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THE REGULATION OF THE ACCOUNTING PROFESSION AND THE PROBLEM OF ENFORCEMENT

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Glenn Perry focuses on regulation of auditors. He first describes the forms of accounting regulation, including self-regulation, peer regulation, state licensing authorities, and private litigation. Perry then discusses the SEC's oversight of independent auditors and its remedies for misconduct. He describes the conflict that exists between punitive regulations and preventive-corrective regulations, and asserts that the latter is generally more beneficial. Perry concludes that the accounting profession has made substantial improvements but more are necessary, including higher educational and licensing standards for certified public accountants to ensure that they have adequate audit experience.

1. Introduction

Financial statements and disclosures that fairly present the financial condition and results of operations of companies are essential in making financial decisions. The role of independent auditors who audit and express their opinions on financial statements is a critical ingredient in this process.

Congress decided in 1933 to rely on independent auditors rather than government auditors, to provide these essential financial opinions [1]. During a congressional hearing that led to the enactment of the Securities Act of 1933 [2], the following dialogue between Senator Robert Reynolds of North Carolina and Colonel Arthur H. Carter, President of the New York State Society of Certified Accountants, occurred:

Senator Reynolds: Suppose that we decide in the final passage of this bill here to employ five or six hundred auditors from your organization, that would be all right, then, would it not?

Mr. Carter: I do not think the Government could employ five or six hundred independent accountants.

Senator Reynolds: Why could they not?

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Mr. Carter: I do not think the type of men that are in the public practice of accountancy would leave their present practice to go into government employ.

Senator Reynolds: Well, if it were sufficiently remunerative they would?

Mr. Carter: Yes; if the Government made their time worthwhile.

Senator Reynolds: The bill here provides for taking care of the expenses incident thereto by way of registration.

Mr. Carter: Well, you will have to build some more buildings in Washington to house them if you are going to do that.

Senator Reynolds: Then we had better not pass this bill at all [3].

Since that time, the accounting profession has grown, both in terms of its size and its critical role in the financial reporting and disclosure process. This critical role is clearly demonstrated by the regulations of the Securities and Exchange Commission (SEC) which expressly provide that financial statements filed with it be audited by independent auditors in accordance with generally accepted auditing standards [4].

The code of professional ethics of the American Institute of Certified Public Accountants (AICPA) [5] states:

> The reliance of the public, the government and the business community on sound financial reporting ... and the importance of these matters to the economic and social aspects of life impose particular obligations on certified public accountants [6].

Moreover, in a recent decision the Supreme Court of the United States [7] stated:

> An independent certified public accountant performs a different role from an attorney whose duty, as his client's confidential adviser and advocate, is to present the client's case in the most favorable possible light. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust [8].

It is well recognized that the role of independent auditors is both critical to the financial reporting and disclosure process and that auditors have responsibilities to the general public in addition to their clients. Accordingly, while the accounting profession is a private profession with private rights, it also has certain public responsibilities. For this reason, the accounting profession in the United States has historically been subjected to substantial regulation [9].

It would require a large book to describe the history of the accounting profession and the evolution of its regulation even though it is a relatively young profession and the regulations that govern it still younger. Prior to the 1880s, there was no accounting profession in the United States. In 1887, the American Association of Public Accountants, the first national professional accounting organization, was formed with thirty-one members. New York, in 1896, became the first state to license certified public accountants. In 1903, the first audited financial statements were published by the United States Steel Corporation. Prior to the stock market crash of 1929, there was little regulation of the accounting profession. As a result of the crash and pressure from both the New York Stock Exchange and the SEC, the profession began to establish standards, or regulations.

Regulation serves two functions. The first function is to establish standards for the accounting profession. These include, for example, generally accepted accounting principles, generally accepted auditing standards, and ethical standards. Second, regulations function to ensure that the accounting profession complies with these standards. There are both direct and indirect regulations, and they take many forms. The major forms of regulation are self-regulation, peer-regulation, state licensing authorities, private litigation, federal government oversight, and federal government enforcement. These forms of regulation work collectively to protect the public from unprofessional and illegal conduct by independent auditors. Indeed, when compared to other professions, the accounting profession is subjected to much greater regulation [10].

2. Forms of accounting regulation

2.1. Self-regulation

Self-regulation has historically been and continues to be the most important and effective form of regulation. Self-regulation takes two forms: individual regulation and firm regulation.

