



JIM COPELAND REMARKS

**“WE CAN RESTORE INVESTOR CONFIDENCE
IN THE AMERICAN FINANCIAL SYSTEM”**

ETHICS RESOURCE CENTER

POTOMAC, MARYLAND

JULY 19, 2002

Thank you. I appreciate the opportunity to be with you today – and especially at this time in the history of our country.

We find ourselves at a crossroads.

One in which the values of America are being put to the test.

And while it would be easy for all of us to be depressed and discouraged by recent events, it’s very important for your companies and my firm – for you and for me – to continue to do what’s right.

I share your passion for that – and so do the people of my firm, Deloitte & Touche, and the tens of thousands of honest and hard-working men and women of our profession.

Ethics and integrity are the foundation of our capital market system. When they come into question – as we see today – the consequences can be severe. Simply because people invest their trust long before they invest their dollars.

So I want to thank you for what you do – and, again, for inviting me to share more about an idea that I believe would restore investor confidence in the integrity of our financial system.

In doing so, I will make two announcements today that will bring us closer to that goal. But, before I share those with you, let’s first take a look at the “perfect financial storm” that has brought us to this point.

I.

Recent events involving Enron, WorldCom, and others have shaken many people’s faith in our capital markets. Previously reported profits have now disappeared. Billions of dollars in market capitalization have evaporated. And in the wake of this fallout, many thousands of people have lost jobs and retirement savings. And many more innocent bystanders have suffered collateral damage to their reputations.

We’ve always had business failures – and we always will. No reform will eliminate the inherent risk in the marketplace. And when we talk about “restoring confidence in the capital markets,” we must be sure we don’t **over promise** to restore a **false sense of confidence** to investors. This would be an even greater “fraud on the market.”

But having said that, we cannot and should not accept risk that is the result of unethical or illegal activity.

Investors are angry. They have a right to be. But investors also want to understand why these business failures happened – and what can be done to prevent similar failures from happening again.

Let me be clear. The American financial system is still the best and strongest in the world. But as recent events demonstrate, we cannot take this strength for granted.

Investor confidence in the integrity of management and the quality of the financial information available is an absolute necessity for investors to risk their hard-earned money. That means that when a business failure does occur, it is important that we learn its cause.

I'm convinced that we can restore the public's confidence by gathering evidence to explain what caused the failure, and then fix what's broken.

The true extent of the problems at Enron was first disclosed last October. We are now nearing the end of July. During that chaotic time, there have been:

- Numerous Congressional hearings
- An investigation by a special committee of the Enron board
- A criminal investigation and prosecution by the Department of Justice
- Ongoing SEC review
- And, of course, considerable investigative reporting by the press.

Each of these entities played a role that helped shed light on what went wrong.

But, at some point, we need for some good to come out of all this. Someone needs to make sense of all this information and insight, draw conclusions from it, and recommend steps to ensure that this kind of failure doesn't happen again.

As we have clearly seen, taking action in this rational manner can be difficult in the politically and emotionally charged environment that often accompanies a major financial crash.

That's why we need a new investigative body – one that specializes in precisely these sorts of investigations. Just to have a working name, let's call it the National Financial Review Board, or NFRB.

The NFRB should be a government body, but one that draws upon the knowledge and expertise of the private sector. And it should be constituted so as to perform its job in a low profile, professional way, so that it can earn the trust of the American people.

There are four basic characteristics that would be key to its success:

- It would be capable of responding immediately to a significant financial corporate failure or collapse anywhere in the United States;
- It would draw upon the talents of experts in the often complex and technical areas of finance, accounting, auditing and capital markets;
- It would be professional, nonpartisan, and insulated from political considerations or pressure; and
- Its top priority would be to determine the cause of the business failure and make recommendations to prevent the recurrence of similar failures.

Creating a new government agency from scratch is certainly no easy task, and I don't mean to suggest that I have all the answers as to how one should be formed. Fortunately, a workable model for the NFRB already exists – the National Transportation Safety Board.

