

107TH CONGRESS } <i>2d Session</i>	HOUSE OF REPRESENTATIVES	{ REPORT 107-_____
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SARBANES-OXLEY ACT OF 2002

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\_\_\_\_\_, 2002.—ORDERED TO BE PRINTED  
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Mr. OXLEY, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 3763]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:



1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the “Sar-  
3 banes-Oxley Act of 2002”.

4 (b) TABLE OF CONTENTS.—The table of contents for this  
5 Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

**TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

**TITLE II—AUDITOR INDEPENDENCE**

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

**TITLE III—CORPORATE RESPONSIBILITY**

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods.
- Sec. 307. Rules of professional responsibility for attorneys.
- Sec. 308. Fair funds for investors.

**TITLE IV—ENHANCED FINANCIAL DISCLOSURES**

- Sec. 401. Disclosures in periodic reports.



- Sec. 402. Enhanced conflict of interest provisions.
- Sec. 403. Disclosures of transactions involving management and principal stockholders.
- Sec. 404. Management assessment of internal controls.
- Sec. 405. Exemption.
- Sec. 406. Code of ethics for senior financial officers.
- Sec. 407. Disclosure of audit committee financial expert.
- Sec. 408. Enhanced review of periodic disclosures by issuers.
- Sec. 409. Real time issuer disclosures.

TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

- Sec. 601. Authorization of appropriations.
- Sec. 602. Appearance and practice before the Commission.
- Sec. 603. Federal court authority to impose penny stock bars.
- Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.
- Sec. 702. Commission study and report regarding credit rating agencies.
- Sec. 703. Study and report on violators and violations
- Sec. 704. Study of enforcement actions.
- Sec. 705. Study of investment banks.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD  
ACCOUNTABILITY

- Sec. 801. Short title.
- Sec. 802. Criminal penalties for altering documents.
- Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
- Sec. 804. Statute of limitations for securities fraud.
- Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
- Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

- Sec. 901. Short title.
- Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
- Sec. 903. Criminal penalties for mail and wire fraud.



- Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
- Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
- Sec. 906. Corporate responsibility for financial reports.

TITLE X—CORPORATE TAX RETURNS

- Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

- Sec. 1101. Short title.
- Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
- Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 1104. Amendment to the Federal Sentencing Guidelines.
- Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
- Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
- Sec. 1107. Retaliation against informants.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act, the following definitions  
3 shall apply:

4 (1) APPROPRIATE STATE REGULATORY AUTHORITY.—  
5 The term “appropriate State regulatory authority” means  
6 the State agency or other authority responsible for the li-  
7 censure or other regulation of the practice of accounting in  
8 the State or States having jurisdiction over a registered  
9 public accounting firm or associated person thereof, with  
10 respect to the matter in question.

11 (2) AUDIT.—The term “audit” means an examination  
12 of the financial statements of any issuer by an independent  
13 public accounting firm in accordance with the rules of the  
14 Board or the Commission (or, for the period preceding the  
15 adoption of applicable rules of the Board under section  
16 103, in accordance with then-applicable generally accepted



1 auditing and related standards for such purposes), for the  
2 purpose of expressing an opinion on such statements.

3 (3) AUDIT COMMITTEE.—The term “audit committee”  
4 means—

5 (A) a committee (or equivalent body) established  
6 by and amongst the board of directors of an issuer for  
7 the purpose of overseeing the accounting and financial  
8 reporting processes of the issuer and audits of the fi-  
9 nancial statements of the issuer; and

10 (B) if no such committee exists with respect to an  
11 issuer, the entire board of directors of the issuer.

12 (4) AUDIT REPORT.—The term “audit report” means  
13 a document or other record—

14 (A) prepared following an audit performed for  
15 purposes of compliance by an issuer with the require-  
16 ments of the securities laws; and

17 (B) in which a public accounting firm either—

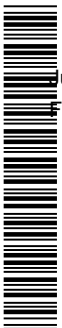
18 (i) sets forth the opinion of that firm regard-  
19 ing a financial statement, report, or other docu-  
20 ment; or

21 (ii) asserts that no such opinion can be ex-  
22 pressed.

23 (5) BOARD.—The term “Board” means the Public  
24 Company Accounting Oversight Board established under  
25 section 101.

26 (6) COMMISSION.—The term “Commission” means the  
27 Securities and Exchange Commission.

28 (7) ISSUER.—The term “issuer” means an issuer (as  
29 defined in section 3 of the Securities Exchange Act of 1934  
30 (15 U.S.C. 78c)), the securities of which are registered



1 under section 12 of that Act (15 U.S.C. 78l), or that is re-  
2 quired to file reports under section 15(d) (15 U.S.C.  
3 78o(d)), or that files or has filed a registration statement  
4 that has not yet become effective under the Securities Act  
5 of 1933 (15 U.S.C. 77a et seq.), and that it has not with-  
6 drawn.

7 (8) NON-AUDIT SERVICES.—The term “non-audit serv-  
8 ices” means any professional services provided to an issuer  
9 by a registered public accounting firm, other than those  
10 provided to an issuer in connection with an audit or a re-  
11 view of the financial statements of an issuer.

12 (9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING  
13 FIRM.—

14 (A) IN GENERAL.—The terms “person associated  
15 with a public accounting firm” (or with a “registered  
16 public accounting firm”) and “associated person of a  
17 public accounting firm” (or of a “registered public ac-  
18 counting firm”) mean any individual proprietor, part-  
19 ner, shareholder, principal, accountant, or other profes-  
20 sional employee of a public accounting firm, or any  
21 other independent contractor or entity that, in connec-  
22 tion with the preparation or issuance of any audit  
23 report—

24 (i) shares in the profits of, or receives com-  
25 pensation in any other form from, that firm; or

26 (ii) participates as agent or otherwise on be-  
27 half of such accounting firm in any activity of that  
28 firm.

29 (B) EXEMPTION AUTHORITY.—The Board may, by  
30 rule, exempt persons engaged only in ministerial tasks



1 from the definition in subparagraph (A), to the extent  
2 that the Board determines that any such exemption is  
3 consistent with the purposes of this Act, the public in-  
4 terest, or the protection of investors.

5 (10) PROFESSIONAL STANDARDS.—The term “profes-  
6 sional standards” means—

7 (A) accounting principles that are—

8 (i) established by the standard setting body  
9 described in section 19(b) of the Securities Act of  
10 1933, as amended by this Act, or prescribed by the  
11 Commission under section 19(a) of that Act (15  
12 U.S.C. 17a(s)) or section 13(b) of the Securities  
13 Exchange Act of 1934 (15 U.S.C. 78a(m)); and

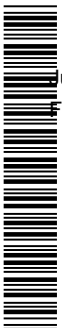
14 (ii) relevant to audit reports for particular  
15 issuers, or dealt with in the quality control system  
16 of a particular registered public accounting firm;  
17 and

18 (B) auditing standards, standards for attestation  
19 engagements, quality control policies and procedures,  
20 ethical and competency standards, and independence  
21 standards (including rules implementing title II) that  
22 the Board or the Commission determines—

23 (i) relate to the preparation or issuance of  
24 audit reports for issuers; and

25 (ii) are established or adopted by the Board  
26 under section 103(a), or are promulgated as rules  
27 of the Commission.

28 (11) PUBLIC ACCOUNTING FIRM.—The term “public  
29 accounting firm” means—



1 (A) a proprietorship, partnership, incorporated as-  
2 sociation, corporation, limited liability company, limited  
3 liability partnership, or other legal entity that is en-  
4 gaged in the practice of public accounting or preparing  
5 or issuing audit reports; and

6 (B) to the extent so designated by the rules of the  
7 Board, any associated person of any entity described in  
8 subparagraph (A).

9 (12) REGISTERED PUBLIC ACCOUNTING FIRM.—The  
10 term “registered public accounting firm” means a public  
11 accounting firm registered with the Board in accordance  
12 with this Act.

13 (13) RULES OF THE BOARD.—The term “rules of the  
14 Board” means the bylaws and rules of the Board (as sub-  
15 mitted to, and approved, modified, or amended by the Com-  
16 mission, in accordance with section 107), and those stated  
17 policies, practices, and interpretations of the Board that  
18 the Commission, by rule, may deem to be rules of the  
19 Board, as necessary or appropriate in the public interest or  
20 for the protection of investors.

21 (14) SECURITY.—The term “security” has the same  
22 meaning as in section 3(a) of the Securities Exchange Act  
23 of 1934 (15 U.S.C. 78c(a)).

24 (15) SECURITIES LAWS.—The term “securities laws”  
25 means the provisions of law referred to in section 3(a)(47)  
26 of the Securities Exchange Act of 1934 (15 U.S.C.  
27 78c(a)(47)), as amended by this Act, and includes the  
28 rules, regulations, and orders issued by the Commission  
29 thereunder.





1 (16) STATE.—The term “State” means any State of  
2 the United States, the District of Columbia, Puerto Rico,  
3 the Virgin Islands, or any other territory or possession of  
4 the United States.

5 (b) CONFORMING AMENDMENT.—Section 3(a)(47) of the  
6 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is  
7 amended by inserting “the Sarbanes-Oxley Act of 2002,” be-  
8 fore “the Public”.

9 **SEC. 3. COMMISSION RULES AND ENFORCEMENT.**

10 (a) REGULATORY ACTION.—The Commission shall pro-  
11 mulgate such rules and regulations, as may be necessary or ap-  
12 propriate in the public interest or for the protection of inves-  
13 tors, and in furtherance of this Act.

14 (b) ENFORCEMENT.—

15 (1) IN GENERAL.—A violation by any person of this  
16 Act, any rule or regulation of the Commission issued under  
17 this Act, or any rule of the Board shall be treated for all  
18 purposes in the same manner as a violation of the Securi-  
19 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the  
20 rules and regulations issued thereunder, consistent with the  
21 provisions of this Act, and any such person shall be subject  
22 to the same penalties, and to the same extent, as for a vio-  
23 lation of that Act or such rules or regulations.

24 (2) INVESTIGATIONS, INJUNCTIONS, AND PROSECU-  
25 TION OF OFFENSES.—Section 21 of the Securities Ex-  
26 change Act of 1934 (15 U.S.C. 78u) is amended—

27 (A) in subsection (a)(1), by inserting “the rules of  
28 the Public Company Accounting Oversight Board, of  
29 which such person is a registered public accounting



1 firm or a person associated with such a firm,” after “is  
2 a participant,”;

3 (B) in subsection (d)(1), by inserting “the rules of  
4 the Public Company Accounting Oversight Board, of  
5 which such person is a registered public accounting  
6 firm or a person associated with such a firm,” after “is  
7 a participant,”;

8 (C) in subsection (e), by inserting “the rules of the  
9 Public Company Accounting Oversight Board, of which  
10 such person is a registered public accounting firm or a  
11 person associated with such a firm,” after “is a partici-  
12 pant,”; and

13 (D) in subsection (f), by inserting “or the Public  
14 Company Accounting Oversight Board” after “self-reg-  
15 ulatory organization” each place that term appears.

16 (3) CEASE-AND-DESIST PROCEEDINGS.—Section  
17 21C(c)(2) of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78u-3(c)(2)) is amended by inserting “registered  
19 public accounting firm (as defined in section 2 of the Sar-  
20 banes-Oxley Act of 2002),” after “government securities  
21 dealer,”.

22 (4) ENFORCEMENT BY FEDERAL BANKING AGEN-  
23 CIES.—Section 12(i) of the Securities Exchange Act of  
24 1934 (15 U.S.C. 78l(i)) is amended by—

25 (A) striking “sections 12,” each place it appears  
26 and inserting “sections 10A(m), 12,”; and

27 (B) striking “and 16,” each place it appears and  
28 inserting “and 16 of this Act, and sections 302, 303,  
29 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-  
30 Oxley Act of 2002,”.



1 (c) EFFECT ON COMMISSION AUTHORITY.—Nothing in  
2 this Act or the rules of the Board shall be construed to impair  
3 or limit—

4 (1) the authority of the Commission to regulate the  
5 accounting profession, accounting firms, or persons associ-  
6 ated with such firms for purposes of enforcement of the se-  
7 curities laws;

8 (2) the authority of the Commission to set standards  
9 for accounting or auditing practices or auditor independ-  
10 ence, derived from other provisions of the securities laws or  
11 the rules or regulations thereunder, for purposes of the  
12 preparation and issuance of any audit report, or otherwise  
13 under applicable law; or

14 (3) the ability of the Commission to take, on the ini-  
15 tiative of the Commission, legal, administrative, or discipli-  
16 nary action against any registered public accounting firm  
17 or any associated person thereof.

18 **TITLE I—PUBLIC COMPANY**  
19 **ACCOUNTING OVERSIGHT BOARD**

20 **SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVI-**  
21 **SIONS.**

22 (a) ESTABLISHMENT OF BOARD.—There is established the  
23 Public Company Accounting Oversight Board, to oversee the  
24 audit of public companies that are subject to the securities  
25 laws, and related matters, in order to protect the interests of  
26 investors and further the public interest in the preparation of  
27 informative, accurate, and independent audit reports for com-  
28 panies the securities of which are sold to, and held by and for,  
29 public investors. The Board shall be a body corporate, operate



1 as a nonprofit corporation, and have succession until dissolved  
2 by an Act of Congress.

3 (b) STATUS.—The Board shall not be an agency or estab-  
4 lishment of the United States Government, and, except as oth-  
5 erwise provided in this Act, shall be subject to, and have all  
6 the powers conferred upon a nonprofit corporation by, the Dis-  
7 trict of Columbia Nonprofit Corporation Act. No member or  
8 person employed by, or agent for, the Board shall be deemed  
9 to be an officer or employee of or agent for the Federal Gov-  
10 ernment by reason of such service.

11 (c) DUTIES OF THE BOARD.—The Board shall, subject to  
12 action by the Commission under section 107, and once a deter-  
13 mination is made by the Commission under subsection (d) of  
14 this section—

15 (1) register public accounting firms that prepare audit  
16 reports for issuers, in accordance with section 102;

17 (2) establish or adopt, or both, by rule, auditing, qual-  
18 ity control, ethics, independence, and other standards relat-  
19 ing to the preparation of audit reports for issuers, in ac-  
20 cordance with section 103;

21 (3) conduct inspections of registered public accounting  
22 firms, in accordance with section 104 and the rules of the  
23 Board;

24 (4) conduct investigations and disciplinary proceedings  
25 concerning, and impose appropriate sanctions where justi-  
26 fied upon, registered public accounting firms and associated  
27 persons of such firms, in accordance with section 105;

28 (5) perform such other duties or functions as the  
29 Board (or the Commission, by rule or order) determines  
30 are necessary or appropriate to promote high professional



1 standards among, and improve the quality of audit services  
2 offered by, registered public accounting firms and associ-  
3 ated persons thereof, or otherwise to carry out this Act, in  
4 order to protect investors, or to further the public interest;

5 (6) enforce compliance with this Act, the rules of the  
6 Board, professional standards, and the securities laws re-  
7 lating to the preparation and issuance of audit reports and  
8 the obligations and liabilities of accountants with respect  
9 thereto, by registered public accounting firms and associ-  
10 ated persons thereof; and

11 (7) set the budget and manage the operations of the  
12 Board and the staff of the Board.

13 (d) COMMISSION DETERMINATION.—The members of the  
14 Board shall take such action (including hiring of staff, proposal  
15 of rules, and adoption of initial and transitional auditing and  
16 other professional standards) as may be necessary or appro-  
17 priate to enable the Commission to determine, not later than  
18 270 days after the date of enactment of this Act, that the  
19 Board is so organized and has the capacity to carry out the  
20 requirements of this title, and to enforce compliance with this  
21 title by registered public accounting firms and associated per-  
22 sons thereof. The Commission shall be responsible, prior to the  
23 appointment of the Board, for the planning for the establish-  
24 ment and administrative transition to the Board's operation.

25 (e) BOARD MEMBERSHIP.—

26 (1) COMPOSITION.—The Board shall have 5 members,  
27 appointed from among prominent individuals of integrity  
28 and reputation who have a demonstrated commitment to  
29 the interests of investors and the public, and an under-  
30 standing of the responsibilities for and nature of the finan-

1 cial disclosures required of issuers under the securities laws  
2 and the obligations of accountants with respect to the prep-  
3 aration and issuance of audit reports with respect to such  
4 disclosures.

5 (2) LIMITATION.—Two members, and only 2 members,  
6 of the Board shall be or have been certified public account-  
7 ants pursuant to the laws of 1 or more States, provided  
8 that, if 1 of those 2 members is the chairperson, he or she  
9 may not have been a practicing certified public accountant  
10 for at least 5 years prior to his or her appointment to the  
11 Board.

12 (3) FULL-TIME INDEPENDENT SERVICE.—Each mem-  
13 ber of the Board shall serve on a full-time basis, and may  
14 not, concurrent with service on the Board, be employed by  
15 any other person or engage in any other professional or  
16 business activity. No member of the Board may share in  
17 any of the profits of, or receive payments from, a public ac-  
18 counting firm (or any other person, as determined by rule  
19 of the Commission), other than fixed continuing payments,  
20 subject to such conditions as the Commission may impose,  
21 under standard arrangements for the retirement of mem-  
22 bers of public accounting firms.

23 (4) APPOINTMENT OF BOARD MEMBERS.—

24 (A) INITIAL BOARD.—Not later than 90 days after  
25 the date of enactment of this Act, the Commission,  
26 after consultation with the Chairman of the Board of  
27 Governors of the Federal Reserve System and the Sec-  
28 retary of the Treasury, shall appoint the chairperson  
29 and other initial members of the Board, and shall des-  
30 ignate a term of service for each.



1 (B) VACANCIES.—A vacancy on the Board shall  
2 not affect the powers of the Board, but shall be filled  
3 in the same manner as provided for appointments  
4 under this section.

5 (5) TERM OF SERVICE.—

6 (A) IN GENERAL.—The term of service of each  
7 Board member shall be 5 years, and until a successor  
8 is appointed, except that—

9 (i) the terms of office of the initial Board  
10 members (other than the chairperson) shall expire  
11 in annual increments, 1 on each of the first 4 anni-  
12 versaries of the initial date of appointment; and

13 (ii) any Board member appointed to fill a va-  
14 cancy occurring before the expiration of the term  
15 for which the predecessor was appointed shall be  
16 appointed only for the remainder of that term.

17 (B) TERM LIMITATION.—No person may serve as  
18 a member of the Board, or as chairperson of the  
19 Board, for more than 2 terms, whether or not such  
20 terms of service are consecutive.

21 (6) REMOVAL FROM OFFICE.—A member of the Board  
22 may be removed by the Commission from office, in accord-  
23 ance with section 107(d)(3), for good cause shown before  
24 the expiration of the term of that member.

25 (f) POWERS OF THE BOARD.—In addition to any authority  
26 granted to the Board otherwise in this Act, the Board shall  
27 have the power, subject to section 107—

28 (1) to sue and be sued, complain and defend, in its  
29 corporate name and through its own counsel, with the ap-



1       proval of the Commission, in any Federal, State, or other  
2       court;

3               (2) to conduct its operations and maintain offices, and  
4       to exercise all other rights and powers authorized by this  
5       Act, in any State, without regard to any qualification, li-  
6       censing, or other provision of law in effect in such State  
7       (or a political subdivision thereof);

8               (3) to lease, purchase, accept gifts or donations of or  
9       otherwise acquire, improve, use, sell, exchange, or convey,  
10      all of or an interest in any property, wherever situated;

11              (4) to appoint such employees, accountants, attorneys,  
12      and other agents as may be necessary or appropriate, and  
13      to determine their qualifications, define their duties, and fix  
14      their salaries or other compensation (at a level that is com-  
15      parable to private sector self-regulatory, accounting, tech-  
16      nical, supervisory, or other staff or management positions);

17              (5) to allocate, assess, and collect accounting support  
18      fees established pursuant to section 109, for the Board,  
19      and other fees and charges imposed under this title; and

20              (6) to enter into contracts, execute instruments, incur  
21      liabilities, and do any and all other acts and things nec-  
22      essary, appropriate, or incidental to the conduct of its oper-  
23      ations and the exercise of its obligations, rights, and pow-  
24      ers imposed or granted by this title.

25              (g) RULES OF THE BOARD.—The rules of the Board shall,  
26      subject to the approval of the Commission—

27              (1) provide for the operation and administration of the  
28      Board, the exercise of its authority, and the performance  
29      of its responsibilities under this Act;





1 (2) permit, as the Board determines necessary or ap-  
 2 propriate, delegation by the Board of any of its functions  
 3 to an individual member or employee of the Board, or to  
 4 a division of the Board, including functions with respect to  
 5 hearing, determining, ordering, certifying, reporting, or  
 6 otherwise acting as to any matter, except that—

7 (A) the Board shall retain a discretionary right to  
 8 review any action pursuant to any such delegated func-  
 9 tion, upon its own motion;

10 (B) a person shall be entitled to a review by the  
 11 Board with respect to any matter so delegated, and the  
 12 decision of the Board upon such review shall be deemed  
 13 to be the action of the Board for all purposes (includ-  
 14 ing appeal or review thereof); and

15 (C) if the right to exercise a review described in  
 16 subparagraph (A) is declined, or if no such review is  
 17 sought within the time stated in the rules of the Board,  
 18 then the action taken by the holder of such delegation  
 19 shall for all purposes, including appeal or review there-  
 20 of, be deemed to be the action of the Board;

21 (3) establish ethics rules and standards of conduct for  
 22 Board members and staff, including a bar on practice be-  
 23 fore the Board (and the Commission, with respect to  
 24 Board-related matters) of 1 year for former members of  
 25 the Board, and appropriate periods (not to exceed 1 year)  
 26 for former staff of the Board; and

27 (4) provide as otherwise required by this Act.

28 (h) ANNUAL REPORT TO THE COMMISSION.—The Board  
 29 shall submit an annual report (including its audited financial  
 30 statements) to the Commission, and the Commission shall



1 transmit a copy of that report to the Committee on Banking,  
2 Housing, and Urban Affairs of the Senate, and the Committee  
3 on Financial Services of the House of Representatives, not later  
4 than 30 days after the date of receipt of that report by the  
5 Commission.

6 **SEC. 102. REGISTRATION WITH THE BOARD.**

7 (a) MANDATORY REGISTRATION.—Beginning 180 days  
8 after the date of the determination of the Commission under  
9 section 101(d), it shall be unlawful for any person that is not  
10 a registered public accounting firm to prepare or issue, or to  
11 participate in the preparation or issuance of, any audit report  
12 with respect to any issuer.

13 (b) APPLICATIONS FOR REGISTRATION.—

14 (1) FORM OF APPLICATION.—A public accounting firm  
15 shall use such form as the Board may prescribe, by rule,  
16 to apply for registration under this section.

