

- 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

CEO/CFO CERTIFICATIONS UNDER SARBANES-OXLEY ACT

By Curtis R. Hearn and Allison C. Bell

Yesterday, we alerted you to the fact that the Sarbanes-Oxley Act of 2002 requires that filed periodic reports containing financial statements must now be accompanied by a CEO and CFO certification. You should note that there are two separate statutory certification requirements, one criminal and one civil. The certification requirement with criminal law ramifications became effective upon execution of the Act by the President on July 30, 2002, and requires CEOs and CFOs to certify that:

- the periodic report in question complies with the requirements of the Securities Exchange Act of 1934; and
- the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the filing company.

The civil certification requirement will become effective after further SEC rulemaking (which must be completed on or before August 29, 2002), and will require CEOs and CFOs to make a separate certification to the following effects:

- that the periodic report in question (i) does not misstate or omit a material fact, (ii) fully complies with the requirements of the Securities Exchange Act of 1934, and (iii) fairly presents, in all material respects, the financial condition and results of operations of the company;
- that the signing officers are responsible for and have established and examined the company's internal controls to ensure that material information relating to the company is made known to the signing officers;
- that the signing officers have disclosed to the company's auditors and audit committee any significant deficiencies in the company's internal controls and 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 the company's internal controls or other factors that could significantly affect the internal controls.

NYSE BOARD APPROVES NEW CORPORATE GOVERNANCE RULES

By Amos J. Oelking III

Yesterday, the Board of Directors of the New York Stock Exchange approved new corporate governance standards for NYSE-listed companies, adopting the recommendations of the NYSE's Corporate Accountability and Listing Standards Committee submitted to the NYSE Board in June. ([Click here to link to our E*Zine regarding the Committee's corporate governance recommendations.](#))

Comment letters received by the NYSE, as well as subsequent legislative developments and deliberations of the Committee, resulted in several clarifications of the Committee's original recommendations, including changes to clarify that:

- each NYSE-listed company must have an internal audit function; and
- prohibited compensation for audit committee members includes fees paid, directly or indirectly, for consulting, legal or financial advisory services, regardless of the amount.

Formal rule changes incorporating these new standards will be filed with the SEC in the near future. The rule changes, which will be subject to public comment, will become effective upon adoption by the SEC.

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:

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ENVIRONMENTAL & TOXIC TORTS

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