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The Sarbanes-Oxley Act of 2002: What Alaska Attorneys Need To Know

Presentation on
I. Filing Rules
III. Addressing Liability for Fraud and Criminal Actions

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INTRODUCTION

Overview. The Sarbanes-Oxley Act of 2002 ("SOA") was enacted by overwhelming majorities in both houses of Congress in response to numerous instances of corporate officer and board room self-centered enterprises characterized at best as imprudent and at worst as flagrant conflicts of interest and defrauding of companies and their shareholders.[1] The Conference Report on SOA states in its initial paragraph the purpose of the legislation as "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws . . ."[2]

Some have suggested SOA is the most sweeping change to federal securities law since enactment of the Securities Act of 1933, as amended ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). Indeed, SOA makes numerous changes and additions primarily to those acts and, to a lesser extent, to other federal securities law. It also enhances several federal criminal penalties relating to securities law. In its final form, SOA comprises 65 pages of new securities law. A copy of the public law constituting SOA is attached as Exhibit A.

The SOA requires the Securities and Exchange Commission ("SEC"), the federal agency charged with administration of it and other federal securities law, to adopt rules to interpret and otherwise implement several of its sections. The SEC has issued releases indicating its intent to adopt rules pertaining to several sections of SOA. In several instances, the SEC has taken further action through the issuance of releases to adopt final rules pertaining to a number of SOA sections. In fact, as of September 4, 2003 (referred to herein as "date of this outline"), the SEC has issued in excess of 105 releases on proposed and final rules pertaining to SOA and its impact on federal securities law.

Generally, the SEC may choose to respond to a request as to how a particular provision of federal securities law affects a person under a specific set of facts. Specifically, the SEC has responded to a number of these so called no-action letter requests pertaining to SOA. A list of 44 of them issued as of the date of this outline is provided as Exhibit B. In addition, the SEC and others have used SOA

to confront alleged violations of federal securities law by suing for civil relief or bringing criminal actions. A list of 25 cases and matters reported as of the date of this outline is provided as Exhibit C.

Applicability to Alaska. The provisions of SOA apply directly to any Alaska corporation or other person who comes within the definition of an issuer as provided in the act and described below (see within this outline I.A.1.). The following presentation outlines issues that Alaska attorneys need to know concerning SOA filing rules and liability for fraud and criminal actions.

A number of provisions of SOA may also have applicability to persons who would not otherwise be subject to the act, e.g., prohibition of loans to officers, directors and insiders, internal controls, audit committees, and codes of ethics for senior officers. Alaska corporations and those who manage or provide advice to them may wish to consider seriously incorporating a number of the SOA provisions and related SEC rules into their corporate functions as a matter of sound business practice.

Presentation Structure. The following presentation focuses on certain specific topics covered by SOA. The discussion of each topic is structured as a brief summary of the corresponding section of SOA followed by a discussion of any SEC rules proposed or adopted regarding the section. Because the presentation is in the nature of an overview, the outline of it is necessarily brief, touching upon main issues with directions to the SEC releases for more in-depth handling of them.

The presentation represents a snapshot in time of the activities of the SEC on rules and other actions taken on topics addressed up through the date of this outline. That is, the outline and exhibits to it cover what has been reported on these topics through that date in the context of the SEC and the courts.

The presentation is not meant to cover all aspects of SOA. While the primary focus of SOA is on issuers subject to the Securities Act and the Exchange Act, it does note, in passing, areas affecting the Investment Company Act of 1940 ("Investment Company Act"). That is, the presentation notes those areas and, generally defers to the SEC releases, if any, for further discussion of them.

Citations to "Section" numbers are to sections of SOA, unless the context otherwise requires. Citations to SEC rules are made as appropriate. The electronic form of this presentation provides a direct link to the corresponding rules and other resources.

I. FILING RULES

A. Certification

1. The Certification (Section 906)

Section 906 amends Chapter 63 of title 18 of the U.S. Code by adding Section 1350 to set forth a requirement for corporate officers to certify financial records filed by an issuer with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act. That is, under Section 906 each periodic report containing financial statements so filed must be accompanied by a written statement by the issuer's chief executive and the chief financial officer (or the equivalent of those positions). The term "issuer" ("Public Company") is defined by SOA as meaning a person whose securities are registered under Section 12 of the Exchange Act, is required to file reports under Section 15(d) of the Exchange Act, or files, or has filed, a registration statement that has not yet become effective under, and has not been withdrawn under, the Securities Act.

Section 906 requires the certifying statement must state –

> "*[i] that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the [Exchange Act] and [ii] that information contained in the periodic report* ***fairly presents****, in all material respects, the financial condition and results of operations of the issuer." [Emphasis added.]*

The phrase "fairly presents" has not been interpreted in the context of this section. However, the SEC has interpreted the phrase in the context of Section 302 (see within this outline I.A.2.).

Section 906 became effective with the effectiveness of SOA.

On March 21, 2003, the SEC issued a release and gave notice of a proposed rule interpreting and otherwise implementing Section 906.[3] The proposed rule is to give interim guidance regarding filing procedures for what are termed in the rule "Section 1350 certifications," i.e., certifications required as a result of Section 906 of SOA. The proposed rule also provides such guidance for Section 302 certifications (see discussion at I.A.2.). The release notes that each periodic report containing issuer financial statements filed with the SEC under Section 13(a) or 15(d) of the Exchange Act must "be accompanied by" the Section 1350 certifications. The proposed rule amends Exchange Act Rules 13a-14 and 15d-14 to allow an issuer to provide the Section 1350 certification as an exhibit to a periodic report to which it relates.

Unlike Section 302 certifications, the Section 906 certifications are only required in periodic reports containing financial statements for the Public Company. A Section 906 certification may, unlike a Section 302 certification, take the form of a single statement signed by the chief executive and financial officers of the Public Company.

On June 5, 2003, the SEC issued a release and adopted a final rule implementing the provisions of the March 21 release requiring that Sections 302 and 906 certifications be exhibits to, rather than in, periodic reports, i.e., annual, semi-annual, and quarterly reports.[4] This rule applies to Public Companies, as well as, to investment companies (amends Investment Company Act Rule 30a-2) registered under the Investment Company Act. Compliance with this new rule was generally required for reports due on or after August 14, 2003.

2. Quarterly and Annual Reports (Section 302)

Section 302 requires that the principal executive officer or officers and the principal financial officer or officers (or persons who perform similar functions) certify in each annual or quarterly report filed with the SEC to each of several items set forth in the section. Note that current reports, e.g., Form 8-K (Current Report), are not included in this requirement. This certification is sometimes referred to as a certification of internal controls.

On August 29, 2002, the SEC issued a release and adopted a final rule implementing Section 302.[5] The rule requires a Public Company's principal executives and financial officers each to certify certain items relating to the company's financial and other information as contained in the company's quarterly and annual reports. The rule further requires such persons to certify that they are responsible for establishing, maintaining, and evaluating the effectiveness of the internal controls of the Public Company. The rule also requires these persons to certify that they have made specified disclosures to the Public Company's auditors and company's audit committee about internal controls, and they have included information in those periodic reports as to their evaluation of, and whether there have been significant changes to, those internal controls or other factors which could significantly affect those controls.

The release specifically outlines the requirements of the new rule (formalized as Exchange Act Rules 13a-14 and 15d-14) to provide that a Public Company's principal executive officer or officers and the principal financial officer or officers (or person performing similar functions), each to certify in each quarterly and annual report (including transition reports) filed by the company under Sections 13(a) or 15(d) of the Exchange Act as follows:

- *he or she has reviewed the report;*
- *based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;*
- *based on his or her knowledge, the financial statements, and other financial information included in the report,* ***fairly present*** *in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;*
- *he or she and the other certifying officers:*
    - *are responsible for establishing and maintaining "****disclosure controls and procedures****," . . . for the issuer;*

    - *have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;*

    - *have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and*

    - *have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;*

- *he or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):*

    - *all significant deficiencies in the design or operation of internal controls (a pre-existing term relating to internal controls regarding financial reporting) which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and*

    - *any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and*

- *he or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses. [Emphasis added.]*

The phrase "disclosure controls and procedures" is defined in the rule as "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in its reports that it files or submits under the [Exchange Act] is recorded, processed, summarized and reported within the time periods specified in the [SEC's] rules and forms." Note that the release specifically states such reports include, in addition to quarterly and annual reports, definitive proxy materials filed under Section 14(a) of the Exchange Act, definitive information statements filed under Section 14(c) of the Exchange Act and amendments to any of these reports or documents.

The release interprets "fair presentation" as used in the rule as not limited to a representation that the statements have been presented in accordance with GAAP. The SEC specifically concluded that Congress intended the certified statement to provide assurances that the disclosed information viewed in its entirety "meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under [GAAP]."

On January 27, 2003, the SEC issued a release and adopted a final rule amending rules pertaining to Section 302 reporting requirements applying to investment companies registered under the Investment Company Act.[6] Under the new rule, the SEC adopted a new Form N-CSR and required such a company to use it to file certified shareholder reports with the SEC. Under the release, those reports are designated as the reports required under Section 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act.

On March 21, 2003, the SEC issued a release and gave notice of a proposed rule interpreting the certification requirements of Section 302.[7] The release gave notice of the SEC proposal to amend its Exchange Act Rules 13a-14 and 15d-14 and forms to require a Public Company to file Section 302 certifications as exhibits to periodic reports to which they relate. In this way, the SEC reasoned the certification would be more easily accessible in the EDGAR system. That is, in implementing the Section 302 certification requirements, the SEC had through the previous August release (see within this outline I.A.1.) required the certifications to be "in" each such periodic report. Under the proposed rule, signatures appearing at the end of a Section 302 certification would continue to be a part of the periodic report. That is, such signatures would be subject to SEC signature requirements.[8]

In its June 5 release (discussed previously within this outline at I.A.1.), the SEC announced its adoption of a final rule implementing provisions of its March 21 release requiring that Sections 302 and 906 certifications be exhibits to, rather than in, periodic reports, i.e., annual, semi-annual, and quarterly reports. This rule applies to Public Companies and investment companies registered under the Investment Company Act. Compliance with the new rule was generally required as of August 14, 2003.

B. Two-Business Day Filing of Ownership Records (Section 403)

Section 403 amends Section 16(a) of the Exchange Act and requires every person directly or indirectly a beneficial owner of more than 10% of a class of equity security (unless otherwise exempt) registered under Section 12 of the Exchange Act, or who is an officer or director of the Public Company which issued the security must file specified statements with the SEC when there is a change in the person's ownership. Such statements are made using SEC Forms 3, 4, and 5 (see discussion of them within this outline at I.B.4.). Should the security be registered on a national securities exchange, the person must also file the statements with that exchange.

Section 403 further requires such a person reporting under Section 16(a) to disclose such changes in security ownership prior to the end of the second business day after the transaction is executed. Under previous provisions of Section 16(a), the person had up until the tenth day of the calendar month after the transaction to make the disclosure. The new two-day limitation also applies to reports of ownership by such persons at the end of the Public Company's fiscal year. Under previous provisions of Section 16(a) the allowable reporting period was 45 days after the end of the fiscal year.

Section 403 provides the amendment made to the Exchange Act though it becomes effective 30 days after the date of enactment of SOA, i.e., by August 29, 2002.