We are all familiar with the work of the NTSB whenever there is a plane crash. The NTSB is known for its integrity and competence. It is an independent federal agency, funded by Congress, and run by a five-member Board whose members are appointed by the President. The NTSB investigates all aircraft accidents involving civilian aircraft, as well as major highway, railroad, pipeline, and marine accidents. When the NTSB concludes an investigation, it releases its findings to the public.

Over the years, the NTSB has developed and maintained an unmatched reputation for fairness and professionalism. In fact, when Congress reauthorized the NTSB in 1993, one congressman said that “the NTSB has developed such a stature that . . . not a single industry organization, labor group, or Federal agency had enough concern about the NTSB's work to send a single witness to testify in opposition to, or express concern about, the NTSB.”

That is precisely the sort of success story we should try to recreate. I think an independent federal agency, modeled on the NTSB, but with a mandate to investigate significant financial disasters and to follow the investigation with a public report, would go a long way toward restoring investor confidence in the wake of a business failure.

President Bush could create the NFRB through an Executive Order, just like the Corporate Fraud Task Force he announced last week. Or Congress, if it chose, could include this idea in the legislative vehicles currently under debate.

I do not envision this new agency in any way displacing the SEC, the Department of Justice, or the many other existing authorities, federal and state alike, that oversee the capital markets and those who participate in them. All of these regulators have an important role to play, and they should continue to do so.

Nor would the NFRB render reform legislation unnecessary. On the contrary, its findings would become the basis of a well-informed and comprehensive approach to any necessary reform following a financial collapse. Specifically, I would envision an NFRB as a complementary initiative to the Corporate Fraud Task Force.

In short, I see the NFRB as fitting comfortably within our existing scheme of regulation and oversight. I see it as providing a centralized authority capable of bringing order to our fragmented, chaotic, politicized and often overlapping approach to investigating financial crashes.

II.

Before I describe how a “financial NTSB” would work in practice, let me say a few words on how the real NTSB goes about its job.

The NTSB’s investigative process is flexible, and reflects the unpredictable nature and circumstances of the accidents it investigates. It also serves as a recognized, legitimate clearinghouse for information – an important consideration in dispelling the

rumors and speculation that so often accompany a disaster. Through a rapid-response “Go Team” with a single leader, the agency quickly asserts operational control over the event.

Using a team of eight working groups, each of which focuses on a specialized area of inquiry, the investigative team draws upon outside parties to contribute specialized expertise. The NTSB has full discretion to select who will be a party to any given inquiry. In addition to providing valuable expertise, these representatives help foster an impartial investigation and ensure the NTSB hears from a variety of perspectives in drawing conclusions and making recommendations.

Each working group focuses on assembling facts about the crash – through interviews, site inspections, and the exhaustive collection of evidence.

At the conclusion of the field investigations, the teams return to their home office to document their findings. Eventually, each working group prepares a factual report, with every member of the group verifying its accuracy.

After all the working groups have completed their reports, the NTSB staff prepares a final report for the Board’s consideration and approval. The final report, which is released to the public, relates the factual findings of each working group and states the probable cause – or causes – of the crash. In this way, the process itself – a careful and thorough investigation, consensus judgments by experts, conclusions rendered free from political influence or bias – goes a long way toward boosting public confidence in the safety of our transportation system.

Even though the NTSB's factual findings may be used in lawsuits, the conclusions of its report – in which it states its judgment as to the probable causes of the crash – may not be used in litigation.

This is a key point. Because the NTSB's conclusions may not be leveraged into liability findings in civil litigation, the plaintiff's bar has less incentive to attempt to influence, or to attack, the NTSB.

The NTSB also generates public confidence in its work through a rational approach to access to information while an investigation is ongoing. The agency is by no means secretive. Most of its hearings are public. But it does try to avoid publicizing its investigations until it has determined the facts. (A truly unique idea.) This minimizes the speculation and the rush to judgment that often happens in the immediate aftermath of an accident.

Along with the final report that it issues at the end of an investigation, the NTSB often recommends changes in policies and procedures to minimize the possibility of another disaster occurring for the same reason.

The agency also issues periodic reports to Congress and to federal and state agencies suggesting legislative changes to reduce the likelihood of accidents. In addition, the NTSB submits an annual report to Congress summarizing its investigations and noting its safety recommendations.

