

by Phil Livingston



### FEI HELPS SHAPE NEW GOVERNANCE LAW

The Sarbanes-Oxley Act of 2002 is significant and complex. While the heart of the bill addresses the regulatory mechanisms for public company auditing firms, impacting our members only indirectly, there are many other provisions that aren't so benign, from our perspective. FEI participated actively in the Act's passage, wary from the early stages that the crisis in confidence might force Congress and the President to act. We worked to gain inclusion of FEI's key points and modify the troublesome provisions as much as possible.

Our participation effectively started with FEI's 12 recommendations for strengthening financial management, financial reporting and corporate governance. The task force that compiled those recommendations took early stands on tough issues that later rippled through the positions and regulations. These positions related to the financial experts on audit committees, codes of conduct, independent whistleblower protection mechanisms and hiring auditors for top company positions.

In addition to these leadership stands, the final provisions of the Sarbanes-Oxley Act regarding auditor independence are, in essence, the same as FEI's recommendation calling for prohibitions on certain services — including, importantly, that audit committees approve all non-audit services provided by the external auditor.

While our overall objective was to gain widespread adoption of the recommendations without a new law, we recognized the significant threat of the legislation being formulated without our input. Though FEI historically has not been a political heavyweight (we don't have a political action committee or organize member political contributions), the situation and the strength of our recommendations propelled us to the forefront.

Grace Hinchman, FEI's senior vice president for public affairs, based in our Washington office, did a tremendous

job meeting with the key congressional staff members of the House Financial Services Committee and the Senate Banking Committee. Because our financial resources are limited, we raised funds through a special solicitation. One leading company contributed \$25,000 to the cause, and many contributed smaller amounts. My heartfelt thanks go out to them all. This funding allowed us to hire a leading Washington lobbyist, Larry Sidman of Paul, Hastings, Janofsky & Walker.

As a team, we drafted legislative wording reflecting the FEI recommendations, when appropriate, and met with Rep. Oxley (R-Ohio), Sen. Jon Corzine (D-N.J.), Rep. Carolyn Maloney (D-N.Y.) and many staff members. At our request, many FEI members wrote letters to key legislators and arranged meetings on our behalf. I cannot overstate the value of those letters and phone calls: Active grassroots input was critical and effective.

In parallel with the Congressional efforts, we actively lobbied the NYSE and the Nasdaq exchanges to reflect some of the FEI recommendations as each revised their listing agreements. FEI legend Frank Borelli and I presented the key points to the NYSE's special committee. Nasdaq asked me to present to their listing committee early in the process, and I presented at their two governance summits in which they solicited input from their member companies. The March SEC Roundtable on improving corporate disclosure was also an important forum for promoting FEI's positions. NASBA, the association of state boards of accountancy, also invited me to present FEI's recommendations.

At this point, many of FEI's 12 recommendations are reflected in the Act, as well as in the NYSE and Nasdaq revised listing agreements, the Business Roundtable revised principles of corporate governance (a substantial document *continued on page 76*



Phil Livingston and Sen. Paul Sarbanes (D-Md.) at the White House ceremony at which the bill was signed in late July.

that I recommend to all FEI members — [www.brt.org](http://www.brt.org)) and SEC regulations.

Reflecting on all that's happened, significant changes have already been made. The most significant, in my opinion, are:

- Shareholder approval for all equity-based compensation plans.
- Directors will be appointed only by independent directors.
- Audit committees will add members with practical experience in financial reporting.
- Mechanisms for employees to



President Bush thanks key Senators and Congressmen for their efforts on the bill

operational business matters. Long before Enron, FEI called for substantive reform in the processes and oversight of accounting standard setting. Our letters to the FASB in 1995 look absolutely prescient. We need real change and real leadership at both organizations. Both groups need to elevate their performance and get us off the track followed in recent times.

Secondly, the SEC needs to issue a road map for using technology to modernize financial reporting. The SEC chairman and chief accountant are strong supporters of using the Internet to eliminate the gibberish that clouds the substance in financial statements. We need to get on with it.

This just points out that the process isn't done yet, and FEI and its members need to stay active and vocal. *The Washington Post* photo of Sen. Sarbanes and me at the White House ceremony (see page 6) represents one very significant step in the process and FEI's high level of participation. So many of those in attendance expressed their great appreciation for FEI's "meaty"



Treasury Secretary Paul O'Neill, Commerce Secretary Donald Evans and SEC Chairman Harvey Pitt



Rep. John LaFalce and Sen. Sarbanes



Sen. Mike Enzi and Grace Hinchman

report improper conduct will be widely required and monitored by audit committees.

- The auditing profession will have a tough oversight body and be required to significantly improve the quality and effectiveness of audits.
- Independent directors will meet



SEC Chief Accountant Robert Herdman and FEI's Grace Hinchman

regularly in executive session.

Two important matters have yet to be addressed satisfactorily. First, the FASB and the IASB continue on the lost track that they've been on for 15 years, reacting in a narrow and defensive manner to specific problems, driven towards agendas that use the accounting model to solve governance or

contributions to the process. Sen. Sarbanes repeated that appreciation many times, including a mention on CNBC and a personal phone call to Grace Hinchman. As we work on implementing these regulations and future requirements, FEI is well-positioned to continue its representation on behalf of our members and the profession. ■