Statement of The Honorable Roderick M. Hills

Concerning Audit Independence Requirements

Before the

Securities and Exchange Commission

Comment File No. S7-13-00

Public Hearing
Washington, D.C.
September 20, 2000

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I. INTRODUCTION

My views on the Commission's proposals can be summarized in four points:

- The independence of accounting firms has been compromised far too often because the continuation of the audit relationship has become more economically important than the integrity of the financial statements.

- If auditing firms are prohibited from offering some non-audit services to audit clients and discouraged from offering others, it will reduce the likelihood that the integrity of financial statements will be compromised.

- Reduction, however, or even elimination of all non-audit services, will not adequately address the problem. It is my opinion that fees from audit services for a significant client are more likely to compromise an audit than fees from non-audit services. The independent directors on audit committees must do more to protect the independence of the auditors.

And, finally:

- Accounting firms today are not attracting the same high level of talent as they did 30 years ago.

My comments are influenced by my experiences while serving on the boards of a dozen publicly traded companies since 1969, serving on the audit committees of all of them, and while serving as Chairman of the Audit Committee of seven of them. In my 23 years since leaving the Commission, I have, at all times, been chairman of a company's audit committee.

In the past 30 years, I have witnessed accounting irregularities at Beck Industries, Republic, Oak, Alexander & Alexander, Sunbeam, Drexel Burnham, Federal-Mogul, and Waste Management. On five separate occasions, I oversaw the write-off of more than $100 million improperly recorded as income in prior periods. At Waste Management, we wrote off $3.5 billion that had crept into the income statement improperly.

Five times we either changed accounting firms or completely replaced audit teams. Eight times, in those same 30 years, I participated with my fellow directors in telling the CEO that he must step aside, and on one of those occasions, it took a difficult proxy fight to change management.

On each of those occasions, we learned after the change in leadership that the auditors had raised serious questions with management about accounting entries, which were not previously raised with the audit committee. In the case of Waste Management, the audit committee did not see a Management Letter for five years even though the auditors regularly warned management about the Company's accounting practices.

Why?

The simple but sad fact is that auditors are far more afraid of being fired by management than by an audit committee, and the fear of losing the income from a given client can compromise the integrity of an audit. Too many corporate managers are willing to threaten, subtly or not, the loss of the audit assignment if the auditor does not allow some accounting irregularities, and there are too many auditors who have yielded to such threats.

The Commission's proposals are a much-needed effort to refocus attention on the relationship between a company and its auditor. It is true, of course, that an external auditor who can be unduly influenced by the fees received by his or her firm is more likely to be influenced if those fees are larger because the firm is providing extensive non-audit services.

The problem, however, would not be solved even if external auditors were prohibited from providing any non-audit services to clients. Human nature is such that there will remain many auditors who will yield independence just to preserve fees from the audit.

In fact, it is the audit partner, not the consulting partner, who will suffer the most if an audit engagement is lost. Most of my own disappointing experiences with external auditors, which are discussed above, were not related to the payment of non-audit fees. In most of these instances, non-audit fees were relatively small.

If the Commission is to be successful in its effort to preserve the needed independence of external auditors, it must insist that independent directors take strong action to protect the external auditors from undue management pressure. I offer some thoughts on this matter following my comments on the Commission's proposals.

II. COMMENTS ON THE COMMISSION'S RULE PROPOSALS

You will note in the testimony that follows that, at times, I recommend disclosure rather than prohibition as the better course of action. I am, nevertheless, mindful that the total fees from non-audit services can create a real problem, even if external auditors can provide a specific service without risking independence. Where I suggest disclosure rather than prohibition, I accept that this will place additional burdens on audit committees, both to guard against the payment of excessive fees to the external auditor and to protect the auditor from undue pressure from management on accounting matters.

You will see also that, in several circumstances, I would allow the external auditor to perform services that need to be appraised by an independent body. In such cases, the audit committee must be fully apprised of the facts and the committee must secure an independent evaluation of such work.

A. Bookkeeping or other services related to the audit client's accounting records or financial statement

Prohibiting such work for an audit client is sensible. I assume, however, that the prohibition will not apply to exceptional one-time assignments. For example, at Waste Management we found that, in the fall of 1999, the Company's bookkeeping systems were inadequate. We employed auditors from both the external and internal audit firms to assist in the reconstruction of the records. Although the work was extensive, the external auditors knew they would not be asked to perform the task in future years.

During this period we used other consultants and lawyers to oversee the bookkeeping work done by the external auditors.