Individual regulation is a state of mind. Absent a commitment by individual independent auditors to professionalism and excellence, the other forms of regulation would surely be ineffective, both individually and collectively. State of mind cannot be directly regulated, although various forms of regulation tend to influence state of mind. For example, peer pressures and the fear of private litigation and SEC enforcement actions all influence state of mind. In the final analysis, however, it is only the individual who can commit to and act with professionalism and excellence.

Accounting firms, including individual practitioners, operate in a highly competitive environment where performance and professional reputation are crucial factors in retaining existing clients and obtaining new clients. Moreover, the monetary costs associated with litigation are a real and ever present fear for accounting firms. Therefore, most accounting firms have established elaborate quality control systems, including systems to monitor and ensure compliance. These generally fall into three categories.

The first is policies and procedures which concern hiring, continuing professional education, supervision, performance appraisal, acceptance of new clients, independence, accounting, and auditing. Second, there are monitoring procedures which are designed to ensure that the policies and procedures established by the firm are followed. They include review and approval of workpapers, independent review of financial statements and accountants' reports by qualified personnel not otherwise involved with the client, and various forms of internal peer review. A final category consists of disciplinary procedures which are used to discipline those who do not comply with the firm's policies and procedures. They include salary adjustments, promotional considerations, and, when appropriate, terminations. Firm regulation is always present as individual independent auditors perform their professional responsibilities.

Because accounting firms in the United States are in the business of performing professional services to make a profit, they must maintain a proper balance between business and professional considerations. Professional considerations must always take precedence over business considerations. Thus, accounting firms must constantly demonstrate their commitment to professionalism and excellence to their personnel. This is accomplished in two ways, first, by establishing and communicating policies and procedures, by monitoring procedures, and by taking disciplinary actions, and second, and more important, by senior managment's demonstrated commitment to professionalism and excellence. It is essential that the senior management of accounting firms consistently demonstrate this commitment through their attitudes and actions on a day-to-day basis. No quality control system can be effective without a commitment by individuals to comply with it.

2.2. Peer-regulation

Peer-regulation is primarily undertaken through the efforts of voluntary professional associations such as the AICPA and state societies of certified public accountants. These organizations regulate their members by adopting codes of professional ethics requiring members to comply with both ethical and technical standards. Accounting standards are developed by the Financial Accounting Standards Board (FASB) [11] and most other standards, including ethical and auditing standards, are established by the AICPA [12]. In addition, the AICPA and some state societies of certified public accountants have developed voluntary peer review programs and minimum continuing professional education requirements [13].

At its annual meeting in 1977, the AICPA created the Division for CPA Firms comprised of the SEC Practice Section and the Private Companies Practice Section in response to congressional concerns about the profession's ability to regulate itself [14]. The Public Oversight Board, comprised of five members, most of whom are not accountants, oversees the activities of the SEC Practice Section [15]. This independent board represents the interests of users of financial statements by assisting the accounting profession in improving the quality of its services. Membership in the SEC Practice Section is voluntary, and accounting firms that join are required to submit to a peer review every three years [16].

The peer review process is the foundation of peer-regulation. The objective of peer reviews is to determine whether accounting firms have adequate quality control systems and whether the conduct of accounting and auditing engagements is in compliance with these systems. Peer reviews include an examination of a cross-section of the reviewed firm's accounting and auditing engagements and, in the case of firms with more than one office, a representative number of offices. Since its establishment, the SEC Practice Section's success has been significant. First, it has resulted in member firms improving their quality control systems and their compliance with such systems. Second, it has resulted in providing public assurances that member firms have established adequate quality control systems and that they are complying with them.

In 1979, the SEC Practice Section established the Special Investigations Committee (SIC). Firms who are members of the SEC Practice Section are required to report all litigation and proceedings against them or firm members involving alleged failures in the audit of financial statements of SEC registrants [17]. The SIC assigns one or more of its members to each case. Each case is subject to screening, monitoring, investigating the firm's quality control systems and/or investigating the alleged audit failure. The SIC's objective is not to seek out accounting firms and persons who have engaged in misconduct and sanction them, but rather to identify deficiencies in a firm's quality control systems and correct them. Another objective is to identify areas where new standards might be appropriate. These objectives lead to better quality control systems and increased assurances that deficiencies do not recur [18].