1. Calculating the Two-Business Day Deadline Exceptions

In requiring reporting within two business days following the day on which the transaction is executed, SOA provides the SEC rulemaking authority to calculate that deadline differently where the SEC determines such period is not feasible. On August 27, 2002, the SEC issued a release and adopted a final rule on ownership reports and trading by officers, directors and principals security holders.[9] The final rule amends Exchange Act Rule 16a-3 requiring the two-business day reporting, with certain exceptions.

In the release it is stated, where a trade date is considered the execution date, filing SEC Form 4 (see within this outline I.B.4.) within the two-business day deadline would not be feasible in two types of transactions where objective criteria prevent the reporting person from controlling the trade date.

These two exceptions are as follows: (1) transactions pursuant to Exchange Act Rule 10b5-1(c) arrangements; (2) discretionary transactions.

Exchange Act Rule 10b5-1(c) provides that a person trades "on the basis of" material nonpublic information should the person purchase or sell securities while aware of material nonpublic information. A reporting person may not know the timing of execution of such a transaction. Should the reporting person not have selected the execution date, he or she may know that the order has been placed but have no control as to when the transaction actually occurs. In the second exception (discretionary transactions, generally defined under Exchange Act Rule 16b-3(b)(1) as involving an inter-plan transfer of assets previously invested in and out of a plan issuer securities fund), the functions of plan administration may prevent the reporting person from selecting the execution date. The reporting person may not expect immediate execution of the transaction.

In these two limited areas, the date of execution, solely for purposes of reporting under Section 16(a) of the Exchange Act, has been modified by the SEC as follows: (1) in the context of a transaction resulting under contract instruction, or written plan for purchase or sale of Public Company securities satisfying the conditions of Exchange Act Rule 10b5-1(c) and where the reporting person does not select the execution date, the date on which the executing broker, dealer or plan administrator notifies the reporting person the transaction execution is deemed the execution date, provided the notification date is not later than the third business day following the trade date; and (2) in the context of a discretionary transaction and where the reporting person has not selected the execution date, the date on which the plan administrator notifies the reporting person that the transaction has been executed is deemed the execution date, provided the notification date is not later than the third day following the trade date.

In each instance, the reporting person must use Form 4 in providing the required report, and the report must be filed before the end of the second business day following the deemed date of execution. In the release, the SEC states it believes the three-business day period provides a reasonable time for notification.

2. Small Acquisition Rule

Under Exchange Act Rule 16a-6, small acquisitions may be reported using Form 4. Prior to SOA, the rule provided that a small acquisition was one of any equity security not exceeding $10,000 in market value or a right to acquire such securities.

Exchange Act Rule 16a-6 has been revised as announced through the SEC release described above (see within this outline I.B.1.) to limit the use of SEC Form 5, used for reporting at the end of a fiscal year, for small acquisitions subject to the following: (1) the acquisition when aggregated with other acquisitions of the same class of securities (with limited exception) within the prior six months does not exceed $10,000 in market value; and (2) the person acquiring the securities does not within six months after that period make any disposition other than by transactions exempt from Section 16(b) of the Exchange Act. Should an acquisition no longer qualify for reporting deferral as previously described, all acquisitions not at that point reported must be reported using Form 4 before the end of the second business day following the day on which the previous conditions are no longer met.

3. Reporting of Transactions That Are Exempt From Section 16(b)

Under Section 16(b) of the Exchange Act and to prevent unfair use of information obtained by an officer, director or beneficial owner of more than 10% of a class of equity security (other than exempted security) registered under Section 12 of the Exchange Act through the person's relationship to the issuer, profit realized by the person from a purchase and sale or a sale and purchase of any equity security of that issuer or a security-based SWAP agreement involving that security within a period of less than 6 months, with limited exceptions, must inure to, and is recoverable by, the issuer. One of those exceptions is a transaction which the SEC by rule exempts from Section 16(b). The SEC adopted Exchange Act Rule

16b-3 as a limited exception to Section 16(b) where the transaction is between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer. However, the transaction must satisfy all applicable conditions set forth by Exchange Act Rule 16b-3.

As a part of the rule changes announced in the above referenced release (see within this outline I.B.1.), the SEC adopted a new Exchange Act Rule 16b-3(f). As a result, transactions between an officer or director and the issuer exempted from Section 16(b) short-saving profit recovery by Exchange Act Rule 16b-3 previously reportable on Form 5, i.e., on an annual basis, are now required to be reported within two business days using Form 4.

4. Amendment To Section 16(a) Forms

The filing requirements under Section 16(a) of the Exchange Act are accomplished by filers using Forms 3 (Initial Statement of Beneficial Ownership of Securities), 4 (Statement of Changes of Beneficial Ownership of Securities) and 5 (Annual Statement of Beneficial Ownership of Securities). On May 7, 2003, the SEC issued a release and adopted a final rule pertaining to changes to these ownership report forms to require electronic filing and to satisfy provisions of SOA.[10]

The changes announced in the release pertaining to Form 3 were of a ministerial nature relating to electronic filing. Those pertaining to Forms 4 and 5 deal more directly with timeliness of filing and SOA.

The Form 4, including the "General Instructions" to the form, have been amended to conform all references to applicable filing deadlines as previously discussed in this outline. With these changes, Form 4 is no longer a monthly form. For example, the revised form provides that "holding columns" must be used to report holdings following reported transactions. Also Form 4 now states reportable Exchange Act Rule 16b-3 exempt transactions must be reported on it.

A new column 2A has been added to Table I and a new column 3A has been added to Table II of Form 4 to require reporting of deemed execution dates computed in accordance with Exchange Act Rule 16a-3(g). The release previously

cited above (see within this outline I.B.1.) states the addition of the columns will enable the SEC to determine whether a filing of the form was timely.

The Form 5 was also revised to include new columns 2A and 3A so that the form may allow the reader similarly to determine how late a transaction was reported. Form 5 was also revised to clarify that reportable Exchange Act Rule 16b-3 exempt transactions no longer may be reported on that form on a deferred basis.

The changes to Forms 3-4 as announced in the release previously cited above (see within this outline I.B.1.) became effective June 30, 2003.

Forms 3-4 are prescribed forms under the Investment Company Act. The changes to these forms as outlined in the release then apply to filers using the forms (see within this outline I.B.1.).

5. Electronic Filing and Website Posting

Section 403 amends Section 16(a) of the Exchange Act to require electronic filing, and website posting by Public Companies having corporate websites, of beneficial ownership reports filed by officer, director and principal security holders (each a holder of more than 10% of any class of equity security registered under Section 12 of the Exchange Act). Under Section 403, these requirements become effective beginning not later than one year after enactment of SOA, i.e., beginning August 29, 2003.

The SEC has revised its EDGAR (Electronic Data Gathering Analysis and Retrieval) system to facilitate electronic filings by Public Companies including the information required to be filed with the SEC under Section 403. In addition, through the above referenced release (see within this outline I.B.4.), the SEC adopted a final rule setting forth requirements for mandatory electronic filing and website posting for Forms 3-5 through revisions to Exchange Act Regulation S-T and new Exchange Act Rule 16a-3(k).

The new rule became effective June 30, 2003. Reporting persons must comply with the new rule on or after that date. Similarly, Public Companies must

comply with the website posting requirements as to beneficial ownership reports filed or after that date. The SEC has also eliminated magnetic cartridges as a means of electronic filing. Therefore, magnetic cartridges after June 27, 2003 were no longer an acceptable means of electronic filing.

On July 22, 2003 the SEC issued a release and adopted a final rule pertaining to further revisions to the EDGAR Filer Manual updating the EDGAR system on ownership reports.[11] The revisions are to Forms 3, 4, 5 and their amendments, Forms 3/A, 4/A, and 5/A and improve functionality of the forms. For example, the revisions include the ability to list holdings of securities separately from securities transactions, allowing the reporting of a gift, phantom stock plan and similar transactions, automatic entry of the filer's address by the system based upon the filer's code (CIK number) and ability to change the address for the filing.

The new rule became effective upon publication in the Federal Register, i.e., July 31, 2003.

Prior to the effective date of these changes, reporting persons could file reports on Forms 3, 4, and 5 either in paper or electronic format using EDGAR.

C. Accelerating Filing Deadline for Annual and Quarterly Reports (Section 409)

Sections 13(a) and 15(d) of the Exchange Act require Public Companies, among others, to make publicly available to investors on an ongoing basis information to aid them in investment and voting decisions. In particular, under the Exchange Act, Public Companies were previously required to file with the SEC the following reports: (1) annual report on Form 10-K (or Form 10-KSB for a small business issuer) no later than 90 calendar days of the end of its fiscal year; (2) quarterly report on Form 10-Q (or Form 10-QSB for a small business issuer) no later than 45 calendar days after the end of the first three quarters of its fiscal year; and (3) current reports on Form 8-K for a number of specified events generally within 5 to 15 days after their occurrence. With the enactment of SOA, the timing for filing such reports changed. In addition, a Public Company may be required to file transition reports when it changes fiscal years.

Section 409 amends Section 13 of the Exchange Act by adding Section 13(l) to require real time issuer disclosure.

On September 5, 2002, the SEC issued a release and adopted a final rule to accelerate filing of quarterly and annual reports under Exchange Act Rules 13a-10 and 15d-10.[12] The new rule applies only to certain domestic reporting companies ("Accelerated Filers"). The changes for Accelerated Filers are to be phased in over three years.

The annual report deadline remains 90 days for year one, changing to 75 days for year two, and changing to 60 days for year three and thereafter. The quarterly report deadline remains 45 days for year one, changing to 40 days for year two, and changing to 35 days for year three and thereafter. The phase-in period began for Accelerated Filers with fiscal years ending on or after December 15, 2002.

1. Determining Whether a Company Is an Accelerated Filer

The term Accelerated Filer is defined in the above referenced release under Exchange Act Rule 12b-2 (see within this outline I.C.) as an issuer after it first meets the following conditions as of the end of its fiscal year:

"(i) The aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer is $75 million or more;
(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the [Exchange Act] . . . for a period of at lease twelve calendar months;
(iii) The issuer has filed at least one annual report pursuant to Section 13 (a) or 15(d) of the [Exchange Act]; and
(iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB . . . for its annual and quarterly reports."

The new rule cited above (see within this outline I.C.) further interprets "aggregate market value" of the issuer's outstanding voting and non-voting common equity as computed by using "the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity." The calculation is to be done as of the last business day of the issuer's most recently completed second fiscal quarter.

The determination of Accelerated Filer status as of the end of the issuer's fiscal years governs the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports filed thereafter while the issuer remains an Accelerated Filer.

Upon becoming an Accelerated Filer, the issuer remains in that status unless it becomes eligible to use Form 10-KSB and 10-QSB for its annual and quarterly reports. Subsequently the issuer will not again become an Accelerated Filer unless it again meets all of the prerequisites for such status.

