US regulator proposes amendments to rules CFO and CEO declarations

The US Securities and Exchange Commission is proposing changes to rules on the certification of financial statements by chief executives and their top finance officer so companies cannot hide the certifications from the public.

An SEC statement released last week states the Commission wants to make it easier for investors and Commission staff to find the certifications within the reports lodged each quarter with the SEC.

The certification rules became a part of the compliance regime in the US following the heightened concern within that country over the integrity of numbers in financial statements after corporate misadventures such as WorldCom and Enron.

Certification of financial statements by those holding the CEO and CFO posts within a company is an obligation on those corporate officials embedded in the Sarbanes-Oxley Act passed by the US Congress last year.

The SEC release announcing the proposed changes to the certification rules states:
"Section 302 of the Sarbanes-Oxley Act requires the principal executive and financial officers of a company filing periodic reports to certify in each quarterly and annual report, among other things, that the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading, and the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the company."

"Section 906 of the Sarbanes-Oxley Act adds a provision to the US criminal laws that contains a separate certification requirement. This provision expressly created new criminal penalties for a knowingly or willfully false certification."

Further Enron litigation

The SEC also announced in the past fortnight that it has sued Merrill Lynch and four of its former executives for aiding Enron management in the manipulation of that entity's financial statements.

Merrill Lynch itself settled with the SEC. The settlement includes $80 million in disgorgement, penalties and interest, according to the SEC. The four former executives, however, have opted to walk the hot coals of litigation..

"As alleged in our complaint, at the end of 1999, Merrill Lynch and four of Merrill's senior executives aided and abetted the fraudulent manipulation of Enron's financial statements," according to Stephen Cutler, director of the SEC's division of enforcement.

“They did so through two transactions designed to make Enron's performance look better than it actually was.”

SEC chairman William Donaldson said the action against Merrill Lynch is the fourth case arising from the collapse of Enron.

“Our action alleges that Merrill Lynch and the four individuals knowingly and substantially assisted Enron's fraud. These allegations stem from two year-end 1999 transactions that fraudulently added approximately $60 million to Enron's 1999 income and raised 1999 earnings per share from $1.09 to $1.17,” the SEC chairman says.

“These actions cover a wide range of conduct, from self-dealing in connection with a special purpose entity transaction called Southampton, to inflating results in Enron's Broadband Business, to the earnings manipulation described in today's complaint. To date, the investigation has yielded charges against former CFO, Andrew Fastow, former executive, Michael Kopper, and Enron Broadband executives Kevin Howard and Michael Krautz.”

Chairman Donaldson asserts the action against Merrill Lynch emphasises the need for all involved in the financial reporting process to behave appropriately.

“This action, therefore, is a message to all who would help a reporting company defraud investors: we will bring the full weight of our enforcement arsenal against anyone and everyone who does so.”

This article was supplied by Tom Ravlic. Tom is a financial journalist who has spent the past seven years covering the accounting profession, accounting and audit standard setting and corporate governance. His work has appeared in various publications including *Business Review Weekly*, *Personal Investment* (now *Personal Investor*), *The Age*, *CFO Magazine*, the *Australian CPA*, the *Company Director Journal* and the newsletters of the internationally renowned Lafferty Group. In addition to his freelance commitment to a wide range of publications, Tom has recently accepted an appointment to be editor of *Chartac Accountancy News*, published by Melbourne-based publisher Crown Content.