Unlike the SEC, state licensing authorities, and the courts, the SIC does not have the power to subpoena documents or to subpoena witnesses, compelling them to testify under penalty of perjury. Moreover, it lacks any power with respect to third parties. The experience of the SEC's Division of Enforcement clearly demonstrates that the ability to get the facts necessary to make informed judgments is hindered without these powers. Obviously, the inability to obtain documents and testimony from an independent auditor's client makes getting relevant facts difficult and, in some cases, impossible. Less obvious, but also a major difficulty, is the inability to obtain documents and testimony from other parties such as creditors, suppliers, and customers. Although the lack of these powers hinders the ability of the SIC to get all relevant facts, the restriction diminishes in significance when viewed in the context of the SIC's objective and the other forms of regulation that exist which have these powers.

Some have criticized the SIC's charter because it does not provide for identifying and sanctioning wrongdoers. This criticism is idealistic, but impractical, given the realities of litigation. Should the SIC identify and sanction wrongdoers in the midst of existing or even potential litigation, it would be disastrous to accounting firms and individual independent auditors in terms of evidence and resulting monetary damages. Thus, adding this responsibility to the SIC's charter is simply not realistic unless monetary damages are limited. Limiting the liability of accounting firms and/or accountants would require legislation.

2.3. State licensing authorities

State licensing authorities, most commonly known as state boards of accountancy, regulate the practice of public accounting primarily by establishing minimum entrance requirements, promulgating and administering rules and regulations, and suspending licenses for misconduct [19]. By establishing minimum requirements for education and experience and by testing prospective licensees, the state licensing authorities control entry into the profession. These standards are designed to ensure that independent auditors who enter the profession meet minimum standards. Many state boards have also added minimum requirements concerning continuing professional education to their periodic relicensing standards [20].

Only state licensing authorities have the power to take away an independent auditor's license to practice as a certified public accountant. An accounting firm could terminate an individual auditor, but he or she could still practice individually or with another firm. The SEC could prohibit an auditor from practicing before it, but he or she could still provide accounting and auditing services to non-SEC registrants. The AICPA and state societies of certified public accountants could expel a member, but membership is voluntary and is not a requirement for practicing. The power of state licensing authorities to suspend or permanently terminate an independent auditor's license to practice represents a much more important regulatory tool. However, most state licensing authorities are faced with limited staffs, limited funds, and, in some cases, legislative restrictions [21]. These limitations and restrictions minimize the effectiveness of this form of regulation. At present, most state licensing authorities only investigate specific cases of substandard performance that come to their attention.

A suggestion for improvement in this area was made by the National Association of State Boards of Accountancy (NASBA) in its 1984 "Positive Enforcement Manual for State Boards of Accountancy" [22]. NASBA suggests that the state licensing authorities adopt positive enforcement programs in which they would actively look for cases of substandard performance by independent auditors, instead of waiting for such matters to come to their attention. This manual also describes in detail the positive enforcement programs currently in use in several states. It covers the major program elements, including suggestions for funding the proposed programs.

2.4. Private litigation

Private litigation is an ever-present threat to independent auditors. Indeed, the restatement of financial statements or the bankruptcy of a company often results in a civil action against the independent auditor, irrespective of whether the auditor's conduct was improper. Moreover, some of these actions are initiated against accounting firms and individual auditors solely because they are a potential source of substantial monetary recovery. Private litigation almost always results in significant defense costs and the consumption of considerable amounts of time. There is also the possibility of substantial monetary awards to plantiffs and damage to professional reputations which could lead to the loss of both existing clients and opportunities to obtain new clients. Thus, the threat of private litigation and its resulting and potential damages contribute to ensuring the quality of accounting and auditing engagements conducted by the accounting profession.

2.5. The regulatory role of the federal government

2.5.1. Federal government oversight

At the forefront of federal government oversight is the SEC. Both the Securities Act of 1933 [23] and the Securities Exchange Act of 1934 [24] provide the SEC with express authority to prescribe accounting and reporting standards [25]. The SEC maintains an active involvement in the accounting, auditing, and ethical standard-setting processes of the private sector, establishes some accounting and ethical standards itself, and interprets standards when deemed necessary. Although it prefers to remain in an overseeing role, the SEC has, on occasion, overruled accounting standards established by the private sector. For example, the SEC overruled the AICPA Accounting Principles Board's opinion concerning the accounting for investment tax credits in 1963 [26] and the FASB's pronouncement on oil and gas accounting in 1977 [27]. The SEC's oversight has historically proved to be both constant and effective.