B. Financial information systems design and implementation

The Commission is wise to raise this issue. Nothing is more important than the reliability of a company's financial system. Audit committees should be consulted on any financial system design project, and the assignment certainly should not be given to the external auditors without audit committee approval, and without the establishment of important guidelines. How the committee, or the board as a whole, should deal with the size of the fees to be paid for such services is dealt with below.

I do not believe, however, that a complete prohibition on using the external auditors for the design and implementation of a financial information system is practical. It could seriously impair management's ability to maintain efficient information systems.

As the Commission's proposals note, external auditors will often be important in the assessment of information systems and in the design of a new system. Moreover, information systems are, in a sense, in constant design and always subject to updating. The auditors may play a very substantial role in one part of the design and no role at all in another part. Some companies have superb information officers who need only minor assistance from the external auditor; others may need more.

There will be occasions when the involvement of the external audit firm in the audit will give it invaluable insights into how the information system should be changed. On such occasions, the external auditor's heavy involvement in the process of change is not realistically avoidable. Consequently, an impact on independence is unavoidable.

If the external auditor does play a significant role in the design of a financial system, it is incumbent upon management and the auditors to disclose that fact and incumbent upon the audit committee to secure an independent evaluation of the efficacy of that system.

During the past four years, I unexpectedly became responsible for the financial statements of two major New York Stock Exchange-listed companies when we, the boards of these two companies, terminated the Chief Executive Officers. On repeated occasions, I called upon our external auditors to provide information system experts to assist us in assessing the quality of the financial information we were receiving. I seriously doubt that such expertise would have been available if external auditors were materially restricted from designing information systems for audit clients.

The point I wish to make is that I do not believe any other firm could have given us the information we needed to have in a timely fashion.

By suggesting that the Commission modify its proposal with respect to information systems, I do not make light of the problem. I only suggest that more responsibility be placed on audit committees to protect the integrity of a company's financial statements when the auditors are significantly involved with the design of the information system that produces those statements.

At a minimum, the audit committee must, in such cases, find an independent basis for concluding that the financial information system is effective.

I suggest some guidelines for audit committees that must deal with these matters in the section III below entitled "Alternatives".

C. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports

I have not had sufficient occasion either to use external auditors for these services or to oversee such use to make any extensive comment. I will note, however, that the external auditors do give advice to management as to how to go about various kinds of valuations. If there is to be a strict prohibition, it should apply only to those cases where the external auditor is relied upon to a very significant degree. It is, of course, incumbent upon the external auditors to make certain that any valuation work done by them is brought to the attention of the audit committee whether or not the amounts involved are deemed material.

D. Actuarial services

External auditors do play some role with respect to actuarial issues. I recall no occasion, however, when an actuarial determination was based largely on the work of external auditors. My concern with this proposal is that it may become too complicated for management, or audit committee members, to determine what is prohibited.

Perhaps a better approach would be to require both disclosure and an independent appraisal of any material actuarial work done by the external auditor.

E. Internal audit outsourcing

It is difficult to deal with the issue of internal audit outsourcing because there is no clear understanding of what kind of internal audit function, if any, is "required". Since 1977, when the Commission first mandated the maintenance of internal controls, the function has evolved gradually. Many companies still do not have an internal auditor, outsourced or otherwise.

One commentator on the proposed rules argues that internal audit functions are "not required by the SEC or stock exchange listing requirements," and, therefore, the fact that the function may be outsourced to the external auditor is not important.

My own view is that the lack of an effective internal audit function should constitute a material weakness in the internal controls mandated by the SEC. Until the Commission, by regulation, enforcement, or speeches makes it clear that an effective internal audit function is critical; all discussion of the matter will be inconclusive.

A further complication is that there is no clear distinction between what is an internal audit function and what is an external audit function. If you were to compare the management letters given to most audit committees by both the external and internal auditors, you would find great similarity in what is disclosed.

I do agree, however, with the view that in most circumstances the external auditors should not accept the responsibility of the internal audit.

If the internal audit function, as a whole, is to be outsourced, it should not be to the external auditor except in the most unusual of circumstances.

The establishment of an internal control system, while a management responsibility, is normally done with close advice from the external auditors who are charged with disclosing any material weaknesses they may find in that system. If not a conflict of interest, it, at least, is strange to have one partner investigate the reliability of a system operated by another partner in the same firm.