17 (2) CONTENTS OF APPLICATIONS.—Each public ac-  
18 counting firm shall submit, as part of its application for  
19 registration, in such detail as the Board shall specify—

20 (A) the names of all issuers for which the firm  
21 prepared or issued audit reports during the imme-  
22 diately preceding calendar year, and for which the firm  
23 expects to prepare or issue audit reports during the  
24 current calendar year;

25 (B) the annual fees received by the firm from each  
26 such issuer for audit services, other accounting serv-  
27 ices, and non-audit services, respectively;

28 (C) such other current financial information for  
29 the most recently completed fiscal year of the firm as  
30 the Board may reasonably request;

1 (D) a statement of the quality control policies of  
2 the firm for its accounting and auditing practices;

3 (E) a list of all accountants associated with the  
4 firm who participate in or contribute to the preparation  
5 of audit reports, stating the license or certification  
6 number of each such person, as well as the State li-  
7 cense numbers of the firm itself;

8 (F) information relating to criminal, civil, or ad-  
9 ministrative actions or disciplinary proceedings pending  
10 against the firm or any associated person of the firm  
11 in connection with any audit report;

12 (G) copies of any periodic or annual disclosure  
13 filed by an issuer with the Commission during the im-  
14 mediately preceding calendar year which discloses ac-  
15 counting disagreements between such issuer and the  
16 firm in connection with an audit report furnished or  
17 prepared by the firm for such issuer; and

18 (H) such other information as the rules of the  
19 Board or the Commission shall specify as necessary or  
20 appropriate in the public interest or for the protection  
21 of investors.

22 (3) CONSENTS.—Each application for registration  
23 under this subsection shall include—

24 (A) a consent executed by the public accounting  
25 firm to cooperation in and compliance with any request  
26 for testimony or the production of documents made by  
27 the Board in the furtherance of its authority and re-  
28 sponsibilities under this title (and an agreement to se-  
29 cure and enforce similar consents from each of the as-  
30 sociated persons of the public accounting firm as a con-



1           dition of their continued employment by or other asso-  
2           ciation with such firm); and

3                   (B) a statement that such firm understands and  
4           agrees that cooperation and compliance, as described in  
5           the consent required by subparagraph (A), and the se-  
6           curing and enforcement of such consents from its asso-  
7           ciated persons, in accordance with the rules of the  
8           Board, shall be a condition to the continuing effective-  
9           ness of the registration of the firm with the Board.

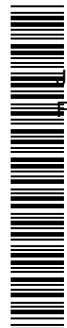
10       (c) ACTION ON APPLICATIONS.—

11           (1) TIMING.—The Board shall approve a completed  
12       application for registration not later than 45 days after the  
13       date of receipt of the application, in accordance with the  
14       rules of the Board, unless the Board, prior to such date,  
15       issues a written notice of disapproval to, or requests more  
16       information from, the prospective registrant.

17           (2) TREATMENT.—A written notice of disapproval of  
18       a completed application under paragraph (1) for registra-  
19       tion shall be treated as a disciplinary sanction for purposes  
20       of sections 105(d) and 107(c).

21       (d) PERIODIC REPORTS.—Each registered public account-  
22       ing firm shall submit an annual report to the Board, and may  
23       be required to report more frequently, as necessary to update  
24       the information contained in its application for registration  
25       under this section, and to provide to the Board such additional  
26       information as the Board or the Commission may specify, in  
27       accordance with subsection (b)(2).

28       (e) PUBLIC AVAILABILITY.—Registration applications and  
29       annual reports required by this subsection, or such portions of  
30       such applications or reports as may be designated under rules



1 of the Board, shall be made available for public inspection, sub-  
2 ject to rules of the Board or the Commission, and to applicable  
3 laws relating to the confidentiality of proprietary, personal, or  
4 other information contained in such applications or reports,  
5 provided that, in all events, the Board shall protect from public  
6 disclosure information reasonably identified by the subject ac-  
7 counting firm as proprietary information.

8 (f) REGISTRATION AND ANNUAL FEES.—The Board shall  
9 assess and collect a registration fee and an annual fee from  
10 each registered public accounting firm, in amounts that are  
11 sufficient to recover the costs of processing and reviewing appli-  
12 cations and annual reports.

13 **SEC. 103. AUDITING, QUALITY CONTROL, AND INDE-**  
14 **PENDENCE STANDARDS AND RULES.**

15 (a) AUDITING, QUALITY CONTROL, AND ETHICS STAND-  
16 ARDS.—

17 (1) IN GENERAL.—The Board shall, by rule, establish,  
18 including, to the extent it determines appropriate, through  
19 adoption of standards proposed by 1 or more professional  
20 groups of accountants designated pursuant to paragraph  
21 (3)(A) or advisory groups convened pursuant to paragraph  
22 (4), and amend or otherwise modify or alter, such auditing  
23 and related attestation standards, such quality control  
24 standards, and such ethics standards to be used by reg-  
25 istered public accounting firms in the preparation and  
26 issuance of audit reports, as required by this Act or the  
27 rules of the Commission, or as may be necessary or appro-  
28 priate in the public interest or for the protection of inves-  
29 tors.



1 (2) RULE REQUIREMENTS.—In carrying out para-  
2 graph (1), the Board—

3 (A) shall include in the auditing standards that it  
4 adopts, requirements that each registered public ac-  
5 counting firm shall—

6 (i) prepare, and maintain for a period of not  
7 less than 7 years, audit work papers, and other in-  
8 formation related to any audit report, in sufficient  
9 detail to support the conclusions reached in such  
10 report;

11 (ii) provide a concurring or second partner re-  
12 view and approval of such audit report (and other  
13 related information), and concurring approval in its  
14 issuance, by a qualified person (as prescribed by  
15 the Board) associated with the public accounting  
16 firm, other than the person in charge of the audit,  
17 or by an independent reviewer (as prescribed by the  
18 Board); and

19 (iii) describe in each audit report the scope of  
20 the auditor’s testing of the internal control struc-  
21 ture and procedures of the issuer, required by sec-  
22 tion 404(b), and present (in such report or in a  
23 separate report)—

24 (I) the findings of the auditor from such  
25 testing;

26 (II) an evaluation of whether such internal  
27 control structure and procedures—

28 (aa) include maintenance of records  
29 that in reasonable detail accurately and



1 fairly reflect the transactions and disposi-  
2 tions of the assets of the issuer;  
3 (bb) provide reasonable assurance that  
4 transactions are recorded as necessary to  
5 permit preparation of financial statements  
6 in accordance with generally accepted ac-  
7 counting principles, and that receipts and  
8 expenditures of the issuer are being made  
9 only in accordance with authorizations of  
10 management and directors of the issuer;  
11 and  
12 (III) a description, at a minimum, of ma-  
13 terial weaknesses in such internal controls, and  
14 of any material noncompliance found on the  
15 basis of such testing.  
16 (B) shall include, in the quality control standards  
17 that it adopts with respect to the issuance of audit re-  
18 ports, requirements for every registered public account-  
19 ing firm relating to—  
20 (i) monitoring of professional ethics and inde-  
21 pendence from issuers on behalf of which the firm  
22 issues audit reports;  
23 (ii) consultation within such firm on account-  
24 ing and auditing questions;  
25 (iii) supervision of audit work;  
26 (iv) hiring, professional development, and ad-  
27 vancement of personnel;  
28 (v) the acceptance and continuation of engage-  
29 ments;  
30 (vi) internal inspection; and



1 (vii) such other requirements as the Board  
2 may prescribe, subject to subsection (a)(1).

3 (3) AUTHORITY TO ADOPT OTHER STANDARDS.—

4 (A) IN GENERAL.—In carrying out this subsection,  
5 the Board—

6 (i) may adopt as its rules, subject to the terms  
7 of section 107, any portion of any statement of au-  
8 diting standards or other professional standards  
9 that the Board determines satisfy the requirements  
10 of paragraph (1), and that were proposed by 1 or  
11 more professional groups of accountants that shall  
12 be designated or recognized by the Board, by rule,  
13 for such purpose, pursuant to this paragraph or 1  
14 or more advisory groups convened pursuant to  
15 paragraph (4); and

16 (ii) notwithstanding clause (i), shall retain full  
17 authority to modify, supplement, revise, or subse-  
18 quently amend, modify, or repeal, in whole or in  
19 part, any portion of any statement described in  
20 clause (i).

21 (B) INITIAL AND TRANSITIONAL STANDARDS.—

22 The Board shall adopt standards described in subpara-  
23 graph (A)(i) as initial or transitional standards, to the  
24 extent the Board determines necessary, prior to a de-  
25 termination of the Commission under section 101(d),  
26 and such standards shall be separately approved by the  
27 Commission at the time of that determination, without  
28 regard to the procedures required by section 107 that  
29 otherwise would apply to the approval of rules of the  
30 Board.





1           (4) ADVISORY GROUPS.—The Board shall convene, or  
2 authorize its staff to convene, such expert advisory groups  
3 as may be appropriate, which may include practicing ac-  
4 countants and other experts, as well as representatives of  
5 other interested groups, subject to such rules as the Board  
6 may prescribe to prevent conflicts of interest, to make rec-  
7 ommendations concerning the content (including proposed  
8 drafts) of auditing, quality control, ethics, independence, or  
9 other standards required to be established under this sec-  
10 tion.

11           (b) INDEPENDENCE STANDARDS AND RULES.—The Board  
12 shall establish such rules as may be necessary or appropriate  
13 in the public interest or for the protection of investors, to im-  
14 plement, or as authorized under, title II of this Act.

15           (c) COOPERATION WITH DESIGNATED PROFESSIONAL  
16 GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

17           (1) IN GENERAL.—The Board shall cooperate on an  
18 ongoing basis with professional groups of accountants des-  
19 ignated under subsection (a)(3)(A) and advisory groups  
20 convened under subsection (a)(4) in the examination of the  
21 need for changes in any standards subject to its authority  
22 under subsection (a), recommend issues for inclusion on the  
23 agendas of such designated professional groups of account-  
24 ants or advisory groups, and take such other steps as it  
25 deems appropriate to increase the effectiveness of the  
26 standard setting process.

27           (2) BOARD RESPONSES.—The Board shall respond in  
28 a timely fashion to requests from designated professional  
29 groups of accountants and advisory groups referred to in



1 paragraph (1) for any changes in standards over which the  
2 Board has authority.

3 (d) EVALUATION OF STANDARD SETTING PROCESS.—The  
4 Board shall include in the annual report required by section  
5 101(h) the results of its standard setting responsibilities during  
6 the period to which the report relates, including a discussion  
7 of the work of the Board with any designated professional  
8 groups of accountants and advisory groups described in para-  
9 graphs (3)(A) and (4) of subsection (a), and its pending issues  
10 agenda for future standard setting projects.

11 **SEC. 104. INSPECTIONS OF REGISTERED PUBLIC AC-**  
12 **COUNTING FIRMS.**

13 (a) IN GENERAL.—The Board shall conduct a continuing  
14 program of inspections to assess the degree of compliance of  
15 each registered public accounting firm and associated persons  
16 of that firm with this Act, the rules of the Board, the rules of  
17 the Commission, or professional standards, in connection with  
18 its performance of audits, issuance of audit reports, and related  
19 matters involving issuers.

20 (b) INSPECTION FREQUENCY.—

21 (1) IN GENERAL.—Subject to paragraph (2), inspec-  
22 tions required by this section shall be conducted—

23 (A) annually with respect to each registered public  
24 accounting firm that regularly provides audit reports  
25 for more than 100 issuers; and

26 (B) not less frequently than once every 3 years  
27 with respect to each registered public accounting firm  
28 that regularly provides audit reports for 100 or fewer  
29 issuers.



1           (2) ADJUSTMENTS TO SCHEDULES.—The Board may,  
2           by rule, adjust the inspection schedules set under para-  
3           graph (1) if the Board finds that different inspection  
4           schedules are consistent with the purposes of this Act, the  
5           public interest, and the protection of investors. The Board  
6           may conduct special inspections at the request of the Com-  
7           mission or upon its own motion.

8           (c) PROCEDURES.—The Board shall, in each inspection  
9           under this section, and in accordance with its rules for such  
10          inspections—

11           (1) identify any act or practice or omission to act by  
12           the registered public accounting firm, or by any associated  
13           person thereof, revealed by such inspection that may be in  
14           violation of this Act, the rules of the Board, the rules of  
15           the Commission, the firm’s own quality control policies, or  
16           professional standards;

17           (2) report any such act, practice, or omission, if ap-  
18           propriate, to the Commission and each appropriate State  
19           regulatory authority; and

20           (3) begin a formal investigation or take disciplinary  
21           action, if appropriate, with respect to any such violation, in  
22           accordance with this Act and the rules of the Board.

23           (d) CONDUCT OF INSPECTIONS.—In conducting an inspec-  
24           tion of a registered public accounting firm under this section,  
25           the Board shall—

26           (1) inspect and review selected audit and review en-  
27           gagements of the firm (which may include audit engage-  
28           ments that are the subject of ongoing litigation or other  
29           controversy between the firm and 1 or more third parties),



1 performed at various offices and by various associated per-  
2 sons of the firm, as selected by the Board;

3 (2) evaluate the sufficiency of the quality control sys-  
4 tem of the firm, and the manner of the documentation and  
5 communication of that system by the firm; and

6 (3) perform such other testing of the audit, super-  
7 visory, and quality control procedures of the firm as are  
8 necessary or appropriate in light of the purpose of the in-  
9 spection and the responsibilities of the Board.

10 (e) RECORD RETENTION.—The rules of the Board may re-  
11 quire the retention by registered public accounting firms for in-  
12 spection purposes of records whose retention is not otherwise  
13 required by section 103 or the rules issued thereunder.

14 (f) PROCEDURES FOR REVIEW.—The rules of the Board  
15 shall provide a procedure for the review of and response to a  
16 draft inspection report by the registered public accounting firm  
17 under inspection. The Board shall take such action with respect  
18 to such response as it considers appropriate (including revising  
19 the draft report or continuing or supplementing its inspection  
20 activities before issuing a final report), but the text of any such  
21 response, appropriately redacted to protect information reason-  
22 ably identified by the accounting firm as confidential, shall be  
23 attached to and made part of the inspection report.

24 (g) REPORT.—A written report of the findings of the  
25 Board for each inspection under this section, subject to sub-  
26 section (h), shall be—

27 (1) transmitted, in appropriate detail, to the Commis-  
28 sion and each appropriate State regulatory authority, ac-  
29 companied by any letter or comments by the Board or the



1 inspector, and any letter of response from the registered  
2 public accounting firm; and

3 (2) made available in appropriate detail to the public  
4 (subject to section 105(b)(5)(A), and to the protection of  
5 such confidential and proprietary information as the Board  
6 may determine to be appropriate, or as may be required by  
7 law), except that no portions of the inspection report that  
8 deal with criticisms of or potential defects in the quality  
9 control systems of the firm under inspection shall be made  
10 public if those criticisms or defects are addressed by the  
11 firm, to the satisfaction of the Board, not later than 12  
12 months after the date of the inspection report.

13 (h) INTERIM COMMISSION REVIEW.—

14 (1) REVIEWABLE MATTERS.—A registered public ac-  
15 counting firm may seek review by the Commission, pursu-  
16 ant to such rules as the Commission shall promulgate, if  
17 the firm—

18 (A) has provided the Board with a response, pur-  
19 suant to rules issued by the Board under subsection  
20 (f), to the substance of particular items in a draft in-  
21 spection report, and disagrees with the assessments  
22 contained in any final report prepared by the Board  
23 following such response; or

24 (B) disagrees with the determination of the Board  
25 that criticisms or defects identified in an inspection re-  
26 port have not been addressed to the satisfaction of the  
27 Board within 12 months of the date of the inspection  
28 report, for purposes of subsection (g)(2).

29 (2) TREATMENT OF REVIEW.—Any decision of the  
30 Commission with respect to a review under paragraph (1)



1 shall not be reviewable under section 25 of the Securities  
2 Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be  
3 “final agency action” for purposes of section 704 of title  
4 5, United States Code.

5 (3) TIMING.—Review under paragraph (1) may be  
6 sought during the 30-day period following the date of the  
7 event giving rise to the review under subparagraph (A) or  
8 (B) of paragraph (1).

9 **SEC. 105. INVESTIGATIONS AND DISCIPLINARY PRO-**  
10 **CEEDINGS.**

11 (a) IN GENERAL.—The Board shall establish, by rule, sub-  
12 ject to the requirements of this section, fair procedures for the  
13 investigation and disciplining of registered public accounting  
14 firms and associated persons of such firms.

15 (b) INVESTIGATIONS.—

16 (1) AUTHORITY.—In accordance with the rules of the  
17 Board, the Board may conduct an investigation of any act  
18 or practice, or omission to act, by a registered public ac-  
19 counting firm, any associated person of such firm, or both,  
20 that may violate any provision of this Act, the rules of the  
21 Board, the provisions of the securities laws relating to the  
22 preparation and issuance of audit reports and the obliga-  
23 tions and liabilities of accountants with respect thereto, in-  
24 cluding the rules of the Commission issued under this Act,  
25 or professional standards, regardless of how the act, prac-  
26 tice, or omission is brought to the attention of the Board.

27 (2) TESTIMONY AND DOCUMENT PRODUCTION.—In  
28 addition to such other actions as the Board determines to  
29 be necessary or appropriate, the rules of the Board may—



1 (A) require the testimony of the firm or of any  
2 person associated with a registered public accounting  
3 firm, with respect to any matter that the Board con-  
4 siders relevant or material to an investigation;

5 (B) require the production of audit work papers  
6 and any other document or information in the posses-  
7 sion of a registered public accounting firm or any asso-  
8 ciated person thereof, wherever domiciled, that the  
9 Board considers relevant or material to the investiga-  
10 tion, and may inspect the books and records of such  
11 firm or associated person to verify the accuracy of any  
12 documents or information supplied;

13 (C) request the testimony of, and production of  
14 any document in the possession of, any other person,  
15 including any client of a registered public accounting  
16 firm that the Board considers relevant or material to  
17 an investigation under this section, with appropriate  
18 notice, subject to the needs of the investigation, as per-  
19 mitted under the rules of the Board; and

20 (D) provide for procedures to seek issuance by the  
21 Commission, in a manner established by the Commis-  
22 sion, of a subpoena to require the testimony of, and  
23 production of any document in the possession of, any  
24 person, including any client of a registered public ac-  
25 counting firm, that the Board considers relevant or ma-  
26 terial to an investigation under this section.

27 (3) NONCOOPERATION WITH INVESTIGATIONS.—

28 (A) IN GENERAL.—If a registered public account-  
29 ing firm or any associated person thereof refuses to  
30 testify, produce documents, or otherwise cooperate with



1 the Board in connection with an investigation under  
2 this section, the Board may—

3 (i) suspend or bar such person from being as-  
4 sociated with a registered public accounting firm,  
5 or require the registered public accounting firm to  
6 end such association;

7 (ii) suspend or revoke the registration of the  
8 public accounting firm; and

9 (iii) invoke such other lesser sanctions as the  
10 Board considers appropriate, and as specified by  
11 rule of the Board.

12 (B) PROCEDURE.—Any action taken by the Board  
13 under this paragraph shall be subject to the terms of  
14 section 107(c).

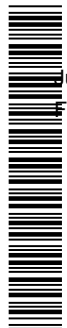
15 (4) COORDINATION AND REFERRAL OF INVESTIGA-  
16 TIONS.—

17 (A) COORDINATION.—The Board shall notify the  
18 Commission of any pending Board investigation involv-  
19 ing a potential violation of the securities laws, and  
20 thereafter coordinate its work with the work of the  
21 Commission’s Division of Enforcement, as necessary to  
22 protect an ongoing Commission investigation.

23 (B) REFERRAL.—The Board may refer an inves-  
24 tigation under this section—

25 (i) to the Commission;

26 (ii) to any other Federal functional regulator  
27 (as defined in section 509 of the Gramm-Leach-Blie-  
28 ley Act (15 U.S.C. 6809)), in the case of an inves-  
29 tigation that concerns an audit report for an insti-





1                   tution that is subject to the jurisdiction of such  
2                   regulator; and

3                   (iii) at the direction of the Commission, to—

4                   (I) the Attorney General of the United  
5                   States;

6                   (II) the attorney general of 1 or more  
7                   States; and

8                   (III) the appropriate State regulatory au-  
9                   thority.

10                  (5) USE OF DOCUMENTS.—

11                  (A) CONFIDENTIALITY.—Except as provided in  
12                  subparagraph (B), all documents and information pre-  
13                  pared or received by or specifically for the Board, and  
14                  deliberations of the Board and its employees and  
15                  agents, in connection with an inspection under section  
16                  104 or with an investigation under this section, shall  
17                  be confidential and privileged as an evidentiary matter  
18                  (and shall not be subject to civil discovery or other  
19                  legal process) in any proceeding in any Federal or  
20                  State court or administrative agency, and shall be ex-  
21                  empt from disclosure, in the hands of an agency or es-  
22                  tablishment of the Federal Government, under the  
23                  Freedom of Information Act (5 U.S.C. 552a), or other-  
24                  wise, unless and until presented in connection with a  
25                  public proceeding or released in accordance with sub-  
26                  section (c).

27                  (B) AVAILABILITY TO GOVERNMENT AGENCIES.—  
28                  Without the loss of its status as confidential and privi-  
29                  leged in the hands of the Board, all information re-  
30                  ferred to in subparagraph (A) may—



1 (i) be made available to the Commission; and  
 2 (ii) in the discretion of the Board, when deter-  
 3 mined by the Board to be necessary to accomplish  
 4 the purposes of this Act or to protect investors, be  
 5 made available to—

6 (I) the Attorney General of the United  
 7 States;

8 (II) the appropriate Federal functional  
 9 regulator (as defined in section 509 of the  
 10 Gramm-Leach-Bliley Act (15 U.S.C. 6809)),  
 11 other than the Commission, with respect to an  
 12 audit report for an institution subject to the ju-  
 13 risdiction of such regulator;

14 (III) State attorneys general in connection  
 15 with any criminal investigation; and

16 (IV) any appropriate State regulatory au-  
 17 thority,

18 each of which shall maintain such information as con-  
 19 fidential and privileged.

20 (6) IMMUNITY.—Any employee of the Board engaged  
 21 in carrying out an investigation under this Act shall be im-  
 22 mune from any civil liability arising out of such investiga-  
 23 tion in the same manner and to the same extent as an em-  
 24 ployee of the Federal Government in similar circumstances.