The SEC exerts considerable influence over the application of accounting standards through issuance of Financial Reporting Releases, Staff Accounting

Bulletins, and Accounting and Auditing Enforcement Releases. It also exerts such influence through its interaction with SEC registrants and their independent auditors. In meetings between the SEC staff and representatives of registrants and their independent auditors, specific accounting and reporting issues are often discussed and resolved.

The SEC meets periodically with the members and staffs of the AICPA's Auditing Standards Board and the Public Oversight Board to monitor developments concerning auditors' responsibilities. The SEC also evaluates the effectiveness of the peer review process within the SEC Practice Section and the role and effectiveness of oversight by the Public Oversight Board.

Congress has periodically directed its attention to the accounting profession. The extensive congressional hearings that took place during the 1970s have had significant positive effects on the accounting profession [28]. First, as previously discussed, the AICPA established the Division for CPA Firms. Second, the attention directed to the accounting profession during these congressional hearings and other congressional concerns resulted in the 1977 enactment of the Foreign Corrupt Practices Act [29]. This legislation, among other things, requires SEC registrants to maintain accurate books and records and to devise and maintain an adequate system of internal controls, and makes it unlawful to falsify books and records and to lie to auditors [30].

The Act's provisions concerning internal accounting controls have proved to be beneficial to the accounting profession in three ways. First, as a result of enactment, many companies undertook extensive reviews of their internal control systems and implemented improvements. This resulted in improved controls and more accurate books and records, which in turn has enhanced the environment in which independent auditors perform their audits. Second, by making it unlawful to lie to auditors, managements of companies are less likely to do so. The SEC has aggressively enforced these provisions of the Foreign Corrupt Practices Act [31]. Finally, the SEC's vigorous enforcement of the Act has improved the audit environment.

2.5.2. Federal government enforcement

In investigating financial fraud by entities who are registrants with the SEC, the SEC's Division of Enforcement routinely reviews the conduct of independent auditors. These reviews are directed to whether the auditors' examination was made in accordance with generally accepted auditing standards, including whether the financial statements are presented in accordance with generally accepted accounting principles. Federal government enforcement, which takes the form of the SEC's presence and ability to sanction accounting firms and individual auditors who practice before it, is a well-recognized and significant regulatory tool.

In instances where the SEC finds that an independent auditor has engaged in misconduct, it has two available ways to proceed. First, it may allege a violation of, or aiding and abetting a violation of, the federal securities laws in a civil injunctive action [32]. Second, it may institute a Rule 2(e) administrative proceeding [33]. This rule gives the SEC the authority to discipline and sanction, including permanently barring from practicing before it, "any person" who is found:

> (i) not to possess the requisite qualifications to represent others, or (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws ..., or the rules and regulations thereunder [34].

In some instances, usually involving the most egregious conduct, the SEC will allege that an independent auditor engaged in misconduct both in a civil injunctive action and a Rule 2(e) administrative proceeding [35].

Investigations of audit failures by the SEC's Division of Enforcement have revealed important information concerning the accounting profession. First, the quality controls of accounting firms that are members of the SEC Practice Section are usually found to be adequate. Audit failures, therefore, generally result from "people problems," not quality control deficiencies. The quality controls of firms that are not members of the SEC Practice Section are more likely to be found deficient. Second, the Division of Enforcement has found "people problems" both in accounting firms that are members of the SEC Practice Section and those that are not. These "people problems" most often involve independent auditors who: (1) yield to client pressures to bend rules rather than doing the right thing, thereby placing business and/or career considerations ahead of professionalism; (2) take the word of their client rather than obtaining sufficient competent evidential matter; and/or (3) lack the necessary level of training and/or experience to perform the engagement.

These investigations have also revealed that misconduct by independent auditors almost never reaches the level of a criminal act. Rather, such misconduct usually constitutes recklessness or something less than recklessness. Indeed, most independent auditors who are found to have engaged in misconduct usually are found also to have omitted procedures or to have made mistakes (*i.e.*, improper professional conduct), but not to have willfully engaged in misconduct.

