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Sarbanes-Oxley: Bill Summaries

SARBANES-OXLEY ACT of 2002

This Summary provided by AICPA.

Section 3: Commission Rules and Enforcement.

A violation of Rules of the Public Company Accounting Oversight Board ("Board") is treated as a violation of the '34 Act, giving rise to the same penalties that may be imposed for violations of that Act.

Section 101: Establishment; Board Membership.

The Board will have five financially-literate members, appointed for five-year terms. Two of the members must be or have been certified public accountants, and the remaining three must not be and cannot have been CPAs. The Chair may be held by one of the CPA members, provided that he or she has not been engaged as a practicing CPA for five years.

The Board's members will serve on a full-time basis.

No member may, concurrent with service on the Board, "share in any of the profits of, or receive payments from, a public accounting firm," other than "fixed continuing payments," such as retirement payments.

Members of the Board are appointed by the Commission, "after consultation with" the Chairman of the Federal Reserve Board and the Secretary of the Treasury.

Members may be removed by the Commission "for good cause."

Section 101: Establishment; Duties Of The Board.

Section 103: Auditing, Quality Control, And Independence Standards And Rules.

The Board shall:

(1) register public accounting firms;

(2) establish, or adopt, by rule, "auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers;"

(3) conduct inspections of accounting firms;

(4) conduct investigations and disciplinary proceedings, and impose appropriate sanctions;

(5) perform such other duties or functions as necessary or appropriate;

(6) enforce compliance with the 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;

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

Auditing standards. The Board would be required to "cooperate on an on-going basis" with designated professional groups of accountants and any advisory groups convened in connection with standard-setting, and although the Board can "to the extent that it determines appropriate" adopt standards proposed by those groups, the Board will have authority to amend, modify, repeal, and reject any standards suggested by the groups. The Board must report on its standard-setting activity to the Commission on an annual basis.

The Board must require registered public accounting firms to "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."

The Board must require a 2nd partner review and approval of audit reports registered accounting firms must adopt quality control standards.

The Board must adopt an audit standard to implement the internal control review required by section 404(b).

This standard must require the auditor evaluate whether the internal control structure and procedures include records that accurately and fairly reflect the transactions of the issuer, provide reasonable assurance that the transactions are recorded in a manner that will permit the preparation of financial statements in accordance with GAAP, and a description of any material weaknesses in the internal controls.

Section 102(a): Mandatory Registration

Section 102(f): Registration And Annual Fees.

Section 109(d): Funding; Annual Accounting Support Fee For The Board.

In order to audit a public company, a public accounting firm must register with the Board.

The Board shall 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.

The Board shall also establish by rule a reasonable "annual accounting support fee" as may be necessary or appropriate to maintain the Board. This fee will be assessed on issuers only.

Section 104: Inspections of Registered Public Accounting Firms

Annual quality reviews (inspections) must be conducted for firms that audit more than 100 issues, all others must be conducted every 3 years. The SEC and/or the Board may order a special inspection of any firm at any time.

Section 105(b)(5): Investigation And Disciplinary Proceedings; Investigations; Use Of Documents.

Section 105(c)(2): Investigations And Disciplinary Proceedings; Disciplinary Procedures; Public Hearings.

Section 105(c)(4): Investigations And Disciplinary Proceedings; Sanctions.

Section 105(d): Investigations And Disciplinary Proceedings; Reporting of Sanctions.

All documents and information prepared or received by the Board shall be "confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery other legal process) in any proceeding in any Federal or State court or administrative agency, . . . unless and until presented in connection with a public proceeding or [otherwise] released" in connection with a disciplinary action. However, all such documents and information can be made available to the SEC, the U.S. Attorney General, and other federal and appropriate state agencies.

Disciplinary hearings will be closed unless the Board orders that they be public, for good cause, and with the consent of the parties.

Sanctions can be imposed by the Board of a firm if it fails to reasonably supervise any associated person with regard to auditing or quality control standards, or otherwise.

No sanctions report will be made available to the public unless and until stays pending appeal have been lifted.

Section 106: Foreign Public Accounting Firms.

The bill would subject foreign accounting firms who audit a U.S. company to registrations with the Board. This would include foreign firms that perform some audit work, such as in a foreign subsidiary of a U.S. company, that is relied on by the primary auditor.

Section 107(a): Commission Oversight Of The Board; General Oversight Responsibility.

Section 107(b): Rules Of The Board.

Section 107(d): Censure Of The Board And Other Sanctions.

The SEC shall have "oversight and enforcement authority over the Board." The SEC can, by rule or order, give the Board additional responsibilities. The SEC may require the Board to keep certain records, and it has the power to the Board itself, in the same manner as it can with regard to SROs such as the NASD.

The Board, in its rulemaking process, is to be treated "as if the Board were a 'registered securities association'"—that is, a self-regulatory organization. The Board is required to file proposed rules and proposed rule changes with the SEC. The SEC may approve, reject, or amend such rules.

The Board must notify the SEC of pending investigations involving potential violations of the securities laws, and coordinate its investigation with the SEC Division of Enforcement as necessary to protect an ongoing SEC investigation.

The SEC may, by order, "censure or impose limitations upon the activities, functions, and operations of the Board" if it finds that the Board has violated the Act or the securities laws, or if the Board has failed to ensure the compliance of accounting firms with applicable rules without reasonable justification.

Section 107(c): Commission Review Of Disciplinary Action Taken By The Board.

The Board must notify the SEC when it imposes "any final sanction" on any accounting firm or associated person. The Board's findings and sanctions are subject to review by the SEC.

The SEC may enhance, modify, cancel, reduce, or require remission of such sanction.

Section 108: Accounting Standards.

