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Fair Presentation in the Sarbanes-Oxley Era: An Assessment Framework and Opportunities for Forensic Accountants

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"Something can be in accordance with GAAP and yet not be a fair presentation of the company." (Alan Berkeley, attorney at Kirkpatrick & Lockhart, LLP, 2004)

INTRODUCTION

The Sarbanes-Oxley Act of 2002 (the "Act") was a watershed event in the accounting profession designed to increase investor confidence in the reliability of financial reporting. In an effort to ensure accountability among top executives, Sections 302 and 906 of the Act require CEOs and CFOs to certify that their company's financial statements are presented fairly. Interestingly, however, neither section provides that fair presentation can be achieved by conformity with generally accepted accounting principles (GAAP). Instead, the Act indicates that conformity with GAAP does not ensure fair presentation, raising questions about the specific characteristics that will be used in legal settings to evaluate whether accounting information is presented "fairly".

This paper evaluates the concept of fair presentation in financial reporting as it relates to legal cases in the Sarbanes-Oxley era. Specifically, we use the accounting literature, professional standards, and regulatory and legal precedents to examine the meaning of fair presentation without using GAAP as a wholly sufficient criterion. We also propose a framework for assessing fair presentation in investigative settings involving 302 and 906 certifications. Our framework provides that evaluations of information accuracy, completeness, and transparency provide a relatively comprehensive basis for assessing presentation fairness. In this context, conformity with GAAP is considered persuasive but not convincing. Finally, we argue that forensic accountants possess a combination of technical accounting, investigation, and communication skills that uniquely qualify them to assist parties who are interested in assessing fair presentation within its broader legal scope.