To ensure that it can fulfill its important mission, Congress has given the NTSB broad investigative powers. The agency can hold fact-finding hearings and issue

subpoenas. It may enforce these subpoenas in federal district court, and it may bring suit in federal court to recover a civil penalty for violating rules relating to aircraft investigations.

In situations where criminal conduct is thought to have played a role in an accident, the NTSB is required to turn over its investigation to the FBI. The NTSB, however, typically remains involved throughout the investigation to provide the necessary expertise.

III.

Why has the NTSB been so successful?

As you can see, the NTSB fulfills the four basic requirements I noted at the beginning.

First, it is responsive. A Board member is on the scene of an accident and the investigation has begun within a matter of hours.

Second, it has expertise. The NTSB draws upon the nation's top experts in a variety of complex and technical fields. The agency's staff has also developed a broad base of knowledge and experience in these areas.

Third, it is nonpartisan. The NTSB is known as an agency of professional career employees who seek the right answer, rather than try to advance a political agenda.

Fourth, it is forward-, rather than backward-looking. The NTSB's focus is on protecting the traveling public in the future, rather than looking back in time to assess

guilt or determine punishment. The Department of Justice or the FAA can seek or impose sanctions; the NTSB's interest lies in making sure the same problem does not cause another accident.

The NTSB thus gives the traveling public both confidence and reassurance: confidence that an impartial government agency is dedicated to doing everything possible to root out the causes of accidents, and reassurance that it is safe to board a plane once again.

No doubt, investors could use some confidence and reassurance right about now. Enron and other high-profile companies have nose-dived so swiftly – and the impact has been so dramatic – that the analogy of a “crash” is very appropriate.

To be sure, NTSB investigations often involve hard, objective facts – weather conditions, engineering stresses and the like.

Financial crashes are likely to involve more subjective questions, of bad judgment and bad policies, or failure to adhere to appropriate policies. But, if established, a National Financial Review Board could act promptly to reassure investors that a particular crash was not the product of systemic flaws in our system of regulated capital markets.

How would the agency investigate a financial crash? Let's walk through an example.

Immediately upon learning of the crash, a “Go Team” would be activated. Whereas the NTSB would dispatch a team to a crash site, the NFRB team could be

dispatched to the company's headquarters or to another key "nerve center" where financial decisions are made or financial information is processed.

The "Go Team" would include a chief investigator and several team leaders for the investigation's working groups. The focus of each working group could be chosen from a predetermined list of typical subjects, as is the case with the NTSB, or decided on an ad hoc basis depending on the nature of the crash.

For example, working groups might focus on areas such as corporate governance, internal accounting control, external auditing, information systems, management, and accounting and auditing.

The working group's membership would be drawn from the agency's own personnel, as well as from outside groups deemed to be appropriate "parties" by the agency's Board.

Just as the FAA is a party to all NTSB airline crash investigations, perhaps the new agency would choose to designate the SEC or the Federal Reserve Board to participate in its investigations of financial crashes.

Other parties might include former CEOs and board members, auditors, legal scholars, experts in corporate governance or others with expertise in the fields of accounting, auditing, finance, economics and capital markets. The size of the team would likely depend on the scope and complexity of the financial failure.

The working groups would then conduct a field investigation. Although the NTSB focuses its inquiry on the crash site, its work groups often spread out depending on

the nature of their task. Groups focusing on weather conditions may visit meteorological facilities to consider weather patterns that may have affected the flight, while other groups might visit the airport to assess the airline's maintenance procedures.

So, too, with a financial crash.

The work groups may move through different locations within the company under investigation as well as those of other relevant organizations and people. It all depends on which piece of the puzzle they've been assigned to investigate.

Securing the intellectual resources for these investigations will be critical to their success. As seen with Enron, business failures can involve highly technical and intricate financial activities. Dissecting the evidence can be a dizzying process that requires years of training and expertise. The NFRB ought to be able to call upon the best minds in the country to ensure the most thorough and successful investigations possible.