The SEC is authorized to "recognize, as 'generally accepted'... any accounting principles" that are established by a standard-setting body that meets the bill's criteria, which include requirements that the body:

(1) be a private entity;

(2) be governed by a board of trustees (or equivalent body), the majority of whom are not or have not been associated persons with a public accounting firm for the past 2 years;

(3) be funded in a manner similar to the Board;

(4) have adopted procedures to ensure prompt consideration of changes to accounting principles by a majority vote;

(5) consider, when adopting standards, the need to keep them current and the extent to which international convergence of standards is necessary or appropriate.

Section 201: Services Outside The Scope Of Practice Of Auditors; Prohibited Activities.

It shall be "unlawful" for a registered public accounting firm to provide any non-audit service to an issuer contemporaneously with the audit, 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; (9) any other service that the Board determines, by regulation, is impermissible. The Board may, on a case-by-case basis, exempt from these prohibitions any person, issuer, public accounting firm, or transaction, subject to review by the Commission.

It will not be unlawful to provide other non-audit services if they are pre-approved by the audit committee in the following manner. The bill allows an accounting firm to "engage in any non-audit service, including tax services," that is not listed above, only if the activity is pre-approved by the audit committee of the issuer. The audit committee will disclose to investors in periodic reports its decision to pre-approve non-audit services. Statutory insurance company regulatory audits are treated as an audit service, and thus do not require pre-approval.

The pre-approval requirement is waived with respect to the provision of non-audit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than 5 % of the total amount of revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed), such services were not recognized by the issuer at the time of the engagement to be non-audit services; and such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit.

The authority to pre-approve services can be delegated to 1 or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee.

Section 203: Audit Partner Rotation.

The lead audit or coordinating partner and the reviewing partner must rotate off of the audit every 5 years.

Section 204: Auditor Reports to Audit Committees.

The accounting firm must report to the audit committee all "critical accounting policies and practices to be used...all alternative treatments of financial information within [GAAP] that have been discussed with management... ramifications of the use of such alternative disclosures and treatments, and the treatment preferred" by the firm.

Section 206: Conflicts of Interest.

The CEO, Controller, CFO, Chief Accounting Officer or person in an equivalent position cannot have been employed by the company's audit firm during the 1-year period proceeding the audit.

Section 207: Study of Mandatory Rotation of Registered Public Accountants.

The GAO will do a study on the potential effects of requiring the mandatory rotation of audit firms.

Section 209: Consideration by Appropriate State Regulatory Authorities.

State regulators are directed to make an independent determination as to whether the Boards standards shall be applied to small and mid-size non-registered accounting firms.

Section 301: Public Company Audit Committees.

Each member of the audit committee shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"Independent" is defined as not receiving, other than for service on the board, any consulting, advisory, or other compensatory fee from the issuer, and as not being an affiliated person of the issuer, or any subsidiary thereof.

The SEC may make exemptions for certain individuals on a case-by-case basis.

Section 301: Public Company Audit Committees.

The audit committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer.

The audit committee shall establish procedures for the "receipt, retention, and treatment of complaints" received by the issuer regarding accounting, internal controls, and auditing.

Each audit committee shall have the authority to engage independent counsel or other advisors, as it determines necessary to carry out its duties.

Each issuer shall provide appropriate funding to the audit committee.

Section 302: Corporate Responsibility For Financial Reports.

The CEO and CFO of each issuer shall prepare a statement to accompany the audit report to certify the "appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer." A violation of this section must be knowing and intentional to give rise to liability.

Section 303: Improper Influence on Conduct of Audits

It shall be unlawful for any officer or director of an issuer to take any action to fraudulently influence, coerce, manipulate, or mislead any auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.

Section 304: Forfeiture Of Certain Bonuses And Profits.

Section 305: Officer And Director Bars And Penalties; Equitable Relief.

If an issuer is required to prepare a restatement due to "material noncompliance" with financial reporting requirements, the chief executive officer and the chief financial officer shall "reimburse the issuer for any bonus or other incentive-based or equity-based compensation received" during the twelve months following the issuance or filing of the non-compliant document and "any profits realized from the sale of securities of the issuer" during that period.

In any action brought by the SEC for violation of the securities laws, federal courts are authorized to "grant any equitable relief that may be appropriate or necessary for the benefit of investors."

Section 305: Officer And Director Bars And Penalties.

The SEC may issue an order to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated section 10(b) of the 1934 Act from acting as an officer or director of an issuer if the SEC has found that such person's conduct "demonstrates unfitness" to serve as an officer or director of any such issuer.

Section 306: Insider Trades During Pension Fund Black-Out Periods Prohibited.

Prohibits the purchase or sale of stock by officers and directors and other insiders during blackout periods. Any profits resulting from sales in violation of this section "shall inure to and be recoverable by the issuer." If the issuer fails to bring suit or prosecute diligently, a suit to recover such profit may be instituted by "the owner of any security of the issuer."

Section 401(a): Disclosures In Periodic Reports; Disclosures Required.

Each financial report that is required to be prepared in accordance with GAAP shall "reflect all material correcting adjustments . . . that have been identified by a registered accounting firm . . . ."

"Each annual and quarterly financial report . . . shall disclose all material off-balance sheet transactions" and "other relationships" with "unconsolidated entities" that may have a material current or future effect on the financial condition of the issuer.

The SEC shall issue rules providing that pro forma financial information must be presented so as not to "contain an untrue statement" or omit to state a material fact necessary in order to make the pro forma financial information not misleading.

Section 401 (c): Study and Report on Special Purpose Entities.

SEC shall study off-balance sheet disclosures to determine a) 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 and make a report containing recommendations to the Congress.

Section 402(a): Prohibition on Personal Loans to Executives.

