer has reviewed the periodic report and, based on his or her knowledge, (i) the report does not misstate or omit a material fact and (ii) the financial statements included within the report fairly present, in all material respects, the financial condition, results of operations and cash flows of the company for the periods presented in the report;
- that (i) the signing officer and other certifying officers are responsible for and have established and maintained "disclosure controls and procedures" (defined below) to ensure that material information relating to the company is made known to the signing officers, (ii) the signing officers have evaluated the effectiveness of the company's disclosure controls and procedures within 90 days of the filing date of the periodic report and (iii) the signing officers have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation;
- that the signing officer and other certifying officers have disclosed to the company's auditors and audit committee (i) any significant deficiencies in the design or operation of the company's internal controls and (ii) any fraud that involves management or other employees who have a significant role in the company's internal controls; and
- whether or not there were any significant changes in internal controls or

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

other factors that could significantly affect the company's internal controls subsequent to the date of their evaluation.

In order to implement the certification requirement, the SEC has amended Forms 10-Q, 10-QSB, 10-K and 10-KSB (and Forms 20-F and 40-F for certain foreign issuers) to require that the certifications follow immediately after the signature sections of these reports. Moreover, the certifications required by the new rules must be in the exact form set forth in the amendments to the affected reports; thus, the wording of the certifications may not be changed in any respect, even if the change would appear to be inconsequential in nature. ([Click here to link to the SEC's final rules containing the amendments to Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F and 40-F.](#))

For purposes of the new rules, "disclosure controls and procedures" are defined as controls and other procedures designed to ensure that information required to be disclosed by a company in its Exchange Act reports is recorded, processed, summarized and reported to the company's management so as to allow for timely decisions regarding required disclosure.

The SEC also adopted new Exchange Act Rules 13a-15 and 15d-15 requiring public companies to establish and maintain such disclosure controls and procedures as are necessary to make the civil certifications. Previously, an SEC-registered company was only required to establish and maintain systems of internal procedures and controls with respect to its financial information. These new rules, however, require companies to implement procedures for gathering *all information*, including non-financial information, required to be included in its quarterly and annual reports. The procedures should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the company's business, and should also cover material information that may need to be disclosed in order to make statements in the company's Exchange Act reports not misleading.

New Rules 13a-15 and 15d-15 also require companies to evaluate, within 90 days prior to the filing of any Form 10-Q or 10-K and under management's supervision, the effectiveness of its procedures relating to the development of the information necessary to prepare its 10-Q and 10-K reports. While the rules do not require particular procedures for conducting the evaluation, the SEC recommends that each company *create a committee* with responsibility for considering the materiality of the information and determining disclosure obligations on a timely basis. The SEC has indicated that this committee should report to senior management, and members of the committee could include the company's controller, general counsel, principal risk management officer and chief investor relations officer.

*Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities practice group:*

L. Richards McMillan, II  
Jones Walker  
201 St. Charles Ave., 51st Fl.  
New Orleans, LA 70170-5100  
ph. 504.582.8188  
email [rmcmillan@joneswalker.com](mailto:rmcmillan@joneswalker.com)

## Corporate and Securities Practice Group

BRAD J. AXELROD  
ALLISON C. BELL  
LISA MANGET BUCHANAN  
MONIQUE A. CENAC  
IZABELA M. CHABINSKA  
SCOTT DAVID CHENEVERT  
DOUGLAS N. CURRAULT, II  
CARL C. HANEMANN  
CURTIS R. HEARN  
WILLIAM B. MASTERS  
MEREDITH GUTHRIE MAXWELL  
L. RICHARDS MCMILLAN, II

RICHARD B. MONTGOMERY  
MARGARET F. MURPHY  
KENNETH J. NAJDER  
AMOS JOHN OELKING, III  
ROBERT JOSEPH PARKEY, JR.  
ANDREW D. PILANT  
CELESTE ELIZABETH RASMUSSEN  
DIONNE M. ROUSSEAU  
KELLY C. SIMONEAUX  
JAMES EDWARD APPELL SLATON  
RICHARD P. WOLFE

To subscribe to other E\*Zines, visit [www.joneswalker.com/news/ezine.asp](http://www.joneswalker.com/news/ezine.asp)

ADMIRALTY & MARITIME  
ANTITRUST & TRADE REGULATION  
AVIATION  
APPELLATE LITIGATION  
BANKING, RESTRUCTURING &  
CREDITORS-DEBTORS RIGHTS  
BUSINESS & COMMERCIAL  
LITIGATION  
COMMERCIAL LENDING & FINANCE  
CONSTRUCTION  
CORPORATE & SECURITIES  
EMPLOYEE BENEFITS, ERISA, &  
EXECUTIVE COMPENSATION  
ENERGY  
ENVIRONMENTAL & TOXIC TORTS  
ERISA, LIFE, HEALTH &  
DISABILITY INSURANCE LITIGATION  
GAMING  
GOVERNMENT RELATIONS  
HEALTH CARE LITIGATION,  
TRANSACTIONS & REGULATION  
INTELLECTUAL PROPERTY &  
E-COMMERCE  
INTERNATIONAL  
LABOR RELATIONS &  
EMPLOYMENT  
MEDICAL PROFESSIONAL &  
HOSPITAL LIABILITY  
MERGERS & ACQUISITIONS  
PRODUCTS LIABILITY  
PROFESSIONAL LIABILITY  
PROJECT DEVELOPMENT & FINANCE  
PUBLIC FINANCE  
REAL ESTATE: LAND USE,  
DEVELOPMENT & FINANCE  
TAX (INTERNATIONAL,  
FEDERAL AND STATE)  
TELECOMMUNICATIONS &  
UTILITIES  
TRUSTS, ESATES &  
PERSONAL PLANNING  
VENTURE CAPITAL &  
EMERGING COMPANIES  
WHITE COLLAR CRIME