The primary reason why a company should create an internal audit function is to enable it to maintain an adequate level of control over its own systems and processes. If the external auditor performs the internal audit, there will, inevitably, be some loss of that control. Controls developed and managed apart from the external audit process will be more robust. I am more concerned about this consequence of outsourcing the internal audit function than I am about the possibility that it can compromise the integrity of the audit.

Second, as chairman of an audit committee, I have been uncomfortable when I have had to rely upon an internal audit function that is operated by the same firm charged with the external audit. A properly operating internal audit department actually works for the audit committee. It does the committee's bidding. If we ask for an investigation of a department, or seek confirmation that a given investment is performing as predicted, we expect the internal auditor to do exactly what we ask. The relationship with the external auditor is entirely different. An external audit partner who fully understands his or her fiduciary relationship with the shareholders is jealous about maintaining his or her independence. I do not see the internal auditor as having that kind of independence. He or she must, of course, maintain a proper independence from operating management; he or she is not at all independent from the audit committee.

To illustrate this point, I refer to a number of investigations that we asked the internal auditor (a major accounting firm) of Waste Management to make that the external auditor declined because the partner in charge believed it would compromise independence.

How odd it would be to have the external audit partner decline an assignment so that we could give the same assignment to his partner in charge of the internal audit.

It should be noted also that the internal auditor is far more than a policeman looking for transgressions. Used properly, the internal audit gives both management and the audit committee a fresh look at long-established practices. On more than one occasion, I have asked the internal auditor to see if the external audit process could be improved or whether various management assessments or judgments should be revisited.

Finally, a good audit committee is quite wary of having the external auditor too dependent upon its economic relationship with the company. We all realize, as do external auditors, that when fees reach too high a level, independence can be compromised.

Although I fully support the Commission's effort to discourage the outsourcing of the internal audit to the external auditors, I am skeptical of the efficacy of any attempt to draw a bright line as to what type of audit activities can be prohibited and what can be permitted.

In my own experience, there have been numerous occasions when it was proper, even necessary, for us to use employees of the external auditor to perform an internal audit function. I offer four examples:

- As Chairman of the Audit Committee of a relatively small NYSE-listed company, it was for several years clearly inefficient for us to have an internal auditor. Instead, we assigned certain key employees to oversee specific investigations each year, and we authorized those employees to engage employees of the external auditor as needed. No major firm, other than our external auditors, would have offered us the two or three auditors that we needed from time to time. More important, the supervisor of the auditors from any other firm could never learn enough about the company to monitor their work.

- As Chairman of the Audit Committee of a larger NYSE-listed company we developed a significant internal audit staff but had difficulty finding certain skills. In that case, we authorized the company's internal auditor, a company employee, to engage three skilled employees from the external auditor on a regular basis.

- As Chairman of the Audit Committee of a large $12 billion NYSE-listed company, I found that an ill-conceived merger, ultimately laid the seeds for impairment of the financial recording system had destroyed the financial recording system. The company had more than 600 separate financial centers that had no capacity to produce timely financial information for corporate managers. On this occasion, we engaged well over 1,000 auditors from the two major accounting firms that were the external and internal auditors for the company. Working cooperatively, we were able to recreate adequate financial records. In this case, the line between the internal and external audit functions was quite blurred. We did engage several other accounting experts and experienced lawyers to monitor the activity to a degree that gave us the requisite comfort about the process.

- As Chairman of the Audit Committee of a small NASDAQ-listed company without an internal audit function, I asked the external auditor to assist us in creating the function. For two years we used employees of the external auditor. Thereafter, we outsourced it to another Big Five auditing firm. I believe it would have been quite difficult, and much more expensive, for us to have begun the internal audit with the firm that ultimately took over this function.

There is another serious problem that would exist if the external auditing firm were prohibited from performing any internal audit functions. All companies should have an effective compliance operation, both for their own sake, and to comply with federal sentencing provisions. When a serious compliance problem arises, management should be free to seek assistance from its external auditor. Today, management personnel perform most internal audit functions at most companies. Outsourcing of the internal function is growing but, from my experience, it is too early to know whether such outsourcing will become the rule or the exception.

Thus, when external help is needed to deal with a compliance problem, management will often need to use the external auditor or go to a new firm to have the necessary investigative work performed. In my experience, in far too many such cases, it would have been terribly expensive and quite impractical to bring in a new firm for such work.

If the internal auditing function has been outsourced to a different auditing firm, that firm would normally be asked to deal with the compliance problem. However, even where the internal audit has been outsourced to a different auditing firm there can be compelling reasons to ask the external auditor to assist.

