

Client Alert: SEC Issues Order Requiring Filing of Sworn Statements Regarding Accuracy of SEC Filings

A. Introduction

In the aftermath of recent accounting scandals, on June 27, 2002 the Securities and Exchange Commission issued an order¹ requiring the principal executive officer and principal financial officer of most large publicly traded companies² to file a statement with the SEC certifying, to the best of their knowledge, as to the accuracy of the company's most recent annual report on Form 10-K and all quarterly reports on Form 10-Q, current reports on Form 8-K and definitive proxy materials filed after the company's most recent annual report on Form 10-K.

B. Certification

Specifically, the SEC has mandated that the principal executive officer and principal financial officer of each of the companies subject to the order either:

- (i) file a statement in writing, under oath, in the form of Exhibit A hereto, or
- (ii) file a statement in writing, under oath, describing the facts and circumstances that would make such a statement incorrect.

In either case, such statement is required to further declare, under oath, whether or not the contents of the statement have been reviewed with the company's audit committee, or in the absence of an audit committee, the independent members of the Company's board of directors.

The statements are due by the close of business on the first date that a Form 10-K or Form 10-Q of the applicable company is required to be filed with the SEC on or after August 14, 2002.

¹ See Securities and Exchange Commission OMB Number 3235-0569, File No. 4-460. A copy of the order is available on the SEC website at <http://www.sec.gov/rules/other/4-460.htm>.

² For a list of companies subject to the order, see <http://www.sec.gov/rules/other/4-460list.htm>

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Exhibit A

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.