25 (c) DISCIPLINARY PROCEDURES.—

26 (1) NOTIFICATION; RECORDKEEPING.—The rules of  
 27 the Board shall provide that in any proceeding by the  
 28 Board to determine whether a registered public accounting  
 29 firm, or an associated person thereof, should be disciplined,  
 30 the Board shall—



1 (A) bring specific charges with respect to the firm  
2 or associated person;

3 (B) notify such firm or associated person of, and  
4 provide to the firm or associated person an opportunity  
5 to defend against, such charges; and

6 (C) keep a record of the proceedings.

7 (2) PUBLIC HEARINGS.—Hearings under this section  
8 shall not be public, unless otherwise ordered by the Board  
9 for good cause shown, with the consent of the parties to  
10 such hearing.

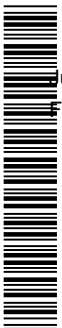
11 (3) SUPPORTING STATEMENT.—A determination by  
12 the Board to impose a sanction under this subsection shall  
13 be supported by a statement setting forth—

14 (A) each act or practice in which the registered  
15 public accounting firm, or associated person, has en-  
16 gaged (or omitted to engage), or that forms a basis for  
17 all or a part of such sanction;

18 (B) the specific provision of this Act, the securities  
19 laws, the rules of the Board, or professional standards  
20 which the Board determines has been violated; and

21 (C) the sanction imposed, including a justification  
22 for that sanction.

23 (4) SANCTIONS.—If the Board finds, based on all of  
24 the facts and circumstances, that a registered public ac-  
25 counting firm or associated person thereof has engaged in  
26 any act or practice, or omitted to act, in violation of this  
27 Act, the rules of the Board, the provisions of the securities  
28 laws relating to the preparation and issuance of audit re-  
29 ports and the obligations and liabilities of accountants with  
30 respect thereto, including the rules of the Commission



1 issued under this Act, or professional standards, the Board  
2 may impose such disciplinary or remedial sanctions as it  
3 determines appropriate, subject to applicable limitations  
4 under paragraph (5), including—

5 (A) temporary suspension or permanent revocation  
6 of registration under this title;

7 (B) temporary or permanent suspension or bar of  
8 a person from further association with any registered  
9 public accounting firm;

10 (C) temporary or permanent limitation on the ac-  
11 tivities, functions, or operations of such firm or person  
12 (other than in connection with required additional pro-  
13 fessional education or training);

14 (D) a civil money penalty for each such violation,  
15 in an amount equal to—

16 (i) not more than \$100,000 for a natural per-  
17 son or \$2,000,000 for any other person; and

18 (ii) in any case to which paragraph (5) ap-  
19 plies, not more than \$750,000 for a natural person  
20 or \$15,000,000 for any other person;

21 (E) censure;

22 (F) required additional professional education or  
23 training; or

24 (G) any other appropriate sanction provided for in  
25 the rules of the Board.

26 (5) INTENTIONAL OR OTHER KNOWING CONDUCT.—

27 The sanctions and penalties described in subparagraphs (A)  
28 through (C) and (D)(ii) of paragraph (4) shall only apply  
29 to—



1 (A) intentional or knowing conduct, including  
2 reckless conduct, that results in violation of the appli-  
3 cable statutory, regulatory, or professional standard; or

4 (B) repeated instances of negligent conduct, each  
5 resulting in a violation of the applicable statutory, reg-  
6 ulatory, or professional standard.

7 (6) FAILURE TO SUPERVISE.—

8 (A) IN GENERAL.—The Board may impose sanc-  
9 tions under this section on a registered accounting firm  
10 or upon the supervisory personnel of such firm, if the  
11 Board finds that—

12 (i) the firm has failed reasonably to supervise  
13 an associated person, either as required by the  
14 rules of the Board relating to auditing or quality  
15 control standards, or otherwise, with a view to pre-  
16 venting violations of this Act, the rules of the  
17 Board, the provisions of the securities laws relating  
18 to the preparation and issuance of audit reports  
19 and the obligations and liabilities of accountants  
20 with respect thereto, including the rules of the  
21 Commission under this Act, or professional stand-  
22 ards; and

23 (ii) such associated person commits a violation  
24 of this Act, or any of such rules, laws, or stand-  
25 ards.

26 (B) RULE OF CONSTRUCTION.—No associated per-  
27 son of a registered public accounting firm shall be  
28 deemed to have failed reasonably to supervise any other  
29 person for purposes of subparagraph (A), if—



1 (i) there have been established in and for that  
 2 firm procedures, and a system for applying such  
 3 procedures, that comply with applicable rules of the  
 4 Board and that would reasonably be expected to  
 5 prevent and detect any such violation by such asso-  
 6 ciated person; and

7 (ii) such person has reasonably discharged the  
 8 duties and obligations incumbent upon that person  
 9 by reason of such procedures and system, and had  
 10 no reasonable cause to believe that such procedures  
 11 and system were not being complied with.

12 (7) EFFECT OF SUSPENSION.—

13 (A) ASSOCIATION WITH A PUBLIC ACCOUNTING  
 14 FIRM.—It shall be unlawful for any person that is sus-  
 15 pended or barred from being associated with a reg-  
 16 istered public accounting firm under this subsection  
 17 willfully to become or remain associated with any reg-  
 18 istered public accounting firm, or for any registered  
 19 public accounting firm that knew, or, in the exercise of  
 20 reasonable care should have known, of the suspension  
 21 or bar, to permit such an association, without the con-  
 22 sent of the Board or the Commission.

23 (B) ASSOCIATION WITH AN ISSUER.—It shall be  
 24 unlawful for any person that is suspended or barred  
 25 from being associated with an issuer under this sub-  
 26 section willfully to become or remain associated with  
 27 any issuer in an accountancy or a financial manage-  
 28 ment capacity, and for any issuer that knew, or in the  
 29 exercise of reasonable care should have known, of such



1 suspension or bar, to permit such an association, with-  
2 out the consent of the Board or the Commission.

3 (d) REPORTING OF SANCTIONS.—

4 (1) RECIPIENTS.—If the Board imposes a disciplinary  
5 sanction, in accordance with this section, the Board shall  
6 report the sanction to—

7 (A) the Commission;

8 (B) any appropriate State regulatory authority or  
9 any foreign accountancy licensing board with which  
10 such firm or person is licensed or certified; and

11 (C) the public (once any stay on the imposition of  
12 such sanction has been lifted).

13 (2) CONTENTS.—The information reported under  
14 paragraph (1) shall include—

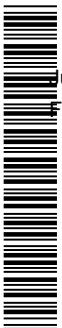
15 (A) the name of the sanctioned person;

16 (B) a description of the sanction and the basis for  
17 its imposition; and

18 (C) such other information as the Board deems  
19 appropriate.

20 (e) STAY OF SANCTIONS.—

21 (1) IN GENERAL.—Application to the Commission for  
22 review, or the institution by the Commission of review, of  
23 any disciplinary action of the Board shall operate as a stay  
24 of any such disciplinary action, unless and until the Com-  
25 mission orders (summarily or after notice and opportunity  
26 for hearing on the question of a stay, which hearing may  
27 consist solely of the submission of affidavits or presentation  
28 of oral arguments) that no such stay shall continue to oper-  
29 ate.



1           (2) EXPEDITED PROCEDURES.—The Commission shall  
2           establish for appropriate cases an expedited procedure for  
3           consideration and determination of the question of the du-  
4           ration of a stay pending review of any disciplinary action  
5           of the Board under this subsection.

6           **SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.**

7           (a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

8           (1) IN GENERAL.—Any foreign public accounting firm  
9           that prepares or furnishes an audit report with respect to  
10          any issuer, shall be subject to this Act and the rules of the  
11          Board and the Commission issued under this Act, in the  
12          same manner and to the same extent as a public account-  
13          ing firm that is organized and operates under the laws of  
14          the United States or any State, except that registration  
15          pursuant to section 102 shall not by itself provide a basis  
16          for subjecting such a foreign public accounting firm to the  
17          jurisdiction of the Federal or State courts, other than with  
18          respect to controversies between such firms and the Board.

19          (2) BOARD AUTHORITY.—The Board may, by rule, de-  
20          termine that a foreign public accounting firm (or a class  
21          of such firms) that does not issue audit reports nonetheless  
22          plays such a substantial role in the preparation and fur-  
23          nishing of such reports for particular issuers, that it is nec-  
24          essary or appropriate, in light of the purposes of this Act  
25          and in the public interest or for the protection of investors,  
26          that such firm (or class of firms) should be treated as a  
27          public accounting firm (or firms) for purposes of registra-  
28          tion under, and oversight by the Board in accordance with,  
29          this title.

30          (b) PRODUCTION OF AUDIT WORKPAPERS.—





1 (1) CONSENT BY FOREIGN FIRMS.—If a foreign public  
2 accounting firm issues an opinion or otherwise performs  
3 material services upon which a registered public accounting  
4 firm relies in issuing all or part of any audit report or any  
5 opinion contained in an audit report, that foreign public ac-  
6 counting firm shall be deemed to have consented—

7 (A) to produce its audit workpapers for the Board  
8 or the Commission in connection with any investigation  
9 by either body with respect to that audit report; and

10 (B) to be subject to the jurisdiction of the courts  
11 of the United States for purposes of enforcement of  
12 any request for production of such workpapers.

13 (2) CONSENT BY DOMESTIC FIRMS.—A registered pub-  
14 lic accounting firm that relies upon the opinion of a foreign  
15 public accounting firm, as described in paragraph (1), shall  
16 be deemed—

17 (A) to have consented to supplying the audit  
18 workpapers of that foreign public accounting firm in  
19 response to a request for production by the Board or  
20 the Commission; and

21 (B) to have secured the agreement of that foreign  
22 public accounting firm to such production, as a condi-  
23 tion of its reliance on the opinion of that foreign public  
24 accounting firm.

25 (c) EXEMPTION AUTHORITY.—The Commission, and the  
26 Board, subject to the approval of the Commission, may, by  
27 rule, regulation, or order, and as the Commission (or Board)  
28 determines necessary or appropriate in the public interest or  
29 for the protection of investors, either unconditionally or upon  
30 specified terms and conditions exempt any foreign public ac-

1 counting firm, or any class of such firms, from any provision  
2 of this Act or the rules of the Board or the Commission issued  
3 under this Act.

4 (d) DEFINITION.—In this section, the term “foreign public  
5 accounting firm” means a public accounting firm that is orga-  
6 nized and operates under the laws of a foreign government or  
7 political subdivision thereof.

8 **SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.**

9 (a) GENERAL OVERSIGHT RESPONSIBILITY.—The Com-  
10 mission shall have oversight and enforcement authority over the  
11 Board, as provided in this Act. The provisions of section  
12 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C.  
13 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange  
14 Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as  
15 fully as if the Board were a “registered securities association”  
16 for purposes of those sections 17(a)(1) and 17(b)(1).

17 (b) RULES OF THE BOARD.—

18 (1) DEFINITION.—In this section, the term “proposed  
19 rule” means any proposed rule of the Board, and any modi-  
20 fication of any such rule.

21 (2) PRIOR APPROVAL REQUIRED.—No rule of the  
22 Board shall become effective without prior approval of the  
23 Commission in accordance with this section, other than as  
24 provided in section 103(a)(3)(B) with respect to initial or  
25 transitional standards.

26 (3) APPROVAL CRITERIA.—The Commission shall ap-  
27 prove a proposed rule, if it finds that the rule is consistent  
28 with the requirements of this Act and the securities laws,  
29 or is necessary or appropriate in the public interest or for  
30 the protection of investors.



1 (4) PROPOSED RULE PROCEDURES.—The provisions of  
2 paragraphs (1) through (3) of section 19(b) of the Securi-  
3 ties Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern  
4 the proposed rules of the Board, as fully as if the Board  
5 were a “registered securities association” for purposes of  
6 that section 19(b), except that, for purposes of this  
7 paragraph—

8 (A) the phrase “consistent with the requirements  
9 of this title and the rules and regulations thereunder  
10 applicable to such organization” in section 19(b)(2) of  
11 that Act shall be deemed to read “consistent with the  
12 requirements of title I of the Sarbanes-Oxley Act of  
13 2002, and the rules and regulations issued thereunder  
14 applicable to such organization, or as necessary or ap-  
15 propriate in the public interest or for the protection of  
16 investors”; and

17 (B) the phrase “otherwise in furtherance of the  
18 purposes of this title” in section 19(b)(3)(C) of that  
19 Act shall be deemed to read “otherwise in furtherance  
20 of the purposes of title I of the Sarbanes-Oxley Act of  
21 2002”.

22 (5) COMMISSION AUTHORITY TO AMEND RULES OF  
23 THE BOARD.—The provisions of section 19(c) of the Securi-  
24 ties Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern  
25 the abrogation, deletion, or addition to portions of the rules  
26 of the Board by the Commission as fully as if the Board  
27 were a “registered securities association” for purposes of  
28 that section 19(c), except that the phrase “to conform its  
29 rules to the requirements of this title and the rules and  
30 regulations thereunder applicable to such organization, or

1 otherwise in furtherance of the purposes of this title” in  
2 section 19(c) of that Act shall, for purposes of this para-  
3 graph, be deemed to read “to assure the fair administration  
4 of the Public Company Accounting Oversight Board, con-  
5 form the rules promulgated by that Board to the require-  
6 ments of title I of the Sarbanes-Oxley Act of 2002, or oth-  
7 erwise further the purposes of that Act, the securities laws,  
8 and the rules and regulations thereunder applicable to that  
9 Board”.

10 (c) COMMISSION REVIEW OF DISCIPLINARY ACTION  
11 TAKEN BY THE BOARD.—

12 (1) NOTICE OF SANCTION.—The Board shall promptly  
13 file notice with the Commission of any final sanction on  
14 any registered public accounting firm or on any associated  
15 person thereof, in such form and containing such informa-  
16 tion as the Commission, by rule, may prescribe.

17 (2) REVIEW OF SANCTIONS.—The provisions of sec-  
18 tions 19(d)(2) and 19(e)(1) of the Securities Exchange Act  
19 of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the  
20 review by the Commission of final disciplinary sanctions  
21 imposed by the Board (including sanctions imposed under  
22 section 105(b)(3) of this Act for noncooperation in an in-  
23 vestigation of the Board), as fully as if the Board were a  
24 self-regulatory organization and the Commission were the  
25 appropriate regulatory agency for such organization for  
26 purposes of those sections 19(d)(2) and 19(e)(1), except  
27 that, for purposes of this paragraph—

28 (A) section 105(e) of this Act (rather than that  
29 section 19(d)(2)) shall govern the extent to which ap-  
30 plication for, or institution by the Commission on its

1 own motion of, review of any disciplinary action of the  
2 Board operates as a stay of such action;

3 (B) references in that section 19(e)(1) to “mem-  
4 bers” of such an organization shall be deemed to be  
5 references to registered public accounting firms;

6 (C) the phrase “consistent with the purposes of  
7 this title” in that section 19(e)(1) shall be deemed to  
8 read “consistent with the purposes of this title and title  
9 I of the Sarbanes-Oxley Act of 2002”;

10 (D) references to rules of the Municipal Securities  
11 Rulemaking Board in that section 19(e)(1) shall not  
12 apply; and

13 (E) the reference to section 19(e)(2) of the Securi-  
14 ties Exchange Act of 1934 shall refer instead to section  
15 107(c)(3) of this Act.

16 (3) COMMISSION MODIFICATION AUTHORITY.—The  
17 Commission may enhance, modify, cancel, reduce, or re-  
18 quire the remission of a sanction imposed by the Board  
19 upon a registered public accounting firm or associated per-  
20 son thereof, if the Commission, having due regard for the  
21 public interest and the protection of investors, finds, after  
22 a proceeding in accordance with this subsection, that the  
23 sanction—

24 (A) is not necessary or appropriate in furtherance  
25 of this Act or the securities laws; or

26 (B) is excessive, oppressive, inadequate, or other-  
27 wise not appropriate to the finding or the basis on  
28 which the sanction was imposed.

29 (d) CENSURE OF THE BOARD; OTHER SANCTIONS.—



1           (1) RESCISSION OF BOARD AUTHORITY.—The Com-  
2           mission, by rule, consistent with the public interest, the  
3           protection of investors, and the other purposes of this Act  
4           and the securities laws, may relieve the Board of any re-  
5           sponsibility to enforce compliance with any provision of this  
6           Act, the securities laws, the rules of the Board, or profes-  
7           sional standards.

8           (2) CENSURE OF THE BOARD; LIMITATIONS.—The  
9           Commission may, by order, as it determines necessary or  
10          appropriate in the public interest, for the protection of in-  
11          vestors, or otherwise in furtherance of the purposes of this  
12          Act or the securities laws, censure or impose limitations  
13          upon the activities, functions, and operations of the Board,  
14          if the Commission finds, on the record, after notice and op-  
15          portunity for a hearing, that the Board—

16                (A) has violated or is unable to comply with any  
17                provision of this Act, the rules of the Board, or the se-  
18                curities laws; or

19                (B) without reasonable justification or excuse, has  
20                failed to enforce compliance with any such provision or  
21                rule, or any professional standard by a registered pub-  
22                lic accounting firm or an associated person thereof.

23          (3) CENSURE OF BOARD MEMBERS; REMOVAL FROM  
24          OFFICE.—The Commission may, as necessary or appro-  
25          priate in the public interest, for the protection of investors,  
26          or otherwise in furtherance of the purposes of this Act or  
27          the securities laws, remove from office or censure any mem-  
28          ber of the Board, if the Commission finds, on the record,  
29          after notice and opportunity for a hearing, that such  
30          member—



1 (A) has willfully violated any provision of this Act,  
2 the rules of the Board, or the securities laws;

3 (B) has willfully abused the authority of that  
4 member; or

5 (C) without reasonable justification or excuse, has  
6 failed to enforce compliance with any such provision or  
7 rule, or any professional standard by any registered  
8 public accounting firm or any associated person there-  
9 of.

10 **SEC. 108. ACCOUNTING STANDARDS.**

11 (a) AMENDMENT TO SECURITIES ACT OF 1933.—Section  
12 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

13 (1) by redesignating subsections (b) and (c) as sub-  
14 sections (c) and (d), respectively; and

15 (2) by inserting after subsection (a) the following:

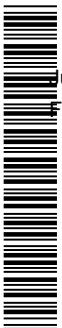
16 “(b) RECOGNITION OF ACCOUNTING STANDARDS.—

17 “(1) IN GENERAL.—In carrying out its authority  
18 under subsection (a) and under section 13(b) of the Securi-  
19 ties Exchange Act of 1934, the Commission may recognize,  
20 as ‘generally accepted’ for purposes of the securities laws,  
21 any accounting principles established by a standard setting  
22 body—

23 “(A) that—

24 “(i) is organized as a private entity;

25 “(ii) has, for administrative and operational  
26 purposes, a board of trustees (or equivalent body)  
27 serving in the public interest, the majority of whom  
28 are not, concurrent with their service on such  
29 board, and have not been during the 2-year period



1 preceding such service, associated persons of any  
2 registered public accounting firm;

3 “(iii) is funded as provided in section 109 of  
4 the Sarbanes-Oxley Act of 2002;

5 “(iv) has adopted procedures to ensure prompt  
6 consideration, by majority vote of its members, of  
7 changes to accounting principles necessary to re-  
8 flect emerging accounting issues and changing  
9 business practices; and

10 “(v) considers, in adopting accounting prin-  
11 ciples, the need to keep standards current in order  
12 to reflect changes in the business environment, the  
13 extent to which international convergence on high  
14 quality accounting standards is necessary or appro-  
15 priate in the public interest and for the protection  
16 of investors; and

17 “(B) that the Commission determines has the ca-  
18 pacity to assist the Commission in fulfilling the require-  
19 ments of subsection (a) and section 13(b) of the Secu-  
20 rities Exchange Act of 1934, because, at a minimum,  
21 the standard setting body is capable of improving the  
22 accuracy and effectiveness of financial reporting and  
23 the protection of investors under the securities laws.

24 “(2) ANNUAL REPORT.—A standard setting body de-  
25 scribed in paragraph (1) shall submit an annual report to  
26 the Commission and the public, containing audited finan-  
27 cial statements of that standard setting body.”.

28 (b) COMMISSION AUTHORITY.—The Commission shall pro-  
29 mulgate such rules and regulations to carry out section 19(b)  
30 of the Securities Act of 1933, as added by this section, as it





1 deems necessary or appropriate in the public interest or for the  
2 protection of investors.

3 (c) NO EFFECT ON COMMISSION POWERS.—Nothing in  
4 this Act, including this section and the amendment made by  
5 this section, shall be construed to impair or limit the authority  
6 of the Commission to establish accounting principles or stand-  
7 ards for purposes of enforcement of the securities laws.

8 (d) STUDY AND REPORT ON ADOPTING PRINCIPLES-  
9 BASED ACCOUNTING.—

10 (1) STUDY.—

11 (A) IN GENERAL.—The Commission shall conduct  
12 a study on the adoption by the United States financial  
13 reporting system of a principles-based accounting sys-  
14 tem.

15 (B) STUDY TOPICS.—The study required by sub-  
16 paragraph (A) shall include an examination of—

17 (i) the extent to which principles-based ac-  
18 counting and financial reporting exists in the  
19 United States;

20 (ii) the length of time required for change  
21 from a rules-based to a principles-based financial  
22 reporting system;

23 (iii) the feasibility of and proposed methods by  
24 which a principles-based system may be imple-  
25 mented; and

26 (iv) a thorough economic analysis of the imple-  
27 mentation of a principles-based system.

28 (2) REPORT.—Not later than 1 year after the date of  
29 enactment of this Act, the Commission shall submit a re-  
30 port on the results of the study required by paragraph (1)



1 to the Committee on Banking, Housing, and Urban Affairs  
2 of the Senate and the Committee on Financial Services of  
3 the House of Representatives.

4 **SEC. 109. FUNDING.**

5 (a) IN GENERAL.—The Board, and the standard setting  
6 body designated pursuant to section 19(b) of the Securities Act  
7 of 1933, as amended by section 108, shall be funded as pro-  
8 vided in this section.

9 (b) ANNUAL BUDGETS.—The Board and the standard set-  
10 ting body referred to in subsection (a) shall each establish a  
11 budget for each fiscal year, which shall be reviewed and ap-  
12 proved according to their respective internal procedures not less  
13 than 1 month prior to the commencement of the fiscal year to  
14 which the budget pertains (or at the beginning of the Board's  
15 first fiscal year, which may be a short fiscal year). The budget  
16 of the Board shall be subject to approval by the Commission.  
17 The budget for the first fiscal year of the Board shall be pre-  
18 pared and approved promptly following the appointment of the  
19 initial five Board members, to permit action by the Board of  
20 the organizational tasks contemplated by section 101(d).