2. The New Accelerated Filing Schedule

As described in the above referenced release (see within this outline I.C.), the Accelerated Filer filing schedule deadlines are phased-in over a three year period. There is no change in deadlines for the first year. The schedule is as follows:

For FY Ending on or after	Form 10-K Deadline	Form 10-Q Deadline
December 15, 2002	90 days after FY end	45 days after fiscal quarter end
December 15, 2003	75 days after FY end	45 days after fiscal quarter end
December 15, 2004	60 days after FY end	40 days after fiscal quarter end
December 15, 2005	60 days after FY end	35 days after fiscal quarter end

3. Conforming Amendments

In the proposing release on Accelerated Filers,[13] the SEC requested comment on several possible related "conforming" amendments to other SEC rules. Based upon responses received, the SEC adopted several conforming

amendments along with changes discussed in the previous release for Accelerated Filers (see within this outline I.C.). Briefly, the conforming amendments are the following:

> (1) amendments to Regulation S-X to conform timeliness requirements for inclusion of financial information in other SEC filings, e.g., Securities Act and Exchange Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act;
>
> (2) with limited exception for unconsolidated subsidiaries, amendments to continue to require financial information included in documents listed under item (1) to be at least as current as financial information filed under the Exchange Act; and
>
> (3) amendments to maintain an extra 30 days for a company to file schedules required by Article 12 of Regulation S-X as an amendment to its annual report on Form 10-K, if needed.

As to unconsolidated subsidiaries and item (2) above, separate financial statements of such subsidiaries, i.e., ones not consolidated and 50% or less owned persons required by Rule 3-09 of Regulation S-X are not to be accelerated for inclusion in an Accelerated Company's annual report on Form 10-K so long as the subsidiary or 50% or less owned person is not an Accelerated Filer. Under these final rules, an Accelerated Filer will be allowed to file financial statements for the subsidiary or 50% or less owned person by amendment within the existing time periods.

4. Mandatory Disclosure of Website Access to Company Reports

As described in the above referenced release (see within this outline I.C.), Accelerated Filers must disclose in their annual reports on Form 10-K all of the following:

- The company's website address, if it has one

- Whether the company makes available free of charge on or through its website, if it has one, its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC

- If the company does not make its filings available in this manner, the reasons it does not do so (including, where applicable, that it does not have an Internet website

- If the company does not make its filings available in this manner, whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

An Accelerated Filer is required to commence compliance with these disclosure requirements with its annual report on Forms 10-K to be filed for fiscal years ending on or after December 15, 2002.

The SEC noted in the above referenced release (see within this outline I.C.) that a company may provide website access to its Exchange Act report via a third-party service rather than maintain the report directly. The SEC stated specifically in the release that, for purposes of disclosure for website access to reports, hyperlinking to such a third-party service is acceptable so long as the reports are made available within an appropriate time from and access to the report is free of charge to the user. The release recommends that the hyperlink should be directly to the reports, or a list of them, rather than to the home page or general search page of that third-party service. The release also notes that such reports may be accessed through a hyperlink to EDGAR.

The release does not specify how long a company's report must be made available on or through its website. The release encourages companies to provide ongoing website access to company reports, e.g., at a minimum for at least a 12 month period. The release further encourages a company to provide website

access to all of its filings with the SEC, including its filings under proxy rules and the Securities Act.

The mandatory disclosures outline above are limited in their applicability to Accelerated Filers. In the release, the SEC states that it would study the issue and consider extending the requirement to all reporting companies after evaluating the initial experience with Accelerated Filers.

D. Reporting Requirements and Disclosure

Several sections of SOA revise Exchange Act reporting and disclosure requirements. The reporting requirements include annual reports on Form 10-K and quarterly reports on Form 10-Q as previously described. The reporting requirements also include Form 8-K current reports on events as specified in the instructions to the form. In addition, the SEC is empowered to adopt rules to interpret and otherwise implement such requirements. The following are five examples of such requirements in SOA.

1. Material Changes in Financial Condition or Operations (Section 409)

Section 409 amends Section 13 of the Exchange Act by adding Section 13(l) to require a Public Company subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act to disclose to the public "on a rapid and current basis" additional information regarding material changes in the company's financial condition or operations. The disclosure must be in "plain English" and may include trend and qualitative information and graphic presentations, all of which are subject to determinations made by SEC rule as "necessary or useful for the protection of investors and in the public interest."

The SEC has implemented Section 409 in part through provisions pertaining specifically to Accelerated Filers (see within this outline I.C.1.-2.). In addition the SEC has revised Form 8-K to require timely disclosure of material changes in financial condition or operations.

2. Correcting Adjustments on Material Off-Balance Sheet Transactions (Section 401)

Section 401(a) amends Section 13 of the Exchange Act by adding Section 13(i) to require that each financial report containing financial statements required to be prepared in accordance with generally accepted accounting principles ("GAAP") and filed with the SEC must reflect all material correcting adjustments identified by a registered public accounting firm in accordance with GAAP and SEC rules.

Section 401(a) further amends Section 13 of the Exchange Act by adding Section 13(j) requiring the SEC to adopt final rules requiring that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the Public Company with unconsolidated entities or other persons that may have a material current of future effect on financial condition, results of operation, liquidity, capital expenditures, capital resources, or significant components of revenue or expenses.

Section 401(b) requires the SEC to issue final rules providing that pro forma financial information which is included in a periodic or other report filed with the SEC under securities law or in any public disclosure or news release must be presented in a manner that meets criteria set forth in that section. The criteria are that the information:

> *"(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and*
>
> *(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles."*

On January 27, 2003, the SEC issued a release and adopted a final rule to interpret Sections 401(a) and 401(b).[14] The rule requires disclosure of off-balance sheet arrangements. That is, a Public Company must provide an explanation of such arrangements in a separately captioned subsection of the Management's

Discussion and Analysis part of the company's disclosure documents. In addition the rule requires the Public Company to provide an overview of certain known contractual obligations in tabular format.

The release states that the new definition of "off-balance sheet arrangements" (see Item 303 of Regulation S-K) primarily targets "the means through which companies typically structure off-balance sheet transactions or otherwise incur risk of loss that are not fully transparent to investors." These arrangements have included a transfer of assets or otherwise financing of activities of an unconsolidated entity. That financial support can take the form of financial guarantees, subordinated retained interests, keepwell arguments (agreements or undertakings whereby the company is obligated to provide, or arrange for, funds to an affiliate or third party), derivative instruments or other contingent arrangements exposing the registrant to continued risk or material contingent liability.

Consequently, the new rule contains a definition of off-balance sheet arrangements which include –

". . . any contractual arrangement to which an unconsolidated entity is a party, under which the registrant has:

[1] Any obligation under certain guarantee contracts

[2] A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to that entity for such assets

[3] Any obligation under certain derivative instruments

[4] Any obligation under a material variable interest held by the registrant in an unconsolidated entity that provides financing, liquidity, market risk or credit risk support to the registrant, or engages in leasing, hedging or research and development services with the registrant."

A Public Company must comply with the new rule in registration statements, annual reports and proxy information statements that are required to include financial statements for fiscal years ending on or after June 15, 2003. A Public Company (other than a small business issuer) must include the above referenced table in registration statements, annual reports, and proxy or information statements required to include financial statements for fiscal years ending on or after December

15, 2003. However, Public Companies may voluntarily comply with these disclosure requirements before the indicated dates.

Section 405 expressly excludes an investment company registered under Section 8 of the Investment Company Act from the provisions of Sections 401 (disclosures in periodic reports), 402 (enhanced conflict of interest provisions), and 404 (management assessment of internal controls) and any SEC rules adopted under those sections of SOA.

3. Creation and Assessment of the Internal Controls (Section 404)

Section 404(a) directs the SEC to adopt rules providing each annual report required by Section 13(a) or 15(d) of the Exchange Act must contain an internal control report. The report must contain the following: (1) state management's responsibility to establish and maintain adequate internal controls and procedures for financial reporting; and (2) contain an assessment (as of company's most recent fiscal year) of effectiveness of those controls and procedures for financial reporting. Section 404(b) requires, in the context of the internal control assessment, each registered public accounting firm that prepares or issues the company's audit report must attest to, and report on, the assessment made by the company's management. Neither Section 404 directly nor SOA generally provides a deadline.

On June 5, 2003, the SEC issued a release and adopted a final rule to implement Section 404.[15] The new rule amends several provisions of SEC regulations including Exchange Act Rules 12b-15, 13a-14, 13a-15, 15d-14 and 15d-15.

The release and new rule focus on management reports on a company's internal control over financial reporting ("Internal Controls") and certification of disclosure in Exchange Act periodic reports. The release states that the rule requires that an Internal Controls report must include statements addressing the following:

- Management's responsibility to establish and maintain adequate Internal Controls

- Management's assessment of effectiveness of Internal Controls as of end of company's most recent fiscal year

- Management's identification of framework used to evaluate effectiveness of Internal Controls

- Registered public accounting firm that audited company's financial statements included in the annual report issued an "attestation report" on management's assessment of the Internal Controls

Under the new rule, the company is required to file the attestation report as a part of the annual report. The attestation must be made in accordance with standards issued or adopted by the Public Company Accounting Oversight Board. That board is created under Title I of SOA.

The new rule requires management to evaluate any change in the Internal Controls that occurred during a fiscal quarter which materially affected (or is reasonably likely to so affect) the Internal Controls.

The release states that an Accelerated Filer must, as of the end of its first fiscal year on or after June 15, 2004, begin to comply with the new rule's requirements on management reports on Internal Controls in its annual report for that fiscal year. A company that is not an Accelerated Filer as of the end of its first fiscal year ending on or after that date must begin compliance with the annual report on Internal Controls for its first fiscal year ending on or after April 15, 2005. However, a company must commence compliance with reporting requirements on evaluation of material changes to its Internal Controls in its first periodic report due after the first annual report required to include a management report on Internal Controls.

The release provides that a company may voluntarily comply with these new disclosure requirements. However, a company must comply with the new exhibit requirements of Section 302 and Section 906 certifications and changes to Section 302 certification requirements as previously discussed (see within this outline I.A.1.).

The release extends the deadline for compliance with Section 404 internal control certification requirements to financial statements of fiscal years ending on or after June 15, 2004. The original proposed compliance deadline was October 15, 2004.

As discussed above, certain investment companies registered under the Investment Company Act are not subject to the requirements of Section 404 (see within this outline I.D.2.).

4. Code of Ethics (Section 406)

Section 406 sets forth a requirement for disclosure by a Public Company pertaining to the existence of a code of ethics for its senior financial officers. That is, a Public Company must disclose in its periodic reports to the SEC whether it has adopted such a code of ethics. In the case where the company has not adopted such a code, the company must state the reason why it has not so acted.

Section 406 requires that the code apply to a Public Company's principal financial officer and comptroller or principal accounting officer, or persons performing similar functions. Section 406 further requires immediate disclosure by the Public Company by means of filing Form 8-K, dissemination by the internet or dissemination by other electronic means of any change to the code or waiver of the code for senior financial officers.

On January 23, 2003 the SEC issued a release and adopted a final rule interpreting Section 406.[16] Under the new rule, the code of ethics applies, not only to senior financial officers, but also to the Public Company's principal executive officer.

The new rule expands upon Section 406 and defines in Item 406 of Regulation S-K a code of ethics as –

". . . written standards that are reasonably designed to deter wrongdoing and to promote:

- *Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships*

- *Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the [SEC] and in other public communications made by the registrant*
- *Compliance with applicable governmental laws, rules and regulations*
- *The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code*
- *Accountability for adherence to the code."*

Under the new rule, Public Companies must comply with the code of ethics disclosure requirements in their annual reports for fiscal years ending on or after July 15, 2003. Such a company must comply with requirements of the rule pertaining to amendments and waivers on or after the date on which the company files its first annual report in which the code disclosure is required.

