

# TRENDS

I N F I N A N C I A L M A N A G E M E N T

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## Legal Liability for Your Financial Reporting?

### ► IT ISN'T ONLY CEOS AND CFOs

who are legally exposed to Sarbanes-Oxley rules for certification of financial statements' accuracy and completeness. So are treasurers, financial managers, controllers, and any other financial professionals within a company who contribute to public and private company reports filed with the Securities & Exchange Commission, if they're asked to and do sign a "subcertification" affidavit.

Since Sections 302 and 906 of the legislation went into effect one year ago, 37% of these executives who work for public companies and 20% with private companies were asked to sign affidavits certifying the accuracy of the financial information they provided, and nearly all who were asked to signed. That's according to a survey the Association for Financial Professionals (AFP) conducted in June 2003 and released in late July 2003. AFP specifically sought to measure the prevalence of sub-

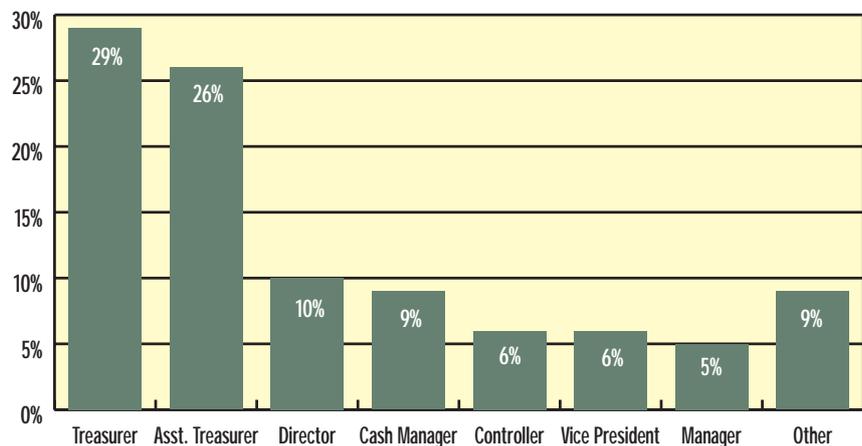
certification activity and the issues it raised for financial professionals, 555 of whom—AFP members and nonmembers—responded to the 13-question survey.

Financial professionals certifying their work signed affidavits for a median of three items in their company's financial reports, according to the survey results. Two-thirds who work for public companies said they certify disclosures in

Management's Discussion and Analysis or footnotes, 60% on specific account balances, 60% on compliance with company practices, and 58% on adequacy of internal controls. The types of information financial professionals at privately held firms certify roughly parallels those at publicly traded companies.

