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Corporate Governance - Sarbanes [7]

4/17 Draft

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3763
OFFERED BY MR. OXLEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Corporate and Auditing Accountability, Responsibility,
4 and Transparency Act of 2002”.

5 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Auditor oversight.
- Sec. 3. Improper influence on conduct of audits.
- Sec. 4. Real-time disclosure of financial information.
- Sec. 5. Insider trades during pension fund blackout periods prohibited.
- Sec. 6. Improved transparency of corporate disclosures.
- Sec. 7. Improvements in reporting on insider transactions and relationships.
- Sec. 8. Codes of conduct.
- Sec. 9. Review of financial disclosures.
- Sec. 10. Enhanced oversight of periodic disclosures by issuers.
- Sec. 11. Retention of records.
- Sec. 12. Commission authority to bar persons from serving as officers or directors.
- Sec. 13. Disgorging insiders profits from trades prior to correction of erroneous financial statements.
- Sec. 14. Securities and Exchange Commission authority to provide relief.
- Sec. 15. Study of rules relating to analyst conflicts of interest.
- Sec. 16. Review of corporate governance practices.
- Sec. 17. Study of enforcement actions.
- Sec. 18. Study of credit rating agencies.
- Sec. 19. Study of investment banks and other financial institutions.
- Sec. 20. Study of model rules for attorneys of issuers.
- Sec. 21. Enforcement authority.
- Sec. 22. Exclusion for investment companies.
- Sec. 23. Definitions.



1 **SEC. 2. AUDITOR OVERSIGHT.**

2 (a) CERTIFIED FINANCIAL STATEMENT REQUIRE-
3 MENTS.—If a financial statement is required by the secu-
4 rities laws or any rule or regulation thereunder to be cer-
5 tified by an independent public or certified accountant, an
6 accountant shall not be considered to be qualified to cer-
7 tify such financial statement, and the Securities and Ex-
8 change Commission shall not accept a financial statement
9 certified by an accountant, unless such accountant—

10 (1) is subject to a system of review by a public
11 regulatory organization that complies with the re-
12 quirements of this section and the rules prescribed
13 by the Commission under this section; and

14 (2) has not been determined in the most recent
15 review completed under such system to be not quali-
16 fied to certify such a statement.

17 (b) ESTABLISHMENT OF PRO.—The Commission
18 shall by rule establish the criteria by which a public regu-
19 latory organization may be recognized for purposes of this
20 section. Such criteria shall include the following require-
21 ments:

22 (1)(A) The board of such organization shall be
23 comprised of five members, three of whom shall be
24 public members who are not members of the ac-
25 counting profession and two of whom shall be per-

1 sons licensed to practice public accounting and who
2 have recent experience in auditing public companies.

3 (B) Each member of the board of such organi-
4 zation shall be a person who meets such standards
5 of financial literacy as are determined by the Com-
6 mission.

7 (C) For purposes of this paragraph, a person
8 shall not be considered a member of the accounting
9 profession if such person has not worked in such
10 profession for any of the last two years prior to the
11 date of such person's appointment to the board.

12 (2) Such organization is so organized and has
13 the capacity—

14 (A) to be able to carry out the purposes of
15 this section and to comply, and to enforce com-
16 pliance by accountants and persons associated
17 with accountants, with the provisions of this
18 Act, professional ethics and competency stand-
19 ards, and the rules of the organization;

20 (B) to perform a review of the work prod-
21 uct (including the quality thereof) of an ac-
22 countant or a person associated with an ac-
23 countant; and

24 (C) to perform a review of any potential
25 conflicts of interest between an accountant (or



1 a person associated with an accountant) and
2 the issuer, the issuer's board of directors and
3 committees thereof, officers, and affiliates of
4 such issuer, that may result in an impairment
5 of auditor independence.

6 (3) Such organization shall have the authority
7 to impose sanctions, which, if there is a finding of
8 knowing or intentional misconduct, may include a
9 determination that an accountant is not qualified to
10 certify a financial statement, or any categories of fi-
11 nancial statements, required by the securities laws,
12 or that a person associated with an accountant is
13 not qualified to participate in such certification, if,
14 after conducting a review and providing fair proce-
15 dures and an opportunity for a hearing, the organi-
16 zation finds that—

17 (A) such accountant or person associated
18 with an accountant has violated the standards
19 of independence, ethics, or competency in the
20 profession;

21 (B) such accountant or person associated
22 with an accountant has been found by the Com-
23 mission or a court of competent jurisdiction to
24 have violated the securities laws or a rule or
25 regulation thereunder (provided in both cases



1 that any applicable time period for appeal has
2 expired);

3 (C) an audit conducted by such accountant
4 or any person associated with an accountant
5 has been materially affected by an impairment
6 of auditor independence;

7 (D) such accountant or person associated
8 with an accountant has performed both audit-
9 ing services and consulting services in violation
10 of the rules prescribed by the Commission pur-
11 suant to subsection (c); or

12 (E) such accountant or any person associ-
13 ated with an accountant has impeded, ob-
14 structed, or otherwise not cooperated in such
15 review.

16 (4) Any such organization shall disclose pub-
17 licly, and make available for public comment, pro-
18 posed procedures and methods for conducting such
19 reviews.

20 (5) Any such organization shall have in place
21 procedures to minimize and deter conflicts of inter-
22 est involving the public members of such organiza-
23 tion, and have in place procedures to resolve such
24 conflicts.