An independent auditor who is alleged to have engaged in any type of misconduct by the SEC is likely to find himself or herself faced with other penalties involving even greater consequences. These could include loss of partnership or job, loss of license to practice public accounting, damage to professional reputation, and the penalties imposed in civil and, perhaps even, criminal court proceedings.

SEC enforcement actions involving financial reporting and disclosure matters that are directed to companies, their officers, directors, and employees, or their independent auditors, often influence the accounting profession. Enforcement actions have caused certain generally accepted auditing standards, generally accepted accounting principles, and quality control systems of accounting firms to be established or modified. Moreover, enforcement actions have resulted in a greater awareness on the part of individuals, whether they be officers, directors, or employees of companies, or independent auditors, of what constitutes illegal and improper conduct. This awareness, coupled with the knowledge of the SEC's enforcement presence, serves as a deterrent.

2.6. Role of the press

The financial press consistently prints articles involving companies, their officers, directors, and employees, and independent auditors who are found or alleged to have engaged in misconduct. SEC enforcement actions are almost always publicized by many magazines and newspapers. Press coverage of actual or alleged misconduct by independent auditors serves two functions. First, it serves as a deterrent to others. Second, it serves to cause the standards of the accounting profession and the effectiveness of regulation to be scrutinized and improved.

3. Critical analysis

3.1. Regulatory conflicts

Although, as stated earlier, each of the various forms of regulation work collectively to regulate the accounting profession, there also exists intra- and inter-regulatory conflict. The primary conflict is between forms of regulation designed to serve punitive objectives and those designed to serve corrective and preventive objectives. Punitive forms of regulation are designed to punish accounting firms and individual auditors who engage in unprofessional or illegal conduct [36]. Corrective and preventive forms of regulation are designed to enhance the quality of services provided by independent auditors and, ultimately, to ensure that users of financial statements are provided with the most accurate information in the most timely fashion [37]. Ideally, as errors in financial statements are discovered, independent auditors would freely acknowledge the errors and any deficiencies in the conduct of their audit. Corrected financial statements would be promptly issued. However, the presence of punitive forms of regulation (including private litigation, SEC enforcement actions, and, in extreme cases, criminal actions) [38] sometimes prevents this ideal situation from occurring. Indeed, on occasion, independent auditors have refused to acknowledge errors in previously issued financial statements they audited and even permitted errors to be repeated year after year because of the fear of punitive forms of regulation.

Regrettably, there is a need to maintain punitive forms of regulation because of their deterrent effects. The challenge is to strike the proper balance between punitive forms and corrective and preventive forms of regulation.

3.2. The effectiveness of regulation

The many forms of regulation work collectively to regulate the accounting profession and protect the public from unprofessional and illegal conduct. However, one might ask why audit failures nevertheless occur. In order to address this question, the question of audit failures must be placed in perspective. When one considers the many thousands of audits performed by the accounting profession annually, it becomes clear that the frequency of audit failures is actually very low [39]. Moreover, regulation is not and never can be sufficient to eliminate all audit failures. Regulation itself can never eliminate all omissions and mistakes by individuals.

The accounting profession has made substantial improvements during the past decade. The most impressive and effective improvement has been in the area of quality control systems and compliance with such systems. The establishment of the SEC Practice Section and the peer review process led to many of these improvements. However, despite this, there remains a need for additional improvements.

3.3. Improvements to consider

In considering what improvements would be beneficial, it is important to focus both on previously implemented improvements that have been effective and the primary reasons for today's audit failures. Also, contemplated improvements must be evaluated in light of practicability.

As noted above, the quality controls of accounting firms which are members of the SEC Practice Section have been improved and generally are adequate. Moreover, the peer review process has resulted in providing public assurances that member firms have established adequate systems and that they are complying with them. However, all accounting firms are not members of the SEC Practice Section. Therefore, public assurances do not exist for such non-member firms. Indeed, membership in the SEC Practice Section is voluntary, and some accounting firms that audit SEC registrants are not members and, therefore, are not subjected to its peer review process. Substantial improvements would result by expanding the peer review process to include all accounting firms, whether they audit companies which are registrants with the SEC or not.

In the area of enforcement, the state licensing authorities could and should increase their role and effectiveness. Adoption of positive enforcement programs recently suggested by NASBA [40] could provide an additional effective nationwide enforcement presence and serve to influence state of mind perhaps more than any other enforcement effort. The benefits could be substantial, both for the accounting profession and the public.