21 (c) SOURCES AND USES OF FUNDS.—

22 (1) RECOVERABLE BUDGET EXPENSES.—The budget  
23 of the Board (reduced by any registration or annual fees  
24 received under section 102(e) for the year preceding the  
25 year for which the budget is being computed), and all of  
26 the budget of the standard setting body referred to in sub-  
27 section (a), for each fiscal year of each of those 2 entities,  
28 shall be payable from annual accounting support fees, in  
29 accordance with subsections (d) and (e). Accounting sup-  
30 port fees and other receipts of the Board and of such

1 standard-setting body shall not be considered public monies  
2 of the United States.

3 (2) FUNDS GENERATED FROM THE COLLECTION OF  
4 MONETARY PENALTIES.—Subject to the availability in ad-  
5 vance in an appropriations Act, and notwithstanding sub-  
6 section (i), all funds collected by the Board as a result of  
7 the assessment of monetary penalties shall be used to fund  
8 a merit scholarship program for undergraduate and grad-  
9 uate students enrolled in accredited accounting degree pro-  
10 grams, which program is to be administered by the Board  
11 or by an entity or agent identified by the Board.

12 (d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE  
13 BOARD.—

14 (1) ESTABLISHMENT OF FEE.—The Board shall estab-  
15 lish, with the approval of the Commission, a reasonable an-  
16 nual accounting support fee (or a formula for the computa-  
17 tion thereof), as may be necessary or appropriate to estab-  
18 lish and maintain the Board. Such fee may also cover costs  
19 incurred in the Board's first fiscal year (which may be a  
20 short fiscal year), or may be levied separately with respect  
21 to such short fiscal year.

22 (2) ASSESSMENTS.—The rules of the Board under  
23 paragraph (1) shall provide for the equitable allocation, as-  
24 sessment, and collection by the Board (or an agent ap-  
25 pointed by the Board) of the fee established under para-  
26 graph (1), among issuers, in accordance with subsection  
27 (g), allowing for differentiation among classes of issuers, as  
28 appropriate.



1 (e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD  
2 SETTING BODY.—The annual accounting support fee for the  
3 standard setting body referred to in subsection (a)—

4 (1) shall be allocated in accordance with subsection  
5 (g), and assessed and collected against each issuer, on be-  
6 half of the standard setting body, by 1 or more appropriate  
7 designated collection agents, as may be necessary or appro-  
8 priate to pay for the budget and provide for the expenses  
9 of that standard setting body, and to provide for an inde-  
10 pendent, stable source of funding for such body, subject to  
11 review by the Commission; and

12 (2) may differentiate among different classes of  
13 issuers.

14 (f) LIMITATION ON FEE.—The amount of fees collected  
15 under this section for a fiscal year on behalf of the Board or  
16 the standards setting body, as the case may be, shall not exceed  
17 the recoverable budget expenses of the Board or body, respec-  
18 tively (which may include operating, capital, and accrued  
19 items), referred to in subsection (c)(1).

20 (g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG  
21 ISSUERS.—Any amount due from issuers (or a particular class  
22 of issuers) under this section to fund the budget of the Board  
23 or the standard setting body referred to in subsection (a) shall  
24 be allocated among and payable by each issuer (or each issuer  
25 in a particular class, as applicable) in an amount equal to the  
26 total of such amount, multiplied by a fraction—

27 (1) the numerator of which is the average monthly eq-  
28 uity market capitalization of the issuer for the 12-month  
29 period immediately preceding the beginning of the fiscal  
30 year to which such budget relates; and

1           (2) the denominator of which is the average monthly  
2 equity market capitalization of all such issuers for such 12-  
3 month period.

4           (h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the  
5 Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is  
6 amended—

7           (1) in subparagraph (A), by striking “and” at the end;  
8 and

9           (2) in subparagraph (B), by striking the period at the  
10 end and inserting the following: “; and

11           “(C) notwithstanding any other provision of law, pay  
12 the allocable share of such issuer of a reasonable annual  
13 accounting support fee or fees, determined in accordance  
14 with section 109 of the Sarbanes-Oxley Act of 2002.”.

15           (i) RULE OF CONSTRUCTION.—Nothing in this section  
16 shall be construed to render either the Board, the standard set-  
17 ting body referred to in subsection (a), or both, subject to pro-  
18 cedures in Congress to authorize or appropriate public funds,  
19 or to prevent such organization from utilizing additional  
20 sources of revenue for its activities, such as earnings from pub-  
21 lication sales, provided that each additional source of revenue  
22 shall not jeopardize, in the judgment of the Commission, the  
23 actual and perceived independence of such organization.

24           (j) START-UP EXPENSES OF THE BOARD.—From the un-  
25 expended balances of the appropriations to the Commission for  
26 fiscal year 2003, the Secretary of the Treasury is authorized  
27 to advance to the Board not to exceed the amount necessary  
28 to cover the expenses of the Board during its first fiscal year  
29 (which may be a short fiscal year).

**TITLE II—AUDITOR  
INDEPENDENCE**

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**SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE  
OF AUDITORS.**

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

“(g) PROHIBITED ACTIVITIES.—Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the ‘Board’), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

“(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

“(2) financial information systems design and implementation;

“(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

“(4) actuarial services;

“(5) internal audit outsourcing services;

“(6) management functions or human resources;

“(7) broker or dealer, investment adviser, or investment banking services;



1           “(8) legal services and expert services unrelated to the  
2           audit; and

3           “(9) any other service that the Board determines, by  
4           regulation, is impermissible.

5           “(h) **PREAPPROVAL REQUIRED FOR NON-AUDIT SERV-**  
6 **ICES.**—A registered public accounting firm may engage in any  
7 non-audit service, including tax services, that is not described  
8 in any of paragraphs (1) through (9) of subsection (g) for an  
9 audit client, only if the activity is approved in advance by the  
10 audit committee of the issuer, in accordance with subsection  
11 (i).”.

12           “(b) **EXEMPTION AUTHORITY.**—The Board may, on a case  
13 by case basis, exempt any person, issuer, public accounting  
14 firm, or transaction from the prohibition on the provision of  
15 services under section 10A(g) of the Securities Exchange Act  
16 of 1934 (as added by this section), to the extent that such ex-  
17 emption is necessary or appropriate in the public interest and  
18 is consistent with the protection of investors, and subject to re-  
19 view by the Commission in the same manner as for rules of the  
20 Board under section 107.

21 **SEC. 202. PREAPPROVAL REQUIREMENTS.**

22           Section 10A of the Securities Exchange Act of 1934 (15  
23 U.S.C. 78j-1), as amended by this Act, is amended by adding  
24 at the end the following:

25           “(i) **PREAPPROVAL REQUIREMENTS.**—

26           “(1) **IN GENERAL.**—

27           “(A) **AUDIT COMMITTEE ACTION.**—All auditing  
28 services (which may entail providing comfort letters in  
29 connection with securities underwritings or statutory  
30 audits required for insurance companies for purposes of

1 State law) and non-audit services, other than as pro-  
2 vided in subparagraph (B), provided to an issuer by the  
3 auditor of the issuer shall be preapproved by the audit  
4 committee of the issuer.

5 “(B) DE MINIMUS EXCEPTION.—The preapproval  
6 requirement under subparagraph (A) is waived with re-  
7 spect to the provision of non-audit services for an  
8 issuer, if—

9 “(i) the aggregate amount of all such non-  
10 audit services provided to the issuer constitutes not  
11 more than 5 percent of the total amount of reve-  
12 nues paid by the issuer to its auditor during the  
13 fiscal year in which the nonaudit services are pro-  
14 vided;

15 “(ii) such services were not recognized by the  
16 issuer at the time of the engagement to be non-  
17 audit services; and

18 “(iii) such services are promptly brought to  
19 the attention of the audit committee of the issuer  
20 and approved prior to the completion of the audit  
21 by the audit committee or by 1 or more members  
22 of the audit committee who are members of the  
23 board of directors to whom authority to grant such  
24 approvals has been delegated by the audit com-  
25 mittee.

26 “(2) DISCLOSURE TO INVESTORS.—Approval by an  
27 audit committee of an issuer under this subsection of a  
28 non-audit service to be performed by the auditor of the  
29 issuer shall be disclosed to investors in periodic reports re-  
30 quired by section 13(a).





1           “(3) DELEGATION AUTHORITY.—The audit committee  
2 of an issuer may delegate to 1 or more designated members  
3 of the audit committee who are independent directors of  
4 the board of directors, the authority to grant preapprovals  
5 required by this subsection. The decisions of any member  
6 to whom authority is delegated under this paragraph to  
7 preapprove an activity under this subsection shall be pre-  
8 sented to the full audit committee at each of its scheduled  
9 meetings.

10           “(4) APPROVAL OF AUDIT SERVICES FOR OTHER PUR-  
11 POSES.—In carrying out its duties under subsection (m)(2),  
12 if the audit committee of an issuer approves an audit serv-  
13 ice within the scope of the engagement of the auditor, such  
14 audit service shall be deemed to have been preapproved for  
15 purposes of this subsection.”.

16 **SEC. 203. AUDIT PARTNER ROTATION.**

17           Section 10A of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78j-1), as amended by this Act, is amended by adding  
19 at the end the following:

20           “(j) AUDIT PARTNER ROTATION.—It shall be unlawful for  
21 a registered public accounting firm to provide audit services to  
22 an issuer if the lead (or coordinating) audit partner (having  
23 primary responsibility for the audit), or the audit partner re-  
24 sponsible for reviewing the audit, has performed audit services  
25 for that issuer in each of the 5 previous fiscal years of that  
26 issuer.”.

27 **SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.**

28           Section 10A of the Securities Exchange Act of 1934 (15  
29 U.S.C. 78j-1), as amended by this Act, is amended by adding  
30 at the end the following:



1 “(k) REPORTS TO AUDIT COMMITTEES.—Each registered  
2 public accounting firm that performs for any issuer any audit  
3 required by this title shall timely report to the audit committee  
4 of the issuer—

5 “(1) all critical accounting policies and practices to be  
6 used;

7 “(2) all alternative treatments of financial information  
8 within generally accepted accounting principles that have  
9 been discussed with management officials of the issuer,  
10 ramifications of the use of such alternative disclosures and  
11 treatments, and the treatment preferred by the registered  
12 public accounting firm; and

13 “(3) other material written communications between  
14 the registered public accounting firm and the management  
15 of the issuer, such as any management letter or schedule  
16 of unadjusted differences.”.

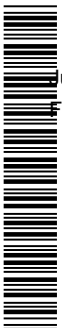
17 **SEC. 205. CONFORMING AMENDMENTS.**

18 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-  
19 change Act of 1934 (15 U.S.C. 78c(a)) is amended by adding  
20 at the end the following:

21 “(58) AUDIT COMMITTEE.—The term ‘audit com-  
22 mittee’ means—

23 “(A) a committee (or equivalent body) established  
24 by and amongst the board of directors of an issuer for  
25 the purpose of overseeing the accounting and financial  
26 reporting processes of the issuer and audits of the fi-  
27 nancial statements of the issuer; and

28 “(B) if no such committee exists with respect to  
29 an issuer, the entire board of directors of the issuer.



1           “(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The  
2 term ‘registered public accounting firm’ has the same  
3 meaning as in section 2 of the Sarbanes-Oxley Act of  
4 2002.”.

5           (b) AUDITOR REQUIREMENTS.—Section 10A of the Secu-  
6 rities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

7           (1) by striking “an independent public accountant”  
8 each place that term appears and inserting “a registered  
9 public accounting firm”;

10           (2) by striking “the independent public accountant”  
11 each place that term appears and inserting “the registered  
12 public accounting firm”;

13           (3) in subsection (c), by striking “No independent  
14 public accountant” and inserting “No registered public ac-  
15 counting firm”; and

16           (4) in subsection (b)—

17           (A) by striking “the accountant” each place that  
18 term appears and inserting “the firm”;

19           (B) by striking “such accountant” each place that  
20 term appears and inserting “such firm”; and

21           (C) in paragraph (4), by striking “the account-  
22 ant’s report” and inserting “the report of the firm”.

23           (c) OTHER REFERENCES.—The Securities Exchange Act  
24 of 1934 (15 U.S.C. 78a et seq.) is amended—

25           (1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by strik-  
26 ing “independent public accountants” each place that term  
27 appears and inserting “a registered public accounting  
28 firm”; and

29           (2) in subsections (e) and (i) of section 17 (15 U.S.C.  
30 78q), by striking “an independent public accountant” each



1 place that term appears and inserting “a registered public  
2 accounting firm”.

3 (d) CONFORMING AMENDMENT.—Section 10A(f) of the  
4 Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is  
5 amended—

6 (1) by striking “DEFINITION” and inserting “DEFINI-  
7 TIONS”; and

8 (2) by adding at the end the following: “As used in  
9 this section, the term ‘issuer’ means an issuer (as defined  
10 in section 3), the securities of which are registered under  
11 section 12, or that is required to file reports pursuant to  
12 section 15(d), or that files or has filed a registration state-  
13 ment that has not yet become effective under the Securities  
14 Act of 1933 (15 U.S.C. 77a et seq.), and that it has not  
15 withdrawn.”.

16 **SEC. 206. CONFLICTS OF INTEREST.**

17 Section 10A of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78j-1), as amended by this Act, is amended by adding  
19 at the end the following:

20 “(l) CONFLICTS OF INTEREST.—It shall be unlawful for a  
21 registered public accounting firm to perform for an issuer any  
22 audit service required by this title, if a chief executive officer,  
23 controller, chief financial officer, chief accounting officer, or  
24 any person serving in an equivalent position for the issuer, was  
25 employed by that registered independent public accounting firm  
26 and participated in any capacity in the audit of that issuer dur-  
27 ing the 1-year period preceding the date of the initiation of the  
28 audit.”.



1   **SEC. 207. STUDY OF MANDATORY ROTATION OF REG-**  
2                   **ISTERED PUBLIC ACCOUNTING FIRMS.**

3           (a) STUDY AND REVIEW REQUIRED.—The Comptroller  
4   General of the United States shall conduct a study and review  
5   of the potential effects of requiring the mandatory rotation of  
6   registered public accounting firms.

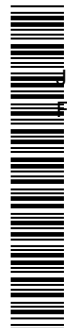
7           (b) REPORT REQUIRED.—Not later than 1 year after the  
8   date of enactment of this Act, the Comptroller General shall  
9   submit a report to the Committee on Banking, Housing, and  
10   Urban Affairs of the Senate and the Committee on Financial  
11   Services of the House of Representatives on the results of the  
12   study and review required by this section.

13          (c) DEFINITION.—For purposes of this section, the term  
14   “mandatory rotation” refers to the imposition of a limit on the  
15   period of years in which a particular registered public account-  
16   ing firm may be the auditor of record for a particular issuer.

17   **SEC. 208. COMMISSION AUTHORITY.**

18          (a) COMMISSION REGULATIONS.—Not later than 180 days  
19   after the date of enactment of this Act, the Commission shall  
20   issue final regulations to carry out each of subsections (g)  
21   through (l) of section 10A of the Securities Exchange Act of  
22   1934, as added by this title.

23          (b) AUDITOR INDEPENDENCE.—It shall be unlawful for  
24   any registered public accounting firm (or an associated person  
25   thereof, as applicable) to prepare or issue any audit report with  
26   respect to any issuer, if the firm or associated person engages  
27   in any activity with respect to that issuer prohibited by any of  
28   subsection (g) through (l) of section 10A of the Securities Ex-  
29   change Act of 1934, as added by this title, or any rule or regu-  
30   lation of the Commission or of the Board issued thereunder.



1    **SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE**  
2                    **REGULATORY AUTHORITIES.**

3            In supervising nonregistered public accounting firms and  
4    their associated persons, appropriate State regulatory authori-  
5    ties should make an independent determination of the proper  
6    standards applicable, particularly taking into consideration the  
7    size and nature of the business of the accounting firms they su-  
8    pervise and the size and nature of the business of the clients  
9    of those firms. The standards applied by the Board under this  
10   Act should not be presumed to be applicable for purposes of  
11   this section for small and medium sized nonregistered public  
12   accounting firms.

13                    **TITLE III—CORPORATE**  
14                    **RESPONSIBILITY**

15    **SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.**

16            Section 10A of the Securities Exchange Act of 1934 (15  
17    U.S.C. 78f) is amended by adding at the end the following:

18            “(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

19                    “(1) COMMISSION RULES.—

20                            “(A) IN GENERAL.—Effective not later than 270  
21                    days after the date of enactment of this subsection, the  
22                    Commission shall, by rule, direct the national securities  
23                    exchanges and national securities associations to pro-  
24                    hibit the listing of any security of an issuer that is not  
25                    in compliance with the requirements of any portion of  
26                    paragraphs (2) through (6).

27                            “(B) OPPORTUNITY TO CURE DEFECTS.—The  
28                    rules of the Commission under subparagraph (A) shall  
29                    provide for appropriate procedures for an issuer to  
30                    have an opportunity to cure any defects that would be



1 the basis for a prohibition under subparagraph (A), be-  
2 fore the imposition of such prohibition.

3 “(2) RESPONSIBILITIES RELATING TO REGISTERED  
4 PUBLIC ACCOUNTING FIRMS.—The audit committee of each  
5 issuer, in its capacity as a committee of the board of direc-  
6 tors, shall be directly responsible for the appointment, com-  
7 pensation, and oversight of the work of any registered pub-  
8 lic accounting firm employed by that issuer (including reso-  
9 lution of disagreements between management and the audi-  
10 tor regarding financial reporting) for the purpose of pre-  
11 paring or issuing an audit report or related work, and each  
12 such registered public accounting firm shall report directly  
13 to the audit committee.

14 “(3) INDEPENDENCE.—

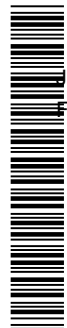
15 “(A) IN GENERAL.—Each member of the audit  
16 committee of the issuer shall be a member of the board  
17 of directors of the issuer, and shall otherwise be inde-  
18 pendent.

19 “(B) CRITERIA.—In order to be considered to be  
20 independent for purposes of this paragraph, a member  
21 of an audit committee of an issuer may not, other than  
22 in his or her capacity as a member of the audit com-  
23 mittee, the board of directors, or any other board  
24 committee—

25 “(i) accept any consulting, advisory, or other  
26 compensatory fee from the issuer; or

27 “(ii) be an affiliated person of the issuer or  
28 any subsidiary thereof.

29 “(C) EXEMPTION AUTHORITY.—The Commission  
30 may exempt from the requirements of subparagraph



1 (B) a particular relationship with respect to audit com-  
2 mittee members, as the Commission determines appro-  
3 priate in light of the circumstances.

4 “(4) COMPLAINTS.—Each audit committee shall estab-  
5 lish procedures for—

6 “(A) the receipt, retention, and treatment of com-  
7 plaints received by the issuer regarding accounting, in-  
8 ternal accounting controls, or auditing matters; and

9 “(B) the confidential, anonymous submission by  
10 employees of the issuer of concerns regarding question-  
11 able accounting or auditing matters.

12 “(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit  
13 committee shall have the authority to engage independent  
14 counsel and other advisers, as it determines necessary to  
15 carry out its duties.

16 “(6) FUNDING.—Each issuer shall provide for appro-  
17 priate funding, as determined by the audit committee, in its  
18 capacity as a committee of the board of directors, for pay-  
19 ment of compensation—

20 “(A) to the registered public accounting firm em-  
21 ployed by the issuer for the purpose of rendering or  
22 issuing an audit report; and

23 “(B) to any advisers employed by the audit com-  
24 mittee under paragraph (5).”.

25 **SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL**  
26 **REPORTS.**

27 (a) REGULATIONS REQUIRED.—The Commission shall, by  
28 rule, require, for each company filing periodic reports under  
29 section 13(a) or 15(d) of the Securities Exchange Act of 1934  
30 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or





1 officers and the principal financial officer or officers, or persons  
2 performing similar functions, certify in each annual or quar-  
3 terly report filed or submitted under either such section of such  
4 Act that—

5 (1) the signing officer has reviewed the report;

6 (2) based on the officer’s knowledge, the report does  
7 not contain any untrue statement of a material fact or omit  
8 to state a material fact necessary in order to make the  
9 statements made, in light of the circumstances under which  
10 such statements were made, not misleading;

11 (3) based on such officer’s knowledge, the financial  
12 statements, and other financial information included in the  
13 report, fairly present in all material respects the financial  
14 condition and results of operations of the issuer as of, and  
15 for, the periods presented in the report;

16 (4) the signing officers—

17 (A) are responsible for establishing and maintain-  
18 ing internal controls;

19 (B) have designed such internal controls to ensure  
20 that material information relating to the issuer and its  
21 consolidated subsidiaries is made known to such offi-  
22 cers by others within those entities, particularly during  
23 the period in which the periodic reports are being pre-  
24 pared;

25 (C) have evaluated the effectiveness of the issuer’s  
26 internal controls as of a date within 90 days prior to  
27 the report; and

28 (D) have presented in the report their conclusions  
29 about the effectiveness of their internal controls based  
30 on their evaluation as of that date;



1 (5) the signing officers have disclosed to the issuer's  
2 auditors and the audit committee of the board of directors  
3 (or persons fulfilling the equivalent function)—

4 (A) all significant deficiencies in the design or op-  
5 eration of internal controls which could adversely affect  
6 the issuer's ability to record, process, summarize, and  
7 report financial data and have identified for the  
8 issuer's auditors any material weaknesses in internal  
9 controls; and

10 (B) any fraud, whether or not material, that in-  
11 volves management or other employees who have a sig-  
12 nificant role in the issuer's internal controls; and

13 (6) the signing officers have indicated in the report  
14 whether or not there were significant changes in internal  
15 controls or in other factors that could significantly affect  
16 internal controls subsequent to the date of their evaluation,  
17 including any corrective actions with regard to significant  
18 deficiencies and material weaknesses.

19 (b) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—  
20 Nothing in this section 302 shall be interpreted or applied in  
21 any way to allow any issuer to lessen the legal force of the  
22 statement required under this section 302, by an issuer having  
23 reincorporated or having engaged in any other transaction that  
24 resulted in the transfer of the corporate domicile or offices of  
25 the issuer from inside the United States to outside of the  
26 United States.

27 (c) DEADLINE.—The rules required by subsection (a) shall  
28 be effective not later than 30 days after the date of enactment  
29 of this Act.



1   **SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AU-**  
2                   **DITS.**

3           (a) RULES TO PROHIBIT.—It shall be unlawful, in con-  
4    travention of such rules or regulations as the Commission shall  
5    prescribe as necessary and appropriate in the public interest or  
6    for the protection of investors, for any officer or director of an  
7    issuer, or any other person acting under the direction thereof,  
8    to take any action to fraudulently influence, coerce, manipulate,  
9    or mislead any independent public or certified accountant en-  
10   gaged in the performance of an audit of the financial state-  
11   ments of that issuer for the purpose of rendering such financial  
12   statements materially misleading.