1 (6) Any such organization shall have in place
2 procedures for notifying the boards of accountancy
3 of the States of the results of reviews and evidence
4 under paragraphs (2) and (3).

5 (7) Any such organization shall have in place
6 procedures for notifying the Commission of any find-
7 ings of such reviews, including any findings regard-
8 ing suspected violations of the securities laws.

9 (8) Any such organization shall consult with
10 boards of accountancy of the States.

11 (9) Any such organization shall have in place a
12 mechanism to allow the organization to operate on
13 a self-funded basis. Such funding mechanism shall
14 ensure that such organization is not solely depend-
15 ent upon members of the accounting profession for
16 such funding and operations.

17 (10) Any such organization shall have the au-
18 thority to request, in a manner established by the
19 Commission, that the Commission, by subpoena or
20 otherwise, compel the testimony of witnesses or the
21 production of any books, papers, correspondence,
22 memoranda, or other records relevant to any ac-
23 countant review proceeding or necessary or appro-
24 priate for the organization to carry out its purposes.
25 The Commission shall comply with any such request



1 from such an organization if the Commission deter-
2 mines that compliance with the request would assist
3 the organization in its accountant review proceeding
4 or in carrying out its purposes, unless the Commis-
5 sion determines that compliance would not be in the
6 public interest. The issuance and enforcement of a
7 subpoena requested under this paragraph shall be
8 deemed to be made pursuant to, and shall be made
9 in accordance with, the provisions of subsections (b)
10 and (c) of section 21 of the Securities and Exchange
11 Act of 1934 (15 U.S.C. 78u(b)-(c)). For purposes
12 of taking evidence, the Commission in its discretion
13 may designate the Board, or any member thereof, as
14 officers pursuant to section 21(b) of such Act.

15 (c) PROHIBITION ON THE OFFER OF BOTH AUDIT
16 AND CONSULTING SERVICES.—

17 (1) MODIFICATION OF REGULATIONS RE-
18 QUIRED.—The Commission shall revise its regula-
19 tions pertaining to auditor independence to require
20 that an accountant shall not be considered inde-
21 pendent with respect to an audit client if the ac-
22 countant provides to the client the following
23 nonaudit services, as such terms are defined in such
24 regulations as in effect on the date of enactment of



1 this Act, and subject to such conditions and exemp-
2 tions as the Commission shall prescribe:

3 (A) financial information system design or
4 implementation; or

5 (B) internal audit services.

6 (2) REVIEW OF PROHIBITED NONAUDIT SERV-
7 ICES.—The Commission is authorized to review the
8 impact on the independence of auditors of the scope
9 of services provided by auditors to issuers in order
10 to determine whether the list of prohibited nonaudit
11 services under paragraph (1) shall be modified. In
12 conducting such review, the Commission shall con-
13 sider the impact of the provision of a service on an
14 auditor's independence where provision of the service
15 creates a conflict of interest with the audit client.

16 (3) ADDITIONS BY RULE.—After conducting the
17 review required by paragraph (2) and at any other
18 time, the Commission may, by rule consistent with
19 the protection of investors and the public interest,
20 modify the list of prohibited nonaudit services under
21 paragraph (1).

22 (4) REPORT.—The Commission shall report to
23 the Committee on Financial Services of the House of
24 Representatives and the Committee on Banking,
25 Housing, and Urban Affairs of the Senate on its

1 conduct of any reviews as required by this section.
2 The report shall include a discussion of regulatory or
3 legislative steps that are recommended or that may
4 be necessary to address concerns identified in the
5 study.

6 (5) CONFORMING REVISION.—The Commission
7 shall revise its regulations pertaining to accountant
8 fee disclosure items, as set forth in paragraphs
9 (e)(1) through (e)(3) of item 9 from Schedule 14A
10 (17 CFR 240.14a–101), in light of paragraph (1) of
11 this subsection and after making a determination as
12 to whether such disclosures are necessary.

13 (6) DEADLINE FOR RULEMAKING.—The Com-
14 mission shall—

15 (A) within 90 days after the date of enact-
16 ment of this Act, propose, and

17 (B) within 270 days after such date, pre-
18 scribe,

19 the revisions to its regulations required by this sub-
20 section.

21 (d) PRO ACCOUNTANT REVIEW PROCEEDINGS.—

22 (1) REVIEW PROCEEDING FINDINGS.—Any find-
23 ings made pursuant to an accountant review con-
24 ducted under this section that a financial statement
25 audited by such accountant and submitted to the



1 Commission may have been materially affected by an
2 impairment of auditor independence, or by a viola-
3 tion of professional ethics and competency stand-
4 ards, shall be submitted to the Commission. The
5 Commission shall promptly notify an issuer of any
6 such finding that relates to the financial statements
7 of such issuer.

8 (2) CONFIDENTIAL TREATMENT OF PRO-
9 CEEDINGS PENDING SEC REVIEW.—

10 (A) NO DISCLOSURE.—Except as otherwise
11 provided in this section, but notwithstanding
12 any other provision of law, neither the Commis-
13 sion, a recognized public regulatory organiza-
14 tion, nor any other person shall disclose any in-
15 formation concerning any accountant review
16 proceeding and the findings therein.