Investment companies are also subject to the provisions of Section 406. The SEC has issued a release and adopted a final rule specifically addressing investment company compliance with Section 406.[17]

5. Audit Committee Financial Expert (Section 407)

Section 407 sets forth a requirement for disclosure by a Public Company pertaining to the existence of at least one financial expert on its audit committee. That is, a Public Company must disclose in its periodic reports to the SEC whether its audit committee is comprised of at least one member who is a financial expert. In the case where the company's audit committee does not have at least one such financial expert, the company must state the reason why it has not so acted.

Section 407 requires the SEC to adopt rules to implement its provisions including the definition of financial expert. However, the section sets forth guidelines that the SEC must consider.

On January 23, 2003, the SEC issued a release and adopted a final rule interpreting Section 407.[18] Under the new rule, a Public Company may, but is not required, to disclose that it has more than one "audit committee financial expert" (to replace the term "financial expert" as used in Section 407) on its audit committee. However, the company is required to disclose whether each person identified as an audit committee financial expert on the audit committee is independent of the

company's management. The rule uses as a definition of "independence" that which is given in Schedule 14A.[19]

The new rule defines "audit committee financial expert" in the instructions to Item 401(h) of Regulation S-K as meaning –

> *"a person who has the following attributes:*
>
> *(i) An understanding of generally accepted accounting principles and financial statements;*
>
> *(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;*
>
> *(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;*
>
> *(iv) An understanding of internal controls and procedures for financial reporting; and*
>
> *(v) An understanding of audit committee functions."*

The new rule goes on in those instructions to provide examples of how one may determine whether he or she has acquired such attributes, i.e., through –

> *"(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;*
>
> *(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;*
>
> *(iii) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or*
>
> *(iv) Other relevant experience."*

The new rule sets forth a "safe harbor" for a person determined to be an audit committee financial expert. That is, such a person will not be deemed an expert for any other purpose including under Section 11 of the Securities Act, merely because the person is identified as an audit committee financial expert.

A Public Company (other than a small business issuer) must comply with the new rule in its annual report for fiscal years ending on or after July 15, 2003. Small

business issuers must first comply with the new rule in disclosures in their annual reports for fiscal years on or after December 15, 2003.

Investment companies are also subject to the provisions of Section 407. The SEC has issued a release and adopted a final rule specifically addressing investment company compliance with Section 407.[20]

E. SEC Review of Filings (Section 408)

Section 408(a) requires the SEC to review on a regular and systematic basis, for the protection of investors, issuer disclosures in reports made under Section 13(a) of the Exchange Act. This requirement specifically includes reports filed on Form 10-K. The required review applies only to Public Companies having a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association. Section 408(b) further specifies that such reviews are to include the following factors:

> *"(1) issuers that have issued material restatements of financial results;*
> *(2) issuers that experience significant volatility in their stock price as compared to other issuers;*
> *(3) issuers with the largest market capitalization*
> *(4) issuers emerging companies with disparities in price to earning ratios;*
> *(5) issuers whose operations significantly affect any material sector of the economy; and*
> *(6) any other factors that the [SEC] may consider relevant."*

Section 408(c) requires in no event may a review of an issuer required to file reports under Section 13(a) or 15(d) of the Exchange Act be less frequent than once every three years.

As of the date of this outline, the SEC had not given notice of intent to adopt proposed rules to interpret Section 408.

III. ADDRESSING LIABILITY FOR FRAUD AND CRIMINAL ACTIONS

A. Prohibitions

The SOA proscribes prohibited activity by officers and directors in fraudulently influencing an audit or trading during employee benefit plan blackout periods. The SOA also prohibits certain loans to directors.

1. Fraudulently Influencing an Audit (Section 303)

Section 303(a) identifies as unlawful action by an officer or director (or any other persons acting at that officer's or director's direction) of an issuer in contravention of rules adopted by the SEC, taken to fraudulently influence public or certified accountant engaged by the company to perform an audit of the financial statements for the purpose of rendering those statements materially misleading. Rules, if adopted by the SEC, would under Section 303(a) take as their basis that which the SEC prescribes as "necessary and appropriate in the public interest or for the protection of investors." Section 303(b) states, in a civil proceeding, the SEC has exclusive authority to enforce the provisions of Section 303 and any rule or regulation issued under it. Section 303(c) states that the provisions of Section 303(a) are in addition to, and do not supersede or preempt, any other provision of law or any rule or regulation adopted under it.

On May 20, 2003, the SEC issued a release and adopted a final rule to implement the provisions of Section 303.[21] The effective date of the new rule was June 27, 2003.

The new rule revises Rule 13b2-2 adopted pursuant to the Exchange Act. It prohibits officers and directors of a Public Company (and persons acting under the direction of such officers or directions) from action to coerce, manipulate, mislead, or fraudulently influence (collectively, "improperly influence") the company's auditor in auditing its financial statements where that person knew or should have known that such action, when successful, could render those

statements materially misleading. The new rule supplements Exchange Act Rule 13B-2 which addresses falsification of books, records and accounts and false or misleading statements or omission to make certain statements to accountants.

The new rule states that officers, directors, and others as above identified are improperly influencing an auditor when the person knew or should have known that the action, if successful, could result in rendering the Public Company's financial statements materially misleading. The new rule provides examples of actions considered improperly influencing an auditor taken at any time with respect to an engagement period as follows:

> *"(i) To issue or reissue a report on [a Public Company's] financial statements that is not warranted in the circumstances (due to material violations of [GAAP], generally accepted auditing standards, or other professional or regulatory standards);*
>
> *(ii) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;*
>
> *(iii) Not to withdraw an issued report; or*
>
> *(iv) Not to communicate matters to [a Public Company's] audit committee."*

The release states this portion of the new rule clarifies that the enumerated actions should not occur at any time the auditor is required to exercise professional judgment regarding the Public Company's financial statements.

Note that the term "issuer" as used in the new rule is that provided in the Exchange Act. That is, the definition includes, with limited exception, any person who issues or proposes to issue securities. It is not the definition of "issuer", i.e., Public Company, as provided in SOA. The term "issuer" as used in the new rule includes private issuers of securities.

The new rule addresses activities by an "officer or director of an issuer, or any other person acting under the direction" of an officer or director. The SEC has defined the term "officer" through Exchange Act Rule 13b-2 to include such positions as president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and other persons routinely performing similar functions, regardless of incorporation. Note that under this rule, a person may be an officer regardless of the person's title or the nature of the legal

entity constituting the issuer, e.g., an officer of a wholly owned subsidiary of a Public Company may be an "officer" of the Public Company for purposes of the rule.

The new rule provides at Exchange Act Rule 13b2-2(c) express requirements applying to an investment company registered under Section 8 of the Investment Company Act. Their requirements are similar to those applying to an issuer.

2. Loans to Directors and Officers (Section 402)

Section 402 amends Section 13 of the Exchange Act to provide at a new Section 13(k) a prohibition of personal loans to executives of Public Companies. The prohibition focuses on acts directly or indirectly through any subsidiary "to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof)" of the Public Company. Section 402 states that an extension of credit existing at the time of enactment of SOA is not subject to the prohibition, so long as there is no "material modification" to terms of that credit or any renewal of it on or after that enactment.

Section 402 provides a narrow exception to the personal loan prohibition where the Public Company is in the consumer credit business, e.g., home improvement and manufactured home loans, consumer credit, extensions of credit under an open credit plan, charge cards, and extensions of credit by brokers or dealers registered under the Exchange Act to its employee. However, such loans must meet the following criteria:

> *"(A) made or provided in the ordinary course of the consumer credit business of such issuer;*
> *(B) of a type that is generally made available by such issuer to the public; and*
> *(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit."*

The expansive language of Section 402 may include some transactions not usually considered loans, e.g., split-dollar life insurance policies, cashless option exercise plans, and travel and indemnification advances. In addition, it may include

cash advances for incidental expenses for travel, moving and other normal and customary items and payment of insurance premiums.

As of the date of this outline, the SEC had not given notice of intent to adopt proposed rules to interpret Section 402.

3. Trading During, and Notice of, Employee Plan Blackouts (Section 306)

Section 306(a) prohibits executive officers and directors of a Public Company from engaging in insider trading during employee benefit plan blackout periods. That is, except as may otherwise be provided by SEC rule, Section 306 declares as unlawful for an executive officer or director of a Public Company that has issued an equity security (other than an exempt security) directly or indirectly "to purchase, sell, or otherwise acquire or transfer any equity security" of the company (other than an exempt security) "during any blackout period" affecting that security where that officer or director acquires that security in connection with service or employment as an executive officer or director of the company.

Section 306(a) provides as a remedy for violation of Section 306(a) that any profit realized by the executive officer or director from such transaction is to go to the Public Company, regardless of intention on the part of the officer or director.

The term "blackout period" is defined in Section 306(a) as meaning, with respect to equity securities of a Public Company:

> *"(A) any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the [Public Company] to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and*
>
> *(B) does not include, under regulations which shall be prescribed by the [SEC]*
>
> > *(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such [Public Company], if such period is–*
> >
> > > *(I) incorporated into the individual account plan; and*

(II) *timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or*

(ii) *any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor."*

The phrase "individual account plan" as used in the previous definition is defined in Section 306(a) as a plan, with limited exception as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The exception is that the phrase does not include a one-participant retirement plan as defined in ERISA.

Section 306 further requires that the Public Company notify the executive officers and directors when they are subject to the requirements of the section in connection with a blackout period. In so doing, the Public Company must also notify the SEC.

Action to recover profits within Section 306(a) may be brought at law or in equity in a court of competent jurisdiction by the Public Company or the owner of any security of the company in the name of, and in behalf of, the company should the company fail or refuse to bring the action within 60 days after the date of request or fails diligently to prosecute the action. However, Section 306 provides that no suit may be brought more than two years after the date on which the profit was realized.

Section 306(b) amends ERISA to require the plan administrator of an individual account plan to give advance notice of commencement of a blackout period to plan participants and beneficiaries affected by the action. The required notice must be in writing and in a form to be "calculated to be understood by the average plan participant . . ." Section 306(a) specifically requires the notice include the following:

"(i) *the reasons for the blackout period,*

(ii) *an identification of the investments and other rights affected,*

(iii) *the expected beginning date and length of the blackout period,*

(iv) *in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and*

(v) *such other matters as the Secretary [of Labor] may require by regulation."*

Section 306(a) further requires (with limited exception) the notice to be furnished to all plan participants and beneficiaries subject to the blackout period at least 30 days in advance of it. Where events unforeseeable or circumstances beyond reasonable control of the plan administrator intervene and a fiduciary of the plan reasonably so determines in writing, is identified as a clear exception to the notice requirement. In this instance, the notice is to be furnished as soon as reasonably possible under the circumstances unless notice in advance of blackout period termination is impracticable.

Section 306(b) requires the plan administrator to give notice to the Public Company in connection to a blackout period affecting an individual account plan.

