

September 26 2016 Corporate News Update: Federal Court Addresses False Rule 13a-14 Certifications; Software License Sales May be Subject to UK Agency Regulations; and CFTC Signs an MOU With Mexican Authorities

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CATEGORY:

[BLOG](#)

by [Joseph Morales](#) *This edition of the Corporate News Roundup covers a federal court ruling that the SEC has a cause of action against CEOs and CFOs who sign a false Rule 13a-14 certification, a United Kingdom court's decision that subjects software license sales to UK agency regulations, and the CFTC entering into a Memorandum of Understanding with Comisi3n Nacional Bancaria y de Valores and Banco de M3xico: **FEDERAL COURT RULES THAT SEC HAS CAUSE OF ACTION AGAINST CEOS AND CFOS WHO PROVIDE FALSE RULE 13A-14 CERTIFICATION***

A U.S. Court of Appeals recently ruled that the SEC has a cause of action against CEOs and CFOs who provide a false certification under Exchange Act Rule 13a-14, which requires an issuer's CEO and CFO to sign a certification stating that the financial statements included in the report filed under Exchange Act Section 13(a) fairly present in all material respects the issuer's financial condition, results of operations and cash flow for the covered period. The lower court had concluded that Rule 13a-14 creates a cause of action against CEOs and CFOs who do not sign or file a certification, but not against CEOs and CFOs who make a false certification. The U.S. Court of Appeals disagreed, determining that simply signing a certification was insufficient for compliance with the rule. The court also concluded that the disgorgement remedy provided under Sarbanes-Oxley Act Section 304 applies even if an accounting restatement was caused by conduct in which the officers were not personally involved. In reaching this conclusion, the appeals court agreed with the SEC that Section 304 is concerned with an issuer's misconduct, not the individual CEO or CFO misconduct. For more information on *SEC v. Jensen*, [click here](#). **UNITED KINGDOM CASE CLARIFIES THAT SALE OF SOFTWARE LICENSES MAY BE SUBJECT TO AGENCY REGULATIONS**

A United Kingdom court recently clarified that the sale of software licenses through agents may constitute the sale of goods and therefore may be subject to The Commercial Agents (Council Directive) Regulations 1993. Such regulations govern the relationship between a commercial agent and a principal with respect to sales or purchases of goods and impose (among other things) extensive good faith obligations and minimum notice periods for terminating an agency contract that continues beyond its fixed term. Based on the ruling in *Software Incubator Ltd. v. Computer Associates UK Ltd.*, parties who engage agents to sell software licenses to U.K. customers should review their existing agency contracts and determine if any of them are subject to the regulations. For more information, [see Withers' client advisory here](#). **CFTC SIGNS MEMORANDUM OF UNDERSTANDING WITH MEXICAN AUTHORITIES**

The U.S. Commodity Futures Trading Commission (CFTC) recently signed a Memorandum of Understanding (MOU) with Comisi3n Nacional Bancaria y de Valores and Banco de M3xico, covering cooperation in the oversight of regulated entities that operate on a cross-border basis in the United States and Mexico. Although the MOU does not impose any legally binding obligations, the parties expressed their willingness to cooperate with each other in fulfilling their regulatory mandates with respect to general supervisory issues (including regulatory and oversight developments) and other issues relevant to the operations, activities and regulation of covered entities. The MOU provides for notifications triggered by pending regulatory changes that may significantly impact operations, activities or reputations of covered entities; request-based information sharing among the parties; and periodic meetings by the parties for the purpose of updating each other about regulatory oversight programs. For more information, [click here](#). To subscribe to our weekly Corporate e-newsletter and receive future news updates, please [click here](#). If you would like to read up on previously published Corporate-related news, please visit our e-newsletter archive by [clicking here](#).