17 (B) SPECIFIC WITHHOLDING NOT AUTHOR-
18 IZED.—Nothing in this subsection shall—

19 (i) authorize a recognized public regu-
20 latory organization to withhold information
21 from the Commission;

22 (ii) authorize such board or the Com-
23 mission to withhold information concerning
24 an accountant review proceeding from an
25 accountant or person associated with an

1 accountant that is the subject of such pro-
2 ceeding;

3 (iii) authorize the Commission to
4 withhold information from Congress; or

5 (iv) prevent the Commission from
6 complying with a request for information
7 from any other Federal department or
8 agency requesting information for purposes
9 within the scope of its jurisdiction, or com-
10 plying with an order of a court of the
11 United States in an action brought by the
12 United States or the Commission.

13 (C) DURATION OF WITHHOLDING.—Nei-
14 ther the Commission nor the recognized public
15 regulatory organization shall disclose the results
16 of any such finding until the completion of any
17 review by the Commission under subsections (e)
18 and (f), or the conclusion of the 30-day period
19 for seeking review if no motion seeking review
20 is filed within such period.

21 (D) TREATMENT UNDER FOIA.—For pur-
22 poses of section 552 of title 5, United States
23 Code, this subsection shall be considered a stat-
24 ute described in subsection (b)(3)(B) of such
25 section 552.



1 (3) NONPRECLUSIVE EFFECT OF PRO FIND-
2 INGS.—A finding by a recognized public regulatory
3 organization that an individual audit of an issuer
4 met or failed to meet any applicable standard with
5 respect to the quality of such audit shall not be con-
6 strued in any action arising out of the securities
7 laws as indicative of compliance or noncompliance
8 with the securities laws or with any standard of li-
9 ability arising thereunder.

*other types
of actions.
for
accountant?*

10 (e) REVIEW OF SANCTIONS.—

11 (1) NOTICE.—If any recognized public regu-
12 latory organization—

13 (A) makes a finding with respect to or im-
14 poses any final disciplinary sanction on any ac-
15 countant;

16 (B) prohibits or limits any person in re-
17 spect to access to services offered by such orga-
18 nization; or

19 (C) makes a finding with respect to or im-
20 poses any final disciplinary sanction on any per-
21 son associated with an accountant or bars any
22 person from becoming associated with an ac-
23 countant,

24 the recognized public regulatory organization shall
25 promptly submit notice thereof with the Commission.



1 The notice shall be in such form and contain such
2 information as the Commission, by rule, may pre-
3 scribe as necessary or appropriate in furtherance of
4 the purposes of this section.

5 (2) REVIEW BY COMMISSION.—Any action with
6 respect to which a recognized public regulatory orga-
7 nization is required by paragraph (1) of this sub-
8 section to submit notice shall be subject to review by
9 the Commission, on its own motion, or upon applica-
10 tion by any person aggrieved thereby filed within 30
11 days after the date such notice was filed with the
12 Commission and received by such aggrieved person,
13 or within such longer period as the Commission may
14 determine. Application to the Commission for review,
15 or the institution of review by the Commission on its
16 own motion, shall not operate as a stay of such ac-
17 tion unless the Commission otherwise orders, sum-
18 marily or after notice and opportunity for hearing on
19 the question of a stay (which hearing may consist
20 solely of the submission of affidavits or presentation
21 of oral arguments). The Commission shall establish
22 for appropriate cases an expedited procedure for
23 consideration and determination of the question of a
24 stay.

25 (f) CONDUCT OF COMMISSION REVIEW.—



1 (1) BASIS FOR ACTION.—In any proceeding to
2 review a final disciplinary sanction imposed by a rec-
3 ognized public regulatory organization on an ac-
4 countant or a person associated with such account-
5 ant, after notice and opportunity for hearing (which
6 hearing may consist solely of consideration of the
7 record before the recognized public regulatory orga-
8 nization and opportunity for the presentation of sup-
9 porting reasons to affirm, modify, or set aside the
10 sanction)—

11 (A) if the Commission finds that such ac-
12 countant or person associated with an account-
13 ant has engaged in such acts or practices, or
14 has omitted such acts, as the recognized public
15 regulatory organization has found him to have
16 engaged in or omitted, that such acts or prac-
17 tices, or omissions to act, are in violation of
18 such provisions of this section, or of profes-
19 sional ethics and competency standards, and
20 that such provisions are, and were applied in a
21 manner, consistent with the purposes of this
22 section, the Commission, by order, shall so de-
23 clare and, as appropriate, affirm the sanction
24 imposed by the recognized public regulatory or-
25 ganization, modify the sanction in accordance



1 with paragraph (2) of this subsection, or re-
2 mand to the recognized public regulatory orga-
3 nization for further proceedings; or

4 (B) if the Commission does not make any
5 such finding, it shall, by order, set aside the
6 sanction imposed by the recognized public regu-
7 latory organization and, if appropriate, remand
8 to the recognized public regulatory organization
9 for further proceedings.

10 (2) REDUCTION OF SANCTIONS.—If the Com-
11 mission, having due regard for the public interest
12 and the protection of investors, finds after a pro-
13 ceeding in accordance with paragraph (1) of this
14 subsection that a sanction imposed by a recognized
15 public regulatory organization upon an accountant
16 or person associated with an accountant imposes any
17 burden on competition not necessary or appropriate
18 in furtherance of the purposes of this Act or is ex-
19 cessive or oppressive, the Commission may cancel,
20 reduce, or require the remission of such sanction.