Generally, it will be unlawful for an issuer to extend credit to any director or executive officer. Consumer credit companies may make home improvement and consumer credit loans and issue credit cards to its directors and executive officers if it is done in the ordinary course of business on the same terms and conditions made to the general public.

Section 403: Disclosures Of Transactions Involving Management And Principal Stockholders.

Directors, officers, and 10% owner must report designated transactions by the end of the second business day following the day on which the transaction was executed.

Section 404: Management Assessment Of Internal Controls.

Requires each annual report of an issuer 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 issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

Each issuer's auditor shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this section shall be in accordance with standards for attestation engagements issued or adopted by the Board. An attestation engagement shall not be the subject of a separate engagement.

The language in the report of the Committee which accompanies the bill to explain the legislative intent states, "--- the Committee does not intend that the auditor's evaluation be the subject of a separate engagement or the basis for increased charges or fees."

Directs the SEC to require each issuer to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of that code.

Directs the SEC to revise its regulations concerning prompt disclosure on Form 8-K to require immediate disclosure "of any change in, or waiver of," an issuer's code of ethics.

Section 407: Disclosure of Audit Committee Financial Expert.

The SEC shall issue rules to require issuers to disclose whether at least 1 member of its audit committee is a "financial expert."

Section 409: Real Time Disclosure.

Issuers must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

Section 501: Treatment of Securities Analysts by Registered securities Associations.

National Securities Exchanges and registered securities associations must adopt conflict of interest rules for research analysts who recommend equities in research reports.

Section 601: SEC Resources and Authority.

SEC appropriations for 2003 are increased to $776,000,000. $98 million of the funds shall be used to hire an additional 200 employees to provide enhanced oversight of auditors and audit services required by the Federal securities laws.

Section 602(a): Appearance and Practice Before the Commission.

The SEC may censure any person, or temporarily bar or deny any person the right to appear or practice before the if the person does not possess the requisite qualifications to represent others, lacks character or integrity, or has willfully violated Federal securities laws.

Section 602(c): Study and Report.

SEC is to conduct a study of "securities professionals" (public accountants, public accounting firms, investment bankers, investment advisors, brokers, dealers, attorneys) who have been found to have aided and abetted a violation of Federal securities laws.

Section 602(d): Rules of Professional Responsibility for Attorneys.

The SEC shall establish rules setting minimum standards for professional conduct for attorneys practicing before it.

Section 701: GAO Study and Report Regarding Consolidation of Public Accounting Firms.

The GAO shall conduct a study regarding the consolidation of public accounting firms since 1989, including the present and future impact of the consolidation, and the solutions to any problems discovered.

Title VIII: Corporate and Criminal Fraud Accountability Act of 2002.

It is a felony to "knowingly" destroy or create documents to "impede, obstruct or influence" any existing or contemplated federal investigation.

Auditors are required to maintain "all audit or review work papers" for five years.

The statute of limitations on securities fraud claims is extended to the earlier of five years from the fraud, or two years after the fraud was discovered, from three years and one year, respectively.

Employees of issuers and accounting firms are extended "whistleblower protection" that would prohibit the employer from taking certain actions against employees who lawfully disclose private employer information to, among others, parties in a judicial proceeding involving a fraud claim. Whistle blowers are also granted a remedy of special damages and attorney's fees.

A new crime for securities fraud that has penalties of fines and up to 10 years imprisonment.

Title IX: White Collar Crime Penalty Enhancements

Maximum penalty for mail and wire fraud increased from 5 to 10 years.

Creates a crime for tampering with a record or otherwise impeding any official proceeding.

SEC given authority to seek court freeze of extraordinary payments to directors, offices, partners, controlling persons, agents of employees.

US Sentencing Commission to review sentencing guidelines for securities and accounting fraud.

SEC may prohibit anyone convicted of securities fraud from being an officer or director of any publicly traded company.

Financial Statements filed with the SEC must be certified by the CEO and CFO. The certification must state that the financial statements and disclosures fully comply with provisions of the Securities Exchange Act and that they fairly present, in all material respects, the operations and financial condition of the issuer. Maximum penalties for willful and knowing violations of this section are a fine of not more than $500,000 and/or imprisonment of up to 5 years.

Section 1001: Sense of Congress Regarding Corporate Tax Returns

It is the sense of Congress that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

Section 1102: Tampering With a Record or Otherwise Impeding an Official Proceeding

Makes it a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding or to otherwise obstruct, influence or impede any official proceeding is liable for up to 20 years in prison and a fine.

Section 1103: Temporary Freeze Authority

The SEC is authorized to freeze the payment of an extraordinary payment to any director, officer, partner, controlling person, agent, or employee of a company during an investigation of possible violations of securities laws.

Section 1105: SEC Authority to Prohibit Persons from Serving as Officers or Directors

The SEC may prohibit a person from serving as an officer or director of a public company if the person has committed securities fraud.

GWSCPA Home Page

December 3, 2002

Sarbanes-Oxley Update: SEC Proposes Auditor Independence and Workpaper Retention Rules

The SEC recently published for comment proposed rules implementing Sections 208(a) and 802 of the Sarbanes-Oxley Act, regarding auditor independence and workpaper retention. SEC Release Nos. 33-8154 (auditor independence) and 33-8151 (workpaper retention) are available at www.sec.gov/rules/proposed/33-8154.htm and www.sec.gov/rules/proposed/33-8151.htm, respectively.