However, NASBA's suggestion faces many implementation problems and difficulties. For example, one of the ways suggested by NASBA for state licensing authorities to identify cases of substandard performance is through a peer review process [41]. The use of a peer review process, which is designed to serve corrective and preventive objectives, would cause conflict if also used to achieve punitive objectives. Because of the demonstrated success of the peer review process in improving and encouraging compliance with the quality controls of accounting firms, the additional use of peer reviews as an *enforcement* tool would hinder the more important corrective and preventive aspects. Indeed, the SEC's Division of Enforcement has recognized this conflict and has chosen not to jeopardize the success of the peer review process by using it as an enforcement tool. Therefore, this method of implementation should be rejected. Each possible implementation method for adopting NASBA's suggested program should be carefully evaluated in a similar fashion to ensure that its adoption does not create these kinds of pitfalls.

Ensuring the competence of new certified public accountants to perform audits also would reduce the incidence of audit failure. Accountants who graduate from colleges and universities are just that: accountants, not auditors. While colleges and universities usually include one or more audit courses in their curriculums, classrooms do not adequately prepare an accountant to perform audits. The accounting profession teaches auditing primarily through on-the-job training. Indeed, an accountant's ability to audit effectively is directly dependent on the quality and quantity of his or her on-the-job training. However, the licensing requirements for certified public accountants in many states do not adequately address the quality and quantity of audit experience. Thus, persons who only have accounting experience and no audit experience may be licensed as certified public accountants and be permitted to perform audits [42]. Investigations conducted by the SEC's Division of Enforcement often highlight this deficiency. The AICPA and state licensing authorities should examine this deficiency in the education and licensing of accountants and establish methods to ensure that certified public acountants who undertake to perform audits are sufficiently prepared for the task. Ensuring proper education of auditors would serve to protect the interests of both independent auditors and the public.

Finally, the accounting profession has a public image problem. Few persons outside the accounting profession have an understanding of the accounting profession, particularly what it does, how it does it, and what its responsibilities are [43]. In fact, as stated earlier, whenever financial statements are restated or there is a business failure, many persons immediately leap to the conclusion that the independent auditors somehow acted improperly and bear some responsibility. Because of these problems, the profession should expand its efforts to inform the public about the profession.

4. Conclusion

The critical role of the accounting profession in the financial reporting process and the public's reliance on the profession places it in a unique position. It is essential that the profession's performance be constantly monitored and that possible improvements be identified, evaluated, and, if found to be beneficial, implemented. Present forms of monitoring include: self-regulation, peer regulation, state licensing authorities, federal government oversight and enforcement, private litigation, and the media. Although the accounting profession has accomplished much to improve its performance, there is much yet to do. To wait for possible increased federal government regulation before implementing improvements, as happened in 1977, is both dangerous and foolish. Even though a "federal auditor corps," as proposed in the dialogue between Senator Reynolds and Colonel Carter in 1933, is not a real possibility today, the possibility of increased federal government regulation certainly is.

Notes

[1] *See, e.g., Securities Act: Hearings on S. 875 Before the Senate Committee on Banking and Currency*, 73d Cong., 1st Sess. (1933) [hereinafter cited as *Senate Hearings*].

[2] Securities Act of 1933, ch. 38, 48 Stat. 74, Title I (codified as amended at 15 U.S.C. §§ 77a–77bbbb (1982)).

[3] *See Senate Hearings, supra* note 1, at 59.

[4] 17 C.F.R. § 210.1-02(b) (1984).

[5] American Institute of Certified Public Accountants, Code of Professional Ethics (1977).

[6] *Id.* at ET § 51.02.

[7] United States v. Arthur Young & Co., 104 S.Ct. 1495 (1984).

[8] *Id.* at 1503.

[9] Since 1934, the Securities and Exchange Commission (SEC) has been empowered to promulgate accounting principles to be used in filings with the SEC. *See* 15 U.S.C. § 77s (1982).

[10] For example, the medical profession is not subject to federal regulation, whereas the accounting profession is continually scrutinized by the SEC.

[11] *See* Financial Accounting Standard Board, Accounting Standards: Original Pronouncements July 1973–June 1, 1984 (1984).

[12] *See, e.g.*, AICPA, Audits of Certain Nonprofit Organizations Including Statement of Position (1981); AICPA, Audits of Investment Companies (1973).