In short, I respectfully suggest that flexibility should be left to management and the audit committee in determining whether the external auditor should be engaged to perform some internal audit functions. In particular, some leeway is needed with smaller companies, that either do not have a typical internal auditor or that wish to use a combination of company personnel and employees of the external auditor to perform the function.

There are two steps that the Commission can take to improve the efficacy of the internal audit. It could ask the profession to prepare new auditing rules that would:

- Require the auditors to examine the efficacy of the internal audit function; and
- Require the auditors to enquire into the independence of the audit committee.

Requiring auditors to examine these circumstances would not make them responsible for shortcomings. By taking such action, the Commission also would make it clear that an effective internal audit function is required of all reporting companies.

F. Management functions

The third example given in the above section illustrates a situation where external audit employees were functioning, in the internal audit function, as management employees. I do not believe that this once-in-a-millennium experience eliminated the independence of the external auditor. There are surely other isolated examples where the external auditor can perform an occasional activity that can be characterized as a management function without compromising independence.

Also, in a real corporate crisis, the partner in charge of the external audit may become a vital part of the crisis team. In such cases there is, of course, a real challenge to his or her independence when the external audit is conducted. When such unusual events occur, the audit committee must take serious steps to be certain that the integrity of the audit is not affected.

In short, the Commission should strongly discourage external auditors from engaging in management-type activities. When such an activity occurs, the audit committee must be certain that the activity is disclosed and that the integrity of the audit is not compromised.

G. Human resources

As with each of the Commission's other proposals, it is important that external auditors be discouraged from offering significant human resource-type services to an audit client. Again, however, it is difficult for me to understand how a "bright line" can be drawn between what services can be allowed and what must be prohibited.

Were the external auditor to be a principal consultant on human resource issues, especially those involving financial and control personnel, a serious question of independence would necessarily arise. However, a solid external auditor, like any other consultant, is asked advice on a wide range of issues. As chairman of an audit committee, I regularly ask for the external auditor's assessment of personnel: the internal auditor, the chief financial officer, other financial personnel, and probably the general counsel. We regularly ask advice about organizational matters: *e.g.* to whom should the internal auditor report; should the Chief Financial Officer report to the Chief Executive Officer or the Chief Operating Officer; should the Field Controllers have a dotted-line or a straight-line relationship to the Corporate Controller?

I can recall that some years ago our external auditor found an internal auditor for a company that I was then serving as Chairman of the Audit Committee.

I suggest that here also transparency will work better than regulation. If disclosure shows that the total sums paid in any one-year to the external auditor for human resource type services are significant it can be left to the audit committee to insist that the outsourcing be given to a different firm.

H. Broker-dealer, investment adviser, or investment banking services

I see no reason why an external auditor would be called upon to offer any of the services customarily associated with these services. I recognize that some auditing firms are offering such services, but I see no advantages for a company to receive them from its external auditor. I can, of course, understand that the regular provision of such service to an audit client could compromise the independence of the external auditor.

There are two points in your discussion of the proposed rules that I can comment upon.

You ask whether independence impairment would occur if a broker-dealer client of an external auditor holds substantial equity interests in another of the external auditor's clients. I see no difference between this fact and the fact that external auditors often have confidential information about clients that compete with each other.

I do not believe that an external auditor should act as an investment adviser or broker-dealer for any audit client.

The question of whether an external auditor should design an audit client's system for compliance with broker-dealer or related regulations raises the same issue as when the external auditor is involved in the design of an audit client's internal controls or its financial systems. I see nothing wrong with the external auditor's involvement with such matters, but I believe the Commission is correct in pointing out the potential for abuse if the same external auditor is the only entity examining the reliability of such systems.

If all such use of an external auditor is fully disclosed, I believe audit committees can protect their respective companies from abuse.

I. Legal services

I cannot easily assess the impact of the proposal with respect to legal services. The initial problem, of course, is that no one can say with certainty what is and, what is not, an exclusive legal service. However, I am not persuaded that a lawyer's duty to be an advocate for his or her client is relevant to the question as to whether, in the course of an audit or otherwise, a lawyer/employee of the external auditor may give certain kinds of legal guidance. A lawyer's primary obligation is to give honest advice.

If full disclosure is made to the audit committee of any legal advice taken from the external audit firm, and if that legal advice is incidental to the audit process, I have difficulty seeing a problem of consequence. Most important, of course, is the need for the audit client to have a different law firm or set of lawyers, in the firm or not, from which it receives its principal legal advice.