21 (g) REVIEW AND APPROVAL OF RULES.—

22 (1) SUBMISSION, PUBLICATION, AND COM-
23 MENT.—Each recognized public regulatory organiza-
24 tion shall file with the Commission, in accordance
25 with such rules as the Commission may prescribe,

*std. of
review?*



1 copies of any proposed rule or any proposed change
2 in, addition to, or deletion from the rules of such
3 recognized public regulatory organization (herein-
4 after in this subsection collectively referred to as a
5 "proposed rule change") accompanied by a concise
6 general statement of the basis and purpose of such
7 proposed rule change. The Commission shall, upon
8 the filing of any proposed rule change, publish notice
9 thereof together with the terms of substance of the
10 proposed rule change or a description of the subjects
11 and issues involved. The Commission shall give in-
12 terested persons an opportunity to submit written
13 data, views, and arguments concerning such pro-
14 posed rule change. No proposed rule change shall
15 take effect unless approved by the Commission or
16 otherwise permitted in accordance with the provi-
17 sions of this subsection.

18 (2) APPROVAL OR PROCEEDINGS.—Within 35
19 days of the date of publication of notice of the filing
20 of a proposed rule change in accordance with para-
21 graph (1) of this subsection, or within such longer
22 period as the Commission may designate up to 90
23 days of such date if it finds such longer period to
24 be appropriate and publishes its reasons for so find-

1 ing or as to which the recognized public regulatory
2 organization consents, the Commission shall—

3 (A) by order approve such proposed rule
4 change; or

5 (B) institute proceedings to determine
6 whether the proposed rule change should be dis-
7 approved. Such proceedings shall include notice
8 of the grounds for disapproval under consider-
9 ation and opportunity for hearing and be con-
10 cluded within 180 days of the date of publica-
11 tion of notice of the filing of the proposed rule
12 change. At the conclusion of such proceedings
13 the Commission, by order, shall approve or dis-
14 approve such proposed rule change. The Com-
15 mission may extend the time for conclusion of
16 such proceedings for up to 60 days if it finds
17 good cause for such extension and publishes its
18 reasons for so finding or for such longer period
19 as to which the recognized public regulatory or-
20 ganization consents.

21 (3) BASIS FOR APPROVAL OR DISAPPROVAL.—

22 The Commission shall approve a proposed rule
23 change of a recognized public regulatory organiza-
24 tion if it finds that such proposed rule change is
25 consistent with the requirements of this Act and the



1 rules and regulations thereunder applicable to such
2 organization. The Commission shall disapprove a
3 proposed rule change of a recognized public regu-
4 latory organization if it does not make such finding.
5 The Commission shall not approve any proposed rule
6 change prior to the 30th day after the date of publi-
7 cation of notice of the filing thereof, unless the Com-
8 mission finds good cause for so doing and publishes
9 its reasons for so finding.

10 (4) RULES EFFECTIVE UPON FILING.—

11 (A) Notwithstanding the provisions of
12 paragraph (2) of this subsection, a proposed
13 rule change may take effect upon filing with the
14 Commission if designated by the recognized
15 public regulatory organization as (i) consti-
16 tuting a stated policy, practice, or interpreta-
17 tion with respect to the meaning, administra-
18 tion, or enforcement of an existing rule of the
19 recognized public regulatory organization, (ii)
20 establishing or changing a due, fee, or other
21 charge imposed by the recognized public regu-
22 latory organization, or (iii) concerned solely
23 with the administration of the recognized public
24 regulatory organization or other matters which
25 the Commission, by rule, consistent with the



1 public interest and the purposes of this sub-
2 section, may specify as outside the provisions of
3 such paragraph (2).

4 (B) Notwithstanding any other provision of
5 this subsection, a proposed rule change may be
6 put into effect summarily if it appears to the
7 Commission that such action is necessary for
8 the protection of investors, or otherwise in ac-
9 cordance with the purposes of this title. Any
10 proposed rule change so put into effect shall be
11 filed promptly thereafter in accordance with the
12 provisions of paragraph (1) of this subsection.

13 (C) Any proposed rule change of a recog-
14 nized public regulatory organization which has
15 taken effect pursuant to subparagraph (A) or
16 (B) of this paragraph may be enforced by such
17 organization to the extent it is not inconsistent
18 with the provisions of this Act, the securities
19 laws, the rules and regulations thereunder, and
20 applicable Federal and State law. At any time
21 within 60 days of the date of filing of such a
22 proposed rule change in accordance with the
23 provisions of paragraph (1) of this subsection,
24 the Commission summarily may abrogate the
25 change in the rules of the recognized public reg-



1 ulatory organization made thereby and require
2 that the proposed rule change be refiled in ac-
3 cordance with the provisions of paragraph (1)
4 of this subsection and reviewed in accordance
5 with the provisions of paragraph (2) of this
6 subsection, if it appears to the Commission that
7 such action is necessary or appropriate in the
8 public interest, for the protection of investors,
9 or otherwise in furtherance of the purposes of
10 this Act. Commission action pursuant to the
11 preceding sentence shall not affect the validity
12 or force of the rule change during the period it
13 was in effect, shall not be subject to court re-
14 view, and shall not be deemed to be "final agen-
15 cy action" for purposes of section 704 of title
16 5, United States Code.