SOA does not define the term "executive officer" as used in Section 306, and, as of the date of this outline, the SEC had not noticed intent to adopt proposed rules regarding Section 306. However, the term is defined in Regulation D[22] adopted pursuant to the Securities Act to mean –

> *"the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer."*

B. Attorney Reporting Requirements (Section 307)

Section 307 requires the SEC to adopt rules, in the public interest and for the protection of investors, setting minimum standards of professional conduct for attorneys appearing and practicing before the SEC in the context of representing Public Companies. Section 307 specifically requires that the rules include –

"(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the [Public Company] or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors."

On January 29, 2003, the SEC issued a release and adopted a final rule to implement the intent of Section 307.[23] In essence, the new rule requires an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the Public Company or its agents to appropriate officers within the Public Company. Thereafter, the new rule requires the attorney to report the matter to the highest authority within the Public Company should the initial report not result in an appropriate response.

The SEC release on the proposed rule provided for a "noisy withdrawal" by the attorney, i.e., to withdraw from representation of the company and inform the SEC that the withdrawal was for "professional considerations."[24] However, the final rule does not include this provision. In the SEC release on the final rule, the SEC states that it continues to consider this form of withdrawal of representation by the attorney.

The new rule states that it sets forth minimum standards of professional conduct for attorneys "appearing and practicing before the [SEC] in the representation of [a Public Company]. The rule further states that its provisions supplement applicable standards of the jurisdiction in which the attorney is admitted and are not intended to limit the authority of that jurisdiction to impose additional obligation on that attorney so long as they are not inconsistent with the rule. However, the rule does state further, to the extent the standards of that jurisdiction are in conflict with the rule, including ethical standards, the rule governs. The SEC release on the rule states that the rule does not preempt ethical rules of that jurisdiction that establish more rigorous obligations than imposed by the rule.

The rule defines "appearing and practicing" before the SEC as meaning

"(i) Transacting any business with the [SEC], including communications in any form;

(ii) Representing an issuer in [an SEC] administrative proceeding or in connection with any [SEC] investigation, inquiry, information request, or subpoena;

(iii) Providing advice in respect of the United States securities laws or the [SEC's] rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the [SEC], including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or

(iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the [SEC's] rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the [SEC] . . ."

However, the definition further states what is expressly not included in "appearing and practicing" before the SEC as conducting the above identified four activities, other than in the context of providing legal services to [a Public Company] with whom the attorney has an attorney-client relationship or as a non-appearing foreign attorney. The definition is based upon Rule 102(f) of the SEC Rules of Practice.

The release states that the definition covers an attorney advising a client that a statement, opinion or other writing does not need to be filed or incorporated with a submission to the SEC or that the Public Company is not required to submit a registration statement, notification, application, report, communication or other document with the SEC. The release states that this broad definition was intended "to reflect the reality that materials filed with the [SEC] frequently contain information contributed, edited or prepared by individuals who are not necessarily responsible for the actual filing of the materials. . ."

Under the rule, an attorney need not serve in the legal department of an issuer to fall within the application of the rule. However, to be so subject to the rule, the attorney must be providing legal services to the issuer within the context of an attorney-client relationship. The release states that it is the SEC's intent that the issue of whether an attorney-client relationship exists for purposes of the rule is to be a federal question. The issue would turn on the expectations and understandings between the attorney and the issuer. The release further states, in

this instance the law of the jurisdiction in which the attorney is admitted to practice may be relevant to, but is not to be controlling on, the issue raised under the rule.

The rule defines "appropriate response" as meaning –

". . . a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:

(1) That no material violation, as defined in [this rule] has occurred, is ongoing, or is about to occur;

(2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or

(3) That the issuer with the consent of the issuer's board of directors, or a committee thereof to whom a report could be made [as provided in this rule], or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:

(i) Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or

(ii) Has been advised that such attorney may, consistent with his or her professional obligations, asserts a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation."

The release states that this definition emphasizes "an attorney's evaluation of, and the appropriateness of an issuer's response to, evidence of material violations" is to be measured through a reasonableness standard.

The rule defines "issuer" using the same phraseology as in SOA except that the rule adds to the definition a specific exclusion of a "foreign government issuer." The rule's definition of the term further provides, in the context of its use in the definitions of "appearing and practicing" before the SEC, and "in the representation of an issuer", "issuer" includes "any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer."

Various other terms and phrases are defined by the rule including attorney, breach of fiduciary duty, evidence of material violation, in the representation of an issuer, and material violation. These definitions must be considered in understanding the full meaning of the rule. The rule also covers the composition and functioning of a qualified legal compliance committee (which also may be an audit or other committee of the issuer), standards of reasonableness, representing an issuer, duty to report evidence of a material violation, responsibilities of supervisory attorneys, responsibilities of subordinate attorneys, sanctions and disciplines, and non-existence of private right of action against an attorney. Each of these areas is of importance to an attorney retained by, or otherwise employed by, an issuer and should be reviewed to have a complete understanding of the ramifications of the rule. The rule became effective August 5, 2003.

While the new rule appears to be limited to attorneys in some way associated with an "issuer" as the term is defined in SOA, i.e., Public Companies, other parts of the rule make specific reference to investment companies registered under the Investment Company Act. This structure implies that the new rule applies to attorneys associated with such investment companies as well.

C. Criminal Liability

A separate Article VIII of SOA is devoted exclusively to corporate and criminal fraud accountability. It covers criminal penalties for altering documents, debts nondischargeable if incurred in violation of securities fraud laws, statute of limitations for securities fraud, review of federal sentencing guidelines for obstruction of justice and extensive criminal fraud, protection for employees of publicly traded companies who provide evidence of fraud, and criminal penalties for defrauding shareholders of publicly traded companies.

1. Complying with Recordkeeping Requirements (Section 802)

Section 802 amends Chapter 73 of title 18 of the U.S. Code to provide specifically that an accountant conducting an audit of an issuer for which the audit requirements of Section 10A(a) of the Exchange Act apply must maintain all audit or review workpapers for a period of five years from the end of the fiscal period in

which the work was concluded. As adopted, the record retention requirements apply to a registered investment company. Section 802 requires the SEC to adopt rules to implement the provisions of the section.

Section 802 further provides that whoever knowingly and willfully violates its record retention provisions (relating to destruction of documents in a Chapter 11 bankruptcy procedure) or a rule of the SEC regarding them is subject to fine, imprisonment for not more than 20 years, or both. Section 802 further provides that whoever knowingly and willfully destroys corporate audit records of an issuer subject to the audit requirements of Section 10A(a) of the Exchange Act or violates a rule of the SEC regarding them is subject to fine, imprisonment for not more than 10 years, or both.

On January 24, 2003, the SEC issued a release and adopted a final rule on retention of records relevant to audits and reviews.[25] The rule became effective March 3, 2003. Compliance with the rule is required for audit and reviews completed on or after October 31, 2003.

The rule amends Regulation S-X and requires accountants auditing or reviewing financial statements of a Public Company to retain certain relevant records, e.g., work papers and other documents forming the basis of the audit or review. In addition the retention requirement applies to memoranda, correspondence, communications, other documents and records (including electronic records) which are created, sent or received regarding the audit or review and which contain conclusions, opinions, analyses, or financial data related to the audit or review. The rule uses the term "issuer" as defined in Section 10A(f) of the Exchange Act which is essentially the same definition as appears in SOA.

The rule requires that such records be retained for seven years (not five years as stated in Section 802) after the auditor concludes the audit or review of the financial statements.

The release states the provisions of the new rule apply to financial statements of an investment company registered under Section 8 of the Investment Company Act.

2. Impeding an Investigation (Section 802)

Section 802 also amends Chapter 73 of title 18 of the U.S. Code to provide specific criminal penalties against a person who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record or document with the intent to impede, obstruct or influence an investigation, bankruptcy proceeding, or administration of a matter within the jurisdiction of a department or agency of the United States. Section 802 sets the criminal penalty as a fine under title 18, imprisonment for not more than 20 years, or both.

3. "Whistleblowing" Rights, Remedies, and Protections (Section 806)

Section 806 amends Chapter 73 of title 18 of the U.S. Code to provide special protection to employees of certain companies ("Publicly Traded Companies"). The section defines such companies as ones with a class of securities registered under Section 12 of the Exchange Act or that is required to file under Section 15(d) of the Exchange Act. That is, it does not include several other elements of an "issuer" as defined in SOA, i.e., a Public Company.

Section 806 provides that a Publicly Traded Company, as well as any officer, employee, contractor, subcontractor, or agent of the Publicly Traded Company, is prohibited from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in terms and conditions of employment because of any lawful act done by that employee ("Whistleblower"). Section 806 enumerates those lawful acts as follows: (1) to provide information or otherwise assist an investigation regarding conduct which the Whistleblower reasonably believes constitutes a violation of specified provisions of title 18 (Sections 1341, 1343, 1344, or 1348, pertaining to frauds and swindles; fraud by wire, radio or television; bank fraud; and securities fraud, respectively), any SEC rule, or provision of federal law relating to fraud against shareholders, where the information or assistance is provided to a federal regulatory or law enforcement agency, a member of Congress (or committee of it), or a person with supervisory authority over the Whistleblower; or (2) to file or otherwise assists in a proceeding relating to an alleged violation of those laws and rules.

Section 806 further sets forth a procedure for enforcement of its protection of a Whistleblower who alleges such wrongful discharge, his or her remedies and access to compensatory damages. Section 806 also provides that nothing in the section is to be deemed to diminish the rights, privileges or remedies of a Whistleblower under state or federal law or under a collective bargaining agreement.

Section 806 provides that an employee covered by the section may, within 90 days of an alleged discrimination, file a complaint with the Secretary of the U.S. Department of Labor. The secretary must then notify the person named in the complaint and the employer of covered employee of the filing of the complaint. Section 806 authorizes make-whole relief including reinstatement at the same seniority status, back pay with interest and compensation for special damages sustained, e.g., litigation costs, expert witness fees and reasonable attorney's fees. Section 806 further provides, should the secretary not have issued a final decision within 180 days of complaint filing (and there is no showing of delay due to bad faith of the claimant), the claimant may bring action at law or equity for *de novo* review in the appropriate U.S. district court without regard to the amount in controversy.

As of the date of this outline, the SEC had not given notice of intent to adopt rules to interpret Section 806. However, the Secretary of the U.S. Department of Labor has given notice of procedures for handling of discrimination complaints under Section 806 in the form of an interim final rule effective May 28, 2003.[26]

The interim final rule was proposed to ensure corporate responsibility, enhance public disclosure, and improve the quality of financial reporting and auditing. The rule establishes procedures for submission of a complaint under Section 806, investigation, and issuance of findings and preliminary orders. A sizeable portion of the rule focuses on detailed litigation procedures and the procedures for objecting to findings and request for a hearing.

More specifically, the interim final rule provides that the secretary, upon receipt of a complaint, must give written notice to the person named in the complaint as having violated Section 806 and to the employer. That person and the employer are referred to in the rules collectively as "the named person." The notice

is to include the allegation of the complaint, description of the evidence submitted in support of the complaint and the rights of the named person in the investigation of the complaint.