13          (b) ENFORCEMENT.—In any civil proceeding, the Commis-  
14   sion shall have exclusive authority to enforce this section and  
15   any rule or regulation issued under this section.

16          (c) NO PREEMPTION OF OTHER LAW.—The provisions of  
17   subsection (a) shall be in addition to, and shall not supersede  
18   or preempt, any other provision of law or any rule or regulation  
19   issued thereunder.

20          (d) DEADLINE FOR RULEMAKING.—The Commission  
21   shall—

22            (1) propose the rules or regulations required by this  
23    section, not later than 90 days after the date of enactment  
24    of this Act; and

25            (2) issue final rules or regulations required by this  
26    section, not later than 270 days after that date of enact-  
27    ment.



1 **SEC. 304. FORFEITURE OF CERTAIN BONUSES AND**  
2 **PROFITS.**

3 (a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLI-  
4 ANCE WITH COMMISSION FINANCIAL REPORTING REQUIRE-  
5 MENTS.—If an issuer is required to prepare an accounting re-  
6 statement due to the material noncompliance of the issuer, as  
7 a result of misconduct, with any financial reporting require-  
8 ment under the securities laws, the chief executive officer and  
9 chief financial officer of the issuer shall reimburse the issuer  
10 for—

11 (1) any bonus or other incentive-based or equity-based  
12 compensation received by that person from the issuer dur-  
13 ing the 12-month period following the first public issuance  
14 or filing with the Commission (whichever first occurs) of  
15 the financial document embodying such financial reporting  
16 requirement; and

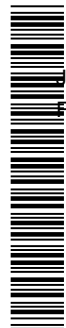
17 (2) any profits realized from the sale of securities of  
18 the issuer during that 12-month period.

19 (b) COMMISSION EXEMPTION AUTHORITY.—The Commis-  
20 sion may exempt any person from the application of subsection  
21 (a), as it deems necessary and appropriate.

22 **SEC. 305. OFFICER AND DIRECTOR BARS AND PEN-**  
23 **ALTIES.**

24 (a) UNFITNESS STANDARD.—

25 (1) SECURITIES EXCHANGE ACT OF 1934.—Section  
26 21(d)(2) of the Securities Exchange Act of 1934 (15  
27 U.S.C. 78u(d)(2)) is amended by striking “substantial  
28 unfitness” and inserting “unfitness”.



1           (2) SECURITIES ACT OF 1933.—Section 20(e) of the  
2           Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by  
3           striking “substantial unfitness” and inserting “unfitness”.

4           (b) EQUITABLE RELIEF.—Section 21(d) of the Securities  
5           Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by add-  
6           ing at the end the following:

7           “(5) EQUITABLE RELIEF.—In any action or proceeding  
8           brought or instituted by the Commission under any provision  
9           of the securities laws, the Commission may seek, and any Fed-  
10          eral court may grant, any equitable relief that may be appro-  
11          priate or necessary for the benefit of investors.”.

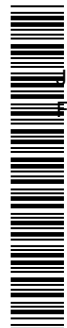
12          **SEC. 306. INSIDER TRADES DURING PENSION FUND**  
13          **BLACKOUT PERIODS.**

14          (a) PROHIBITION OF INSIDER TRADING DURING PENSION  
15          FUND BLACKOUT PERIODS.—

16                 (1) IN GENERAL.—Except to the extent otherwise pro-  
17                 vided by rule of the Commission pursuant to paragraph  
18                 (3), it shall be unlawful for any director or executive officer  
19                 of an issuer of any equity security (other than an exempted  
20                 security), directly or indirectly, to purchase, sell, or other-  
21                 wise acquire or transfer any equity security of the issuer  
22                 (other than an exempted security) during any blackout pe-  
23                 riod with respect to such equity security if such director or  
24                 officer acquires such equity security in connection with his  
25                 or her service or employment as a director or executive offi-  
26                 cer.

27                 (2) REMEDY.—

28                         (A) IN GENERAL.—Any profit realized by a direc-  
29                         tor or executive officer referred to in paragraph (1)  
30                         from any purchase, sale, or other acquisition or trans-



1           fer in violation of this subsection shall inure to and be  
2           recoverable by the issuer, irrespective of any intention  
3           on the part of such director or executive officer in en-  
4           tering into the transaction.

5           (B) ACTIONS TO RECOVER PROFITS.—An action to  
6           recover profits in accordance with this subsection may  
7           be instituted at law or in equity in any court of com-  
8           petent jurisdiction by the issuer, or by the owner of any  
9           security of the issuer in the name and in behalf of the  
10          issuer if the issuer fails or refuses to bring such action  
11          within 60 days after the date of request, or fails dili-  
12          gently to prosecute the action thereafter, except that no  
13          such suit shall be brought more than 2 years after the  
14          date on which such profit was realized.

15          (3) RULEMAKING AUTHORIZED.—The Commission  
16          shall, in consultation with the Secretary of Labor, issue  
17          rules to clarify the application of this subsection and to  
18          prevent evasion thereof. Such rules shall provide for the ap-  
19          plication of the requirements of paragraph (1) with respect  
20          to entities treated as a single employer with respect to an  
21          issuer under section 414(b), (c), (m), or (o) of the Internal  
22          Revenue Code of 1986 to the extent necessary to clarify the  
23          application of such requirements and to prevent evasion  
24          thereof. Such rules may also provide for appropriate excep-  
25          tions from the requirements of this subsection, including  
26          exceptions for purchases pursuant to an automatic dividend  
27          reinvestment program or purchases or sales made pursuant  
28          to an advance election.



1 (4) BLACKOUT PERIOD.—For purposes of this sub-  
2 section, the term “blackout period”, with respect to the eq-  
3 uity securities of any issuer—

4 (A) means any period of more than 3 consecutive  
5 business days during which the ability of not fewer  
6 than 50 percent of the participants or beneficiaries  
7 under all individual account plans maintained by the  
8 issuer to purchase, sell, or otherwise acquire or transfer  
9 an interest in any equity of such issuer held in such an  
10 individual account plan is temporarily suspended by the  
11 issuer or by a fiduciary of the plan; and

12 (B) does not include, under regulations which shall  
13 be prescribed by the Commission—

14 (i) a regularly scheduled period in which the  
15 participants and beneficiaries may not purchase,  
16 sell, or otherwise acquire or transfer an interest in  
17 any equity of such issuer, if such period is—

18 (I) incorporated into the individual ac-  
19 count plan; and

20 (II) timely disclosed to employees before  
21 becoming participants under the individual ac-  
22 count plan or as a subsequent amendment to  
23 the plan; or

24 (ii) any suspension described in subparagraph  
25 (A) that is imposed solely in connection with per-  
26 sons becoming participants or beneficiaries, or  
27 ceasing to be participants or beneficiaries, in an in-  
28 dividual account plan by reason of a corporate  
29 merger, acquisition, divestiture, or similar trans-  
30 action involving the plan or plan sponsor.



1 (5) INDIVIDUAL ACCOUNT PLAN.—For purposes of  
2 this subsection, the term “individual account plan” has the  
3 meaning provided in section 3(34) of the Employee Retirement  
4 Income Security Act of 1974 (29 U.S.C. 1002(34),  
5 except that such term shall not include a one-participant  
6 retirement plan (within the meaning of section 101(i)(8)(B)  
7 of such Act (29 U.S.C. 1021(i)(8)(B))).

8 (6) NOTICE TO DIRECTORS, EXECUTIVE OFFICERS,  
9 AND THE COMMISSION.—In any case in which a director or  
10 executive officer is subject to the requirements of this sub-  
11 section in connection with a blackout period (as defined in  
12 paragraph (4)) with respect to any equity securities, the  
13 issuer of such equity securities shall timely notify such di-  
14 rector or officer and the Securities and Exchange Commis-  
15 sion of such blackout period.

16 (b) NOTICE REQUIREMENTS TO PARTICIPANTS AND  
17 BENEFICIARIES UNDER ERISA.—

18 (1) IN GENERAL.—Section 101 of the Employee Re-  
19 tirement Income Security Act of 1974 (29 U.S.C. 1021) is  
20 amended by redesignating the second subsection (h) as sub-  
21 section (j), and by inserting after the first subsection (h)  
22 the following new subsection:

23 “(i) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR  
24 BENEFICIARY UNDER INDIVIDUAL ACCOUNT PLAN.—

25 “(1) DUTIES OF PLAN ADMINISTRATOR.—In advance  
26 of the commencement of any blackout period with respect  
27 to an individual account plan, the plan administrator shall  
28 notify the plan participants and beneficiaries who are af-  
29 fected by such action in accordance with this subsection.

30 “(2) NOTICE REQUIREMENTS.—





1           “(A) IN GENERAL.—The notices described in para-  
2 graph (1) shall be written in a manner calculated to be  
3 understood by the average plan participant and shall  
4 include—

5           “(i) the reasons for the blackout period,

6           “(ii) an identification of the investments and  
7 other rights affected,

8           “(iii) the expected beginning date and length  
9 of the blackout period,

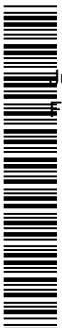
10           “(iv) in the case of investments affected, a  
11 statement that the participant or beneficiary should  
12 evaluate the appropriateness of their current in-  
13 vestment decisions in light of their inability to di-  
14 rect or diversify assets credited to their accounts  
15 during the blackout period, and

16           “(v) such other matters as the Secretary may  
17 require by regulation.

18           “(B) NOTICE TO PARTICIPANTS AND BENE-  
19 FICIARIES.—Except as otherwise provided in this sub-  
20 section, notices described in paragraph (1) shall be fur-  
21 nished to all participants and beneficiaries under the  
22 plan to whom the blackout period applies at least 30  
23 days in advance of the blackout period.

24           “(C) EXCEPTION TO 30-DAY NOTICE REQUIRE-  
25 MENT.—In any case in which—

26           “(i) a deferral of the blackout period would  
27 violate the requirements of subparagraph (A) or  
28 (B) of section 404(a)(1), and a fiduciary of the  
29 plan reasonably so determines in writing, or



1                   “(ii) the inability to provide the 30-day ad-  
2                   vance notice is due to events that were unforesee-  
3                   able or circumstances beyond the reasonable control  
4                   of the plan administrator, and a fiduciary of the  
5                   plan reasonably so determines in writing,  
6                   subparagraph (B) shall not apply, and the notice shall  
7                   be furnished to all participants and beneficiaries under  
8                   the plan to whom the blackout period applies as soon  
9                   as reasonably possible under the circumstances unless  
10                  such a notice in advance of the termination of the  
11                  blackout period is impracticable.

12                  “(D) WRITTEN NOTICE.—The notice required to  
13                  be provided under this subsection shall be in writing,  
14                  except that such notice may be in electronic or other  
15                  form to the extent that such form is reasonably acces-  
16                  sible to the recipient.

17                  “(E) NOTICE TO ISSUERS OF EMPLOYER SECURI-  
18                  TIES SUBJECT TO BLACKOUT PERIOD.—In the case of  
19                  any blackout period in connection with an individual  
20                  account plan, the plan administrator shall provide time-  
21                  ly notice of such blackout period to the issuer of any  
22                  employer securities subject to such blackout period.

23                  “(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIM-  
24                  ITED APPLICABILITY.—In any case in which the blackout  
25                  period applies only to 1 or more participants or bene-  
26                  ficiaries in connection with a merger, acquisition, divesti-  
27                  ture, or similar transaction involving the plan or plan spon-  
28                  sor and occurs solely in connection with becoming or ceas-  
29                  ing to be a participant or beneficiary under the plan by  
30                  reason of such merger, acquisition, divestiture, or trans-



1 action, the requirement of this subsection that the notice  
2 be provided to all participants and beneficiaries shall be  
3 treated as met if the notice required under paragraph (1)  
4 is provided to such participants or beneficiaries to whom  
5 the blackout period applies as soon as reasonably prac-  
6 ticable.

7 “(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—  
8 If, following the furnishing of the notice pursuant to this  
9 subsection, there is a change in the beginning date or  
10 length of the blackout period (specified in such notice pur-  
11 suant to paragraph (2)(A)(iii)), the administrator shall pro-  
12 vide affected participants and beneficiaries notice of the  
13 change as soon as reasonably practicable. In relation to the  
14 extended blackout period, such notice shall meet the re-  
15 quirements of paragraph (2)(D) and shall specify any ma-  
16 terial change in the matters referred to in clauses (i)  
17 through (v) of paragraph (2)(A).

18 “(5) REGULATORY EXCEPTIONS.—The Secretary may  
19 provide by regulation for additional exceptions to the re-  
20 quirements of this subsection which the Secretary deter-  
21 mines are in the interests of participants and beneficiaries.

22 “(6) GUIDANCE AND MODEL NOTICES.—The Secretary  
23 shall issue guidance and model notices which meet the re-  
24 quirements of this subsection.

25 “(7) BLACKOUT PERIOD.—For purposes of this  
26 subsection—

27 “(A) IN GENERAL.—The term ‘blackout period’  
28 means, in connection with an individual account plan,  
29 any period for which any ability of participants or  
30 beneficiaries under the plan, which is otherwise avail-



1 able under the terms of such plan, to direct or diversify  
2 assets credited to their accounts, to obtain loans from  
3 the plan, or to obtain distributions from the plan is  
4 temporarily suspended, limited, or restricted, if such  
5 suspension, limitation, or restriction is for any period  
6 of more than 3 consecutive business days.

7 “(B) EXCLUSIONS.—The term ‘blackout period’  
8 does not include a suspension, limitation, or  
9 restriction—

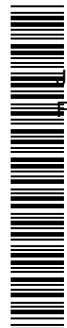
10 “(i) which occurs by reason of the application  
11 of the securities laws (as defined in section  
12 3(a)(47) of the Securities Exchange Act of 1934),

13 “(ii) which is a change to the plan which pro-  
14 vides for a regularly scheduled suspension, limita-  
15 tion, or restriction which is disclosed to partici-  
16 pants or beneficiaries through any summary of ma-  
17 terial modifications, any materials describing spe-  
18 cific investment alternatives under the plan, or any  
19 changes thereto, or

20 “(iii) which applies only to 1 or more individ-  
21 uals, each of whom is the participant, an alternate  
22 payee (as defined in section 206(d)(3)(K)), or any  
23 other beneficiary pursuant to a qualified domestic  
24 relations order (as defined in section  
25 206(d)(3)(B)(i)).

26 “(8) INDIVIDUAL ACCOUNT PLAN.—

27 “(A) IN GENERAL.—For purposes of this sub-  
28 section, the term ‘individual account plan’ shall have  
29 the meaning provided such term in section 3(34), ex-



1           cept that such term shall not include a one-participant  
2           retirement plan.

3                   “(B) ONE-PARTICIPANT RETIREMENT PLAN.—For  
4           purposes of subparagraph (A), the term ‘one-partici-  
5           pant retirement plan’ means a retirement plan that—

6                           “(i) on the first day of the plan year—

7                                   “(I) covered only the employer (and the  
8                                   employer’s spouse) and the employer owned the  
9                                   entire business (whether or not incorporated),  
10                                   or

11   “(II) covered only one or more partners  
12   (and their spouses) in a business partnership  
13   (including partners in an S or C corporation  
14   (as defined in section 1361(a) of the Internal  
15   Revenue Code of 1986)),

16   “(ii) meets the minimum coverage require-  
17   ments of section 410(b) of the Internal Revenue  
18   Code of 1986 (as in effect on the date of the enact-  
19   ment of this paragraph) without being combined  
20   with any other plan of the business that covers the  
21   employees of the business,

22   “(iii) does not provide benefits to anyone ex-  
23   cept the employer (and the employer’s spouse) or  
24   the partners (and their spouses),

25   “(iv) does not cover a business that is a mem-  
26   ber of an affiliated service group, a controlled  
27   group of corporations, or a group of businesses  
28   under common control, and

29   “(v) does not cover a business that leases em-  
30   ployees.”.



1           (2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NO-  
2           TICE.—The Secretary of Labor shall issue initial guidance  
3           and a model notice pursuant to section 101(i)(6) of the  
4           Employee Retirement Income Security Act of 1974 (as  
5           added by this subsection) not later than January 1, 2003.  
6           Not later than 75 days after the date of the enactment of  
7           this Act, the Secretary shall promulgate interim final rules  
8           necessary to carry out the amendments made by this sub-  
9           section.

10           (3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NO-  
11           TICE.—Section 502 of such Act (29 U.S.C. 1132) is  
12           amended—

13                   (A) in subsection (a)(6), by striking “(5), or (6)”  
14                   and inserting “(5), (6), or (7)”;

15                   (B) by redesignating paragraph (7) of subsection  
16                   (c) as paragraph (8); and

17                   (C) by inserting after paragraph (6) of subsection  
18                   (c) the following new paragraph:

19           “(7) The Secretary may assess a civil penalty against a  
20           plan administrator of up to \$100 a day from the date of the  
21           plan administrator’s failure or refusal to provide notice to par-  
22           ticipants and beneficiaries in accordance with section 101(i).  
23           For purposes of this paragraph, each violation with respect to  
24           any single participant or beneficiary shall be treated as a sepa-  
25           rate violation.”.

26           (3) PLAN AMENDMENTS.—If any amendment made by  
27           this subsection requires an amendment to any plan, such  
28           plan amendment shall not be required to be made before  
29           the first plan year beginning on or after the effective date  
30           of this section, if—

1 (A) during the period after such amendment made  
 2 by this subsection takes effect and before such first  
 3 plan year, the plan is operated in good faith compliance  
 4 with the requirements of such amendment made by this  
 5 subsection, and

6 (B) such plan amendment applies retroactively to  
 7 the period after such amendment made by this sub-  
 8 section takes effect and before such first plan year.

9 (c) EFFECTIVE DATE.—The provisions of this section (in-  
 10 cluding the amendments made thereby) shall take effect 180  
 11 days after the date of the enactment of this Act. Good faith  
 12 compliance with the requirements of such provisions in advance  
 13 of the issuance of applicable regulations thereunder shall be  
 14 treated as compliance with such provisions.

15 **SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY**  
 16 **FOR ATTORNEYS.**

17 Not later than 180 days after the date of enactment of  
 18 this Act, the Commission shall issue rules, in the public interest  
 19 and for the protection of investors, setting forth minimum  
 20 standards of professional conduct for attorneys appearing and  
 21 practicing before the Commission in any way in the representa-  
 22 tion of issuers, including a rule—

23 (1) requiring an attorney to report evidence of a mate-  
 24 rial violation of securities law or breach of fiduciary duty  
 25 or similar violation by the company or any agent thereof,  
 26 to the chief legal counsel or the chief executive officer of  
 27 the company (or the equivalent thereof); and

28 (2) if the counsel or officer does not appropriately re-  
 29 spond to the evidence (adopting, as necessary, appropriate  
 30 remedial measures or sanctions with respect to the viola-



1           tion), requiring the attorney to report the evidence to the  
2           audit committee of the board of directors of the issuer or  
3           to another committee of the board of directors comprised  
4           solely of directors not employed directly or indirectly by the  
5           issuer, or to the board of directors.

6           **SEC. 308. FAIR FUNDS FOR INVESTORS.**

7           (a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS  
8           FOR THE RELIEF OF VICTIMS.—If in any judicial or adminis-  
9           trative action brought by the Commission under the securities  
10          laws (as such term is defined in section 3(a)(47) of the Securi-  
11          ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commis-  
12          sion obtains an order requiring disgorgement against any per-  
13          son for a violation of such laws or the rules or regulations  
14          thereunder, or such person agrees in settlement of any such ac-  
15          tion to such disgorgement, and the Commission also obtains  
16          pursuant to such laws a civil penalty against such person, the  
17          amount of such civil penalty shall, on the motion or at the di-  
18          rection of the Commission, be added to and become part of the  
19          disgorgement fund for the benefit of the victims of such viola-  
20          tion.

21          (b) ACCEPTANCE OF ADDITIONAL DONATIONS.—The  
22          Commission is authorized to accept, hold, administer, and uti-  
23          lize gifts, bequests and devises of property, both real and per-  
24          sonal, to the United States for a disgorgement fund described  
25          in subsection (a). Such gifts, bequests, and devises of money  
26          and proceeds from sales of other property received as gifts, be-  
27          quests, or devises shall be deposited in the disgorgement fund  
28          and shall be available for allocation in accordance with sub-  
29          section (a).

30          (c) STUDY REQUIRED.—





1 (1) SUBJECT OF STUDY.—The Commission shall re-  
2 view and analyze—

3 (A) enforcement actions by the Commission over  
4 the five years preceding the date of the enactment of  
5 this Act that have included proceedings to obtain civil  
6 penalties or disgorgements to identify areas where such  
7 proceedings may be utilized to efficiently, effectively,  
8 and fairly provide restitution for injured investors; and

9 (B) other methods to more efficiently, effectively,  
10 and fairly provide restitution to injured investors, in-  
11 cluding methods to improve the collection rates for civil  
12 penalties and disgorgements.

13 (2) REPORT REQUIRED.—The Commission shall re-  
14 port its findings to the Committee on Financial Services of  
15 the House of Representatives and the Committee on Bank-  
16 ing, Housing, and Urban Affairs of the Senate within 180  
17 days after of the date of the enactment of this Act, and  
18 shall use such findings to revise its rules and regulations  
19 as necessary. The report shall include a discussion of regu-  
20 latory or legislative actions that are recommended or that  
21 may be necessary to address concerns identified in the  
22 study.

23 (d) CONFORMING AMENDMENTS.—Each of the following  
24 provisions is amended by inserting “, except as otherwise pro-  
25 vided in section 308 of the Sarbanes-Oxley Act of 2002” after  
26 “Treasury of the United States”:

27 (1) Section 21(d)(3)(C)(i) of the Securities Exchange  
28 Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)).

29 (2) Section 21A(d)(1) of such Act (15 U.S.C. 78u-  
30 1(d)(1)).



1 (3) Section 20(d)(3)(A) of the Securities Act of 1933  
2 (15 U.S.C. 77t(d)(3)(A)).

3 (4) Section 42(e)(3)(A) of the Investment Company  
4 Act of 1940 (15 U.S.C. 80a-41(e)(3)(A)).

5 (5) Section 209(e)(3)(A) of the Investment Advisers  
6 Act of 1940 (15 U.S.C. 80b-9(e)(3)(A)).

7 (e) DEFINITION.—As used in this section, the term  
8 “disgorgement fund” means a fund established in any adminis-  
9 trative or judicial proceeding described in subsection (a).