[13] *See generally* AICPA/NASB, Digest of State Accountancy Laws and State Board Regulations (1983).

[14] *Special Report – The AICPA's 90th Annual Meeting*, 144 J. Acct., Nov. 1977, at 7; *Official Releases – The AICPA Division of CPA Firms*, J. Acct., Nov. 1977, at 113.

[15] AICPA, Division for CPA Firms SEC Practice Section, Peer Review Manual, *Organizational Structure and Functions of the SEC Practice Section of the AICPA Division for CPA Firms (1978).*

[16] *Id.*

[17] *See* Public Oversight Board, SEC Practice Section Div. for CPA Firms, AICPA, *Public Oversight Board Annual Report 1983–1984*, 18.

[18] *See id.* at 18–20.

[19] *See, e.g.,* Pa. Stat. Ann. tit. 63, § 9.3 (Purdon 1983); N.Y. Education Law §§ 7400–7408 (McKinney 1983). *See generally* AICPA/NASB Digest of State Accountancy Laws and State Board Regulations (1983).

[20] *See, e.g.,* Pa. Stat. Ann. tit. 63, § 9.8b(b) (Purdon 1983); Conn. Gen. Stat. Ann. § 20-280(e) (West 1983). *See generally* AICPA/NASB, Digest of State Accountancy Laws and State Board Regulations (1983).

[21] *See, e.g.,* Pa. Stat. Ann. tit. 63, § 9.9(a) (Purdon 1983); N.Y. Education Law §§ 6509–6511 (McKinney 1983). *See generally* AICPA/NASB, Digest of State Accountancy Laws and State Board Regulations (1983).

[22] The National Association of State Boards of Accountancy, *Positive Enforcement Manual for State Boards of Accountancy* (1984) [hereinafter cited as *Positive Enforcement Manual*].

[23] *See* 15 U.S.C. §§ 77a–77bbbb (1982).

[24] *See* 15 U.S.C. §§ 78a–78kk (1982).

[25] *See* 15 U.S.C. §§ 77s, 78c(b) (1982).

[26] SEC Accounting Series Rel. No. 96, Accounting for the Investment Credit (Jan. 10, 1963).

[27] SEC Accounting Series Rel. No. 253, Adoption of Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities (Aug. 31, 1978).

[28] *See, e.g., Foreign Corrupt Practices and Domestic and Foreign Investment Disclosure: Hearing on S. 305 before the Committee on Banking, Housing, and Urban Affairs,* 95th Cong., 1st Sess. (1977).

[29] Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified at 15 U.S.C. §§ 78m, 78dd-2, 78ff (1982)).

[30] *See id.*

[31] *See, e.g.,* SEC v. World-Wide Coin Investments, Ltd., 567 F. Supp. 724 (N.D. Ga. 1983).

[32] *See* 15 U.S.C. § 77t(b) (1982); 15 U.S.C. § 78u(d) (1982).

[33] *See* 17 C.F.R. § 201.2(e) (1984).

[34] 17 C.F.R. § 201.2(e)(1) (1984).

[35] *See, e.g., Emanuel Fields,* SEC Securities Act Rel. No. 5404 (1973).

[36] *See, e.g.,* 17 C.F.R. § 201.2(e) (1984).

[37] *See, e.g.,* 15 U.S.C. § 78m(b)(2) (1982).

[38] *See, e.g.,* 15 U.S.C. §§ 77(b), 78u(c) (1982).

[39] No single source estimates the total number of audits conducted annually. However, Spencer Phelps Harris estimates that 9,291 profit-seeking companies in the United States were audited at least once during 1983. *See* Who Audits America, December 1983, at 274.

[40] *See Positive Enforcement Manual, supra* note 22.

[41] *Id.*

[42] *See* AICPA/NASB, Digest of State Accountancy Laws and State Board Regulations (1983).

[43] *See, e.g.,* Peat, Marwick, Mitchell & Co., *Independent Auditors: How the Profession Is Viewed by Those It Serves, A National Survey Conducted by Opinion Research Corporation and Research Strategies Corporation* (1984). Although the survey reports that the auditing role receives generally high marks from various sectors for its effectiveness and the independence of its judgments, the survey also reveals that an understanding of the auditing role among some groups falls short of acceptable levels.

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