The new rule further provides that the secretary, within 60 days of receipt of the complaint, must afford the named person the opportunity to respond. The secretary may present statements from witnesses, conduce an investigation and make a determination of reasonable cause. However, the rule provides that the investigation may be conducted only if the complaintant had made a prima facie showing that the alleged protected activity under Section 806 was a contributing factor in the unfavorable personnel action and the named person did not show it would have taken the unfavorable personnel action anyway. The level of proof required by the rule in this context is demonstrated by clear and convincing evidence.

Under the new rule, subsequent to the investigation, the secretary must issue a determination letter. Should the investigation result in a finding of reasonable cause that discriminatory behavior has occurred, the named person must be so notified by the secretary. In this instance, the secretary must issue a preliminary order providing appropriate relief.

The complainant and named person have 30 days from receipt of that order in which to file objections to the findings and order and to request a hearing before an administrative law judge. Should such filing not occur within that time frame, the preliminary order becomes final and not subject to judicial review.

Under the new rule, a hearing, if held, must be conducted expeditiously, and the secretary has 120 days from the conclusion of the hearing in which to issue a final order. Subsequent to the issuance of that order, the secretary and the parties to the complaint may enter a settlement agreement. Where a complaint is found by the secretary to be frivolous or brought in bad faith, the secretary may award the prevailing party reasonable attorney fees not exceeding $1,000. A person adversely effected by the final order may, within 60 days of its issuance, file an appeal with the U.S. Court of Appeals for the circuit in which the violation occurred or the complainant resided on the date of violation.

As of the date of this outline, no further public notice of action on the rule had been given by the secretary.

4. Enhancement of Existing Criminal and Other Liability Laws (Articles VIII, IX, XI)

The SOA provides several enhancements of existing criminal and other liability laws. Each one is briefly described as follows.

In addition to criminal sanctions of Section 802 previously discussed (recordkeeping and impeding an investigation, see within this outline III.C.1. and 2.), Article VIII, dealing generally with corporate and criminal fraud accountability, includes the following.

Section 803 amends Section 523(a) of title 11 of the U.S. Code to provide that, in a Chapter 11 bankruptcy proceeding, debts are nondischargable if incurred in violation of state or federal securities fraud laws or for common law fraud, deceit or manipulation in the context of purchase or sale of a security and result from a judgement, settlement agreement, or administrative order.

Section 804 amends Section 1658 of title 28 of the U.S. Code to provide a statute of limitations for securities fraud suits. That is, a private right of action involving a claim of fraud, deceit, manipulation, or contrivance contrary to a securities law requirement may be brought not later than the earlier of two years after discovery of facts constituting the violation or five years after such violation.

Section 805 requires the U.S. Sentencing Commission to review and amend as appropriate the Federal Sentencing Guidelines and corresponding policy statement relating to fraud and obstruction of justice sentences to ensure they are sufficient to deter and punish that activity.

Section 807 amends Chapter 63 of title 18 of the U.S. Code by adding Section 1348 relating to defrauding shareholders of a Publicly Traded Company. That is, the amendment provides whoever knowingly executes a scheme or artifice to defraud a person in connection with a security of a Publicly Traded Company or

to obtain by means of false or fraudulent pretenses any money or property in connection with the purchase or sale of that security is subject to fine under the title, or imprisonment for not more than 25 years, or both.

Article IX of SOA deals with white-collar crime penalty enhancements. The article includes the following.

Section 902 amends Chapter 63 of title 18 of the U.S. Code by adding Section 1349 to provide expressly any person attempting or conspiring to commit any offense under that chapter is subject to the same penalties as provided for the offense.

Section 903 amends Section 1341 and 1343 of title 18 of the U.S. Code to increase the criminal penalties for mail fraud and wire fraud, both from five to 20 years.

Section 904 amends Section 501 of ERISA to increase the criminal penalties for violation of ERISA from $5,000 to $100,000 and, in the case where the violation is by a person not an individual, the fine imposed upon the person is increased from $100,000 to $500,000. The section also changes the maximum imprisonment for such violation of ERISA from one year to 10 years.

Section 905 amends title 28 of the U.S. Code to require the U.S. Sentencing Commission to review and amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of Article IX.

The substantive certification requirements of Section 906 are discussed elsewhere in this outline (see within this outline I.A.1.). Section 906 further amends Chapter 63 of title 18 of the U.S. Code by providing criminal penalties against whoever certifies any statement knowing that the report accompanying the statement does not satisfy the provision of Section 906. Those penalties are a fine of not more than $1 million or imprisonment for not more than 10 years, or both. However, if that person willfully certifies the statement knowing that the report does not satisfy the provisions of Section 906, the penalties are a fine of not more than

$5 million, or imprisonment for not more than 20 years, or both. These provisions became effective on July 30, 2003.

Article XI of SOA deals with corporate fraud accountability. The article includes the following.

Section 1102 amends Section 1512 of title 18 of the U.S. Code to provide that a person who "corruptly" alters, destroys, mutilates or conceals a record or document (or attempts to do so) with intent to impair the integrity or availability of the object for use in an official proceeding or otherwise obstructs, influences or impedes the proceeding (or attempts to) is subject to be fined under title 18 or imprisonment for not more than 20 years, or both.

Section 1103 amends Section 21C(c) of the Exchange Act by adding Section 21C(c)(3) to provide temporary freeze authority to the SEC. That is, whenever, during an investigation involving possible violation of federal securities law by a Public Company or by any of its officers, directors, or other controlling persons, agents, or employees, it appears to the SEC that it is likely that the company may make extraordinary payments to any of those principals, the SEC may petition a federal district court for a temporary order requiring the company to escrow those payments. Section 1103 further provides that the escrow is subject to court supervision and is to be in an interest-bearing account for 45 days. Upon successful petition to the court, the period of the escrow may be extended for an additional 45 days. Section 1103 provides that, should a person subject to the order be charged with a violation of federal securities law before expiration of the temporary order, the order would remain in effect until conclusion of any legal proceedings. Section 1003 further provides that, should that person subject to the order not be charged with a violation of federal securities law before expiration of the temporary order, the escrow would terminate at the expiration of the 45 day period (or expiration of any extended period) and the payment (with accrued interest) would be returned to the Public Company or other person affected by the order.

As of the date of this outline, the SEC has not given notice of intent to adopt rules interpreting Section 1103.

Section 1104 provides specific direction on amendment to the federal sentencing guidelines similar to that contained in Sections 805 and 905.

Section 1105 amends Section 21C of the Exchange Act by adding Section 21C(f) to provide authority to the SEC to prohibit, under certain conditions, persons from serving as officers or directors of a Public Company. More specifically, in a cease and desist proceeding under Section 21C(a) of the Exchange Act, the SEC may issue an order to prohibit a person who has violated Section 10(b) of the Exchange Act or the rules adopted under that section relating to securities fraud, from acting as an officer or director of the Publicly Traded Company should that person's conduct demonstrate unfitness to serve in that capacity.

Section 1105 provides similar relief to the SEC in the context of the Securities Act. That is, Section 8A of that act is amended by adding Section 8A(f) to provide in any cease and desist proceeding under Section 8A(a) of the Securities Act, the SEC may issue an order to prohibit a person who has violated Section 17(a)(1) of the Securities Act (relating to the employment of a device, scheme, or artifice to defraud in an offer or sale of a security) or the rules adopted under that section from acting as an officer or director of the Publicly Traded Company should that person's conduct demonstrate unfitness to serve in that capacity. In both the context of the Exchange Act and the Securities Act, the order to prohibit the person from acting as an officer or director may be conditional or unconditional and permanent or for such period of time as the SEC determines.

As of the date of this outline, the SEC had not given notice of intent to adopt rules to interpret Section 1105.

Section 1106 amends Section 32(a) of the Exchange Act to increase the criminal penalties for violation of the act from the previous provisions (fine of up to $1 million, or imprisonment for not more than 10 years) to a fine of up to $5 million, or imprisonment of not more than 20 years, with one exception. When the person is other than a natural person, the section increases the fine from the previous amount ($2.5 million) to $25 million.

Section 1107 amends Section 1513 of title 18 of the U.S. Code by adding Section 1513(e) to provide a prohibition of retaliation against informants. Specifically, the amendment provides whoever knowingly and with the intent to retaliate takes action harmful to a person for providing truthful information to the commission (or possible commission) of a federal offense, is subject to fine under the title, or imprisonment for not more than 10 years, or both.

ENDNOTES

1. Pub. L. 107-204, 116 Stat. 745 (2002).

2. H.R. Conf. Rep. No. 107-610, 107th Congress, 2d Sess. (2002).

3. SEC Release No. 33-8212 (March 21, 2003) on proposed rules relating to Sections 302 and 906.

4. SEC Release No. 33-8238 (June 5, 2003) on final rules relating to Sections 302 and 404.

5. SEC Release No. 33-8124 (August 29, 2002) on a final rule relating to Section 302. See also release on proposed rule – SEC Release Nos. 34-46300 (August 2, 2002) and 34-46079 (June 17, 2002).

6. SEC Release No. IC 25914 (also 34-47262) (January 27, 2003) on final rules relating to Sections 302, 406, and 407. See also release in proposed rules – SEC Release No. 34-46441 (August 30, 2002).

7. See footnote 3.

8. See Exchange Act Rule 12b-11(d) and Rules 301-302 of Regulation S-T.

9. SEC Release Nos. 34-46421 (August 27, 2002) and 34-46313 (August 6, 2002).

10. SEC Release No. 33-8230 (May 7, 2003) on final rule relating to Section 403 and Forms 3-5. See also release on proposed rule – SEC Release No. 33-8170 (December 20, 2002).

11. SEC Release No. 33-8255 (July 22, 2003) on a final rule relating to Section 403 and Forms 3-5. See also SEC Release No. 33-8255A (September 4, 2003) providing a correction to the final rule.

12. SEC Release Nos. 33-8128 (September 5, 2002) and 33-8128A (April 8, 2003) on final rules relating to acceleration of periodic report filing dates, and technical amendments on them, respectively. See also release on proposed rule – SEC Release No. 33-8089 (April 12, 2002).

13. SEC Release No. 33-8089 (April 12, 2002). on proposed rules relating to acceleration of periodic report filing dates.

14. SEC Release No. 33-8182 (January 27, 2003) on final rules relating to Section 401. See also release on proposed rule – SEC Release No. 33-8144 (November 14, 2002).

15. See footnote 4. See also release on proposed rule – SEC Release No. 33-8138 (October 22, 2002).

16. SEC Release Nos. 33-8177 (January 23, 2003) and 33-8177A (March 26, 2003) on final rules relating to Sections 406 and 407, and corrections to them, respectively. See also release on proposed rule – SEC Release No. 33-8138 (October 22, 2002).

17. SEC Release No. IC 25914, 34-47262 (January 27, 2003) on final rules relating to Sections 302, 406 and 407. See also release on proposed rule – SEC Release No. 34-46441 (August 30, 2002).

18. See footnote 15.

19. See 17 CFR §240.14a-101, Item 7(d)(3)(iv)(A)(1) which defers to the definition of "independence" as found in Section 303.01(B)(2)(a) and (3) of the New York Stock Exchange's listing standards, Section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the National Association of Securities Dealers' listing standards, as applicable.

20. See footnote 16.

21. SEC Release No. 34-47890 (May 20, 2003). See also release on proposed rule – SEC Release No. 34-46685 (October 18, 2002).

22. 17 CFR 230.501-230.508.