## 10 **TITLE IV—ENHANCED FINANCIAL** 11 **DISCLOSURES**

### 12 **SEC. 401. DISCLOSURES IN PERIODIC REPORTS.**

13 (a) DISCLOSURES REQUIRED.—Section 13 of the Securi-  
14 ties Exchange Act of 1934 (15 U.S.C. 78m) is amended by  
15 adding at the end the following:

16 “(i) ACCURACY OF FINANCIAL REPORTS.—Each financial  
17 report that contains financial statements, and that is required  
18 to be prepared in accordance with (or reconciled to) generally  
19 accepted accounting principles under this title and filed with  
20 the Commission shall reflect all material correcting adjustments  
21 that have been identified by a registered public accounting firm  
22 in accordance with generally accepted accounting principles and  
23 the rules and regulations of the Commission.

24 “(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later  
25 than 180 days after the date of enactment of the Sarbanes-  
26 Oxley Act of 2002, the Commission shall issue final rules pro-  
27 viding that each annual and quarterly financial report required  
28 to be filed with the Commission shall disclose all material off-  
29 balance sheet transactions, arrangements, obligations (including  
30 contingent obligations), and other relationships of the issuer

1 with unconsolidated entities or other persons, that may have a  
2 material current or future effect on financial condition, changes  
3 in financial condition, results of operations, liquidity, capital ex-  
4 penditures, capital resources, or significant components of reve-  
5 nues or expenses.”.

6 (b) COMMISSION RULES ON PRO FORMA FIGURES.—Not  
7 later than 180 days after the date of enactment of the Sar-  
8 banes-Oxley Act fo 2002, the Commission shall issue final rules  
9 providing that pro forma financial information included in any  
10 periodic or other report filed with the Commission pursuant to  
11 the securities laws, or in any public disclosure or press or other  
12 release, shall be presented in a manner that—

13 (1) does not contain an untrue statement of a material  
14 fact or omit to state a material fact necessary in order to  
15 make the pro forma financial information, in light of the  
16 circumstances under which it is presented, not misleading;  
17 and

18 (2) reconciles it with the financial condition and re-  
19 sults of operations of the issuer under generally accepted  
20 accounting principles.

21 (c) STUDY AND REPORT ON SPECIAL PURPOSE ENTI-  
22 TIES.—

23 (1) STUDY REQUIRED.—The Commission shall, not  
24 later than 1 year after the effective date of adoption of off-  
25 balance sheet disclosure rules required by section 13(j) of  
26 the Securities Exchange Act of 1934, as added by this sec-  
27 tion, complete a study of filings by issuers and their dislo-  
28 sures to determine—



1 (A) the extent of off-balance sheet transactions,  
2 including assets, liabilities, leases, losses, and the use  
3 of special purpose entities; and

4 (B) whether generally accepted accounting rules  
5 result in financial statements of issuers reflecting the  
6 economics of such off-balance sheet transactions to in-  
7 vestors in a transparent fashion.

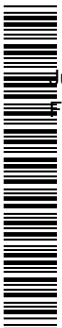
8 (2) REPORT AND RECOMMENDATIONS.—Not later than  
9 6 months after the date of completion of the study required  
10 by paragraph (1), the Commission shall submit a report to  
11 the President, the Committee on Banking, Housing, and  
12 Urban Affairs of the Senate, and the Committee on Finan-  
13 cial Services of the House of Representatives, setting  
14 forth—

15 (A) the amount or an estimate of the amount of  
16 off-balance sheet transactions, including assets, liabil-  
17 ities, leases, and losses of, and the use of special pur-  
18 pose entities by, issuers filing periodic reports pursuant  
19 to section 13 or 15 of the Securities Exchange Act of  
20 1934;

21 (B) the extent to which special purpose entities  
22 are used to facilitate off-balance sheet transactions;

23 (C) whether generally accepted accounting prin-  
24 ciples or the rules of the Commission result in financial  
25 statements of issuers reflecting the economics of such  
26 transactions to investors in a transparent fashion;

27 (D) whether generally accepted accounting prin-  
28 ciples specifically result in the consolidation of special  
29 purpose entities sponsored by an issuer in cases in



1 which the issuer has the majority of the risks and re-  
2 wards of the special purpose entity; and

3 (E) any recommendations of the Commission for  
4 improving the transparency and quality of reporting  
5 off-balance sheet transactions in the financial state-  
6 ments and disclosures required to be filed by an issuer  
7 with the Commission.

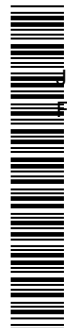
8 **SEC. 402. ENHANCED CONFLICT OF INTEREST PROVI-**  
9 **SIONS.**

10 (a) PROHIBITION ON PERSONAL LOANS TO EXECU-  
11 TIVES.—Section 13 of the Securities Exchange Act of 1934 (15  
12 U.S.C. 78m), as amended by this Act, is amended by adding  
13 at the end the following:

14 “(k) PROHIBITION ON PERSONAL LOANS TO EXECU-  
15 TIVES.—

16 “(1) IN GENERAL.—It shall be unlawful for any issuer  
17 (as defined in section 2 of the Sarbanes-Oxley Act of  
18 2002), directly or indirectly, including through any sub-  
19 sidiary, to extend or maintain credit, to arrange for the ex-  
20 tension of credit, or to renew an extension of credit, in the  
21 form of a personal loan to or for any director or executive  
22 officer (or equivalent thereof) of that issuer. An extension  
23 of credit maintained by the issuer on the date of enactment  
24 of this subsection shall not be subject to the provisions of  
25 this subsection, provided that there is no material modifica-  
26 tion to any term of any such extension of credit or any re-  
27 newal of any such extension of credit on or after that date  
28 of enactment.

29 “(2) LIMITATION.—Paragraph (1) does not preclude  
30 any home improvement and manufactured home loans (as



1 that term is defined in section 5 of the Home Owners'  
2 Loan Act (12 U.S.C. 1464)), consumer credit (as defined  
3 in section 103 of the Truth in Lending Act (15 U.S.C.  
4 1602)), or any extension of credit under an open end credit  
5 plan (as defined in section 103 of the Truth in Lending Act  
6 (15 U.S.C. 1602)), or a charge card (as defined in section  
7 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C.  
8 1637(c)(4)(e)), or any extension of credit by a broker or  
9 dealer registered under section 15 of this title to an em-  
10 ployee of that broker or dealer to buy, trade, or carry secu-  
11 rities, that is permitted under rules or regulations of the  
12 Board of Governors of the Federal Reserve System pursu-  
13 ant to section 7 of this title (other than an extension of  
14 credit that would be used to purchase the stock of that  
15 issuer), that is—

16 “(A) made or provided in the ordinary course of  
17 the consumer credit business of such issuer;

18 “(B) of a type that is generally made available by  
19 such issuer to the public; and

20 “(C) made by such issuer on market terms, or  
21 terms that are no more favorable than those offered by  
22 the issuer to the general public for such extensions of  
23 credit.

24 “(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—  
25 Paragraph (1) does not apply to any loan made or main-  
26 tained by an insured depository institution (as defined in  
27 section 3 of the Federal Deposit Insurance Act (12 U.S.C.  
28 1813)), if the loan is subject to the insider lending restric-  
29 tions of section 22(h) of the Federal Reserve Act (12  
30 U.S.C. 375b).”.

1    **SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING**  
2                   **MANAGEMENT AND PRINCIPAL STOCK-**  
3                   **HOLDERS.**

4           (a) AMENDMENT.—Section 16 of the Securities Exchange  
5 Act of 1934 (15 U.S.C. 78p) is amended by striking the head-  
6 ing of such section and subsection (a) and inserting the fol-  
7 lowing:

8    **“SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL**  
9                   **STOCKHOLDERS.**

10           “(a) DISCLOSURES REQUIRED.—

11                   “(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCK-  
12                   HOLDERS REQUIRED TO FILE.—Every person who is di-  
13                   rectly or indirectly the beneficial owner of more than 10  
14                   percent of any class of any equity security (other than an  
15                   exempted security) which is registered pursuant to section  
16                   12, or who is a director or an officer of the issuer of such  
17                   security, shall file the statements required by this sub-  
18                   section with the Commission (and, if such security is reg-  
19                   istered on a national securities exchange, also with the ex-  
20                   change).

21                   “(2) TIME OF FILING.—The statements required by  
22                   this subsection shall be filed—

23                           “(A) at the time of the registration of such secu-  
24                           rity on a national securities exchange or by the effec-  
25                           tive date of a registration statement filed pursuant to  
26                           section 12(g);

27                           “(B) within 10 days after he or she becomes such  
28                           beneficial owner, director, or officer;

29                           “(C) if there has been a change in such ownership,  
30                           or if such person shall have purchased or sold a secu-  
31                           rity-based swap agreement (as defined in section

1 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78e  
2 note)) involving such equity security, before the end of  
3 the second business day following the day on which the  
4 subject transaction has been executed, or at such other  
5 time as the Commission shall establish, by rule, in any  
6 case in which the Commission determines that such 2-  
7 day period is not feasible.

8 “(3) CONTENTS OF STATEMENTS.—A statement  
9 filed—

10 “(A) under subparagraph (A) or (B) of paragraph  
11 (2) shall contain a statement of the amount of all eq-  
12 uity securities of such issuer of which the filing person  
13 is the beneficial owner; and

14 “(B) under subparagraph (C) of such paragraph  
15 shall indicate ownership by the filing person at the date  
16 of filing, any such changes in such ownership, and such  
17 purchases and sales of the security-based swap agree-  
18 ments as have occurred since the most recent such fil-  
19 ing under such subparagraph.

20 “(4) ELECTRONIC FILING AND AVAILABILITY.—Begin-  
21 ning not later than 1 year after the date of enactment of  
22 the Sarbanes-Oxley Act of 2002—

23 “(A) a statement filed under subparagraph (C) of  
24 paragraph (2) shall be filed electronically;

25 “(B) the Commission shall provide each such  
26 statement on a publicly accessible Internet site not  
27 later than the end of the business day following that  
28 filing; and

29 “(C) the issuer (if the issuer maintains a cor-  
30 porate website) shall provide that statement on that



1 corporate website, not later than the end of the busi-  
2 ness day following that filing.”.

3 (b) EFFECTIVE DATE.—The amendment made by this sec-  
4 tion shall be effective 30 days after the date of the enactment  
5 of this Act.

6 **SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL**  
7 **CONTROLS.**

8 (a) RULES REQUIRED.—The Commission shall prescribe  
9 rules requiring each annual report required by section 13(a) or  
10 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m  
11 or 78o(d)) to contain an internal control report, which shall—

12 (1) state the responsibility of management for estab-  
13 lishing and maintaining an adequate internal control struc-  
14 ture and procedures for financial reporting; and

15 (2) contain an assessment, as of the end of the most  
16 recent fiscal year of the issuer, of the effectiveness of the  
17 internal control structure and procedures of the issuer for  
18 financial reporting.

19 (b) INTERNAL CONTROL EVALUATION AND REPORTING.—  
20 With respect to the internal control assessment required by  
21 subsection (a), each registered public accounting firm that pre-  
22 pares or issues the audit report for the issuer shall attest to,  
23 and report on, the assessment made by the management of the  
24 issuer. An attestation made under this subsection shall be made  
25 in accordance with standards for attestation engagements  
26 issued or adopted by the Board. Any such attestation shall not  
27 be the subject of a separate engagement.

28 **SEC. 405. EXEMPTION.**

29 Nothing in section 401, 402, or 404, the amendments  
30 made by those sections, or the rules of the Commission under



1 those sections shall apply to any investment company registered  
2 under section 8 of the Investment Company Act of 1940 (15  
3 U.S.C. 80a-8).

4 **SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OF-**  
5 **FICERS.**

6 (a) CODE OF ETHICS DISCLOSURE.—The Commission  
7 shall issue rules to require each issuer, together with periodic  
8 reports required pursuant to section 13(a) or 15(d) of the Se-  
9 curities Exchange Act of 1934, to disclose whether or not, and  
10 if not, the reason therefor, such issuer has adopted a code of  
11 ethics for senior financial officers, applicable to its principal fi-  
12 nancial officer and comptroller or principal accounting officer,  
13 or persons performing similar functions.

14 (b) CHANGES IN CODES OF ETHICS.—The Commission  
15 shall revise its regulations concerning matters requiring prompt  
16 disclosure on Form 8-K (or any successor thereto) to require  
17 the immediate disclosure, by means of the filing of such form,  
18 dissemination by the Internet or by other electronic means, by  
19 any issuer of any change in or waiver of the code of ethics for  
20 senior financial officers.

21 (c) DEFINITION.—In this section, the term “code of eth-  
22 ics” means such standards as are reasonably necessary to  
23 promote—

24 (1) honest and ethical conduct, including the ethical  
25 handling of actual or apparent conflicts of interest between  
26 personal and professional relationships;

27 (2) full, fair, accurate, timely, and understandable dis-  
28 closure in the periodic reports required to be filed by the  
29 issuer; and



1 (3) compliance with applicable governmental rules and  
2 regulations.

3 (d) DEADLINE FOR RULEMAKING.—The Commission  
4 shall—

5 (1) propose rules to implement this section, not later  
6 than 90 days after the date of enactment of this Act; and

7 (2) issue final rules to implement this section, not  
8 later than 180 days after that date of enactment.

9 **SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINAN-**  
10 **CIAL EXPERT.**

11 (a) RULES DEFINING “FINANCIAL EXPERT”.—The Com-  
12 mission shall issue rules, as necessary or appropriate in the  
13 public interest and consistent with the protection of investors,  
14 to require each issuer, together with periodic reports required  
15 pursuant to sections 13(a) and 15(d) of the Securities Ex-  
16 change Act of 1934, to disclose whether or not, and if not, the  
17 reasons therefor, the audit committee of that issuer is com-  
18 prised of at least 1 member who is a financial expert, as such  
19 term is defined by the Commission.

20 (b) CONSIDERATIONS.—In defining the term “financial ex-  
21 pert” for purposes of subsection (a), the Commission shall con-  
22 sider whether a person has, through education and experience  
23 as a public accountant or auditor or a principal financial offi-  
24 cer, comptroller, or principal accounting officer of an issuer, or  
25 from a position involving the performance of similar  
26 functions—

27 (1) an understanding of generally accepted accounting  
28 principles and financial statements;

29 (2) experience in—



1 (A) the preparation or auditing of financial state-  
2 ments of generally comparable issuers; and

3 (B) the application of such principles in connec-  
4 tion with the accounting for estimates, accruals, and  
5 reserves;

6 (3) experience with internal accounting controls; and

7 (4) an understanding of audit committee functions.

8 (c) DEADLINE FOR RULEMAKING.—The Commission  
9 shall—

10 (1) propose rules to implement this section, not later  
11 than 90 days after the date of enactment of this Act; and

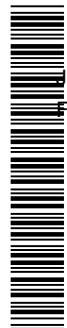
12 (2) issue final rules to implement this section, not  
13 later than 180 days after that date of enactment.

14 **SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLO-**  
15 **SURES BY ISSUERS.**

16 (a) REGULAR AND SYSTEMATIC REVIEW.—The Commis-  
17 sion shall review disclosures made by issuers reporting under  
18 section 13(a) of the Securities Exchange Act of 1934 (including  
19 reports filed on Form 10-K), and which have a class of securi-  
20 ties listed on a national securities exchange or traded on an  
21 automated quotation facility of a national securities association,  
22 on a regular and systematic basis for the protection of inves-  
23 tors. Such review shall include a review of an issuer's financial  
24 statement.

25 (b) REVIEW CRITERIA.—For purposes of scheduling the  
26 reviews required by subsection (a), the Commission shall con-  
27 sider, among other factors—

28 (1) issuers that have issued material restatements of  
29 financial results;



- 1           (2) issuers that experience significant volatility in their  
2 stock price as compared to other issuers;  
3           (3) issuers with the largest market capitalization;  
4           (4) emerging companies with disparities in price to  
5 earning ratios;  
6           (5) issuers whose operations significantly affect any  
7 material sector of the economy; and  
8           (6) any other factors that the Commission may con-  
9 sider relevant.

10           (c) MINIMUM REVIEW PERIOD.—In no event shall an  
11 issuer required to file reports under section 13(a) or 15(d) of  
12 the Securities Exchange Act of 1934 be reviewed under this  
13 section less frequently than once every 3 years.

14 **SEC. 409. REAL TIME ISSUER DISCLOSURES.**

15           Section 13 of the Securities Exchange Act of 1934 (15  
16 U.S.C. 78m), as amended by this Act, is amended by adding  
17 at the end the following:

18           “(l) REAL TIME ISSUER DISCLOSURES.—Each issuer re-  
19 porting under section 13(a) or 15(d) shall disclose to the public  
20 on a rapid and current basis such additional information con-  
21 cerning material changes in the financial condition or oper-  
22 ations of the issuer, in plain English, which may include trend  
23 and qualitative information and graphic presentations, as the  
24 Commission determines, by rule, is necessary or useful for the  
25 protection of investors and in the public interest.”.





1           “(B) limiting the supervision and compensatory  
2           evaluation of securities analysts to officials employed by  
3           the broker or dealer who are not engaged in investment  
4           banking activities; and

5           “(C) requiring that a broker or dealer and persons  
6           employed by a broker or dealer who are involved with  
7           investment banking activities may not, directly or indi-  
8           rectly, retaliate against or threaten to retaliate against  
9           any securities analyst employed by that broker or deal-  
10          er or its affiliates as a result of an adverse, negative,  
11          or otherwise unfavorable research report that may ad-  
12          versely affect the present or prospective investment  
13          banking relationship of the broker or dealer with the  
14          issuer that is the subject of the research report, except  
15          that such rules may not limit the authority of a broker  
16          or dealer to discipline a securities analyst for causes  
17          other than such research report in accordance with the  
18          policies and procedures of the firm;

19          “(2) to define periods during which brokers or dealers  
20          who have participated, or are to participate, in a public of-  
21          fering of securities as underwriters or dealers should not  
22          publish or otherwise distribute research reports relating to  
23          such securities or to the issuer of such securities;

24          “(3) to establish structural and institutional safe-  
25          guards within registered brokers or dealers to assure that  
26          securities analysts are separated by appropriate informa-  
27          tional partitions within the firm from the review, pressure,  
28          or oversight of those whose involvement in investment  
29          banking activities might potentially bias their judgment or  
30          supervision; and

1           “(4) to address such other issues as the Commission,  
2           or such association or exchange, determines appropriate.

3           “(b) DISCLOSURE.—The Commission, or upon the author-  
4           ization and direction of the Commission, a registered securities  
5           association or national securities exchange, shall have adopted,  
6           not later than 1 year after the date of enactment of this sec-  
7           tion, rules reasonably designed to require each securities ana-  
8           lyst to disclose in public appearances, and each registered  
9           broker or dealer to disclose in each research report, as applica-  
10          ble, conflicts of interest that are known or should have been  
11          known by the securities analyst or the broker or dealer, to exist  
12          at the time of the appearance or the date of distribution of the  
13          report, including—

14           “(1) the extent to which the securities analyst has  
15           debt or equity investments in the issuer that is the subject  
16           of the appearance or research report;

17           “(2) whether any compensation has been received by  
18           the registered broker or dealer, or any affiliate thereof, in-  
19           cluding the securities analyst, from the issuer that is the  
20           subject of the appearance or research report, subject to  
21           such exemptions as the Commission may determine appro-  
22           priate and necessary to prevent disclosure by virtue of this  
23           paragraph of material non-public information regarding  
24           specific potential future investment banking transactions of  
25           such issuer, as is appropriate in the public interest and  
26           consistent with the protection of investors;

27           “(3) whether an issuer, the securities of which are rec-  
28           ommended in the appearance or research report, currently  
29           is, or during the 1-year period preceding the date of the  
30           appearance or date of distribution of the report has been,





1 a client of the registered broker or dealer, and if so, stating  
2 the types of services provided to the issuer;

3 “(4) whether the securities analyst received compensa-  
4 tion with respect to a research report, based upon (among  
5 any other factors) the investment banking revenues (either  
6 generally or specifically earned from the issuer being ana-  
7 lyzed) of the registered broker or dealer; and

8 “(5) such other disclosures of conflicts of interest that  
9 are material to investors, research analysts, or the broker  
10 or dealer as the Commission, or such association or ex-  
11 change, determines appropriate.

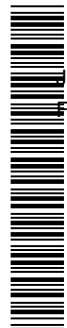
12 “(c) DEFINITIONS.—In this section—

13 “(1) the term ‘securities analyst’ means any associated  
14 person of a registered broker or dealer that is principally  
15 responsible for, and any associated person who reports di-  
16 rectly or indirectly to a securities analyst in connection  
17 with, the preparation of the substance of a research report,  
18 whether or not any such person has the job title of ‘securi-  
19 ties analyst’; and

20 “(2) the term ‘research report’ means a written or  
21 electronic communication that includes an analysis of eq-  
22 uity securities of individual companies or industries, and  
23 that provides information reasonably sufficient upon which  
24 to base an investment decision.”.

25 (b) ENFORCEMENT.—Section 21B(a) of the Securities Ex-  
26 change Act of 1934 (15 U.S.C. 78u-2(a)) is amended by in-  
27 serting “15D,” before “15B”.

28 (c) COMMISSION AUTHORITY.—The Commission may pro-  
29 mulgate and amend its regulations, or direct a registered secu-  
30 rities association or national securities exchange to promulgate



1 and amend its rules, to carry out section 15D of the Securities  
2 Exchange Act of 1934, as added by this section, as is necessary  
3 for the protection of investors and in the public interest.

4 **TITLE VI—COMMISSION**  
5 **RESOURCES AND AUTHORITY**

6 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

7 Section 35 of the Securities Exchange Act of 1934 (15  
8 U.S.C. 78kk) is amended to read as follows:

9 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

10 “In addition to any other funds authorized to be appro-  
11 priated to the Commission, there are authorized to be appro-  
12 priated to carry out the functions, powers, and duties of the  
13 Commission, \$776,000,000 for fiscal year 2003, of which—

14 “(1) \$102,700,000 shall be available to fund addi-  
15 tional compensation, including salaries and benefits, as au-  
16 thorized in the Investor and Capital Markets Fee Relief  
17 Act (Public Law 107–123; 115 Stat. 2390 et seq.);

18 “(2) \$108,400,000 shall be available for information  
19 technology, security enhancements, and recovery and miti-  
20 gation activities in light of the terrorist attacks of Sep-  
21 tember 11, 2001; and

22 “(3) \$98,000,000 shall be available to add not fewer  
23 than an additional 200 qualified professionals to provide  
24 enhanced oversight of auditors and audit services required  
25 by the Federal securities laws, and to improve Commission  
26 investigative and disciplinary efforts with respect to such  
27 auditors and services, as well as for additional professional  
28 support staff necessary to strengthen the programs of the  
29 Commission involving Full Disclosure and Prevention and  
30 Suppression of Fraud, risk management, industry tech-



1 nology review, compliance, inspections, examinations, mar-  
2 ket regulation, and investment management.”.