Auditor Independence

The proposed rules are designed to enhance auditor independence requirements. Existing Rule 2-01 of Regulation S-X sets forth general principles for determining whether an auditor is capable of exercising objective and impartial judgment. These principles provide that a company's relationship with its auditor or the provision of services cannot (1) create a mutual or conflicting interest between the auditor and client, (2) result in the auditor auditing his own work, (3) result in the auditor performing management functions or (4) place the auditor in the position of acting as advocate for the client. Rule 2-01 sets forth a non-exclusive list of circumstances which would be inconsistent with these principles, including auditors and clients having investments in each other, debtor-creditor relationships between auditors and clients and participation by certain relatives of auditors in clients' benefit plans. The proposed rules would set forth additional circumstances in which auditors would be deemed not independent.

Conflicts of Interest Resulting from Employment Arrangements and Compensation. The proposed rules would prohibit an accounting firm from auditing the financial statements of a public company if:

1 year cooling off

- a member of management who oversees or prepares SEC-filed financial statements (including MD&A) had been a member of the accounting firm's audit engagement team within the one-year period preceding the commencement of the audit procedures for the current audit; or
- at any point during an engagement period, any member of the audit team receives compensation (including indirectly such as through allocation of equity shares in the audit firm) based on the performance or sale of any services to the audit client, other than audit, review, or attest services.

The proposed rules also would require detailed disclosure in proxy statements of four different types of fees paid to auditors in the two most recent fiscal years (audit fees, audit-related fees, tax fees and all other fees).

Non-audit Services. Section 201(a) of the Sarbanes-Oxley Act prohibits an auditor from providing contemporaneously the following non-audit services to an audit client: bookkeeping; financial information systems design and implementation; appraisal and valuation services and fairness opinions; actuarial services; internal audit outsourcing services; management functions; human resources; broker-dealer and investment banking services; legal services; and non-audit expert services. Many of these services are already the subject of Rule 2-01. The proposed rules interpret the prohibition on expert services, which was not covered by the SEC's existing rules, to prohibit auditors from providing expert opinions for an audit client in connection with legal, administrative or regulatory proceedings or acting as an advocate for the audit client in such proceedings (including serving as an expert witness or providing consultation or forensic accounting services to the client's legal counsel in connection with such proceedings, including SEC enforcement investigations). The existing rules would be amended to expand upon the types of conduct prohibited by these categories and eliminate certain exceptions based on the general principles described above. Whether or not specifically enumerated, services that conflict with the principles would also be prohibited. Non-audit services performed by accounting firms for non-audit clients would not be affected.

Tax services would be one area in which auditors could continue to provide non-audit services to audit clients. These services would be permitted so long as they do not fall into an otherwise prohibited category, such as legal or expert services. Examples of tax-related services which could fall within a prohibited area include representation of a client in tax court and formulation of tax strategies to minimize tax obligations.

Audit Committee Pre-Approval. The proposed rules would require audit committee pre-approval ~~of all audit, review or~~ attest engagements. With respect to permissible non-audit services, the proposed rules would require (1) audit committee pre-approval or (2) engagement arrangements entered into pursuant to pre-approval policies and procedures previously established by the audit committee, provided the audit committee is informed of each service. The Act allows the audit committee to delegate to one of its members responsibility for pre-approving services. Annual proxy statements would be required to contain a description or copy of such pre-approval policies and procedures. The proposed rules do not contain any general *de minimis* exception to the pre-approval requirements beyond that contained in the Act, which permits non-audit services which together do not constitute over 5% of the total revenues paid by the client to the auditor during the fiscal year, provided they were not recognized as non-audit services at the time of the engagement and are promptly brought to the attention of, and approved by, the audit committee.

In light of the technical nature of the proposed rules defining prohibited non-audit services and the proposed pre-approval requirements, companies should begin now to establish procedures to control the retention of independent auditors for permitted non-audit services. Such procedures should be detailed, to the extent possible, as to the particular service and designed to safeguard the continued independence of the auditor, including (1) management establishing a record for the audit committee that demonstrates that the proposed non-audit service is not prohibited and that the auditor is best suited for the assignment and (2) specific authorization guidelines which must be acknowledged by the auditor before it accepts a non-audit assignment, requiring an audit firm to confirm to the client that a non-audit assignment does not constitute a prohibited service.

Partner Rotation. The proposed rules would prohibit all partners (not just the lead and reviewing ~~partner) directly~~ involved in audit, review or attest engagements from providing audit services to the client (or any significant subsidiaries) for more than five consecutive years and would require a five-year "cooling-off" period thereafter. Partners subject to the rotation requirements could include tax partners if they play a role in the audit engagement. Partners assigned to "national office" duties, who may provide regular consultation to audit clients on specific issues, would not be subject to these requirements. Under the proposed rules, accounting firms could stagger the rotation of partners to promote continuity.

Auditor Communication with Audit Committees. The proposed rules would require the auditor to report (orally or in writing) to the company's audit committee, prior to the filing of an audit report with the SEC:

- all critical accounting policies and practices used by the company;
- all alternative GAAP accounting treatments of financial information discussed with management (including ramifications and the auditor's preferred treatment); and
- other material written communications between the auditor and management.

The proposed rules are intended to cover recognition, measurement and disclosure considerations relating to accounting for specific transactions as well as the selection of and changes in significant accounting policies, including the impact of management's judgments and accounting estimates.

Workpaper Retention

Under the proposed workpaper retention rules, for five years after the end of the fiscal period in which an accountant concludes an audit, the accountant would have to retain workpapers and other documents that form the basis of the audit. The retention requirements apply to supporting materials (including electronic records) which are created, sent or received in connection with the audit or which contain conclusions, opinions, analyses, or financial data related to the audit. The retention requirements also cover materials that "cast doubt on the final conclusions reached by the auditor."

These proposed rules are in addition to the requirements of Section 103 of the Act directing the Public Company Accounting Oversight Board to require auditors to retain for seven years audit workpapers and other materials that support the auditor's conclusions in any audit report. The proposed record retention rules would apply to foreign auditors.