It would be helpful if a set of examples could be set forth that might make the problem seen by the Commission more apparent.

From my experience with global firms, I know that when such a company first considers doing business in some new country the general counsel very often takes initial legal advice from the in-house lawyers the external auditor has in that country. When significant business is actually begun, the general counsel will, more often than not, secure an independent local law firm.

I cannot, however, see why a United States company should not be able to seek various kinds of legal advice from the external auditors' lawyers. For example, why not allow a company to seek advice from the lawyers of its external auditors about such matters as the customs laws or tax laws of a country like Brazil?

I can surely see the danger of using the external auditor's lawyers for a major litigation or financial matter and I certainly understand why a company cannot use its external auditor as its principal outside counsel. Accordingly, any sensible corporation will either refrain from using its auditor's lawyers on sensitive matters or will insist upon reliable "firewalls" to protect sensitive information.

If a matter being handled by counsel in an audit firm turns out to be substantial, then it would certainly be incumbent upon the company to seek an independent appraisal of that matter.

In short, companies should understand that they must have separate counsel for most matters and that they must seek independent appraisals of any legal matter handled by their external auditor that has a material impact on the company. I do not see, however, how auditors can be prohibited, practically, from offering any legal advice to audit clients. Nor do I see how any such prohibition would serve the objectives of the Commission.

J. Expert services

I do not have enough experience in using auditors for expert opinions to offer any helpful guidance.

III. ALTERNATIVES

You also ask for comments on alternatives to complete prohibition of non-audit services. In my previous comments, I suggest that disclosure together with greater supervision by the audit committee can be preferable to prohibition in certain cases.

I have the following comments about your suggested alternatives:

(i) I agree that it would be useful to have the audit committee specifically find that "the best interests of the company will be served by retaining its audit firm" to render a non-audit service. I do not believe that it would be appropriate to require the additional finding that no other firm is as able to do the work. A company and its audit committee know its external auditor. They cannot possibly know whether someone else will do as well.

(ii) The SEC and the POB surely do not want thousands of "findings" to inundate their respective offices. What could either institution do with those findings? If the disclosure is properly made, the lawyers in Corporate Finance can decide whether further investigation is needed.

Proposals that would create a firewall between audit and non-audit services provided by the external auditor would, in my opinion, not be practical except in specific cases. As I have suggested above, it is practically impossible to draw bright lines between such services. In the same conversation with the partner in charge of the external audit, I have often dealt with issues that are not easily dissected into the two classifications.

Firewalls might be appropriate if a given company wished, over a long period of time, to use particular consulting talents of its external auditor. Such firewalls would need to be quite complex. The audit committee of any such company would need to be certain that the income from such service did not directly or indirectly "leak" into the salaries of the audit team.

The sensible alternative proposal, in my opinion, is a hybrid between the Commission's proposals. Some services can be effectively prohibited. Careful disclosure of the fees for other non-audit services, combined with a finding by the audit committee that the non-audit services performed by the external auditor served the company well, is the best firewall.

As discussed more fully below, the audit committee should establish some rules about the amount of non-audit fees that can be paid to the external auditor without the committee's approval. The audit committee should also understand how the engagement partner is compensated. If the employees engaged in the audit are not compensated for the non-audit services provided by the firm, there would be less concern about the independence issue.

A number of other practices by the audit committee can alleviate the problems of concern to the Commission:

- The external audit partner should be asked whether his or her compensation is linked to non-audit services he or she has originated.
- Management can deal with a different partner whenever it wants a proposal from its external auditor for non-audit services.
- The audit committee should be certain that the audit fees are sufficient to cover the cost of the audit. The audit cannot be allowed to be a loss leader to originate other services.
- Under no circumstances should the audit committee allow the non-audit fees to be larger than the audit fees for multiple years. The fact that they might be larger for a year or two because of unusual circumstances can be understandable.

The fact that some firms are "selling off" significant portions of non-audit services will alleviate the problem. However, it is as certain as the tide that the external auditor will be asked regularly to perform non-audit services and that management will expect them to be able to do so. Whatever may be sold will be replaced, in significant part, to respond to the needs that arise out of the audit process.

IV. AUDIT COMMITTEES NEED TO PROTECT THE INDEPENDENCE OF THE EXTERNAL AUDITORS

Regardless of whether the Commission prohibits most or even all of the non-audit services provided by external auditors, too many auditors will let accounting irregularities slip by if they fear the loss of the audit engagement. To the partner in charge of any account, the maintenance of that account can be his or her future. If the fees received from any one company are material to a given office, the fact that they may be a small part of the overall revenues of the accounting firm is not relevant. All the people in that office know how important to their future it is to hold onto that account.