3 **SEC. 602. APPEARANCE AND PRACTICE BEFORE THE**  
4 **COMMISSION.**

5 The Securities Exchange Act of 1934 (15 U.S.C. 78a et  
6 seq.) is amended by inserting after section 4B the following:

7 **“SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE**  
8 **COMMISSION.**

9 “(a) **AUTHORITY TO CENSURE.**—The Commission may  
10 censure any person, or deny, temporarily or permanently, to  
11 any person the privilege of appearing or practicing before the  
12 Commission in any way, if that person is found by the Commis-  
13 sion, after notice and opportunity for hearing in the matter—

14 “(1) not to possess the requisite qualifications to rep-  
15 resent others;

16 “(2) to be lacking in character or integrity, or to have  
17 engaged in unethical or improper professional conduct; or

18 “(3) to have willfully violated, or willfully aided and  
19 abetted the violation of, any provision of the securities laws  
20 or the rules and regulations issued thereunder.

21 “(b) **DEFINITION.**—With respect to any registered public  
22 accounting firm or associated person, for purposes of this sec-  
23 tion, the term ‘improper professional conduct’ means—

24 “(1) intentional or knowing conduct, including reckless  
25 conduct, that results in a violation of applicable profes-  
26 sional standards; and

27 “(2) negligent conduct in the form of—

28 “(A) a single instance of highly unreasonable con-  
29 duct that results in a violation of applicable profes-  
30 sional standards in circumstances in which the reg-



1           istered public accounting firm or associated person  
2           knows, or should know, that heightened scrutiny is  
3           warranted; or

4                   “(B) repeated instances of unreasonable conduct,  
5           each resulting in a violation of applicable professional  
6           standards, that indicate a lack of competence to prac-  
7           tice before the Commission.”.

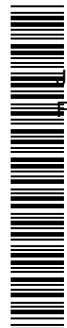
8       **SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE**  
9       **PENNY STOCK BARS.**

10           (a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)  
11       of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as  
12       amended by this Act, is amended by adding at the end the fol-  
13       lowing:

14                   “(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS  
15       FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

16                           “(A) IN GENERAL.—In any proceeding under para-  
17       graph (1) against any person participating in, or, at the  
18       time of the alleged misconduct who was participating in, an  
19       offering of penny stock, the court may prohibit that person  
20       from participating in an offering of penny stock, condi-  
21       tionally or unconditionally, and permanently or for such pe-  
22       riod of time as the court shall determine.

23                           “(B) DEFINITION.—For purposes of this paragraph,  
24       the term ‘person participating in an offering of penny  
25       stock’ includes any person engaging in activities with a  
26       broker, dealer, or issuer for purposes of issuing, trading, or  
27       inducing or attempting to induce the purchase or sale of,  
28       any penny stock. The Commission may, by rule or regula-  
29       tion, define such term to include other activities, and may,  
30       by rule, regulation, or order, exempt any person or class of



1 persons, in whole or in part, conditionally or uncondition-  
2 ally, from inclusion in such term.”.

3 (b) SECURITIES ACT OF 1933.—Section 20 of the Securi-  
4 ties Act of 1933 (15 U.S.C. 77t) is amended by adding at the  
5 end the following:

6 “(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS  
7 FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

8 “(1) IN GENERAL.—In any proceeding under sub-  
9 section (a) against any person participating in, or, at the  
10 time of the alleged misconduct, who was participating in,  
11 an offering of penny stock, the court may prohibit that per-  
12 son from participating in an offering of penny stock, condi-  
13 tionally or unconditionally, and permanently or for such pe-  
14 riod of time as the court shall determine.

15 “(2) DEFINITION.—For purposes of this subsection,  
16 the term ‘person participating in an offering of penny  
17 stock’ includes any person engaging in activities with a  
18 broker, dealer, or issuer for purposes of issuing, trading, or  
19 inducing or attempting to induce the purchase or sale of,  
20 any penny stock. The Commission may, by rule or regula-  
21 tion, define such term to include other activities, and may,  
22 by rule, regulation, or order, exempt any person or class of  
23 persons, in whole or in part, conditionally or uncondition-  
24 ally, from inclusion in such term.”.

25 **SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS**  
26 **OF BROKERS AND DEALERS.**

27 (a) BROKERS AND DEALERS.—Section 15(b)(4) of the Se-  
28 curities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

29 (1) by striking subparagraph (F) and inserting the fol-  
30 lowing:

1 “(F) is subject to any order of the Commission barring  
2 rring or suspending the right of the person to be associated  
3 with a broker or dealer;” and

4 (2) in subparagraph (G), by striking the period at the  
5 end and inserting the following: “; or

6 “(H) is subject to any final order of a State securities  
7 commission (or any agency or officer performing like func-  
8 tions), State authority that supervises or examines banks,  
9 savings associations, or credit unions, State insurance com-  
10 mission (or any agency or office performing like functions),  
11 an appropriate Federal banking agency (as defined in sec-  
12 tion 3 of the Federal Deposit Insurance Act (12 U.S.C.  
13 1813(q))), or the National Credit Union Administration,  
14 that—

15 “(i) bars such person from association with an en-  
16 tity regulated by such commission, authority, agency,  
17 or officer, or from engaging in the business of securi-  
18 ties, insurance, banking, savings association activities,  
19 or credit union activities; or

20 “(ii) constitutes a final order based on violations  
21 of any laws or regulations that prohibit fraudulent, ma-  
22 nipulative, or deceptive conduct.”.

23 (b) INVESTMENT ADVISERS.—Section 203(e) of the In-  
24 vestment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is  
25 amended—

26 (1) by striking paragraph (7) and inserting the fol-  
27 lowing:

28 “(7) is subject to any order of the Commission barring  
29 or suspending the right of the person to be associated with  
30 an investment adviser;”;

1 (2) in paragraph (8), by striking the period at the end  
2 and inserting “; or”;

3 (3) by adding at the end the following:

4 “(9) is subject to any final order of a State securities  
5 commission (or any agency or officer performing like func-  
6 tions), State authority that supervises or examines banks,  
7 savings associations, or credit unions, State insurance com-  
8 mission (or any agency or office performing like functions),  
9 an appropriate Federal banking agency (as defined in sec-  
10 tion 3 of the Federal Deposit Insurance Act (12 U.S.C.  
11 1813(q))), or the National Credit Union Administration,  
12 that—

13 “(A) bars such person from association with an  
14 entity regulated by such commission, authority, agency,  
15 or officer, or from engaging in the business of securi-  
16 ties, insurance, banking, savings association activities,  
17 or credit union activities; or

18 “(B) constitutes a final order based on violations  
19 of any laws or regulations that prohibit fraudulent, ma-  
20 nipulative, or deceptive conduct.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) SECURITIES EXCHANGE ACT OF 1934.—The Securi-  
23 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is  
24 amended—

25 (A) in section 3(a)(39)(F) (15 U.S.C.  
26 78c(a)(39)(F))—

27 (i) by striking “or (G)” and inserting “(H), or  
28 (G)”;

29 (ii) by inserting “, or is subject to an order or  
30 finding,” before “enumerated”;



1 (B) in each of section 15(b)(6)(A)(i) (15 U.S.C.  
2 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section  
3 15B(c) (15 U.S.C. 78o-4(c)), and subparagraphs (A)  
4 and (C) of section 15C(c)(1) (15 U.S.C. 78o-  
5 5(c)(1))—

6 (i) by striking “or (G)” each place that term  
7 appears and inserting “(H), or (G)”;

8 (ii) by striking “or omission” each place that  
9 term appears, and inserting “, or is subject to an  
10 order or finding,”; and

11 (C) in each of paragraphs (3)(A) and (4)(C) of  
12 section 17A(c) (15 U.S.C. 78q-1(c))—

13 (i) by striking “or (G)” each place that term  
14 appears and inserting “(H), or (G)”;

15 (ii) by inserting “, or is subject to an order or  
16 finding,” before “enumerated” each place that term  
17 appears.

18 (2) INVESTMENT ADVISERS ACT OF 1940.—Section  
19 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.  
20 80b-3(f)) is amended—

21 (A) by striking “or (8)” and inserting “(8), or  
22 (9)”;

23 (B) by inserting “or (3)” after “paragraph (2)”.

24 **TITLE VII—STUDIES AND REPORTS**

25 **SEC. 701. GAO STUDY AND REPORT REGARDING CON-**  
26 **SOLIDATION OF PUBLIC ACCOUNTING**  
27 **FIRMS.**

28 (a) STUDY REQUIRED.—The Comptroller General of the  
29 United States shall conduct a study—

30 (1) to identify—





1 (A) the factors that have led to the consolidation  
2 of public accounting firms since 1989 and the con-  
3 sequent reduction in the number of firms capable of  
4 providing audit services to large national and multi-na-  
5 tional business organizations that are subject to the se-  
6 curities laws;

7 (B) the present and future impact of the condition  
8 described in subparagraph (A) on capital formation and  
9 securities markets, both domestic and international;  
10 and

11 (C) solutions to any problems identified under sub-  
12 subparagraph (B), including ways to increase competition  
13 and the number of firms capable of providing audit  
14 services to large national and multinational business or-  
15 ganizations that are subject to the securities laws;

16 (2) of the problems, if any, faced by business organiza-  
17 tions that have resulted from limited competition among  
18 public accounting firms, including—

- 19 (A) higher costs;
- 20 (B) lower quality of services;
- 21 (C) impairment of auditor independence; or
- 22 (D) lack of choice; and

23 (3) whether and to what extent Federal or State regu-  
24 lations impede competition among public accounting firms.

25 (b) CONSULTATION.—In planning and conducting the  
26 study under this section, the Comptroller General shall consult  
27 with—

- 28 (1) the Commission;



1 (2) the regulatory agencies that perform functions  
2 similar to the Commission within the other member coun-  
3 tries of the Group of Seven Industrialized Nations;

4 (3) the Department of Justice; and

5 (4) any other public or private sector organization that  
6 the Comptroller General considers appropriate.

7 (c) REPORT REQUIRED.—Not later than 1 year after the  
8 date of enactment of this Act, the Comptroller General shall  
9 submit a report on the results of the study required by this sec-  
10 tion to the Committee on Banking, Housing, and Urban Affairs  
11 of the Senate and the Committee on Financial Services of the  
12 House of Representatives.

13 **SEC. 702. COMMISSION STUDY AND REPORT REGARDING**  
14 **CREDIT RATING AGENCIES.**

15 (a) STUDY REQUIRED.—

16 (1) IN GENERAL.—The Commission shall conduct a  
17 study of the role and function of credit rating agencies in  
18 the operation of the securities market.

19 (2) AREAS OF CONSIDERATION.—The study required  
20 by this subsection shall examine—

21 (A) the role of credit rating agencies in the evalua-  
22 tion of issuers of securities;

23 (B) the importance of that role to investors and  
24 the functioning of the securities markets;

25 (C) any impediments to the accurate appraisal by  
26 credit rating agencies of the financial resources and  
27 risks of issuers of securities;

28 (D) any barriers to entry into the business of act-  
29 ing as a credit rating agency, and any measures needed  
30 to remove such barriers;



1 (E) any measures which may be required to im-  
 2 prove the dissemination of information concerning such  
 3 resources and risks when credit rating agencies an-  
 4 nounce credit ratings; and

5 (F) any conflicts of interest in the operation of  
 6 credit rating agencies and measures to prevent such  
 7 conflicts or ameliorate the consequences of such con-  
 8 flicts.

9 (b) REPORT REQUIRED.—The Commission shall submit a  
 10 report on the study required by subsection (a) to the President,  
 11 the Committee on Financial Services of the House of Rep-  
 12 resentatives, and the Committee on Banking, Housing, and  
 13 Urban Affairs of the Senate not later than 180 days after the  
 14 date of enactment of this Act.

15 **SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIO-**  
 16 **LATIONS.**

17 (a) STUDY.—The Commission shall conduct a study to de-  
 18 termine, based upon information for the period from January  
 19 1, 1998, to December 31, 2001—

20 (1) the number of securities professionals, defined as  
 21 public accountants, public accounting firms, investment  
 22 bankers, investment advisers, brokers, dealers, attorneys,  
 23 and other securities professionals practicing before the  
 24 Commission—

25 (A) who have been found to have aided and abet-  
 26 ted a violation of the Federal securities laws, including  
 27 rules or regulations promulgated thereunder (collec-  
 28 tively referred to in this section as “Federal securities  
 29 laws”), but who have not been sanctioned, disciplined,  
 30 or otherwise penalized as a primary violator in any ad-



1           ministrative action or civil proceeding, including in any  
2           settlement of such an action or proceeding (referred to  
3           in this section as “aiders and abettors”); and

4                   (B) who have been found to have been primary  
5           violators of the Federal securities laws;

6           (2) a description of the Federal securities laws viola-  
7           tions committed by aiders and abettors and by primary vio-  
8           lators, including—

9                   (A) the specific provision of the Federal securities  
10           laws violated;

11                   (B) the specific sanctions and penalties imposed  
12           upon such aiders and abettors and primary violators,  
13           including the amount of any monetary penalties as-  
14           sessed upon and collected from such persons;

15                   (C) the occurrence of multiple violations by the  
16           same person or persons, either as an aider or abettor  
17           or as a primary violator; and

18                   (D) whether, as to each such violator, disciplinary  
19           sanctions have been imposed, including any censure,  
20           suspension, temporary bar, or permanent bar to prac-  
21           tice before the Commission; and

22           (3) the amount of disgorgement, restitution, or any  
23           other fines or payments that the Commission has assessed  
24           upon and collected from, aiders and abettors and from pri-  
25           mary violators.

26           (b) REPORT.—A report based upon the study conducted  
27           pursuant to subsection (a) shall be submitted to the Committee  
28           on Banking, Housing, and Urban Affairs of the Senate, and  
29           the Committee on Financial Services of the House of Rep-



1 representatives not later than 6 months after the date of enact-  
2 ment of this Act.

3 **SEC. 704. STUDY OF ENFORCEMENT ACTIONS.**

4 (a) **STUDY REQUIRED.**—The Commission shall review and  
5 analyze all enforcement actions by the Commission involving  
6 violations of reporting requirements imposed under the securi-  
7 ties laws, and restatements of financial statements, over the 5-  
8 year period preceding the date of enactment of this Act, to  
9 identify areas of reporting that are most susceptible to fraud,  
10 inappropriate manipulation, or inappropriate earnings manage-  
11 ment, such as revenue recognition and the accounting treat-  
12 ment of off-balance sheet special purpose entities.

13 (b) **REPORT REQUIRED.**—The Commission shall report its  
14 findings to the Committee on Financial Services of the House  
15 of Representatives and the Committee on Banking, Housing,  
16 and Urban Affairs of the Senate, not later than 180 days after  
17 the date of enactment of this Act, and shall use such findings  
18 to revise its rules and regulations, as necessary. The report  
19 shall include a discussion of regulatory or legislative steps that  
20 are recommended or that may be necessary to address concerns  
21 identified in the study.

22 **SEC. 705. STUDY OF INVESTMENT BANKS.**

23 (a) **GAO STUDY.**—The Comptroller General of the United  
24 States shall conduct a study on whether investment banks and  
25 financial advisers assisted public companies in manipulating  
26 their earnings and obfuscating their true financial condition.  
27 The study should address the rule of investment banks and fi-  
28 nancial advisers—

29 (1) in the collapse of the Enron Corporation, including  
30 with respect to the design and implementation of deriva-

1 tives transactions, transactions involving special purpose  
2 vehicles, and other financial arrangements that may have  
3 had the effect of altering the company's reported financial  
4 statements in ways that obscured the true financial picture  
5 of the company;

6 (2) in the failure of Global Crossing, including with re-  
7 spect to transactions involving swaps of fiberoptic cable ca-  
8 pacity, in the designing transactions that may have had the  
9 effect of altering the company's reported financial state-  
10 ments in ways that obscured the true financial picture of  
11 the company; and

12 (3) generally, in creating and marketing transactions  
13 which may have been designed solely to enable companies  
14 to manipulate revenue streams, obtain loans, or move liabil-  
15 ities off balance sheets without altering the economic and  
16 business risks faced by the companies or any other mecha-  
17 nism to obscure a company's financial picture.

18 (b) REPORT.—The Comptroller General shall report to  
19 Congress not later than 180 days after the date of enactment  
20 of this Act on the results of the study required by this section.  
21 The report shall include a discussion of regulatory or legislative  
22 steps that are recommended or that may be necessary to ad-  
23 dress concerns identified in the study.

24 **TITLE VIII—CORPORATE AND**  
25 **CRIMINAL FRAUD ACCOUNT-**  
26 **ABILITY**

27 **SEC. 801. SHORT TITLE.**

28 This title may be cited as the “Corporate and Criminal  
29 Fraud Accountability Act of 2002”.



1 **SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCU-**  
2 **MENTS.**

3 (a) IN GENERAL.—Chapter 73 of title 18, United States  
4 Code, is amended by adding at the end the following:

5 **“§ 1519. Destruction, alteration, or falsification of**  
6 **records in Federal investigations and**  
7 **bankruptcy**

8 “Whoever knowingly alters, destroys, mutilates, conceals,  
9 covers up, falsifies, or makes a false entry in any record, docu-  
10 ment, or tangible object with the intent to impede, obstruct, or  
11 influence the investigation or proper administration of any mat-  
12 ter within the jurisdiction of any department or agency of the  
13 United States or any case filed under title 11, or in relation  
14 to or contemplation of any such matter or case, shall be fined  
15 under this title, imprisoned not more than 20 years, or both.

16 **“§ 1520. Destruction of corporate audit records**

17 “(a)(1) Any accountant who conducts an audit of an  
18 issuer of securities to which section 10A(a) of the Securities  
19 Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall  
20 maintain all audit or review workpapers for a period of 5 years  
21 from the end of the fiscal period in which the audit or review  
22 was concluded.

23 “(2) The Securities and Exchange Commission shall pro-  
24 mulgate, within 180 days, after adequate notice and an oppor-  
25 tunity for comment, such rules and regulations, as are reason-  
26 ably necessary, relating to the retention of relevant records  
27 such as workpapers, documents that form the basis of an audit  
28 or review, memoranda, correspondence, communications, other  
29 documents, and records (including electronic records) which are  
30 created, sent, or received in connection with an audit or review



1 and contain conclusions, opinions, analyses, or financial data  
2 relating to such an audit or review, which is conducted by any  
3 accountant who conducts an audit of an issuer of securities to  
4 which section 10A(a) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78j-1(a)) applies. The Commission may, from time  
6 to time, amend or supplement the rules and regulations that  
7 it is required to promulgate under this section, after adequate  
8 notice and an opportunity for comment, in order to ensure that  
9 such rules and regulations adequately comport with the pur-  
10 poses of this section.

11 “(b) Whoever knowingly and willfully violates subsection  
12 (a)(1), or any rule or regulation promulgated by the Securities  
13 and Exchange Commission under subsection (a)(2), shall be  
14 fined under this title, imprisoned not more than 10 years, or  
15 both.

16 “(c) Nothing in this section shall be deemed to diminish  
17 or relieve any person of any other duty or obligation imposed  
18 by Federal or State law or regulation to maintain, or refrain  
19 from destroying, any document.”.

20 (b) CLERICAL AMENDMENT.—The table of sections at the  
21 beginning of chapter 73 of title 18, United States Code, is  
22 amended by adding at the end the following new items:

“1519. Destruction, alteration, or falsification of records in Federal inves-  
tigations and bankruptcy.

“1520. Destruction of corporate audit records.”.

23 **SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN**  
24 **VIOLATION OF SECURITIES FRAUD LAWS.**

25 Section 523(a) of title 11, United States Code, is  
26 amended—

27 (1) in paragraph (17), by striking “or” after the semi-  
28 colon;



1 (2) in paragraph (18), by striking the period at the  
2 end and inserting “; or”; and

3 (3) by adding at the end, the following:

4 “(19) that—

5 “(A) is for—

6 “(i) the violation of any of the Federal securi-  
7 ties laws (as that term is defined in section  
8 3(a)(47) of the Securities Exchange Act of 1934),  
9 any of the State securities laws, or any regulation  
10 or order issued under such Federal or State securi-  
11 ties laws; or

12 “(ii) common law fraud, deceit, or manipula-  
13 tion in connection with the purchase or sale of any  
14 security; and

15 “(B) results from—

16 “(i) any judgment, order, consent order, or de-  
17 cree entered in any Federal or State judicial or ad-  
18 ministrative proceeding;

19 “(ii) any settlement agreement entered into by  
20 the debtor; or

21 “(iii) any court or administrative order for any  
22 damages, fine, penalty, citation, restitutionary pay-  
23 ment, disgorgement payment, attorney fee, cost, or  
24 other payment owed by the debtor.”.

25 **SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES**  
26 **FRAUD.**

27 (a) IN GENERAL.—Section 1658 of title 28, United States  
28 Code, is amended—

29 (1) by inserting “(a)” before “Except”; and

30 (2) by adding at the end the following:



1           “(b) Notwithstanding subsection (a), a private right of ac-  
2           tion that involves a claim of fraud, deceit, manipulation, or con-  
3           trivance in contravention of a regulatory requirement con-  
4           cerning the securities laws, as defined in section 3(a)(47) of the  
5           Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may  
6           be brought not later than the earlier of—

7                   “(1) 2 years after the discovery of the facts consti-  
8                   tuting the violation; or

9                   “(2) 5 years after such violation.”.

10           (b) EFFECTIVE DATE.—The limitations period provided by  
11           section 1658(b) of title 28, United States Code, as added by  
12           this section, shall apply to all proceedings addressed by this  
13           section that are commenced on or after the date of enactment  
14           of this Act.

15           (c) NO CREATION OF ACTIONS.—Nothing in this section  
16           shall create a new, private right of action.

