

TED STEVENS, ALASKA  
GEORGE V. VOINOVICH, OHIO  
NORM COLEMAN, MINNESOTA  
ARLEN SPECTER, PENNSYLVANIA  
ROBERT F. BENNETT, UTAH  
PETER D. FITZGERALD, ILLINOIS  
JOHN E. SUNUNU, NEW HAMPSHIRE  
RICHARD G. SHELBY, ALABAMA

JOSEPH I. LIEBETMAN, CONNECTICUT  
CARL LEVIN, MICHIGAN  
DANIEL K. AKAKA, HAWAII  
RICHARD J. DURBIN, ILLINOIS  
THOMAS R. CARPER, DELAWARE  
MARK DAYTON, MINNESOTA  
FRANK LAUTENBERG, NEW JERSEY  
MARK PRYOR, ARKANSAS

MICHAEL D. UOFF, STAFF DIRECTOR AND CHIEF COUNSEL  
JOYCE A. RECHTSCHAFFEN, MINORITY STAFF DIRECTOR AND COUNSEL

# United States Senate

COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

March 21, 2003

Charles M. Niemeier  
Acting Chairman  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, D.C. 20006-2803

Dear Mr. Chairman:

I am writing in strong support of the proposal of the Public Company Accounting Oversight Board to require foreign accounting firms seeking to audit corporations trading on U.S. securities exchanges to register with the Board, comply with U.S. auditing standards, and cooperate with Board requests for auditor and client information.

Over the past five years, in my role as Chairman or Ranking Democrat on the U.S. Senate Permanent Subcommittee on Investigations, I have witnessed evidence in several of our investigations of ineffective, uncooperative, and disturbing practices by foreign auditors. In addition, recent events involving Royal Ahold have raised serious concerns about the adequacy of non-U.S. auditing standards and auditor oversight. These factors alone warrant inclusion of foreign firms auditing U.S. publicly traded corporations under the purview of the Board to protect U.S. shareholders and markets. Additional compelling reasons are that granting an exception for foreign auditors would be time-consuming and burdensome, and might encourage U.S. publicly traded corporations to purchase more audit services from abroad, driving audit services beyond the reach of U.S. oversight. The purpose of the Sarbanes-Oxley Act is to increase auditing oversight to restore investor confidence in U.S. securities markets, not push auditing services offshore to jurisdictions where Board oversight would be more difficult to accomplish.

An example of disturbing practices by foreign auditors can be found in the year-long investigation conducted by my Subcommittee staff into the role of correspondent banking in international money laundering. During the course of this investigation, the Subcommittee held hearings and released a five-volume report prepared by my staff. This report raised questions about the quality of auditing in foreign jurisdictions with strong corporate and bank secrecy laws and weak anti-money laundering controls. The report had this to say, for example, about several foreign accounting firms that had been asked questions about financial statements they reviewed or prepared for local banks:

Charles M. Niemeier, Acting Chairman

March 21, 2003

Page 2

"The investigation encountered a number of instances in which accountants in foreign countries refused to provide information about a bank's financial statements they had prepared in the role of a bank receiver or liquidator. Many foreign accountants contracted during the investigation were uncooperative or even hostile when asked for information.

" – The Dominican auditing firm of Moreau Winston & Company, for example, refused to provide any information about the 1998 financial statement of British Trade and Commerce Bank, even though the financial statement was a publicly available document published in the country's official gazette, the firm had certified the statement as accurate, and the statement contained unusual entries that could not be understood without further explanation.

" – A PriceWaterhouseCoopers auditor in Antigua serving as a government-appointed liquidator for Caribbean American Bank (CAB) refused to provide copies of its reports on CAB's liquidation proceedings, even though the reports were filed in court, they were supposed to be publicly available, and the Antiguan government had asked the auditor to provide the information to the investigation.

" – Another Antiguan accounting firm, Pannell Kerr Foster, issued an audited financial statement for Overseas Development Bank and Trust in which the auditor said certain items could not be confirmed because the appropriate information was not available from another bank, American International Bank. Yet Pannell Kerr Foster was also the auditor of American International Bank, with complete access to that bank's financial records.

"The investigation also came across disturbing evidence of possible conflicts of interest involving accountants and the banks they audited, and of incompetent or dishonest accounting practices. In one instance, an accounting firm verified a \$300 million item in a balance sheet for British Trade and Commerce Bank that, when challenged by Dominican government officials, has yet to be substantiated. In another instance, an accounting firm approved an offshore bank's financial statements which appear to have concealed indications of insolvency, insider dealing and questionable transactions. In still another instance raising conflict of interest concerns, an accountant responsible for auditing three offshore banks involving the same official provided that bank official with a letter

Charles M. Nicmeier, Acting Chairman  
March 21, 2003  
Page 3

of reference, which the official then used to help one of the banks open a U.S. correspondent account."<sup>1</sup>

While these matters involved foreign accounting firms reviewing the records of local banks and not U.S. publicly traded corporations, this record of poor performance and poor cooperation with U.S. inquiries does not inspire confidence. Moreover, as increasing numbers of companies such as Tyco International and Ingersoll Rand establish headquarters in the Caribbean or other offshore locations, it is possible that foreign auditors could begin providing substantial auditing services to companies with large numbers of American shareholders. These foreign auditors should be required to meet the same auditing standards and operate under the same oversight as auditors based in the United States.