23. SEC Release No. 33-8185 (January 29, 2003) on final rules relating to Section 307. See also release on proposed rule – SEC Release No. 33-8150 (November 21, 2002).

24. SEC Release No. 33-8150 (November 21, 2002) on proposed rules relating to Section 307.

25. SEC Release No. 33-8180 (January 24, 2003) on final rules relating to Section 802. See also release on proposed rule – SEC Release No. 33-8151 (November 21, 2002).

26. OSHA Release on Interim Final Rule 29 CFR 1980 et seq. (May 28, 2003), Fed. Regis. 68:31859-31868, relating to Section 806.

EXHIBIT A

Sarbanes-Oxley Act of 2002 (Exhibit A)

Pub.L. 107-204

Public Law 107–204
107th Congress

An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

July 30, 2002
[H.R. 3763]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sarbanes-Oxley Act of 2002. Corporate responsibility. 15 USC 7201 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Sarbanes-Oxley Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this 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.

15 USC 7201.

SEC. 2. DEFINITIONS.

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

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term “appropriate State regulatory authority” means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States

having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

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

(4) AUDIT REPORT.—The term "audit report" means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term "Board" means the Public Company Accounting Oversight Board established under section 101.

(6) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(7) ISSUER.—The term "issuer" means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) NON-AUDIT SERVICES.—The term "non-audit services" means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

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

(A) IN GENERAL.—The terms "person associated with a public accounting firm" (or with a "registered public accounting firm") and "associated person of a public accounting firm" (or of a "registered public accounting firm") mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term "professional standards" means—

(A) accounting principles that are—

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

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

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

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

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

(11) PUBLIC ACCOUNTING FIRM.—The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

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

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

(13) RULES OF THE BOARD.—The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

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

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

(16) STATE.—The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting "the Sarbanes-Oxley Act of 2002," before "the Public".

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

15 USC 7202.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

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

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,";

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

(C) in subsection (e), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,"; and

(D) in subsection (f), by inserting "or the Public Company Accounting Oversight Board" after "self-regulatory organization" each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by inserting "registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002)," after "government securities dealer,".

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking "sections 12," each place it appears and inserting "sections 10A(m), 12,"; and

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

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

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

15 USC 7211.

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

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

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

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

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon,

registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

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

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

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

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

(4) APPOINTMENT OF BOARD MEMBERS.—

Deadline.

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors

of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

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

(5) TERM OF SERVICE.—

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

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

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

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

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

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

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

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

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

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

Contracts.

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

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

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

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

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

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

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

(4) provide as otherwise required by this Act.

Deadline.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

15 USC 7212.

SEC. 102. REGISTRATION WITH THE BOARD.

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

(b) APPLICATIONS FOR REGISTRATION.—

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

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

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

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

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

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

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

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

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

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

Deadline.

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

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required

to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

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

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

15 USC 7213.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

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

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

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

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

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

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

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

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

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the

Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

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

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

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

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

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

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

15 USC 7214.

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

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

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

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

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

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

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

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

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

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

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

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

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

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

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

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

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

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

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

15 USC 7215.

Establishment.

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

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

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

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

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

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

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

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

Notification.

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

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

(I) the Attorney General of the United States;

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

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

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

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

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine

whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

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

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

(C) keep a record of the proceedings.

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

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

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

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

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

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

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

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

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

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

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

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

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

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

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

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

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable

care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

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

(A) the Commission;

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

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

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

(A) the name of the sanctioned person;

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

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

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

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

15 USC 7216.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

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

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm

(or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

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

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

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

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

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

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

15 USC 7217.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 17(a)(1) and 17(b)(1).

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

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

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

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

(A) the phrase "consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization" in section 19(b)(2) of that Act shall be deemed to read "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

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

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 19(c), except that the phrase "to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title" in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read "to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

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

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

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

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

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

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

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

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

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

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

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove

from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

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

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

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

15 USC 7218.

SEC. 108. ACCOUNTING STANDARDS.

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

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

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

“(b) RECOGNITION OF ACCOUNTING STANDARDS.—

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

“(A) that—

“(i) is organized as a private entity;

“(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

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

“(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

“(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

“(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

"(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.".

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

Regulations.

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

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

(1) STUDY.—

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

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

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

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

15 USC 7219.

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

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

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

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

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

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

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

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in

a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

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

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

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

(1) in subparagraph (A), by striking "and" at the end; and

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

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

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

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

TITLE II—AUDITOR INDEPENDENCE

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;

"(8) legal services and expert services unrelated to the audit; and

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

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

15 USC 7231.

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

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

"(i) PREAPPROVAL REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

"(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

"(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

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

"(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

"(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

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

"(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.".

SEC. 203. AUDIT PARTNER ROTATION.

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

"(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.".

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

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

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

"(1) all critical accounting policies and practices to be used;

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

"(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.".

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(58) AUDIT COMMITTEE.—The term 'audit committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the

purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

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

"(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.".

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

(1) by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm";

(2) by striking "the independent public accountant" each place that term appears and inserting "the registered public accounting firm";

(3) in subsection (c), by striking "No independent public accountant" and inserting "No registered public accounting firm"; and

(4) in subsection (b)—

(A) by striking "the accountant" each place that term appears and inserting "the firm";

(B) by striking "such accountant" each place that term appears and inserting "such firm"; and

(C) in paragraph (4), by striking "the accountant's report" and inserting "the report of the firm".

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

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking "independent public accountants" each place that term appears and inserting "a registered public accounting firm"; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm".

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

15 USC 78j–1.

(1) by striking "DEFINITION" and inserting "DEFINITIONS"; and

(2) by adding at the end the following: "As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.".

SEC. 206. CONFLICTS OF INTEREST.

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

"(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in

any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.".

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

15 USC 7232.

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

Deadline.

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

(c) DEFINITION.—For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

15 USC 7233.

Deadline.

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

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

15 USC 7234.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

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

15 USC 78j–1.

"(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

"(1) COMMISSION RULES.—

Deadline.

"(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

"(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

"(3) INDEPENDENCE.—

"(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

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

"(ii) be an affiliated person of the issuer or any subsidiary thereof.

"(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

"(4) COMPLAINTS.—Each audit committee shall establish procedures for—

"(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

"(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

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

"(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

"(B) to any advisers employed by the audit committee under paragraph (5).".

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

15 USC 7241.

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

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

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

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

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

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

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

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

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

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

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

15 USC 7242.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

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

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

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

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

15 USC 7243.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

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

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

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

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

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

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

"(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.".

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS.

15 USC 7244.

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

(1) IN GENERAL.—Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) REMEDY.—

(A) IN GENERAL.—Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) RULEMAKING AUTHORIZED.—The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for

appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) BLACKOUT PERIOD.—For purposes of this subsection, the term "blackout period", with respect to the equity securities of any issuer—

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

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

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

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

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

(6) NOTICE TO DIRECTORS, EXECUTIVE OFFICERS, AND THE COMMISSION.—In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

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

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating the second subsection (h) as subsection (j), and by inserting after the first subsection (h) the following new subsection:

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

"(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

"(2) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

"(i) the reasons for the blackout period,

"(ii) an identification of the investments and other rights affected,

"(iii) the expected beginning date and length of the blackout period,

"(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

"(v) such other matters as the Secretary may require by regulation.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

"(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

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

"(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

"(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

"(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such

blackout period to the issuer of any employer securities subject to such blackout period.

"(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIMITED APPLICABILITY.—In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

"(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

"(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

"(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

"(7) BLACKOUT PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'blackout period' means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

"(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

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

"(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

"(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee

(as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)).

"(8) INDIVIDUAL ACCOUNT PLAN.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'individual account plan' shall have the meaning provided such term in section 3(34), except that such term shall not include a one-participant retirement plan.

"(B) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of subparagraph (A), the term 'one-participant retirement plan' means a retirement plan that—

"(i) on the first day of the plan year—

"(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

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

"(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

"(iii) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses),

"(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

"(v) does not cover a business that leases employees.".

Deadlines.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

Regulations.

(3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking "(5), or (6)" and inserting "(5), (6), or (7)";

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

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

"(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.".

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

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

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

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

15 USC 7245.

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Deadline.

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

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

15 USC 7246.

SEC. 308. FAIR FUNDS FOR INVESTORS.

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United

States for a disgorgement fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (a).

(c) STUDY REQUIRED.—

(1) SUBJECT OF STUDY.—The Commission shall review and analyze—

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

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

Deadline.

(2) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of the date of the enactment of this Act, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(d) CONFORMING AMENDMENTS.—Each of the following provisions is amended by inserting ", except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002" after "Treasury of the United States":

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

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

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

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

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

(e) DEFINITION.—As used in this section, the term "disgorgement fund" means a fund established in any administrative or judicial proceeding described in subsection (a).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

15 USC 7261.

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

"(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been

identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

Deadline. Regulations.

"(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.".

Deadline.

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

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

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

Deadline.

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

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

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

Deadline.

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

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

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

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

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

"(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

"(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

"(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e)), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

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

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

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

"(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained

by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).''.

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

(a) AMENDMENT.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by striking the heading of such section and subsection (a) and inserting the following:

''SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

''(a) DISCLOSURES REQUIRED.—

''(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

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

''(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

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

''(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

''(3) CONTENTS OF STATEMENTS.—A statement filed—

''(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

''(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

Deadline.

''(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

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

Deadline.

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

"(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.". Deadline.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act. 15 USC 78p note.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS. 15 USC 7262.

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

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

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

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

SEC. 405. EXEMPTION. 15 USC 7263.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS. 15 USC 7264.

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

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

(c) DEFINITION.—In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

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

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

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

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

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

15 USC 7265.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING "FINANCIAL EXPERT".—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

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

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

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

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

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

15 USC 7266.

SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

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

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

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

SEC. 409. REAL TIME ISSUER DISCLOSURES.

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

"(l) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.".

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS AND NATIONAL SECURITIES EXCHANGES.

(a) RULES REGARDING SECURITIES ANALYSTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15C the following new section:

"SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS.

15 USC 78*o*–6.

Deadline.

"(a) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

"(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

"(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

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

"(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

"(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

"(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

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

"(b) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

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

"(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

"(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

"(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

"(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

"(c) DEFINITIONS.—In this section—

"(1) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

"(2) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.".

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by inserting "15D," before "15B".

15 USC 78*o*–6 note.

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

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

"SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

"In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

"(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

"(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

"(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and

disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.".

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

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

15 USC 78d–3.

"SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

"(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

"(1) not to possess the requisite qualifications to represent others;

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

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

"(b) DEFINITION.—With respect to any registered public accounting firm or associated person, for purposes of this section, the term 'improper professional conduct' means—

"(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

"(2) negligent conduct in the form of—

"(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

"(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.".

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

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

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

"(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes

any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

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

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

''(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

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

(1) by striking subparagraph (F) and inserting the following:

''(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;''; and

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

''(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

(1) by striking paragraph (7) and inserting the following:

"(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;";

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

(3) by adding at the end the following:

"(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

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

(i) by striking "or (G)" and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated";

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

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by striking "or omission" each place that term appears, and inserting ", or is subject to an order or finding,"; and

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

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated" each place that term appears.

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

(A) by striking "or (8)" and inserting "(8), or (9)"; and

(B) by inserting "or (3)" after "paragraph (2)".

