

The Honorable Rahm Emanuel
Committee on Financial Services
Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises
February 4, 2004

Statement for hearing on “the Role of Attorneys in Corporate Governance”

Mr. Chairman,

Thank you for holding this important hearing on the role of attorneys in corporate governance. I would also like to thank our distinguished witnesses for sharing their views with us today.

The corporate scandals at Enron, WorldCom and Sprint raised serious questions about the role of attorneys in facilitating securities fraud and in the creation of abusive tax shelters. This hearing will focus on the new standards of professional conduct for attorneys promulgated by the SEC, as directed by Congress as part of the Sarbanes-Oxley law. The “up the ladder” reporting requirement is an important rule that will enhance the accountability of both attorneys and corporations. Most importantly, it will have a deterrent effect on improper behavior.

The proposed “noisy withdrawal” rule is well-intentioned, but may put attorneys in the untenable position of running afoul of state laws and state codes of professional responsibility on attorney-client privilege issues. I am interested in hearing our panel’s views today both on the proposed rule and on the alternatives that have been promoted.

I also believe it is critical to address the role of attorneys in the creation, marketing and implementation of abusive tax shelters for corporations and wealthy individuals that are depriving the U.S. Treasury of billions in revenue each year. With federal revenues at their lowest level since the Truman Administration, the tax gap reaching \$310 billion, and an increasing burden falling on middle-class families to pick up the slack, it is imperative that Congress act aggressively against tax shelter promoters.

The Senate Permanent Subcommittee on Investigations held a series of hearings on tax shelters in November 2003. The evidence presented at those hearings showed how some of the most ‘respected’ accounting firms, law firms, and investment banks continue to form alliances and devote significant resources toward the creation of hundreds of tax shelters that have no economic substance or business purpose aside from tax avoidance.

Attorneys play a key role in the creation of tax shelters. By providing opinion letters that “bless” the transactions, law firms offer an imprimatur of legitimacy to transactions that would otherwise raise serious questions. Under current law, opinion letters protect tax shelter purchasers with an affirmative defense against certain penalties if the IRS later denies the tax shelter. Thus, the tax shelter buyer has nothing to lose. If the shelter is invalidated, the buyer simply pays the taxes that would have been owed anyway.

I commend the Senate Finance Committee and the Treasury Department for their recent proposals to address tax shelters, including the recommendation that opinion letters receive greater scrutiny.

As I have discussed with Chairman Baker and Ranking Member Kanjorski, our Subcommittee can play an important role in shutting down tax shelters that deprive the U.S. Treasury of billions of dollars every year. I look forward to working with my colleagues on both sides of the aisle to address the willful role of accountants, lawyers and financial professionals in the tax shelter industry.

Thank you, Mr. Chairman. I yield back the balance of my time.