* * *

The releases invite comments within 30 days of publication in the Federal Register with respect to the auditor independence rules and no later than December 27, 2002 with respect to the workpaper retention rules. The Act requires the SEC to issue final rules by January 26, 2003. The SEC is considering transition periods for instituting some of the auditor independence rules, including audit partner rotation and partner compensation.

Patricia A. Vlahakis
Eric S. Robinson
Joshua R. Cammaker
Adam J. Shapiro

October 28, 2002

SARBANES-OXLEY ACT: COMPLIANCE REMINDERS

Fall 2002

Attached is a checklist designed to assist those monitoring compliance with the Sarbanes – Oxley Act. Some provisions of the Act went into effect immediately. Others were subject to SEC rule-making. The SEC was given different deadlines for proposing rules for different sections of the Act. Some SEC rules have become effective. Some have been proposed and are subject to comment. Some have yet to be proposed.

The checklist highlights:

- rules which have recently become effective which require near-term compliance activity;
- proposed rules which, while not yet effective, may require advance planning to ensure timely compliance when they become effective;
- on-going requirements which are effective and need to be monitored; and
- the deadlines for future rule-making by the SEC.

Patricia A. Vlahakis
Joshua R. Cammaker
Gregory E. Ostling

	Section 306 of Sarbanes-Oxley. ➢ **Attorneys required to report evidence of violations of law and breaches of fiduciary duties.** SEC to adopt final rules by January 26, 2003. *Section 307 of Sarbanes-Oxley.* ➢ **Enhanced disclosure of pro formas and off-balance sheet transactions.** SEC to adopt final rules by January 26, 2003. *Section 401 of Sarbanes-Oxley.* ➢ **Disclosure on a "rapid and current basis"** of all material changes to financial condition or operations. No deadline for SEC rulemaking. *Section 409 of Sarbanes-Oxley.*

As of 12/4/02

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT[1]

ACTIONS REQUIRED AND TAKEN WITHIN 30 DAYS (August 29, 2002)[2]

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
CEO and CFO certification requirements	Commission to adopt rules	Section 302 – Commission "shall, by rule," (1) require certification of financial statements by CEOs and CFOs of public companies, and (2) require CEOs and CFOs to certify to the effectiveness of internal controls and that the auditors and audit committee are aware of significant deficiencies in the controls	"The rules required by subsection (a) shall be effective not later than 30 days" after enactment ***COMPLETED - 8/27/02***
Amendments to timing of disclosures of insider transactions.	No rules required unless determined necessary.	Section 403 – Amends Exchange Act Section 16(a) to reduce the mandatory period for directors, officers, and principal stockholders to disclose changes in ownership of certain securities or security-based swap agreements to two business days after the transaction, or at such other time as the Commission, by rule, establishes if it determines that two days is "not feasible." This section also requires these reports to be filed electronically within one year of enactment.	Amendment "shall be effective 30 days after the enactment of this Act" ***COMPLETED - 8/27/02***

[1] Enacted on July 30, 2002 (Pub. L. No. 107-204). General rulemaking authority is included in section 3(a) of the Act.

[2] This chart includes rulemakings and other actions expressly required by the Act and other rulemaking actions the Commission has taken.

ACTIONS REQUIRED WITHIN 90 DAYS (October 28, 2002)

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Appointment of Board members	Required appointments after consultation with the Fed and Treasury	Section 101(e)(4)(A) – Commission "shall appoint the chairperson and other initial members of the Board" and "designate a term of service for each." Under Section 101(e)(4)(B), the SEC also fills vacancies on the Board.	Appointments made "not later than 90 days" after enactment *COMPLETED* - **10/25/02 Terms Of Service Commence On First Formal Meeting Of The Board**
Rules prohibiting improper influence on audits	Commission to propose and adopt rules	Section 303(a) – Commission "shall prescribe" rules "as necessary and appropriate in the public interest or for the protection of investors" to prevent fraudulent influence for purposes of rendering financial statements materially misleading	"Commission shall (1) propose the rules or regulations required by this section, not later than 90 days" after enactment, and "(2) issue final rules . . . not later than 270 days" after enactment[3] *COMPLETED* – **10/16/02 Comment Period Ends 11/25/02**
Code of ethics for senior financial officers	Commission to propose and adopt rules	Section 406 – Commission "shall issue" rules to require disclosure of whether a company has a code of ethics for senior financial officers and, if not, the reason why it does not. Commission to also revise rules for disclosures on form 8-K, to require immediate disclosure of any changes in, or waivers to, a code of ethics	"Commission shall (1) propose rules to implement this section, not later than 90 days" after enactment, and "(2) issue final rules . . . not later than 180 days" after enactment *COMPLETED* – **10/16/02 Comment Period Ends 11/29/02**

[3] Items with multiple statutory deadlines are only listed once, under the earliest deadline specified.

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Disclosure of audit committee "financial experts"	Commission to propose and adopt rules	Section 407 – Commission "shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer" to disclose whether the audit committee has at least one member who is a "financial expert," as defined by the Commission, and to give reason why not if one is not present	"Commission shall (1) propose rules to implement this section, not later than 90 days" after enactment, and "(2) issue final rules . . . not later than 180 days" after enactment ***COMPLETED* – 10/16/02** **Comment Period Ends 11/29/02**

ACTIONS REQUIRED WITHIN 180 DAYS (January 26, 2003)

