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## SEC Seeks Sarbanes-Oxley Section 304 Clawback of Bonuses and Stock Profits from CEO Not Charged With Wrongdoing

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On July 22, 2009, the Securities and Exchange Commission (the "SEC") brought an action, under Section 304 of the Sarbanes-Oxley Act ("Section 304" and "SOX"), seeking to compel a former CEO to reimburse his company and its shareholders for the bonuses that he received and stock sale profits that he had realized while his company committed accounting fraud. Although the SEC has brought several actions in the past under Section 304 to require CEOs and CFOs of publicly held companies to disgorge bonuses and stock sale profits following a restatement of their companies' earnings due to corporate misconduct, the current action marks the first time that the SEC has pursued such an action against an executive officer not otherwise alleged to have violated the securities laws. In its press release, the SEC made clear its view that "personal compensation received by CEOs while the companies they serve engage in wrongdoing can be clawed back."

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