17           **SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDE-**  
18                   **LINES FOR OBSTRUCTION OF JUSTICE AND**  
19                   **EXTENSIVE CRIMINAL FRAUD.**

20           (a) ENHANCEMENT OF FRAUD AND OBSTRUCTION OF  
21           JUSTICE SENTENCES.—Pursuant to section 994 of title 28,  
22           United States Code, and in accordance with this section, the  
23           United States Sentencing Commission shall review and amend,  
24           as appropriate, the Federal Sentencing Guidelines and related  
25           policy statements to ensure that—

26                   (1) the base offense level and existing enhancements  
27                   contained in United States Sentencing Guideline 2J1.2 re-  
28                   lating to obstruction of justice are sufficient to deter and  
29                   punish that activity;



1           (2) the enhancements and specific offense characteris-  
2           tics relating to obstruction of justice are adequate in cases  
3           where—

4                 (A) the destruction, alteration, or fabrication of  
5                 evidence involves—

6                         (i) a large amount of evidence, a large number  
7                         of participants, or is otherwise extensive;

8                         (ii) the selection of evidence that is particu-  
9                         larly probative or essential to the investigation; or

10                        (iii) more than minimal planning; or

11                 (B) the offense involved abuse of a special skill or  
12                 a position of trust;

13           (3) the guideline offense levels and enhancements for  
14           violations of section 1519 or 1520 of title 18, United States  
15           Code, as added by this title, are sufficient to deter and  
16           punish that activity;

17           (4) a specific offense characteristic enhancing sen-  
18           tencing is provided under United States Sentencing Guide-  
19           line 2B1.1 (as in effect on the date of enactment of this  
20           Act) for a fraud offense that endangers the solvency or fi-  
21           nancial security of a substantial number of victims; and

22           (5) the guidelines that apply to organizations in  
23           United States Sentencing Guidelines, chapter 8, are suffi-  
24           cient to deter and punish organizational criminal mis-  
25           conduct.

26           (b) EMERGENCY AUTHORITY AND DEADLINE FOR COM-  
27           MISSION ACTION.—The United States Sentencing Commission  
28           is requested to promulgate the guidelines or amendments pro-  
29           vided for under this section as soon as practicable, and in any  
30           event not later than 180 days after the date of enactment of



1 this Act, in accordance with the procedures set forth in section  
2 219(a) of the Sentencing Reform Act of 1987, as though the  
3 authority under that Act had not expired.

4 **SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY**  
5 **TRADED COMPANIES WHO PROVIDE EVI-**  
6 **DENCE OF FRAUD.**

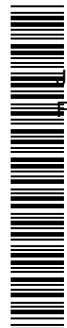
7 (a) IN GENERAL.—Chapter 73 of title 18, United States  
8 Code, is amended by inserting after section 1514 the following:

9 **“§ 1514A. Civil action to protect against retaliation**  
10 **in fraud cases**

11 “(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF  
12 PUBLICLY TRADED COMPANIES.—No company with a class of  
13 securities registered under section 12 of the Securities Ex-  
14 change Act of 1934 (15 U.S.C. 78l), or that is required to file  
15 reports under section 15(d) of the Securities Exchange Act of  
16 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor,  
17 subcontractor, or agent of such company, may discharge, de-  
18 mote, suspend, threaten, harass, or in any other manner dis-  
19 criminate against an employee in the terms and conditions of  
20 employment because of any lawful act done by the employee—

21 “(1) to provide information, cause information to be  
22 provided, or otherwise assist in an investigation regarding  
23 any conduct which the employee reasonably believes con-  
24 stitutes a violation of section 1341, 1343, 1344, or 1348,  
25 any rule or regulation of the Securities and Exchange Com-  
26 mission, or any provision of Federal law relating to fraud  
27 against shareholders, when the information or assistance is  
28 provided to or the investigation is conducted by—

29 “(A) a Federal regulatory or law enforcement  
30 agency;



1           “(B) any Member of Congress or any committee  
2 of Congress; or

3           “(C) a person with supervisory authority over the  
4 employee (or such other person working for the em-  
5 ployer who has the authority to investigate, discover, or  
6 terminate misconduct); or

7           “(2) to file, cause to be filed, testify, participate in, or  
8 otherwise assist in a proceeding filed or about to be filed  
9 (with any knowledge of the employer) relating to an alleged  
10 violation of section 1341, 1343, 1344, or 1348, any rule or  
11 regulation of the Securities and Exchange Commission, or  
12 any provision of Federal law relating to fraud against  
13 shareholders.

14           “(b) ENFORCEMENT ACTION.—

15           “(1) IN GENERAL.—A person who alleges discharge or  
16 other discrimination by any person in violation of sub-  
17 section (a) may seek relief under subsection (c), by—

18           “(A) filing a complaint with the Secretary of  
19 Labor; or

20           “(B) if the Secretary has not issued a final deci-  
21 sion within 180 days of the filing of the complaint and  
22 there is no showing that such delay is due to the bad  
23 faith of the claimant, bringing an action at law or eq-  
24 uity for de novo review in the appropriate district court  
25 of the United States, which shall have jurisdiction over  
26 such an action without regard to the amount in con-  
27 troversy.

28           “(2) PROCEDURE.—

29           “(A) IN GENERAL.—An action under paragraph  
30 (1)(A) shall be governed under the rules and proce-



1           dures set forth in section 42121(b) of title 49, United  
2           States Code.

3                   “(B) EXCEPTION.—Notification made under sec-  
4           tion 42121(b)(1) of title 49, United States Code, shall  
5           be made to the person named in the complaint and to  
6           the employer.

7                   “(C) BURDENS OF PROOF.—An action brought  
8           under paragraph (1)(B) shall be governed by the legal  
9           burdens of proof set forth in section 42121(b) of title  
10          49, United States Code.

11                   “(D) STATUTE OF LIMITATIONS.—An action  
12          under paragraph (1) shall be commenced not later than  
13          90 days after the date on which the violation occurs.

14          “(c) REMEDIES.—

15                   “(1) IN GENERAL.—An employee prevailing in any ac-  
16          tion under subsection (b)(1) shall be entitled to all relief  
17          necessary to make the employee whole.

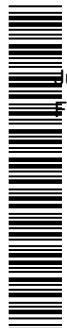
18                   “(2) COMPENSATORY DAMAGES.—Relief for any action  
19          under paragraph (1) shall include—

20                           “(A) reinstatement with the same seniority status  
21                           that the employee would have had, but for the discrimi-  
22                           nation;

23                           “(B) the amount of back pay, with interest; and

24                           “(C) compensation for any special damages sus-  
25                           tained as a result of the discrimination, including liti-  
26                           gation costs, expert witness fees, and reasonable attor-  
27                           ney fees.

28                   “(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this  
29          section shall be deemed to diminish the rights, privileges, or



1 remedies of any employee under any Federal or State law, or  
2 under any collective bargaining agreement.”.

3 (b) CLERICAL AMENDMENT.—The table of sections at the  
4 beginning of chapter 73 of title 18, United States Code, is  
5 amended by inserting after the item relating to section 1514  
6 the following new item:

“1514A. Civil action to protect against retaliation in fraud cases.”.

7 **SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING**  
8 **SHAREHOLDERS OF PUBLICLY TRADED**  
9 **COMPANIES.**

10 (a) IN GENERAL.—Chapter 63 of title 18, United States  
11 Code, is amended by adding at the end the following:

12 **“§ 1348. Securities fraud**

13 “Whoever knowingly executes, or attempts to execute, a  
14 scheme or artifice—

15 “(1) to defraud any person in connection with any se-  
16 curity of an issuer with a class of securities registered  
17 under section 12 of the Securities Exchange Act of 1934  
18 (15 U.S.C. 78l) or that is required to file reports under  
19 section 15(d) of the Securities Exchange Act of 1934 (15  
20 U.S.C. 78o(d)); or

21 “(2) to obtain, by means of false or fraudulent pre-  
22 tentenses, representations, or promises, any money or property  
23 in connection with the purchase or sale of any security of  
24 an issuer with a class of securities registered under section  
25 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l)  
26 or that is required to file reports under section 15(d) of the  
27 Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

28 shall be fined under this title, or imprisoned not more than 25  
29 years, or both.”.

1 (b) CLERICAL AMENDMENT.—The table of sections at the  
2 beginning of chapter 63 of title 18, United States Code, is  
3 amended by adding at the end the following new item:

“1348. Securities fraud.”.

4 **TITLE IX—WHITE-COLLAR CRIME**  
5 **PENALTY ENHANCEMENTS**

6 **SEC. 901. SHORT TITLE.**

7 This title may be cited as the “White-Collar Crime Penalty  
8 Enhancement Act of 2002”.

9 **SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT**  
10 **CRIMINAL FRAUD OFFENSES.**

11 (a) IN GENERAL.—Chapter 63 of title 18, United States  
12 Code, is amended by inserting after section 1348 as added by  
13 this Act the following:

14 **“§ 1349. Attempt and conspiracy**

15 “Any person who attempts or conspires to commit any of-  
16 fense under this chapter shall be subject to the same penalties  
17 as those prescribed for the offense, the commission of which  
18 was the object of the attempt or conspiracy.

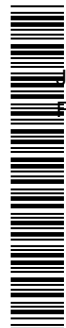
19 (b) CLERICAL AMENDMENT.—The table of sections at the  
20 beginning of chapter 63 of title 18, United States Code, is  
21 amended by adding at the end the following new item:

“1349. Attempt and conspiracy.”.

22 **SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE**  
23 **FRAUD.**

24 (a) MAIL FRAUD.—Section 1341 of title 18, United States  
25 Code, is amended by striking “five” and inserting “20”.

26 (b) WIRE FRAUD.—Section 1343 of title 18, United States  
27 Code, is amended by striking “five” and inserting “20”.





1   **SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF**  
 2                   **THE EMPLOYEE RETIREMENT INCOME SECUR-**  
 3                   **ITY ACT OF 1974.**

4           Section 501 of the Employee Retirement Income Security  
 5 Act of 1974 (29 U.S.C. 1131) is amended—

- 6           (1) by striking “\$5,000” and inserting “\$100,000”;
- 7           (1) by striking “one year” and inserting “10 years”;
- 8           and
- 9           (3) by striking “\$100,000” and inserting “\$500,000”.

10   **SEC. 905. AMENDMENT TO SENTENCING GUIDELINES**  
 11                   **RELATING TO CERTAIN WHITE-COLLAR OF-**  
 12                   **FENSES.**

13           (a) DIRECTIVE TO THE UNITED STATES SENTENCING  
 14 COMMISSION.—Pursuant to its authority under section 994(p)  
 15 of title 18, United States Code, and in accordance with this  
 16 section, the United States Sentencing Commission shall review  
 17 and, as appropriate, amend the Federal Sentencing Guidelines  
 18 and related policy statements to implement the provisions of  
 19 this Act.

20           (b) REQUIREMENTS.—In carrying out this section, the  
 21 Sentencing Commission shall—

- 22           (1) ensure that the sentencing guidelines and policy  
 23 statements reflect the serious nature of the offenses and  
 24 the penalties set forth in this Act, the growing incidence of  
 25 serious fraud offenses which are identified above, and the  
 26 need to modify the sentencing guidelines and policy state-  
 27 ments to deter, prevent, and punish such offenses;
- 28           (2) consider the extent to which the guidelines and  
 29 policy statements adequately address whether the guideline  
 30 offense levels and enhancements for violations of the sec-  
 31 tions amended by this Act are sufficient to deter and pun-





1 section 13(a) or 15(d) of the Securities Exchange Act of 1934  
2 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a writ-  
3 ten statement by the chief executive officer and chief financial  
4 officer (or equivalent thereof) of the issuer.

5 “(b) CONTENT.—The statement required under subsection  
6 (a) shall certify that the periodic report containing the financial  
7 statements fully complies with the requirements of section  
8 13(a) or 15(d) of the Securities Exchange Act of 1934 (15  
9 U.S.C. 78m or 78o(d)) and that information contained in the  
10 periodic report fairly presents, in all material respects, the fi-  
11 nancial condition and results of operations of the issuer.

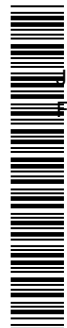
12 “(c) CRIMINAL PENALTIES.—Whoever—

13 “(1) certifies any statement as set forth in subsections  
14 (a) and (b) of this section knowing that the periodic report  
15 accompanying the statement does not comport with all the  
16 requirements set forth in this section shall be fined not  
17 more than \$1,000,000 or imprisoned not more than 10  
18 years, or both; or

19 “(2) willfully certifies any statement as set forth in  
20 subsections (a) and (b) of this section knowing that the  
21 periodic report accompanying the statement does not com-  
22 port with all the requirements set forth in this section shall  
23 be fined not more than \$5,000,000, or imprisoned not more  
24 than 20 years, or both.”.

25 (b) CLERICAL AMENDMENT.—The table of sections at the  
26 beginning of chapter 63 of title 18, United States Code, is  
27 amended by adding at the end the following:

“1350. Failure of corporate officers to certify financial reports.”.



1                   **TITLE X—CORPORATE TAX**  
2                                   **RETURNS**

3   **SEC. 1001. SENSE OF THE SENATE REGARDING THE**  
4                   **SIGNING OF CORPORATE TAX RETURNS BY**  
5                   **CHIEF EXECUTIVE OFFICERS.**

6           It is the sense of the Senate that the Federal income tax  
7   return of a corporation should be signed by the chief executive  
8   officer of such corporation.

9                   **TITLE XI—CORPORATE FRAUD**  
10                                   **ACCOUNTABILITY**

11   **SEC. 1101. SHORT TITLE.**

12           This title may be cited as the “Corporate Fraud Account-  
13   ability Act of 2002”.

14   **SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE**  
15                   **IMPEDING AN OFFICIAL PROCEEDING.**

16           Section 1512 of title 18, United States Code, is  
17   amended—

18                   (1) by redesignating subsections (c) through (i) as  
19                   subsections (d) through (j), respectively; and

20                   (2) by inserting after subsection (b) the following new  
21                   subsection:

22                   “(c) Whoever corruptly—

23                                   “(1) alters, destroys, mutilates, or conceals a record,  
24                   document, or other object, or attempts to do so, with the  
25                   intent to impair the object’s integrity or availability for use  
26                   in an official proceeding; or

27                                   “(2) otherwise obstructs, influences, or impedes any  
28                   official proceeding, or attempts to do so,

29   shall be fined under this title or imprisoned not more than 20  
30   years, or both.”.



1 **SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE**  
2 **SECURITIES AND EXCHANGE COMMISSION.**

3 (a) IN GENERAL.—Section 21C(c) of the Securities Ex-  
4 change Act of 1934 (15 U.S.C. 78u-3(c)) is amended by add-  
5 ing at the end the following:

6 “(3) TEMPORARY FREEZE.—

7 “(A) IN GENERAL.—

8 “(i) ISSUANCE OF TEMPORARY ORDER.—

9 Whenever, during the course of a lawful investiga-  
10 tion involving possible violations of the Federal se-  
11 curities laws by an issuer of publicly traded securi-  
12 ties or any of its directors, officers, partners, con-  
13 trolling persons, agents, or employees, it shall ap-  
14 pear to the Commission that it is likely that the  
15 issuer will make extraordinary payments (whether  
16 compensation or otherwise) to any of the foregoing  
17 persons, the Commission may petition a Federal  
18 district court for a temporary order requiring the  
19 issuer to escrow, subject to court supervision, those  
20 payments in an interest-bearing account for 45  
21 days.

22 “(ii) STANDARD.—A temporary order shall be  
23 entered under clause (i), only after notice and op-  
24 portunity for a hearing, unless the court determines  
25 that notice and hearing prior to entry of the order  
26 would be impracticable or contrary to the public in-  
27 terest.

28 “(iii) EFFECTIVE PERIOD.—A temporary order  
29 issued under clause (i) shall—

30 “(I) become effective immediately;



1                   “(II) be served upon the parties subject to  
2                   it; and

3                   “(III) unless set aside, limited or sus-  
4                   pended by a court of competent jurisdiction,  
5                   shall remain effective and enforceable for 45  
6                   days.

7                   “(iv) EXTENSIONS AUTHORIZED.—The effec-  
8                   tive period of an order under this subparagraph  
9                   may be extended by the court upon good cause  
10                  shown for not longer than 45 additional days, pro-  
11                  vided that the combined period of the order shall  
12                  not exceed 90 days.

13                  “(B) PROCESS ON DETERMINATION OF VIOLA-  
14                  TIONS.—

15                  “(i) VIOLATIONS CHARGED.—If the issuer or  
16                  other person described in subparagraph (A) is  
17                  charged with any violation of the Federal securities  
18                  laws before the expiration of the effective period of  
19                  a temporary order under subparagraph (A) (includ-  
20                  ing any applicable extension period), the order shall  
21                  remain in effect, subject to court approval, until  
22                  the conclusion of any legal proceedings related  
23                  thereto, and the affected issuer or other person,  
24                  shall have the right to petition the court for review  
25                  of the order.

26                  “(ii) VIOLATIONS NOT CHARGED.—If the  
27                  issuer or other person described in subparagraph  
28                  (A) is not charged with any violation of the Federal  
29                  securities laws before the expiration of the effective  
30                  period of a temporary order under subparagraph



1 (A) (including any applicable extension period), the  
2 escrow shall terminate at the expiration of the 45-  
3 day effective period (or the expiration of any exten-  
4 sion period, as applicable), and the disputed pay-  
5 ments (with accrued interest) shall be returned to  
6 the issuer or other affected person.”.

7 (b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the  
8 Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is  
9 amended by striking “This” and inserting “paragraph (1)”.

10 **SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING**  
11 **GUIDELINES.**

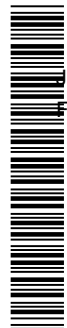
12 (a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE  
13 UNITED STATES SENTENCING COMMISSION.—Pursuant to its  
14 authority under section 994(p) of title 28, United States Code,  
15 and in accordance with this section, the United States Sen-  
16 tencing Commission is requested to—

17 (1) promptly review the sentencing guidelines applica-  
18 ble to securities and accounting fraud and related offenses;

19 (2) expeditiously consider the promulgation of new  
20 sentencing guidelines or amendments to existing sentencing  
21 guidelines to provide an enhancement for officers or direc-  
22 tors of publicly traded corporations who commit fraud and  
23 related offenses; and

24 (3) submit to Congress an explanation of actions taken  
25 by the Sentencing Commission pursuant to paragraph (2)  
26 and any additional policy recommendations the Sentencing  
27 Commission may have for combating offenses described in  
28 paragraph (1).

29 (b) CONSIDERATIONS IN REVIEW.—In carrying out this  
30 section, the Sentencing Commission is requested to—



- 1 (1) ensure that the sentencing guidelines and policy
- 2 statements reflect the serious nature of securities, pension,
- 3 and accounting fraud and the need for aggressive and ap-
- 4 propriate law enforcement action to prevent such offenses;
- 5 (2) assure reasonable consistency with other relevant
- 6 directives and with other guidelines;
- 7 (3) account for any aggravating or mitigating cir-
- 8 cumstances that might justify exceptions, including cir-
- 9 cumstances for which the sentencing guidelines currently
- 10 provide sentencing enhancements;
- 11 (4) ensure that guideline offense levels and enhance-
- 12 ments for an obstruction of justice offense are adequate in
- 13 cases where documents or other physical evidence are actu-
- 14 ally destroyed or fabricated;
- 15 (5) ensure that the guideline offense levels and en-
- 16 hancements under United States Sentencing Guideline
- 17 2B1.1 (as in effect on the date of enactment of this Act)
- 18 are sufficient for a fraud offense when the number of vic-
- 19 tims adversely involved is significantly greater than 50;
- 20 (6) make any necessary conforming changes to the
- 21 sentencing guidelines; and
- 22 (7) assure that the guidelines adequately meet the
- 23 purposes of sentencing as set forth in section 3553 (a)(2)
- 24 of title 18, United States Code.
- 25 (c) EMERGENCY AUTHORITY AND DEADLINE FOR COM-
- 26 MISSION ACTION.—The United States Sentencing Commission
- 27 is requested to promulgate the guidelines or amendments pro-
- 28 vided for under this section as soon as practicable, and in any
- 29 event not later than the 180 days after the date of enactment
- 30 of this Act, in accordance with the procedures set forth in sec-





1 tion 21(a) of the Sentencing Reform Act of 1987, as though  
2 the authority under that Act had not expired.

3 **SEC. 1105. AUTHORITY OF THE COMMISSION TO PRO-**  
4 **HIBIT PERSONS FROM SERVING AS OFFI-**  
5 **CERS OR DIRECTORS.**

6 (a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C  
7 of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3) is  
8 amended by adding at the end the following:

9 “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PER-  
10 SONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any  
11 cease-and-desist proceeding under subsection (a), the Commis-  
12 sion may issue an order to prohibit, conditionally or uncondi-  
13 tionally, and permanently or for such period of time as it shall  
14 determine, any person who has violated section 10(b) or the  
15 rules or regulations thereunder, from acting as an officer or di-  
16 rector of any issuer that has a class of securities registered  
17 pursuant to section 12, or that is required to file reports pursu-  
18 ant to section 15(d), if the conduct of that person demonstrates  
19 unfitness to serve as an officer or director of any such issuer.”.

20 (b) SECURITIES ACT OF 1933.—Section 8A of the Securi-  
21 ties Act of 1933 (15 U.S.C. 77h-1) is amended by adding at  
22 the end of the following:

23 “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PER-  
24 SONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any  
25 cease-and-desist proceeding under subsection (a), the Commis-  
26 sion may issue an order to prohibit, conditionally or uncondi-  
27 tionally, and permanently or for such period of time as it shall  
28 determine, any person who has violated section 17(a)(1) or the  
29 rules or regulations thereunder, from acting as an officer or di-  
30 rector of any issuer that has a class of securities registered



1 pursuant to section 12 of the Securities Exchange Act of 1934,  
2 or that is required to file reports pursuant to section 15(d) of  
3 that Act, if the conduct of that person demonstrates unfitness  
4 to serve as an officer or director of any such issuer.”.

5 **SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SE-**  
6 **CURITIES EXCHANGE ACT OF 1934.**

7 Section 32(a) of the Securities Exchange Act of 1934 (15  
8 U.S.C. 78ff(a)) is amended—

9 (1) by striking “\$1,000,000, or imprisoned not more  
10 than 10 years” and inserting “\$5,000,000, or imprisoned  
11 not more than 20 years”; and

12 (2) by striking “\$2,500,000” and inserting  
13 “\$25,000,000”.

14 **SEC. 1107. RETALIATION AGAINST INFORMANTS.**

15 (a) IN GENERAL.—Section 1513 of title 18, United States  
16 Code, is amended by adding at the end the following:

17 “(e) Whoever knowingly, with the intent to retaliate, takes  
18 any action harmful to any person, including interference with  
19 the lawful employment or livelihood of any person, for pro-  
20 viding to a law enforcement officer any truthful information re-  
21 lating to the commission or possible commission of any Federal  
22 offense, shall be fined under this title or imprisoned not more  
23 than 10 years, or both.”.

And the Senate agree to the same.