17 (h) COMMISSION ACTION TO CHANGE RULES.—The
18 Commission, by rule, may abrogate, add to, and delete
19 from (hereinafter in this subsection collectively referred to
20 as "amend") the rules of a recognized public regulatory
21 organization as the Commission deems necessary or ap-
22 propriate to insure the fair administration of the recog-
23 nized public regulatory organization, to conform its rules
24 to requirements of this Act, the securities laws, and the
25 rules and regulations thereunder applicable to such orga-



1 nization, or otherwise in furtherance of the purposes of
2 this Act, in the following manner:

3 (1) The Commission shall notify the recognized
4 public regulatory organization and publish notice of
5 the proposed rulemaking in the Federal Register.
6 The notice shall include the text of the proposed
7 amendment to the rules of the recognized public reg-
8 ulatory organization and a statement of the Com-
9 mission's reasons, including any pertinent facts, for
10 commencing such proposed rulemaking.

11 (2) The Commission shall give interested per-
12 sons an opportunity for the oral presentation of
13 data, views, and arguments, in addition to an oppor-
14 tunity to make written submissions. A transcript
15 shall be kept of any oral presentation.

16 (3) A rule adopted pursuant to this subsection
17 shall incorporate the text of the amendment to the
18 rules of the recognized public regulatory organiza-
19 tion and a statement of the Commission's basis for
20 and purpose in so amending such rules. This state-
21 ment shall include an identification of any facts on
22 which the Commission considers its determination so
23 to amend the rules of the recognized public regu-
24 latory agency to be based, including the reasons for



1 the Commission's conclusions as to any of such facts
2 which were disputed in the rulemaking.

3 (4)(A) Except as provided in paragraphs (1)
4 through (3) of this subsection, rulemaking under
5 this subsection shall be in accordance with the pro-
6 cedures specified in section 553 of title 5, United
7 States Code, for rulemaking not on the record.

8 (B) Nothing in this subsection shall be con-
9 strued to impair or limit the Commission's power to
10 make, or to modify or alter the procedures the Com-
11 mission may follow in making, rules and regulations
12 pursuant to any other authority under the securities
13 laws.

14 (C) Any amendment to the rules of a recog-
15 nized public regulatory organization made by the
16 Commission pursuant to this subsection shall be con-
17 sidered for all purposes to be part of the rules of
18 such recognized public regulatory organization and
19 shall not be considered to be a rule of the Commis-
20 sion.

21 (i) COMMISSION OVERSIGHT OF THE PRO.—

22 (1) RECORDS AND EXAMINATIONS.—A public
23 regulatory organization shall make and keep for pre-
24 scribed periods such records, furnish such copies
25 thereof, and make and disseminate such reports as



1 the Commission, by rule, prescribes as necessary or
2 appropriate in the public interest, for the protection
3 of investors, or otherwise in furtherance of the pur-
4 poses of this Act or the securities laws.

5 (2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—

6 A public regulatory organization shall perform such
7 other duties or functions as the Commission, by rule
8 or order, determines are necessary or appropriate in
9 the public interest or for the protection of investors
10 and to carry out the purposes of this Act and the
11 securities laws, including conducting a special review
12 of a particular public accounting firm's quality con-
13 trol system or a special review of a particular aspect
14 of some or all public accounting firms' quality con-
15 trol systems.

16 (3) ANNUAL REPORT; PROPOSED BUDGET.—

17 (A) SUBMISSION OF ANNUAL REPORT AND
18 BUDGET.—A public regulatory organization
19 shall submit an annual report and its proposed
20 budget to the Commission for review and ap-
21 proval, by order, at such times and in such
22 form as the Commission shall prescribe.

23 (B) CONTENTS OF ANNUAL REPORT.—

24 Each annual report required by subparagraph

25 (A) shall include—



1 (i) a detailed description of the activi-
2 ties of the public regulatory organization;

3 (ii) the audited financial statements of
4 the public regulatory organization;

5 (iii) a detailed explanation of the fees
6 and charges imposed by the public regu-
7 latory organization under subsection
8 (b)(9); [and]

9 (iv) such other matters as the public
10 regulatory organization or the Commission
11 deems appropriate.

12 (C) TRANSMITTAL OF ANNUAL REPORT TO
13 CONGRESS.—The Commission shall transmit
14 each approved annual report received under
15 subparagraph (A) to the Committee on Finan-
16 cial Services of the United States House of
17 Representatives and the Committee on Bank-
18 ing, Housing, and Urban Affairs of the United
19 States Senate. At the same time it transmits a
20 public regulatory organization's annual report
21 under this subparagraph, the Commission shall
22 include a written statement of its views of the
23 functioning and operations of the public regu-
24 latory organization.



1 (D) PUBLIC AVAILABILITY.—Following
2 transmittal of each approved annual report
3 under subparagraph (C), the Commission and
4 the public regulatory organization shall make
5 the approved annual report publicly available.

6 (4) DISAPPROVAL OF ELECTION OF PRO MEM-
7 BER.—The Commission is authorized, by order, if in
8 its opinion such action is necessary or appropriate in
9 the public interest, for the protection of investors, or
10 otherwise in furtherance of the purposes of this Act
11 or the securities laws, to disapprove the election of
12 any member of a public regulatory organization if
13 the Commission determines, after notice and oppor-
14 tunity for hearing, that the person elected is unfit
15 to serve on the public regulatory organization.

