Testimony of Richard L. Trumka
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Good morning, Chairman Shelby and Senator Sarbanes. My name is Richard Trumka and I am the Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations. The AFL-CIO's member unions sponsor benefit plans with over $400 billion in assets, and collectively bargained benefit plans that union members participate in hold over $5 trillion in assets. For America's working families' retirement security is in large part dependent on the integrity of our capital markets.

The labor movement strongly supported the passage of the Sarbanes-Oxley Act of 2002. America's working families owe a great debt of gratitude to Senator Sarbanes for authoring the Act, and to this Committee, for passing what would become Sarbanes-Oxley in a bipartisan vote before the WorldCom scandal broke. Your leadership came at a time when many predicted Congress would do nothing in response to the growing wave of scandal engulfing our nation's public companies.

I would like to review the key features of the Act that have markedly improved investor protections.

- the Act put an end to most consulting by public company audit firms;

- the Act created the Public Company Accounting Oversight Board (PCAOB), which after a controversial start has proven to be a strong, yet flexible independent regulator;

- the Act requires independence and expertise on company audit committees, and makes clear the importance of strong and independent boards generally;

- the Act bans loans to insiders at public companies, putting an end to a key executive compensation abuse; and provides for disgorgement of executive stock profits in certain circumstances; and

- the Act reinforces the fundamental principle of our securities law -- that companies must disclose to investors what a reasonable investor would want to know before making an investment decision, and that the obligation to do so truthfully rests on senior management.

In the last year, these provisions have been impressively augmented by the work of the SEC and the PCAOB. The SEC and its staff have stepped up and addressed through rulemaking several vital issues, for example by ensuring that attorneys for public companies act in the interests of the company, and not just in the interests of the companies' executives. The Commission has also followed the logic of Sarbanes-Oxley in properly demanding increased disclosure from powerful market actors like hedge funds that have been allowed to operate in secret.

The PCAOB is currently addressing the vital issue of financial controls at public companies. I can tell you as the chief financial officer of the AFL-CIO that proper financial controls are critical to the responsible management of any large organization. The events of the last few years have shown the need to strengthen these controls at public companies, and to give company management who are trying to do the right thing some guidance as to what are appropriate safeguards. We have confidence that the PCAOB will do just that.

More than a year later, we believe Sarbanes-Oxley is a success, not just because of the specific provisions of the Act, but because of the tone the Act set and the message it sent. In the first proxy season after the Act passed, investors acted themselves to push companies to have really independent boards, to reign in executive pay, and to manage their audit process more effectively. The AFL-CIO is very proud of the role that unions and worker pension funds have played in these efforts by sponsoring 360 such proposals, 48 of which received majority votes at company annual meetings. These proposals led to real changes in executive compensation at companies like GE, Coca Cola, Tyco, Hewlett-Packard and Alcoa.

We have also seen in recent events at the New York Stock Exchange a powerful message that runaway executive pay is simply no longer acceptable, even in the case of individuals who have performed well.

Sarbanes-Oxley also serves as a guide to appropriate corporate governance in institutions that actually are not subject to the Act. Since May 8th of this year I have served as the Chair of the Corporate Governance Committee of the Board of ULLICO Inc., a private company owned by unions and union pension funds where there was serious wrongdoing by prior management. Among the first acts taken by the new board the shareholders elected last spring was to move the company toward voluntary compliance with the relevant provisions of Sarbanes-Oxley, including CEO certification of the company's financial statements and the Act's audit committee provisions.

However, the job begun by this Committee last year is not complete. Key elements of the investor protection agenda remain to be enacted, here in Congress, at the Securities and Exchange Commission, and at FASB and the Public Accounting Oversight Board. While we are generally pleased with the work done at those agencies, we believe there is still an unfinished corporate reform agenda that they and Congress should turn to.

In the remainder of my testimony, I would like to lay out some key elements of what remains to be done.

First, our legal system continues to suffer from real deficiencies in the extent to which both individuals and institutions can defraud the investing public and get away with it. Despite your best efforts, Mr. Chairman, in many circumstances lawyers, accountants and investment banks can still aid and abet companies that commit securities fraud and enjoy immunity from investor lawsuits. This is wrong, and really only Congress can fix it.

There are also areas where the Private Securities Litigation Reform Act has made it easier to defraud the investing public and get away with it. Sarbanes-Oxley addressed one such area by lengthening the statute of limitations, but there are others such as the PSLRA's repeal of joint and several liability for securities fraud and the blanket immunity it grants for "forward looking statements" that remain. Again, these problems with the PSLRA can only be addressed by Congress.

However, as important as litigation can be to both deterring corporate wrongdoing and dealing with its consequences, it can not substitute for real working corporate governance and accountability on the part of company management. And as long as CEO's dominate the selection process for company directors, we simply will not see at problem companies the kind of vigorous independent boards that we need and that Sarbanes-Oxley called for.

That's why the labor movement believes the most important effort now underway to address the continuing governance problems at our public companies is the SEC's rulemaking initiative to give long-term investors with a substantial stake in public companies the right to have their board nominees included on management's proxy.

Today, it is practically impossible for even the largest long-term investors, the TIAA-CREF's and CALPERS, to nominate and run their own candidates for the boards of public companies. So we have elections in name only. At one company we know of, Lockheed Martin, a former Enron director continues to be nominated by management despite unprecedented shareholder opposition, and the only thing shareholders can do is withhold their vote-they have no alternative candidate to vote for.

And of course, CEO's know that investors have limited options. They know they can ignore shareholder votes on runaway executive compensation or company audit policies, and there is little that shareholders can do. So we strongly support the SEC and Chairman Donaldson's efforts in this area, and fervently hope that what will emerge from rulemaking is real access to the proxy for long-term investors.

Finally, I would like to note that despite everything that has happened, we still have inadequate disclosure to investors of the facts of executive pay and what financial impact that pay has on the companies that award it. Despite FASB Chairman Bob Herz's hard work in this area, stock options still are not required to be expensed, a state of affairs that amounts to a subsidy to an inappropriate form of executive compensation. And as we have seen over and over again in the last year, investors simply are not given enough information about CEO's deferred compensation plans. While these are matters properly in the hands of the SEC and FASB, they are key elements of the post-Sarbanes-Oxley agenda.

While much has been accomplished since Sarbanes-Oxley was passed, the work of reform is not complete. There is no better evidence of that than the recent comments of one of the most influential people in corporate America, Ken Langone, CEO of Invemed Associates, former chair of the New York Stock Exchange's Compensation Committee, member of the Compensation Committee at General Electric and three other public companies, and Lead Director at Home Depot. Mr. Langone, who is actually responsible for the pay package the Stock Exchange offered Richard Grasso and was involved in the pay and benefits offered to Jack Welch, remains unapologetic. He has told the press that given the chance to vote for Grasso's pay package, he would do so again. As long as this is the attitude among key decision makers in corporate America, there is work to be done.

Fortunately, the independent agencies that are active in the area of corporate governance are by and large stepping up to the plate. The SEC, the PCAOB and FASB have all responded admirably to both the specific mandates of Sarbanes-Oxley and the tone set by the passage of that legislation. The labor movement urges this Committee and Congress as a whole to recognize that work, to fund it, and to protect the independence of those agencies as they go about their vital tasks.

Let me conclude by expressing my deepest appreciation to the Committee on behalf of the working families of the AFL-CIO for inviting the AFL-CIO to appear today, and our hope that we will continue to be able to work together on these vital issues for all Americans. Thank you.