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

15 USC 7201 note.

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

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

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

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

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

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

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

Deadline.

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

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

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

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

(A) the role of credit rating agencies in the evaluation of issuers of securities;

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

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

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

Deadline.

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

SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIOLATIONS.

(a) STUDY.—The Commission shall conduct a study to determine, based upon information for the period from January 1, 1998, to December 31, 2001—

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

(A) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (collectively referred to in this section as “Federal securities laws”), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such an action or proceeding (referred to in this section as “aiders and abettors”); and

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

(2) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

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

(B) the specific sanctions and penalties imposed upon such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

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

(D) whether, as to each such violator, disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

(3) the amount of disgorgement, restitution, or any other fines or payments that the Commission has assessed upon and collected from, aiders and abettors and from primary violators.

(b) REPORT.—A report based upon the study conducted pursuant to subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 704. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the 5-year period preceding the date of enactment of this Act, to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

Deadline.

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

SEC. 705. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the rule of investment banks and financial advisers—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financial arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiberoptic cable capacity, in the designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions which may have been designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

Deadline.

(b) REPORT.—The Comptroller General shall report to Congress not later than 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that

are recommended or that may be necessary to address concerns identified in the study.

Corporate and Criminal Fraud Accountability Act of 2002.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

18 USC 1501 note.

SEC. 801. SHORT TITLE.

This title may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

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

"§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1520. Destruction of corporate audit records

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

Regulations.

"(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

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

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

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

"1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

"1520. Destruction of corporate audit records.".

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

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

(1) in paragraph (17), by striking "or" after the semicolon;

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

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

"(19) that—

"(A) is for—

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

"(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.".

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

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

(1) by inserting "(a)" before "Except"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

"(1) 2 years after the discovery of the facts constituting the violation; or

"(2) 5 years after such violation.".

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

28 USC 1658 note.

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

28 USC 1658 note.

28 USC 994 note.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

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

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

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

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

Deadline.

(b) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the prcedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

“§ 1514A. Civil action to protect against retaliation in fraud cases

“(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)),

or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

"(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

"(A) a Federal regulatory or law enforcement agency;

"(B) any Member of Congress or any committee of Congress; or

"(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

"(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

Deadline.

"(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

"(c) REMEDIES.—

"(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

"(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

"(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

"1514A. Civil action to protect against retaliation in fraud cases.".

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Securities fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1348. Securities fraud.".

White-Collar Crime Penalty Enhancement Act of 2002.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

18 USC 1341 note.

SEC. 901. SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL FRAUD OFFENSES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1348 as added by this Act the following:

"§ 1349. Attempt and conspiracy

"Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1349. Attempt and conspiracy.".

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five" and inserting "20".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five" and inserting "20".

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(2) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

28 USC 994 note.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1349, as created by this Act, the following:

"§ 1350. Failure of corporate officers to certify financial reports

(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act pf 1934 (15 U.S.C. 78m or 78o(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

"(c) CRIMINAL PENALTIES.—Whoever—

"(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

"(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1350. Failure of corporate officers to certify financial reports.".

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

Corporate Fraud Accountability Act of 2002.

SEC. 1101. SHORT TITLE.

15 USC 78a note.

This title may be cited as the "Corporate Fraud Accountability Act of 2002".

SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.".

SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended by adding at the end the following:

"(3) TEMPORARY FREEZE.—

"(A) IN GENERAL.—

"(i) ISSUANCE OF TEMPORARY ORDER.—Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

"(ii) STANDARD.—A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that

notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

"(I) become effective immediately;

"(II) be served upon the parties subject to it; and

"(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

"(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

"(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

"(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

"(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.".

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking "This" and inserting "paragraph (1)".

28 USC 994 note.

SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and

any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

Deadline.

SEC. 1105. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end of the following:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

(1) by striking "$1,000,000, or imprisoned not more than 10 years" and inserting "$5,000,000, or imprisoned not more than 20 years"; and

(2) by striking "$2,500,000" and inserting "$25,000,000".

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

Penalties.

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.".

Approved July 30, 2002.

LEGISLATIVE HISTORY—H.R. 3763 (S. 2673):

HOUSE REPORTS: Nos. 107–414 (Comm. on Financial Services) and 107–610 (Comm. of Conference).
SENATE REPORTS: No. 107–205 accompanying S. 2673 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 148 (2002):
Apr. 24, considered and passed House.
July 15, considered and passed Senate, amended, in lieu of S. 2673.
July 25, House and Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 38 (2002):
July 30, Presidential remarks and statement.

EXHIBIT B

List of SEC No-Action Letters Pertaining to SOA (Exhibit B)

COMPANY	**Date publicly available**
Mitsui & Co., Ltd.	(pub. avail. August 20, 2003)
Alcide Corporation	(pub. avail. August 11, 2003)
Global Entertainment Holdings/Equities, Inc.	(pub. avail. July 10, 2003)
BMC Software, Inc.	(pub. avail. July 9, 2003)
Manugistics Group, Inc.	(pub. avail. June 12, 2003)
Hechinger Liquidation Trust	(pub. avail. May 14, 2003)
Storage Technology Corporation	(pub. avail. April 1, 2003)
Storage Technology Corporation [Different matter.]	(pub. avail. April 1, 2003)
Alaska Air Group, Inc.	(pub. avail. March 31, 2003)
Merrill Lynch Depositer, Inc.	(pub. avail. March 28, 2003)
Equity Office Properties Trust	(pub. avail. March 28, 2003)
Mitsubishi Motors Credit of America, Inc.	(pub. avail. March 27, 2003)
Teradyne, Inc.	(pub. avail. March 20, 2003)
Xcel Energy Inc.	(pub. avail. March 17, 2003)
PeopleSoft, Inc.	(pub. avail. March 14, 2003)
Wal-Mart Stores, Inc.	(pub. avail. March 14, 2003)
Hilton Hotels Corporation	(pub. avail. March 14, 2003)
ExxonMobil Corporation	(pub. avail. March 11, 2003)
Viacom Inc.	(pub. avail. March 10, 2003)
Advanced Fibre Communications, Inc.	(pub. avail. March 10, 2003)
Wyeth	(pub. avail. March 10, 2003)
Corning Incorporated	(pub. avail. March 3, 2003)
ExxonMobil Corporation	(pub. avail. February 28, 2003)
Berry Petroleum Company	(pub. avail. February 28, 2003)
Bank of America Corporation	(pub. avail. February 28, 2003)
Sears, Roebuck and Co.	(pub. avail. February 28, 2003)
Capital One Financial Corporation	(pub. avail. February 7, 2003)
Johnson & Johnson	(pub. avail. February 7, 2003)
General Electric Company	(pub. avail. February 5, 2003)
The Allstate Corporation	(pub. avail. February 5, 2003)
Allstate Corporation	(pub. avail. February 5, 2003)
Exxon Mobil Corporation	(pub. avail. February 4, 2003)
General Motors Corporation	(pub. avail. February 4, 2003)
General Electric Company	(pub. avail. January 28, 2003)
Loews Corporation	(pub. avail. January 28, 2003)
Hewlett-Packard Company	(pub. avail. January 24, 2003)
Verizon Communications Inc.	(pub. avail. January 23, 2003)
Otter Tail Corporation	(pub. avail. January 13, 2003)
Bank of America Corporation	(pub. avail. January 2, 2003)
United Technologies Corporation	(pub. avail. December 27, 2002)
WGL Holdings, Inc.	(pub. avail. December 6, 2002)
United Brotherhood of Carpenters and Joiners of America	(pub. avail. December 6, 2002)
Bank of America	(pub. avail. November 13, 2002)
Farmer Bros. Co.	(pub. avail. October 15, 2002)

EXHIBIT C

List of Federal Court Cases Pertaining to SOA (Exhibit C)

1st Circuit

U.S. v. Thurston, 338 F.3d 50 (1st Cir. 2003)

Sorenson v. H & R Block, Inc., – F.Supp.2d –, 2003 WL 21842854 (D.Mass. 2003)

2nd Circuit

S.E.C. v. Worldcom, – F.Supp.2d –, 2003 WL 22004827 (S.D.N.Y. 2003)

Gideon Minerals U.S.A., Inc. v. JP Morgan Chase Bank, – F.Supp.2d –, 2003 WL 21804850 (S.D.N.Y. 2003)

S.E.C. v. Worldcom, Inc., – F.Supp.2d –, 2003 WL 21523992 (S.D.N.Y. 2002)

In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation, – F.Supp.2d –, 2003 WL 21518833 (S.D.N.Y. 2003)

S.E.C. v. Pierre, – F.Supp.2d –, 2003 WL 21488014 (S.D.N.Y 2003)

S.E.C. v. Bear, Stearns & Co., – F.Supp.2d –, 2003 WL 21517973 (S.D.N.Y. 2003)

Boss v. Salomon Smith Barney Inc., 263 F.Supp.2d 684 (S.D.N.Y. 2003)

In re Initial Public Offering Securities Litigation, 241 F.Supp.2d 281 (S.D.N.Y. 2003)

U.S. v. All Funds on Deposit in Dime Sav. Bank of Williamsburg Account No. 58-400738-1 in the Name of Ishar Abdi and Barbara Abdi, 255 F.Supp.2d 56 (E.D.N.Y. 2003)

3rd Circuit

None

4th Circuit

Glaser v. Enzo Biochem, Inc., – F.Supp.2d –, 2003 WL 21960613 (E.D.Va. 2003)

Verizon Maryland Inc. v. RCN Telecom Services, Inc., 232 F.Supp.2d 539 (D.Md. 2002)

5th Circuit

Murray v. TXU Corp., – F.Supp.2d –, 2003 WL 22047263 (N.D.Tex. 2003)

6th Circuit

Javitch v. First Montauk Financial Corp., – F.Supp.2d –, 2003 WL 22061039 (N.D.Ohio 2003)

7th Circuit

Peters v. Renaissance Hotel Operating Co., 307 F.3d 535 (7th Cir. 2002)

Jones v. R.R. Donnelley & Sons Co., 305 F.3d 717 (7th Cir. 2002)

Taylor v. Prudential Ins. Co. of America, – F.Supp.2d –, 2003 WL 21314254 (S.D.Ind. 2003)

Lawrence E. Jaffe Pension Plan v. Household Intern., Inc., – F.Supp.2d–, 2003 WL 21011757 (N.D.Ill. 2003)

8th Circuit

None

9th Circuit

U.S.S.E.C. v. Henke, – F.Supp.2d –, 2003 WL 21805930 (N.D.Cal. 2003)

In re JDS Uniphase Corp. Securities Litigation, 238 F.Supp.2d 1127 (N.D.Cal. 2002)

10th Circuit

None

11th Circuit

S.E.C. v. Healthsouth Corp., 261 F.Supp.2d 1298 (N.D.Ala. 2003)

Roberts v. Dean Witter Reynolds, Inc., – F.Supp.2d –, 2003 WL 1936116 (M.D.Fla. 2003)

D.C. Circuit

Mittleman v. Department of Treasury, – F.3d –, 2003 WL 22006001 (D.C.Cir. 2003)

New York State Bar Ass'n v. F.T.C., – F.Supp.2d –, 2003 WL 21919841 (D.C.Cir. 2003)