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Rules to implement auditor independence	Commission must propose and adopt rules to carry out provisions of Title II	Sections 201, 202, 203, 204, 206, 208(a) – "Commission shall issue final regulations" regarding prohibited non-audit services, preapproval requirements, audit partner rotation, reports to audit committees and conflicts of interest. Commission must amend rules to require disclosure in reports under section 13(a) of approvals by the audit committee of auditor's performance of non-audit services.	"Not later than 180 days after enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A . . . as added by this title" ***PROPOSED* – 11/19/02** **Comment Period Ends Approximately 1/2/03**
Prohibition on insider trades during blackout periods	Commission shall issue rules in consultation with the Secretary of Labor	Section 306(a)(3) – "Commission shall, in consultation with the Secretary of Labor, issue rules to clarify" the prohibition on insider trades during pension fund blackout periods, and to "prevent evasion thereof"	No deadline in Act, but rules presumably need to be effective before section takes effect 180 days after enactment ***PROPOSED*- 10/30/02** **Comment Period Ends 12/16/02**
Minimum standards of conduct for attorneys	Commission to propose and adopt rules	Section 307 – "Commission shall issue rules, in the public interest and for protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing" before the Commission, which shall include a rule requiring an attorney with evidence of a material violation to report it to company's chief legal officer or CEO and, if necessary, the Board	"Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules" ***PROPOSED*- 11/6/02** **Comment Period Ends 12/18/02**

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Disclosure of material off-balance sheet transactions	Commission to propose and adopt rules	Section 401(a) – "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 and other relationships with unconsolidated entities having a material effect on condition, capital, liquidity, results of operations, revenues or expenses	"Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules" ***PROPOSED-* 10/30/02** **Comment Period Ends 12/9/02**
Pro forma financial information	Commission to propose and adopt rules	Section 401(b) – "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 other public disclosure shall be presented in a manner that" is not misleading, and reconciles it with the financial condition and results of operations of the issuer under GAAP	"Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules" ***PROPOSED-* 10/30/02** **Comment Period Ends 12/13/02**
Record retention	Commission shall propose and adopt rules	Section 802 – "Commission shall promulgate . . . such rules and regulations, as are reasonably necessary, relating to the retention of relevant" audit records	"Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary" ***PROPOSED-* 11/19/02** **Comment Period Ends 12/27/02**

ACTIONS REQUIRED WITHIN 270 DAYS (April 26, 2003)

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Determination that Board is properly organized	Required planning for establishment and administrative transition to Board prior to appointment of Board, and determination that Board, once in place, has capacity to carry out its obligations.	Section 101(d) – "Commission to determine" that the Board is organized and can carry out the purposes of the Act.	"Not later than 270 days after enactment"
Standards relating to audit committees	Commission to direct the exchanges to amend audit committee rules	Section 301 – "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 incompliance with" new standards of audit committee responsibility and independence	"Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct" the exchanges and associations to prohibit certain listings

ACTIONS REQUIRED WITHIN ONE YEAR (July 30, 2003)

Matter	**Obligation**	**Act Provision**	**Timetable for SEC Action**
Analyst conflicts of interest	Commission to adopt, or have securities associations and exchanges adopt, rules on analyst conflicts of interest	Section 501 – "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 enactment, "rules reasonably designed" to address, and limit, securities analyst conflicts of interest, and to require public disclosure of analyst conflicts of interest	"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 enactment, "rules reasonably designed" to achieve goals of section

ACTIONS REQUIRED WITHOUT SPECIFIC DEADLINE

Matter	Obligation	Act Provision	Timetable for SEC Action
Commission procedures for review of disputes over Board inspection reports	Commission to promulgate procedural rules	Section 104(h) – "A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate," of certain Board determinations concerning inspections of public accounting firms	No deadline in Act, but presumably needs to be done shortly after the Board is operational
Commission procedures for determining length of stay in certain reviews of Board disciplinary actions	Commission shall establish procedures for appropriate cases	Section 105(e)(2) – "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"	No deadline in Act, but presumably needs to be done shortly after the Board is operational
Recognition of accounting standards	Commission shall propose and adopt such rules and regulations to implement new statutory provision	Section 108 – "Commission shall promulgate such rules and regulations" to implement provision for recognition of generally accepted accounting principles, "as it deems necessary or appropriate in the public interest or for the protection of investors"	No deadline in Act
Internal control report as part of annual report	Commission to propose and adopt rules	Section 404 – "Commission shall prescribe rules requiring each annual report . . . to (1) state the responsibility of management for establishing an maintaining an adequate internal control structure and procedures for financial reporting; and (2) contain an assessment . . . of the effectiveness of the internal control structure and procedures of the issuer for financial reporting. With respect to the internal control assessment required . . . each registered public	No deadline in Act ***PROPOSED-*** **10/16/02 Comment Period Ends 11/29/02**

Matter	Obligation	Act Provision	Timetable for SEC Action
		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"	

As of 12/4/02

COMMISSION STUDIES – SIX MONTHS OR 180 DAYS (January 26, 2003)

Matter	Obligation	Act Provision	Timetable for SEC Action
FAIR Funds for investors	Commission must conduct study and report on previous five years' civil penalty and disgorgement cases	Section 308(c) – Study and report on civil penalties and disgorgement, to determine how to maximize efficiency, including recommendations to address any concerns noted in the study	Report to Congress within 180 days of enactment
Study and report on credit rating agencies	Commission to conduct study	Section 702 – Commission is to report on study of the role and function of credit rating agencies in the operation of securities markets	Report to the President and Congress within 180 days of enactment
Study and report on aiding and abetting liability	Commission to conduct study	Section 703 – Commission must conduct a study of securities professionals who have "aided and abetted" violations of federal securities laws between 1998 and 2001, and report to Congress	Report to Congress within 6 months of enactment
Study of enforcement actions	Commission to conduct study	Section 704 – Commission shall conduct a study of all of its enforcement actions involving violations of reporting requirements and restatements, within the previous five years, to identify areas most susceptible to fraud or manipulation	Report to Congress within 180 days of enactment