To make these resources available, I believe that companies, academic institutions, and other organizations should make their expert resources available to serve in this capacity.

Which brings me to my first commitment.

To help advance this concept, Deloitte & Touche is assembling a team of professionals with deep knowledge of auditing, forensic accounting, risk management and public administration. Under my direction they will look at specific potential models of how an NFRB could be structured, governed and financed. Our plan is to work with a foundation, business group, or university to gain feedback from business and economic

experts, perhaps through a conference. My appearance with you today is an important step in gaining such feedback.

That brings me to my second commitment.

Once an NFRB is established, Deloitte & Touche will commit to making our professionals available to the Board should it require our expertise. We have expertise that could enable us to play an important role on the “Go Teams” and working groups that I described earlier.

Let’s talk briefly about the Go Teams, and how they would do their work.

Just as with the current NTSB, the immediate mission of the NFRB work groups would be to preserve and collect evidence. While the NTSB sifts through physical wreckage looking for clues to the cause of the crash, the new agency would sift through documents and interviews to help solve the mystery.

And because interviewing witnesses is an essential part of any investigation, the NFRB – just like the NTSB – should be given nationwide subpoena power.

After each working group has documented its findings and submitted its factual report, the staff would begin working on determining the cause of the financial crash and begin to draft its final report. The Board could hold public hearings to take testimony if necessary. The final report would then be submitted to the Board for deliberation, approval, and release to the public. And, just as with final reports of the NTSB, the conclusions of the NFRB’s final reports could not be used in later litigation – so the investigation does not become a defacto trial.

The new Board would also have the power – and the responsibility -- to make recommendations to Congress aimed at preventing similar financial crashes in the future. The nonpartisan nature of the Board, and its expertise in financial matters, will ensure that Congress takes the Board’s proposals seriously.

How could the Board be insulated from political influence? The Executive Order or statute that creates the board could explicitly direct that the Board avoid purely partisan matters to focus on its mission. The order or legislation could also make clear that the Board’s investigations are handled by technical experts dedicated to finding the right answer, rather than scoring political points. I realize there is no guarantee against an agency becoming politicized – just look at what’s happened to the SEC. But to be really effective, the NFRB must be non-partisan.

Some might ask how the NFRB would know when to begin investigating a financial failure. Although a plane crash is a clear and objective “triggering” event, it is much harder to say when a company has “crashed.” It may be obvious in the worst cases, like Enron, but what of lesser financial crashes?

Would a 50 percent drop in the market capitalization of a company in a brief period of time be a sufficient “disaster” to trigger an investigation?

Or the bankruptcy of a medium-sized, publicly traded company?

The inherent ambiguity in defining a triggering event could lead to an excessive – or inadequate – number of investigations.

I would suggest that the Executive Order or legislation that establishes the new agency also establish an objective trigger mechanism.

A point to reinforce is that the trigger mechanism must also take into account the overall performance of the market.

It might also be wise to allow the Board to initiate actions at its own discretion or in response to a request from another government agency, such as by the Federal Reserve.

However, it would be best to employ objective criteria to trigger an assessment by the NFRB. Such an approach would provide a “level playing field” in determining the need for an investigation. It also would help minimize the possibility that the board would come under political pressure to launch an inquiry simply because a company was in the news or was unpopular with one political party or another.

As I noted earlier the NFRB would not displace business investigatory roles performed by the Justice Department, Congress, or the SEC. In fact, I envision it working in harmony with the many agencies, federal and state alike, that already possess investigative and enforcement powers in the private financial sector.

Banking institutions, to take just one example, are heavily regulated by at least four federal agencies as well as state-level agencies. The same goes for brokers and investment advisors, who are governed by the SEC and various self-regulatory organizations. In addition, the Treasury Department, the Commodities Futures Trading

Commission, and the Justice Department each have their own investigative authority and interests.

One possible approach would be to structure the NFRB so that its members would represent all of the appropriate federal regulatory agencies, such as the SEC, the Controller of the Currency, the Federal Reserve Board or others. Bringing these representatives together in the new Board could promote jurisdictional harmony by giving them the opportunity to coordinate the agencies' investigative work and effectively leverage the available resources.