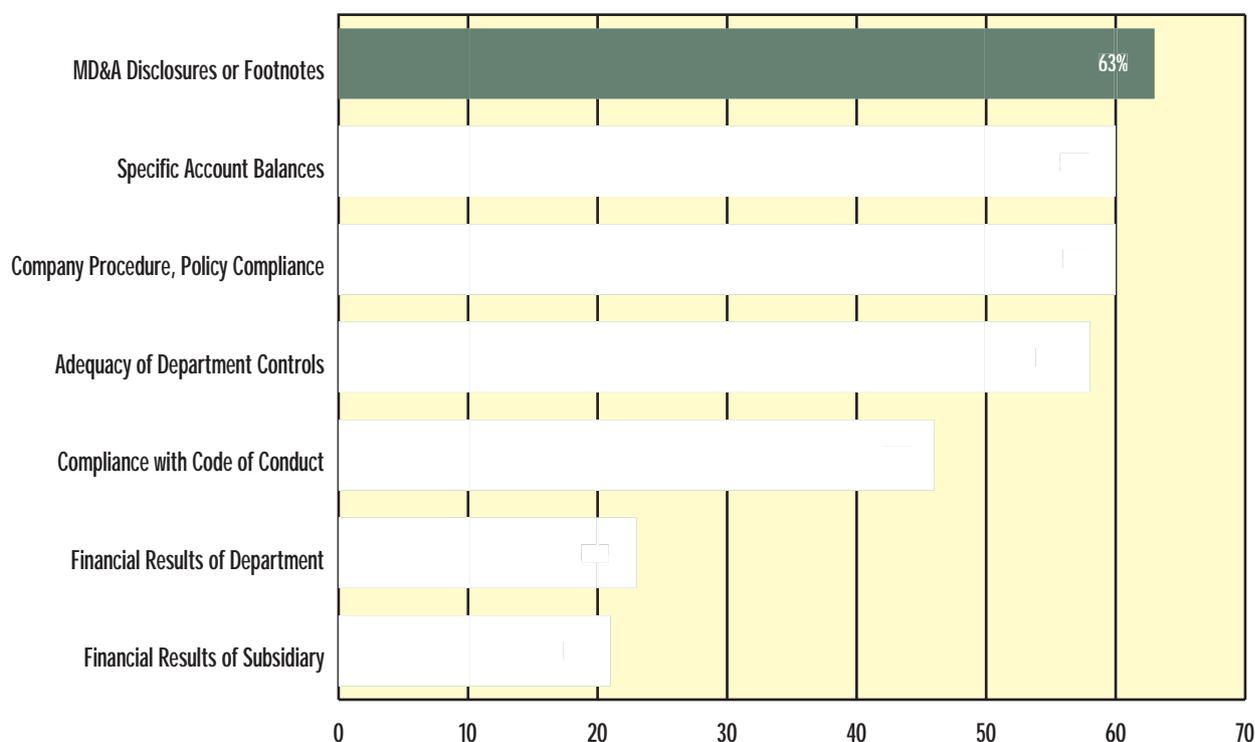
Not surprisingly, 79% of financial professionals who were asked

Figure 1: Job Titles of People Signing Subcertification Affidavits



Source: Association for Financial Professionals

Figure 2: Information Financial Professionals Certify\*



\* Among those who do sign certifications  
 Source: Association for Financial Professionals

to sign an affidavit expressed a “high” or “moderate” level of concern about their liability. But only 21% sought counsel from a company attorney and 2% from a personal attorney. Even financial professionals who haven’t been asked to sign an affidavit are concerned about the personal liability implications of their providing financial information. Sixty-one percent of them expressed at least moderate concern about the personal liability implications of providing financial information.

Among all financial professionals who contribute to public financial reports—that’s 60% of everyone AFP polled—only 12% received legal advice from their employers. That may be because there isn’t much legal advice to give at this point. Sarbanes-Oxley is new legal terrain. No legal precedents exist to

demonstrate the scope and impact of the new law and resultant rules from the SEC.

In a white paper on its website ([www.afponline.org/SOX\\_white\\_paper.pdf](http://www.afponline.org/SOX_white_paper.pdf)), AFP cautions that while a company attorney may answer your questions truthfully, he or she is likely to focus on the Act’s limitations and may not counsel you on your exposure to civil litigation. The white paper suggests the kind of certification language to avoid. It also offers a “boilerplate” subcertification affidavit that the association says financial professionals should feel comfortable with.

Under Sections 302 and 906 of the Sarbanes-Oxley Act, the SEC requires CEOs and CFOs to personally certify in each annual and quarterly report filed with the SEC that they have reviewed the re-

port and that, based on their knowledge, it doesn’t contain any material misstatements or omissions. They also must certify that the financial statements and other financial information included in the report fairly present—in all material respects—the company’s financial condition and results of operations. False certification of financial information carries steep penalties for CEOs and CFOs: \$1 million and/or up to 10 years’ imprisonment if the violation was “knowing” and \$5 million and/or up to 20 years’ imprisonment if the violation was “willful.” That law went into effect for reports filed after August 29, 2002.

But, of course, CEOs and CFOs typically don’t personally prepare the financial data contained in 10-Ks and 10-Qs. Thus the prevalence of subcertification affidavits. ■