16 (j) CLARIFICATION OF APPLICATION OF PRO AU-
17 THORITY.—The authority granted to any such organiza-
18 tion in this section shall only apply to the actions of ac-
19 countants related to the certification of financial state-
20 ments required by securities laws and not other actions
21 or actions for other clients of the accounting firm or any
22 accountant that does not certify financial statements for
23 publicly traded companies.

24 (k) DEADLINE FOR RULEMAKING.—The Commission
25 shall—

1 (1) within 90 days after the date of enactment
2 of this Act, propose, and

3 (2) within 270 days after such date, prescribe,
4 rules to implement this section.

5 (1) EFFECTIVE DATE; TRANSITION PROVISIONS.—

6 (1) EFFECTIVE DATE.—Except as provided in
7 paragraph (2), subsection (a) of this section shall be
8 effective with respect to any certified financial state-
9 ment for any fiscal year that ends more than one
10 year after the Commission recognizes a public regu-
11 latory organization pursuant to this section.

12 (2) DELAY IN ESTABLISHMENT OF BOARD.—If
13 the Commission has failed to recognize any public
14 regulatory organization pursuant to this section
15 within one year after the date of enactment of this
16 Act, the Commission shall perform the duties of
17 such organization with respect to any certified finan-
18 cial statement for any fiscal year that ends before
19 one year after any such board is recognized by the
20 Commission.

21 **SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

22 (a) RULES TO PROHIBIT.—It shall be unlawful in
23 contravention of such rules or regulations as the Commis-
24 sion shall prescribe as necessary and appropriate in the
25 public interest or for the protection of investors for any



1 officer, director, or affiliated person of an issuer of any
2 security registered under section 12 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78l) to take any action
4 to fraudulently influence, coerce, manipulate, or mislead
5 any independent public or certified accountant engaged in
6 the performance of an audit of the financial statements
7 of such issuer for the purpose of rendering such financial
8 statements materially misleading. In any civil proceeding,
9 the Commission shall have exclusive authority to enforce
10 this section and any rule or regulation hereunder.

11 (b) NO PREEMPTION OF OTHER LAW.—The provi-
12 sions of subsection (a) shall be in addition to, and shall
13 not supersede or preempt, any other provision of law or
14 any rule or regulation thereunder.

15 (c) DEADLINE FOR RULEMAKING.—The Commission
16 shall—

17 (1) within 90 days after the date of enactment
18 of this Act, propose, and

19 (2) within 270 days after such date, prescribe,
20 the rules or regulations required by this section.

21 **SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMA-**
22 **TION.**

23 (a) REAL-TIME ISSUER DISCLOSURES REQUIRED.—

24 (1) OBLIGATIONS.—Every issuer of a security
25 registered under section 12 of the Securities Ex-



1 change Act of 1934 (15 U.S.C. 78l) shall file with
2 the Commission and disclose to the public, on a
3 rapid and essentially contemporaneous basis, such
4 information concerning the financial condition or op-
5 erations of such issuer as the Commission deter-
6 mines by rule is necessary in the public interest and
7 for the protection of investors. Such rule shall—

8 (A) specify the events or circumstances
9 giving rise to the obligation to disclose or up-
10 date a disclosure;

11 (B) establish requirements regarding the
12 rapidity and timeliness of such disclosure;

13 (C) identify the means whereby the dislo-
14 sure required shall be made, which shall ensure
15 the broad, rapid, and accurate dissemination of
16 the information to the public via electronic or
17 other communications device;

18 (D) identify the content of the information
19 to be disclosed; and

20 (E) without limiting the Commission's gen-
21 eral exemptive authority, specify any exemp-
22 tions or exceptions from such requirements.

23 (2) TRANSACTIONS INCLUDED.—The rule pre-
24 scribed under paragraph (1) shall require the dislo-
25 sure of the following transactions:



1 (A) Direct or indirect sales or other trans-
2 fers of securities of the issuer (or any interest
3 therein) to the issuer or an affiliate of the
4 issuer.

5 (B) Loans or other extensions of credit ex-
6 tended to an officer, director, or other person
7 affiliated with the issuer on terms or conditions
8 not otherwise available to the public.

9 (3) ENFORCEMENT.—The Commission shall
10 have exclusive authority to enforce this section and
11 any rule or regulation hereunder in civil proceedings.

12 (b) ELECTRONIC DISCLOSURE OF INSIDER TRANS-
13 ACTIONS.—

14 (1) DISCLOSURES OF TRADING.—The Commis-
15 sion shall, by rule, require—

16 (A) that a disclosure required by section
17 16 of the Securities Exchange Act of 1934 (15
18 U.S.C. 78p) of the sale of any securities [of an
19 issuer], or any security futures product (as de-
20 fined in section 3(a)(56) of the securities Ex-
21 change Act of 1934 (15 U.S.C. 78c(a)(56)) or
22 any security-based swap agreement (as defined
23 in section 206B of the Gramm-Leach-Bliley
24 Act) [that is based in whole or in part on the
25 securities of such issuer][?], by an officer or

1 director of the issuer of those securities, or by
2 a beneficial owner of such securities, shall be
3 made available electronically to the Commission
4 and to the issuer by such officer, director, or
5 beneficial owner before the end of the next busi-
6 ness day after the day on which the transaction
7 occurs;

8 (B) that the information in such disclosure
9 be made available electronically to the public by
10 the Commission, to the extent permitted under
11 applicable law, upon receipt, but in no case
12 later than the end of the next business day
13 after the day on which the disclosure is received
14 under subparagraph (A); and

15 (C) that, in any case in which the issuer
16 maintains a corporate website, such information
17 shall be made available by such issuer on that
18 website, before the end of the next business day
19 after the day on which the disclosure is received
20 by the Commission under subparagraph (A).

