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## SEC Brings Another Case Against An Audit Committee Chair

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A recent enforcement action represents another example of the Securities and Exchange Commission's current focus on "gatekeepers," including audit committees, and gatekeepers' failure to take action in response to "red flags."

On March 27, the SEC instituted settled administrative proceedings against the former chair of an audit committee of a public company, based on the chair's apparent failure to act when presented with information suggesting that the company had made false representations in SEC filings.

As alleged in the SEC's [administrative complaint](#), L&L Energy, Inc. falsely represented in its 10-K for fiscal 2008 and three 10-Qs for fiscal 2009 that an individual was Acting CFO of the company when, in fact, she was not the Acting CFO. L&L included Sarbanes-Oxley officer certifications in these filings with the purported Acting CFO's digital signature. After becoming aware that the company had made false representations regarding her status, the purported Acting CFO contacted the audit committee chair. The chair contacted the CEO, who asserted that the individual actually was the Acting CFO; the audit committee chair did not contact anyone else, including anyone else at the company or the company's external auditors, to investigate whether this was the case. After being contacted again by the purported Acting CFO, the chair again contacted the CEO. The CEO then acknowledged that the individual was not the Acting CFO and that he had used the purported Acting CFO's name in L&L's filings without her permission. He told the chair "not to worry about it because it was in the past" (by this time L&L had hired another person as Acting CFO) and not to tell anyone about the purported Acting CFO, including the company's board or the public.

The chair did not tell anyone about the allegations, but signed L&L's 2009 10-K in her director capacity. The 10-K contained Sarbanes-Oxley officer certifications that any fraud, whether or not material, involving management had been disclosed to the company's auditors and its audit committee. The SEC alleged that the chair knew, or should have known, that this assertion was untrue (presumably because the use of the unauthorized digital signature was fraud). The chair agreed to a settlement that included permanently barring her from signing any SEC public filing that contains any certification required by the Sarbanes-Oxley Act.

While it involves unusual facts, the case follows closely on the heels of another recent SEC enforcement action against an audit committee chair (see [this previous post](#)). It is another

demonstration of the hazards for audit committees of not investigating or following up when presented with information about possible improprieties at their companies. It is also a useful reminder for directors that signing a 10-K is not a merely perfunctory act.