While accounting firms in the Caribbean and other countries around the world have had a tradition of self-regulation, ongoing corporate accounting scandals indicate self-regulation will no longer suffice to ensure investor confidence in corporations trading on U.S. markets. Enactment of the Sarbanes-Oxley Act has begun a new chapter of independent auditor oversight in the United States, but equivalent reforms have not taken place in many other countries. For example, when the Dutch conglomerate Royal Ahold NV announced a \$500 million earnings restatement in February 2003, it brought to light the lack of strict auditing standards and oversight in many European countries, even for companies audited by U.S.-based accounting firms such as Deloitte & Touche which audited Royal Ahold. The Netherlands, home of Royal Ahold, has no agency equivalent to the U.S. Securities Exchange Commission (SEC) or any auditor oversight body. According to the European Federation of Accountants, six nations in the European Union do not enforce accounting standards at all. The United Kingdom is apparently closest to the United States in exercising auditor oversight, but one media report noted that "whereas America's Securities and Exchange Commission . . . has made 1,200 companies correct their audited accounts in the past five years, Britain's equivalent, the Financial Reporting Review Panel, has demanded only 15 restatements in the past dozen. It has just one full-time accountant and investigates only if there is a complaint about a company's figures."<sup>2</sup>

Including foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets. At the same time, preliminary estimates indicate overseeing these firms would not overextend the Board. Right now, according to the SEC, of the approximately 1,000 accounting firms that sign financial reports submitted to the SEC, only about fifty to one hundred appear to be

<sup>1</sup> "Role of U.S. Correspondent Banking in International Money Laundering," S.Hrg. 107-84 (March 2001), Volume I, at 313-314.

<sup>2</sup> "Holier than thou," The Economist (2/8/03).

Charles M. Niemeier, Acting Chairman

March 21, 2003

Page 4

foreign firms. Because foreign auditors currently appear to make up less than 10 percent of the total number of auditing firms reviewing corporations traded in the United States, supervising them should not be beyond the resources of the Board. Making arrangements with foreign oversight bodies where feasible, and setting registration fees sufficient to support needed oversight efforts, would also help ensure this task is manageable.

In contrast, if foreign auditors were to be exempted from Board oversight, an immediate, time-consuming, and difficult task would arise requiring the Board to determine on a case-by-case basis which auditing firms would qualify as "foreign." KPMG, for example, states on its Internet website that KPMG International is a Swiss non-operating association, while other Internet sites locate KPMG headquarters in the Netherlands. Several major U.S. accounting firms operate an international network of affiliated but independent firms, raising a host of questions about which, if any, of these affiliates would qualify for a foreign exemption. Even in the case of foreign firms that share the name of one of the "Big 4" accounting firms in the United States, facts are likely to differ on the extent to which the U.S. firm is legally responsible for the foreign firm's conduct or requires it to adhere to U.S. auditing standards. For example, on the PricewaterhouseCoopers (PWC) website, below the address of each "worldwide location" listed as a PWC office is this disclaimer: "PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity." Each of these PWC offices could undertake to certify the financial statements of one or more corporations trading in the United States and ask the Board to evaluate whether it was sufficiently divorced from its U.S. affiliate to qualify for a foreign exemption. This complex determination would likely consume significant Board resources, without advancing the goals of strengthening auditor oversight or restoring investor confidence in U.S. securities markets.

Finally, exempting foreign auditors might have the unintended consequence of pushing key auditing services abroad beyond the Board's oversight. More than 1,300 foreign companies are now registered to trade shares in U.S. securities markets, and many use foreign accounting firms. Granting foreign auditors an exemption might encourage most or all of these foreign companies to use a local auditor beyond U.S. auditing oversight. This exemption might also encourage U.S. corporations to use foreign-based auditors in order to avoid Board scrutiny. In addition, exempting foreign auditors might encourage some U.S. auditing firms to relocate their operations or headquarters offshore in order to market themselves to companies as free from Board scrutiny. The decision of the consulting firm Accenture, formerly part of Andersen and now domiciled in Bermuda, provides precedent for a professional services firm moving offshore while continuing to market its services to U.S. publicly traded corporations. This exemption might even provide U.S. corporations with another reason to move offshore, since a company relocating its headquarters abroad could claim that this relocation justified its switching to a local, foreign auditor beyond U.S. auditing oversight. Tyco International, a longtime U.S. company that relocated its headquarters to

Charles M. Niemeier, Acting Chairman

March 21, 2003

Page 5

Bermuda a few years ago, has continued to trade in the United States and market its shares to U.S. shareholders, while undergoing increased scrutiny over possible accounting irregularities. Surely, if we are to achieve the goals of the Sarbanes-Oxley Act, a company like Tyco ought to be required to use an auditor that is fully subject to the auditing standards and oversight of the Public Company Accounting Oversight Board.

The Board's unanimous support for the proposal to require all foreign auditors seeking to audit corporations traded on U.S. securities exchanges to register with the Board and accept its oversight is a crucial step towards returning stability, reliability, and investor confidence to our capital markets. I support this proposal and urge the Board to continue to oppose any efforts to create an exemption for foreign auditors.

Sincerely,



Carl Levin, Ranking Democrat  
Permanent Subcommittee on Investigations

CL:ejb

cc: PCAOB Board Member Kayla J. Gillan  
PCAOB Board Member Daniel L. Goelzer  
PCAOB Board Member Willis D. Gradison, Jr.  
SEC Chairman William H. Donaldson  
SEC Commissioner Paul S. Atkins  
SEC Commissioner Roel C. Campos  
SEC Commissioner Cynthia A. Glassman  
SEC Commissioner Harvey J. Goldschmid