

STATEMENT

STATEMENT OF SENATOR FRED THOMPSON Ranking Member, Senate Governmental Affairs Committee Enron Hearing January 24, 2002

Mr. Chairman. This marks the first day of the first full Senate Committee hearing on the Enron matter. This is clearly an appropriate matter for the Governmental Affairs Committee. How our government agencies and institutions performed is a vital part of the inquiry that needs to be made as Congress works its way to the bottom of this.

I would also like to say, Mr. Chairman, that I am pleased that you are chairing these hearings. Having worked closely with you in the past, I know of no one who has a more proven record of fairness and objectivity and I look forward to working with you on this matter.

We have the opportunity to do some good here - to examine what went wrong and to consider constructive changes to the governance of our public capital markets which appear to be inadequate to the demands of the 21st century and the complex financial transactions that now take place on a daily basis.

It is true that not every aspect of the Enron matter is either unusual or especially cause for great concern. For instance, to what extent is this simply a case of individual misconduct or illegal conduct. No system known to man can prevent unscrupulous and clever individuals from manipulating the system and even getting away with it for a period of time.

Also, how much of this financial disaster was simply the result of bad business judgment and legitimate risk taking that simply didn't pan out? This is not the first big company to go belly-up with losses to stockholders and employees. And when it happens it is not always because of illegal conduct or unethical activities.

But while it may be that part of what we are seeing here is individual misconduct or simple bad business judgement, both of which our system is very capable of dealing with, there also seems to be some systematic failures that are much more troubling.

Our free markets and our public financial system, much as our government, are dependent upon certain checks and balances. Some of the unfortunate tendencies of human nature that were of concern to our Founding Fathers are just as prevalent in the corporate world as in the political world. People entrusted with power need watchdogs and must be required to operate under public scrutiny. We must ask ourselves where were the watchdogs here? Where were the auditors, the law firms, the board of directors, the analysts and the governmental agencies? As the Economist recently pointed out, we must especially look at the role played by auditors. As they said: "The capital markets, and indeed capitalism itself, can function efficiently only if the highest standards of accounting, disclosure and transparency are observed. In America, well-policed stock markets, fearsome regulators at the Securities and Exchange Commission (SEC), stern accounting standards in the form of generally accepted accounting principles (GAAP), and the perceived audit skills of the big five accounting firms, have long been seen as crucial to the biggest, most liquid and most admired capital markets in the world."

The most troubling feature of this issue is not so much as how these entities failed in the Enron matter but the fact that this may be indicative of problems with auditors, boards and other gatekeepers in general. For one thing, most are up to their necks in conflicts of interest. One way or the other, all of these people have tremendous financial incentive for their company to make the numbers and keep the stock price high.

This of, course, plays right into the hands of the unscrupulous corporate executive who is willing to cover up of the financial realities of the corporation through non-disclosure, taking corporate debt off the book, and any number of things that would raise the question in the mind of the average high school bookkeeping student.

And as is often the case, the real scandal here may be from not what is illegal, but what is totally permissible. If the generally accepted accounting principles allow the bookkeeping shenanigans that have been reported in the press, then we all should go into the derivative business. It seems that all too often the name of the corporate game is to conceal the true financial situation of the company while doing the minimum amount of disclosure to avoid legal exposure. The system is clearly not designed with the primary interest of the general public or the investor in mind.

Also, what about the role of the government agencies? What should they have caught? Do they have an adequate staff? We have 17,000 public companies; is the SEC supposed to keep up with all of them?

Also, what about those rare instances where the government catches wrong doing? Are penalties sufficient to deter this kind of behavior?

So while issues such as individual wrong-doing and who made contacts with the Administration are interesting and titillating, the issue of most long-term importance to our country has to do with the integrity of our systems. It is also the area in which we have the most responsibility as legislators. We must address our legal and regulatory framework not as what we thought it was, but as we now know it to be and work together toward reform. As I said, I believe we have an opportunity to do some good here on a bi-partisan basis. And who knows, in the process we may even finally decide that allowing huge amounts of soft money contributions to public officials is not such a good idea. We may come to the conclusion that this practice is always a scandal just waiting to happen and that we do ourselves and the institution we serve a disservice by tolerating it.

Mr. Chairman, I look forward to working with you and other members of the committee toward a constructive set of hearings.

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