21 (2) OTHER FORMATS; FORMS.—In the rule pre-
22 scribed under paragraph (1), the Commission shall
23 provide that electronic filing and disclosure shall be
24 in lieu of any other format required for such disclo-
25 sures on the day before the date of enactment of this



1 subsection. The Commission shall revise such forms
2 and schedules required to be filed with the Commis-
3 sion pursuant to paragraph (1) as necessary to fa-
4 cilitate such electronic filing and disclosure.

5 **SEC. 5. INSIDER TRADES DURING PENSION FUND BLACK-**
6 **OUT PERIODS PROHIBITED.**

7 (a) PROHIBITION.—It shall be unlawful for any per-
8 son who is directly or indirectly the beneficial owner of
9 more than 10 percent of any class of any equity security
10 (other than an exempted security) which is registered
11 under section 12 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78l) or who is a director or an officer of the
13 issuer of such security, directly or indirectly, to purchase
14 (or otherwise acquire) or sell (or otherwise transfer) any
15 equity security of any issuer (other than an exempted se-
16 curity), during any blackout period with respect to such
17 equity security.

18 (b) REMEDY.—Any profit realized by such beneficial
19 owner, director, or officer from any purchase (or other ac-
20 quisition) or sale (or other transfer) in violation of this
21 section shall inure to and be recoverable by the issuer irre-
22 spective of any intention on the part of such beneficial
23 owner, director, or officer in entering into the transaction.
24 Suit to recover such profit may be instituted at law or
25 in equity in any court of competent jurisdiction by the



1 issuer, or by the owner of any security of the issuer in
2 the name and in behalf of the issuer if the issuer shall
3 fail or refuse to bring such suit within 60 days after re-
4 quest or shall fail diligently to prosecute the same there-
5 after; but no such suit shall be brought more than 2 years
6 after the date such profit was realized. This subsection
7 shall not be construed to cover any transaction where such
8 beneficial owner was not such both at the time of the pur-
9 chase and sale, or the sale and purchase, of the security
10 or security-based swap (as defined in section 206B of the
11 Gramm-Leach-Bliley Act) involved, or any transaction or
12 transactions which the Commission by rules and regula-
13 tions may exempt as not comprehended within the pur-
14 poses of this subsection.

15 (c) RULEMAKING PERMITTED.—The Commission
16 may issue rules to clarify the application of this sub-
17 section, to ensure adequate notice to all persons affected
18 by this subsection, and to prevent evasion thereof.

19 (d) DEFINITION.—For purposes of this section, the
20 term “beneficial owner” has the meaning provided such
21 term in rules or regulations issued by the Securities and
22 Exchange Commission under section 16 of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78p).



1 **SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DIS-**
2 **CLOSURES.**

3 (a) **MODIFICATION OF REGULATIONS REQUIRED.—**

4 The Commission shall revise its regulations under the se-
5 curities laws pertaining to the disclosures required in peri-
6 odic financial reports and registration statements to re-
7 quire such reports to include adequate and appropriate
8 disclosure of—

9 (1) the issuer's off-balance sheet transactions
10 and relationships with unconsolidated entities or
11 other persons, to the extent they are not disclosed in
12 the financial statements and are reasonably likely to
13 materially affect the liquidity or the availability of,
14 or requirements for, capital resources, or the finan-
15 cial condition or results of operations of the issuer;
16 and

17 (2) loans extended to officers, directors, or
18 other persons affiliated with the issuer on terms or
19 conditions that are not otherwise available to the
20 public.

21 (b) **DEADLINE FOR RULEMAKING.—**The Commission
22 shall—

23 (1) within 90 days after the date of enactment
24 of this Act, propose, and

25 (2) within 270 days after such date, prescribe,
26 the revisions to its regulations required by subsection (a).

1 (c) ANALYSIS REQUIRED.—

2 (1) TRANSPARENCY, COMPLETENESS, AND USE-
3 FULNESS OF FINANCIAL STATEMENTS.—The Com-
4 mission shall conduct an analysis of the extent to
5 which, consistent with the protection of investors
6 and the public interest, disclosure of additional or
7 reorganized information may be required to improve
8 the transparency, completeness, or usefulness of fi-
9 nancial statements and other corporate disclosures
10 filed under the securities laws.

11 (2) ALTERNATIVES TO BE CONSIDERED.—In
12 conducting the analysis required by paragraph (1),
13 the Commission shall consider—

14 (A) requiring the identification of the key
15 accounting principles that are most important
16 to the issuer's reported financial condition and
17 results of operation, and that require manage-
18 ment's most difficult, subjective, or complex
19 judgments;

20 (B) requiring an explanation, where mate-
21 rial, of how different available accounting prin-
22 ciples applied, the judgments made in their ap-
23 plication, and the likelihood of materially dif-
24 ferent reported results if different assumptions
25 or conditions were to prevail;

1 (C) in the case of any issuer engaged in
2 the business of trading [non-exchange] traded
3 contracts, requiring an explanation of such
4 trading activities when such activities require
5 the issuer to account for contracts at fair value,
6 but for which a lack of market price quotations
7 necessitates the use of fair value estimation
8 techniques;

9 (D) establishing requirements relating to
10 the presentation of information in clear and un-
11 derstandable format and language; and

12 (E) requiring such other disclosures, in-
13 cluded in the financial statements or in other
14 disclosure by the issuer, as would in the Com-
15 mission's view improve the transparency of such
16 issuer's financial statements and other required
17 corporate disclosures.