As of 12/4/02

COMMISSION STUDIES – ONE YEAR OR MORE (July 30, 2003)

Matter	Obligation	Act Provision	Timetable for SEC Action
Study and report on principles-based accounting	Commission to conduct study and report	Section 108(d) – Commission to conduct a study of principles-based accounting	Report to Congress within one year of enactment
Study and report on special purpose entities	Commission must conduct study and report on off-balance sheet transactions and special purpose entities	Section 401(c)(1) -- Commission to complete a study and report on off-balance sheet transactions and special purpose entities to ascertain the extent of their use and whether the accounting treatment afforded them results in transparency	Study to be completed within one year after the adoption of the off-balance sheet disclosure rules. Report and recommendations to the President and Congress based on the Commission's findings must be made within six months of the completion of the study

GAO STUDIES – 180 DAYS (January 26, 2003)

Matter	Obligation	Act Provision	Timetable for SEC Action
Study of investment banks	None	Section 705 – GAO to conduct a study on whether investment banks and financial advisers assisted public company earnings manipulation, especially with regard to Enron and Global Crossing	GAO to report to Congress within 180 days of enactment

GAO STUDIES – ONE YEAR (July 30, 2003)

Matter	Obligation	Act Provision	Timetable for SEC Action
Report on potential effects of mandatory rotation of public accounting firms	None	Section 207 – GAO to report on audit firm rotation	GAO to report within one year of enactment
Study and report of consolidation of accounting firms	Commission to be consulted on study	Section 701 – GAO to report on study of consolidation of accounting firms	Report to Congress required within one year of enactment

Brief Summaries of SEC Actions Taken and Rules Proposed and/or Adopted Pursuant to the Sarbanes-Oxley Act of 2002

For informal, informational purposes only.
Prepared by the SEC's Office of Legislative Affairs.
Consists primarily of information found in SEC press releases.
For complete information, please refer to SEC official postings on **www.sec.gov**

Section 101(e)(4)(A) – Appointment of PCAOB Members

On October 25, 2002, the Commission selected the initial members of the new Public Company Accounting Oversight Board (PCAOB) to oversee the accounting profession: Judge William H. Webster to be chairman, and Kayla J. Gillan, Daniel L. Goelzer, Willis D. Gradison Jr., and Charles D. Niemeier. *(Webster subsequently resigned on November 12, 2002. His replacement has not been named as of 12-4-02.)*

The Board was established by the Sarbanes-Oxley Act of 2002 to oversee the audits of the financial statements of public companies through rigorous registration, standard setting, inspection and disciplinary programs. The Act requires the Commission, in consultation with the Secretary of Treasury and the Chairman of the Federal Reserve Board, to select the members of the Board.

Section 208 - Auditor Independence

On Nov. 19, 2002, the Commission proposed rules that would make amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. As directed by Section 208(a) of the Sarbanes-Oxley Act of 2002, the Commission is proposing rules to:

- revise its regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence (based on the nine prohibited services listed in Sarbanes-Oxley);

- require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;

- prohibit partners on the audit engagement team from providing audit services to the issuer for more than five consecutive years and from returning to audit services with the same issuer within five years;

- prohibit an accounting firm from auditing an audit client's financial statements if certain members of management of that client had been members of the accounting firm's audit engagement team within the onesatisfied all obligations under the rule. The Commission believes that most situations involving reporting to the CLO or CEO by an attorney will be resolved in this manner. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she would be required to report the evidence of a material violation to the issuer's audit committee, another committee of independent directors, or to the full board. Similarly, if the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, another committee of independent directors, or to the full board. A reporting attorney who has reported a matter all the way "up the ladder" within the issuer and who reasonably believes that the issuer has not responded appropriately would be required to explain to the CLO, CEO, or directors why he or she thinks the response is not appropriate, take reasonable steps under the circumstances to document the response (or absence thereof) and to retain any such documentation for a reasonable time.

'Noisy Withdrawal'. The proposed rule also deals with the obligation of an attorney who has not received an appropriate response from the issuer and, in certain instances, requires or permits a "noisy withdrawal." While this provision is not specifically mandated by Section 307, a provision that obligates a reporting attorney under certain circumstances to disaffirm a submission to the Commission which the attorney believes has been tainted by a material violation (and permits the attorney to disaffirm under other circumstances) is important to the effective operation of the reporting obligation in those instances where an issuer does not respond appropriately. The provision would distinguish between outside attorneys retained by the issuer and attorneys employed by the issuer because the personal cost of compliance to an attorney employed by the issuer is greater. The provision would impose an affirmative obligation on attorneys to disaffirm a document or filing that the attorneys participated in preparing where they reasonably believe a violation is ongoing or is about to occur and is likely to cause substantial financial harm to the issuer or to investors. Where the attorney reasonably believes that a material violation has already occurred and has no continuing effect and is likely to have caused substantial financial harm, the attorney may (but is not required to) notify the Commission of his or her withdrawal and disaffirm a document or filing that the attorney participated in preparing. "Noisy withdrawal" is mandatory if the material violation is ongoing or about to occur because of the greater potential of harm to investors inherent in such violations. A "noisy withdrawal" does not violate the attorney/client privilege because it does not reveal confidential communications or the evidence of a material violation.

'QLCC'. As an alternative process for considering reports of material violations, an issuer may establish a qualified legal compliance committee (QLCC) comprised of at least one member of the issuer's audit committee, and two or more members of the issuer's board, all of whom must be independent, for the purpose of investigating reports made by attorneys of evidence of a material violation. The QLCC would be authorized and would have the responsibility to require the issuer to take remedial actions that the CLCC decides are appropriate and to notify the CLO and the CEO of the remedial actions the QLCC has decided are appropriate. If the issuer were to fail to act as directed by the QLCC in any material respect, each QLCC member, as well as the issuer's CLO and CEO, would have the responsibility to notify the Commission that a material violation has occurred, is occurring, or is about to occur and to disaffirm any filings by the issuer that are materially false or misleading. Attorneys who report evidence of a material violation to a QLCC would not be subject to the rule's "noisy withdrawal" requirement.

