

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

March 28,2002

Professor Richard W. Painter
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504 East Pennsylvania Avenue
Champaign, IL 61820

Dear Professor Painter:

Thank you for your March 7th letter regarding lawyers' responsibilities under Commission Rule 102(e), to which Chairman Pitt has asked me to reply.

As noted in your letter, the role played by professionals - both accountants and lawyers - in securities fraud is a matter of legitimate concern. While much recent focus has been on the role of accountants, you raise the question whether lawyers should also have heightened responsibilities for reporting violations of the securities laws. You propose in your letter that the Commission should expressly require, either through Rule 102(e) or some other Commission rule, that a lawyer representing a corporation in connection with its securities law compliance must inform the client's board of directors if the lawyer knows that the client is violating the securities laws and senior management does not promptly rectify the violation. This proposal is akin to, though less demanding than, the obligations imposed on auditors by Section 10A of the Exchange Act, which Congress added as part of the Securities Litigation Reform Act of 1995.

As you are aware, since the *Carter and Johnson* Rule 102(e) proceeding, 47 SEC 471 (1981), the Commission has not brought Rule 102(e) proceedings against lawyers based on allegations of improper professional conduct, or otherwise used the Rule to establish professional responsibilities of lawyers. There has been a strong view among the bar that these matters are more appropriately addressed by state bar rules, which historically have been the source of professional responsibility requirements for lawyers, and have been overseen by state courts. As you noted in the 1996 SMU Law Review article which you enclosed, there may be reasons to prefer having one uniform nation-wide rule governing lawyers who participate in nation-wide securities law practices; but there are also good reasons why consideration of such a significant change in established practice should be undertaken in the context of Congressional legislation, as opposed to agency rulemaking. As I understand it, your 1996 article concludes that any such changes to the rules governing lawyers should be the result of Congressional changes to the securities laws, analogous to Section 10A's rules for accountants.

I appreciate your providing us with the benefit of your very thoughtful work on these important issues. Given the current level of concern about corporate disclosure and securities fraud, there is certain to be continued discussion and opportunity for dialogue about what changes to our system of federal securities regulation are appropriate to meet today's challenges. As Chairman Pitt has stated, the Commission is committed to listening to all points of view as it proceeds towards helping, fashion appropriate solutions to these challenges.

Sincerely,

David Becker
General Counsel