

American Federation of Labor and Congress of Industrial Organizations



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November 1, 2010

Sent via Electronic and U.S. Mail

J. Gordon Seymour
Office of the Secretary
Public Accounting Oversight Board
1666 K Street, N.W.,
Washington, D.C. 20006-2803

Re: Rulemaking Docket Matter No. 031, Application of the "Failure to Supervise" Provision of the Sarbanes-Oxley Act of 2002 and Solicitation of Comment on Rulemaking Concepts

Dear Mr. Seymour:

On behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), I appreciate the opportunity to comment on the Public Company Accounting Oversight Board ("PCAOB" or "Board") proposed application of the "Failure to Supervise" Provision of the Sarbanes-Oxley Act of 2002 ("the Act").

The AFL-CIO is the largest labor federation in the United States, representing 12.2 million members. Union-sponsored pension plans hold approximately \$480 billion in assets, and union members also participate directly in the capital markets as individual investors.

Collectively, America's workers have lost hundreds of billions of dollars of their retirement savings through accounting-related scandals in the past decade. These include scandals involving Enron, WorldCom, Global Crossing, American International Group, and many others. The ability of investors to rely on accurate and reliable audited financial statements is fundamental to ensuring the integrity of the capital

markets. And in order for investors to trust such audits, there must be mechanisms in place that ensure that all those who participate in the auditing process—from the lowest level intern to the highest manager of a registered public accounting firm—adhere to the laws, rules, and standards that govern the profession.

For this reason, we express our full support to the Board, both in its reminder of the Board's statutory authority under the Act to issue sanctions against those firms and managers who fail to supervise associated persons who do not uphold the laws, rules, and standards of the profession, and for the rulemaking process that the Board is undertaking to clarify the nature of those supervisory relationships within registered public accounting firms.

In particular, we agree with the Board's assessment that it is necessary to "require firms to make and document clear assignments of the supervision responsibilities that are already required to be part of any audit practice."¹ The integrity of our financial markets depends on principles of transparency and documentation. The Board's modest proposed rulemaking is thus fully consistent with the animating principles of capital market regulation that have existed in this country since the Great Depression. Where there is documentation of the supervisory relationships within firms, there will be, by definition, greater clarity as to who is supervising whom, and what that relationship means for the protection of the auditing process.

The Board's proposal is thus a practical, workable solution to problems that the Board inspectors have already observed: namely, the "lack of clarity that regarding the allocation of various supervisory responsibilities at different levels within the firm's practice."² There can be no question as to the value of this proposal. The benefits are most immediate for the registered public accounting firms themselves: the requirement to document with clarity the allocation of supervision authorities should be in place already. Where it is not, the Board's recommendations will only increase the efficiency and the auditing process and protect the firms and their managers from sanctions associated with failure to supervise errant employees. While rulemaking has sometimes been criticized as too blunt an instrument to solve specific problems, in this case, there is almost no downside to the use of rulemaking to require what is already in these firms' best interests. Failure to do so will only extend the ambiguity that exists within some firms, coming ultimately at the expense of public investors.

¹ PCAOB Release No. 2010-005, August 5, 2010, Rulemaking No Docket Matter No. 31, p. 2

² *Id.* at 10

Letter to J. Gordon Seymour
November 1, 2010
Page Three

Indeed, while the firms themselves are the direct beneficiaries of this rulemaking, the benefits ultimately accrue to the public companies the firms audit, and the public investors who own them. Sanctions for failure to supervise, when accounting laws have been broken, can be seen as too little too late: by the time sanctions have been issued, the damage to the public has already been done. Ex ante rulemaking that seeks to ensure that all auditors are adequately supervised will thus prevent the need for such sanctions, because the errors associated with a failure to supervise will be less likely to occur when there is clarity in the supervisory process. For these reasons, we fully support the Board in its efforts.

Thank you again for the opportunity to comment on the proposal. If you need any additional information, please contact me at 202-637-3900.

Sincerely,

A handwritten signature in black ink, appearing to read "D. F. Pedrotty". The signature is fluid and cursive, with a large loop at the end.

Daniel Pedrotty
Director, AFL-CIO Office of Investment

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opeiu #2, afl-cio