Final rules are due to be issued within 180 days of enactment (Jan. 26).

Section 401(a) – Disclosure of Material Off-Balance Sheet Arrangements

On October 30, 2002, the Commission proposed rules to require periodic reports filed with the Commission to disclose material off-balance sheet arrangements.

The proposed rules would explicitly require a company to disclose these arrangements and relationships in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) section of the company's disclosure documents. While current MD&A rules already require a company to provide disclosure about its off-balance sheet arrangements to the extent necessary to an understanding of the company's financial condition, changes in financial condition and results of operations, the proposed rules will more specifically address the types of disclosure that companies must provide.

In addition to fulfilling the statutory mandate, the proposed rules codify many of the views expressed in the Jan. 22, 2002 statement focusing on the need for improved MD&A disclosure. The proposed rules would, however, lower the threshold that triggers disclosure relating to off-balance sheet transactions discussed in the January statement consistent with Congressional intent. While MD&A disclosure about an off-balance sheet transaction currently is required if the transaction is "reasonably likely" to have a material effect on the company, the proposed rules would require disclosure if the likelihood of the transaction having a material effect on the company is more than "remote."

Although Exchange Act Section 13(j) directs the SEC to require the off-balance sheet arrangement disclosure only in a company's annual and quarterly reports, the Commission proposed to also require a company to include this disclosure in the MD&A section of its Securities Act registration statements.

The proposals also would require a registrant, other than a small business issuer, to provide an overview of its aggregate contractual obligations in a tabular format and an overview of its contingent liabilities and commitments in either a textual or tabular format.

Final rules are to be issued not later than 180 days after enactment (Jan. 26).

Section 401(b) – Pro Forma Financial Information

On October 30, 2002, the Commission proposed rules to address public companies' disclosure or release of "pro forma," or non-GAAP, financial information. Section 401(b) of the Sarbanes-Oxley Act of 2002 directs the Commission to issue final rules by

Jan. 26, 2003, requiring that any public disclosure or release of "pro forma financial information" by a public company 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 the "pro forma financial information" presented with the financial condition and results of operations of the company under GAAP. The Commission proposed to meet the mandate of Section 401(b) by defining the category of financial information that is subject to that mandate and then taking a two-step approach to regulating the use of that financial information.

(1) The Commission proposed that the rules apply to the public disclosure or release of material information that includes a "non-GAAP financial measure."

(2) The Commission proposed new Regulation G, which would prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure misleading. Regulation G would provide a limited exception for foreign private issuers where (1) the securities of the issuer are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States; (2) the non-GAAP financial measure and the most comparable GAAP financial measure are not calculated and presented in accordance with generally accepted accounting principles in the United States; and (3) the disclosure is made by or on behalf of the issuer outside the United States, or is included in a written communication that is released by or on behalf of the issuer only outside the United States.

<u>Section 403 – Accelerated Deadlines for Disclosures of Insider Transactions</u>

On August 27, 2002, the Commission adopted rules to require insiders to report a change in ownership or purchase or sale of a security-based swap agreement "before the end of the second business day following the day on which the subject transaction has been executed." This rule became effective on August 29, 2002.

<u>Section 404 – Internal Control Report as Part of Annual Report</u>

On October 16, 2002, the Commission proposed rules requiring companies to file an annual internal control report as part of its annual report. This report would address management's responsibility to establish internal controls and procedures for financial reporting and require management to evaluate the effectiveness of those controls and procedures as of the last day of the company's fiscal year. Under Section 404(b) of the Sarbanes-Oxley Act, the company's auditor must attest to, and report on, management's assertions in the internal control report. The company must state this fact and file the auditor's attestation in its annual report.

Section 406 – Code of Ethics for Senior Financial Officers

On October 16, 2002, the Commission proposed rules to require companies to disclose in its annual report whether the company has adopted a code of ethics for the company's principal executive officer and senior financial officers, or if it has not, why it has not; and to disclose on a current basis amendments to, and waivers from, the code of ethics relating to any of those officers.

The proposed rules would define a code of ethics as a codification of standards that is reasonably necessary to deter wrongdoing and to promote:
- honest and ethical conduct;
- avoidance of conflicts of interest;
- full, fair, accurate, timely, and understandable disclosure in reports and documents;
- compliance with applicable governmental laws, rules and regulations;
- prompt internal reporting of code violations to an appropriate person or persons identified in the code; and
- accountability for adherence to the code.

Final rules are to be issued not later than 180 days after enactment (Jan. 26).

Section 407 – Disclosure of Audit Committee Financial Experts

On October, 16, 2002, the Commission proposed rules to require companies to disclose whether the audit committee of the Board of Directors has at least one member who is a "financial expert." The proposed rules would define the term "financial expert" by requiring such a person to have all of the attributes listed in Section 407 of the Sarbanes-Oxley Act. They also would provide a list of factors that companies should consider when determining whether a member of the audit committee is a financial expert.

Final rules are to be issued not later than 180 days after enactment (Jan. 26).

Section 802 - Document retention by Auditors

On Nov. 19, 2002, the Commission proposed rules that would specify the information that must be retained by auditors for a five-year period subsequent to the completion of an audit or review of a registrant's financial statements. In particular, the proposed rules would specify that auditors should retain workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review and contain conclusions, opinions, analyses, or financial data related to the audit or review.

Final rules are due to be issued within 180 days of enactment (Jan. 26).