Nor do I see a potential conflict with law enforcement. In situations where the NFRB suspects criminal activity, control of the criminal aspects of the investigation would be given to the Justice Department in the same manner as the NTSB relinquishes its authority to the FBI.

To be sure, criminal conduct is alleged more often in corporate collapses than in transportation accidents, which are often ascribed to mechanical failures, Acts of God, or ordinary negligence.

But the new Board could pursue its investigation until it suspects criminal activity. At that point, it would relinquish control to law enforcement authorities, but remain involved in an advisory role.

Alternatively, the NFRB could conduct an investigation that runs parallel to a criminal investigation.

I understand that it is not at all uncommon for a federal agency, such as the Food and Drug Administration or the SEC, to investigate the activities of particular parties, and even punish them, at the same time a criminal investigation is occurring involving the same parties and same facts.

IV.

Going forward, we all have a vested interest in understanding and learning from business failures. We will never eliminate them. The markets will always produce winners and losers.

But when they result from inappropriate activity, we need to uncover it, vigorously prosecute the violators, and correct the system wherever possible, to prevent similar abuses in the future.

I believe that a highly dedicated and permanent agency –

Conducting neutral, dispassionate, and technically expert investigations –

Will make enormous contributions to the stability of our financial markets.

Indeed, recent financial collapses, and the fragmented, chaotic, partisan and often overlapping government investigations that have resulted, underscore the urgent need for a new agency:

- An agency dedicated to investigating financial crashes with real experts
- An agency that can consolidate and analyze evidence from across the country

- And an agency of unbiased professionals that can earn the trust and command the respect of all Americans

I'm an optimist.

But I'm also a realist. There will always be business failures and financial frauds. The nature of a free-market economy offers plenty of risk and reward – and, for better or for worse, no guarantees.

Still, the integrity and competence of the NTSB help provide airplane passengers with the confidence they need to continue flying – despite the fact that some number of crashes is inevitable.

Likewise, the integrity and competence of a new National Financial Review Board would help provide the public with the confidence it needs to continue investing in the capital markets – despite the fact that some number of financial “crashes” is inevitable.

I believe this suggestion has the potential to help restore investor confidence. Its focus on teamwork and fact-based analysis provides much-needed coordination and substance. But it should be evaluated as part of a total package of reforms. The entire set of reforms must work in concert to be effective.

That said, when all of the reform -- the systems, controls, regulations, and laws have been put in place, success or failure will boil down to one thing – personal integrity – or the lack of it.

T.S. Eliot said it best, “They constantly try to escape from the darkness outside – and within – by dreaming of systems so perfect that no one will need to be good.”

But, like it or not, we do need to be good – individually. We can’t depend on controls and regulations. The individual honesty and integrity of management and auditors is what’s needed most to reestablish credibility in financial information and restore confidence in our public and capital markets.

A few years ago, my best friend died. My sons and I loved him for a lot of reasons, but in part because we shared a passion for scuba diving. When we took a diving trip together, one of my sons saw a tiny lock that Alan put on his diving equipment bag.

My son laughed and asked what good a lock like that did. Alan said it only helps “keep an honest man honest.”

That is all reforms will do – even the best of reforms – help encourage an honest professional to stay honest. All of our reforms are only as real as our determination to try to do the right thing – individually – every time – day in and day out.

As Tomita-san, one of the founding partners of our Japanese firm, said: "There's nothing worse than an accountant without a conscience."

That translates pretty directly – and resonates with what President Bush said in a speech last week when he stated: “Tougher laws and stricter requirements will help. . . . Yet ultimately the ethics of American business depend on the conscience of America’s business leaders.”

True – we need tough, effective reforms. We need understandable, accurate, and comparable financial information – based on international accounting and auditing

standards – and reinforced by sound governance practices and effective market regulation.

But, above all, we need honesty and integrity in our auditors and everyone else involved in providing financial information to our public and capital markets.

I want to thank each of you and the Ethics Resource Center for this opportunity to share some ideas on how we can restore confidence in the American financial system.

I'd be delighted to answer any questions you may have.

#