Since 1977, when the New York Stock Exchange first required the existence of an independent audit committee as a condition of listing, much has been said about what independence means. The Treadway Commission and the Blue Ribbon Commission were both constructive on this issue.

It is not enough, however, that members of an audit committee appear to be objectively independent. In my view, audit committees need to be far more aggressive in ***protecting the independence of the external auditors and the internal audit function.***

Audit committees must play a far more significant role in the engagement of the external auditor, in the selection and replacement of the partner in charge of the audit, and in the fee negotiations. The external auditor must be made to know that the primary relationship is with the audit committee and not with management.

I do not suggest that the audit committee should engage a firm not wanted by management, but I do argue that the audit firm must be made to know that its engagement and retention are in the hands of the audit committee. My view would require a significant change in the relationship of the audit committee to most corporate management. The committee, or its chairman, must understand the fee negotiations. A chief financial officer cannot be allowed to threaten to seek a new audit firm if the audit fee is not lowered.

Similarly, management cannot be allowed to use the external auditor for non-audit services without the ***informed*** approval of the audit committee. The audit committees on which I serve, and have served, have limits on what the external auditor can do without committee approval. Typically the limit is $100,000. Above that amount committee approval is needed for every engagement. Even so, there are problems with any such engagement.

It is all too common for an audit firm to give "commissions" to the partner in charge of the audit who secures non-audit commissions for his or her firm. The fact that the same practice exists with law firms, which pay partners far too much for work generated, and too little for work performed, demonstrates how this is just another expression of human nature.

It is particularly mischievous when the partner in charge of the audit agrees to audit fees that do not cover the cost of the audit. When he or she believes that non-audit services must be performed to cover the losses on the audit, the entire relationship is compromised. Management is too often callous in using the lure of future engagements to negotiate lower audit fees. In fact, it is not uncommon for a Chief Financial Officer to insist on smaller audit fees, a cost that is part of his budget, knowing that the consulting fees, which are part of some other budget, will be higher as a result.

It is incumbent upon the audit committee to be certain that a fair price is being paid for the audit services rendered.

I need to emphasize the fact that what I propose is not typical of the relationships that exist today between audit committees, management, and audit firms.

V. AUDITING FIRMS ARE NOT ATTRACTING THE SAME CALIBER OF EMPLOYEES AS THEY DID 30 YEARS AGO

It is worth noting that the accounting profession is losing out to Wall Street, e-commerce, and the legal profession in the competition for college graduates. Nor should there be any doubt that the attractiveness of the profession will be adversely affected if serious restrictions are placed on the services firms are permitted to render to audit clients.

Part of the problem is that auditing services typically do not provide the same income per hour as do most consulting services. Too often the audit has been the loss leader that is performed to secure consulting engagements. So long as the brighter, more committed, young employees see that they can make more money as consultants, the audit will suffer.

I believe that, over the years, corporations have put too much pressure on auditing fees. It is far too easy for the chief financial officer to accept a "low ball" auditing bid knowing that expected consulting fees will be on someone else's budget.

If management wishes the kind of talent it needs for the external audit, increased costs for the audit may be inevitable.

VI. *SUMMARY*

Looking back over the past 30 years, I continue to be impressed with what the Commission has been able to do with disclosure and enforcement of the disclosure rules. Each time there has been a call for more regulation the Commission has, wisely in my opinion, leaned toward more disclosure.

That choice was never more important than in the late 1970s when the Commission caused over 400 reporting companies to disclose questionable payments they had made, which had been concealed from their boards, the outside auditors and even, on occasion, from the Chief Executive Officers.

At that time, there was a compelling call from Congress to enact substantial laws that would submit major corporations to Federal charter requirements. The Commission, instead, asked the New York Stock Exchange to consider the requirement of independent audit committees, and asked the auditing profession to require its auditors to report all suspicious entries to those committees. Concurrently, the Commission, for the first time, required corporations to have substantial internal controls.

Today, the Commission has recognized the need for further investor protection. The choice today, as it was 23 years ago, is between more regulation or more disclosure. It is not an absolute choice. The external auditors, as suggested above, should not undertake some non-audit functions. However, management should be free to assign other non-audit functions to the external auditors so long as full disclosure is made and ***so long as the Commission is able to make audit committees responsible for meaningful oversight.***