18 (3) RULES REQUIRED.—If the Commission, on
19 the basis of the analysis required by this subsection,
20 determines that it is necessary in the public interest
21 or for the protection of investors and would improve
22 the transparency of issuer financial statements, the
23 Commission may prescribe rules reflecting the re-
24 sults of such analysis and the considerations re-
25 quired by paragraph (2). In prescribing such rules,



1 the Commission may seek to minimize the paper-
2 work and cost burden on the issuer consistent with
3 achieving the public interest and investor protection
4 purposes of such rules.

5 **SEC. 7. IMPROVEMENTS IN REPORTING ON INSIDER**
6 **TRANSACTIONS AND RELATIONSHIPS.**

7 (a) **SPECIFIC OBJECTIVES.**—The Commission shall
8 initiate a proceeding to propose changes in its rules and
9 regulations with respect to financial reporting to improve
10 the transparency and clarity of the information available
11 to investors and to require increased financial disclosure
12 with respect to the following:

13 (1) **INSIDER RELATIONSHIPS AND TRANS-**
14 **ACTIONS.**—Relationships and transactions—

15 (A) between the issuer, affiliates of the
16 issuer, and officers, directors, or employees of
17 the issuer or such affiliates; and

18 (B) between officers, directors, employees,
19 or affiliates of the issuer and entities that are
20 not otherwise affiliated with the issuer,

21 to the extent such arrangement or transaction cre-
22 ates a conflict of interest for such persons. Such dis-
23 closure shall provide a description of such elements
24 of the transaction as are necessary for an under-
25 standing of the business purpose and economic sub-



1 stance of such transaction (including contingencies).
2 The disclosure shall provide sufficient information to
3 determine the effect on the issuer's financial state-
4 ments and describe compensation arrangements of
5 interested parties to such transactions.

6 (2) RELATIONSHIPS WITH PHILANTHROPIC OR-
7 GANIZATIONS.—Relationships between the registrant
8 or any executive officer of the registrant and any
9 not-for-profit organization on whose board a director
10 or immediate family member serves or of which a di-
11 rector or immediate family member serves as an offi-
12 cer or in a similar capacity. Relationships that shall
13 be disclosed include contributions to the organization
14 in excess of \$10,000 made by the registrant or any
15 executive officer in the last five years and any other
16 activity undertaken by the registrant or any execu-
17 tive officer that provides a material benefit to the or-
18 ganization. Material benefit includes lobbying.

19 (3) INSIDER-CONTROLLED AFFILIATES.—Rela-
20 tionships in which the registrant or any executive of-
21 ficer exercises significant control over an entity in
22 which a director or immediate family member owns
23 an equity interest or to which a director or imme-
24 diate family member has extended credit. Significant
25 control should be defined with reference to the con-



1 tractual and governance arrangements between the
2 registrant or executive officer, as the case may be,
3 and the entity.

4 (4) JOINT OWNERSHIP.—Joint ownership by a
5 registrant or executive officer and a director or im-
6 mediate family member of any real or personal prop-
7 erty.

8 (5) PROVISION OF SERVICES BY RELATED PER-
9 SONS.—The provision of any professional services,
10 including legal, financial advisory or medical serv-
11 ices, by a director or immediate family member to
12 any executive officer of the registrant in the last five
13 years.

14 (b) DEADLINES.—The Commission shall complete
15 the rulemaking required by this section within 180 days
16 after the date of enactment of this Act.

17 **SEC. 8. CODES OF CONDUCT.**

18 (a) RULES REQUIRED.—Within 180 days after the
19 date of enactment of this Act, the New York Stock Ex-
20 change, the American Stock Exchange and the Nasdaq
21 Stock Market (or any successor to such entities), shall file
22 with the Commission proposed rule changes that would
23 prohibit the listing of any security issued by an issuer that
24 has not adopted a senior financial officers code of ethics
25 applicable to its principal financial officer, its comptroller



1 or principal accounting officer, or persons performing
2 similar functions that establishes such standards as are
3 reasonably necessary to promote honest and ethical con-
4 duct, the avoidance of conflicts of interest, full, fair, accu-
5 rate, timely and understandable disclosure in the issuer's
6 periodic reports and compliance with applicable govern-
7 mental rules and regulations. The Commission shall ap-
8 prove such proposed rule changes pursuant to the require-
9 ment of section 19(b)(2) of the Securities Act of 1934.

10 (b) OTHER EXCHANGES.—The Commission, by rule
11 or regulation, may require any other national securities
12 exchange, to propose rule changes necessary to comply
13 with the provisions of subsection (a) of this section if the
14 Commission determines such action is necessary or appro-
15 priate in the public interest and consistent with the protec-
16 tion of investors.

17 (c) FURTHER STANDARDS.—In addition to the re-
18 quirements of subsections (a) and (b), the Commission
19 may, by rule or regulation, prescribe further standards of
20 conduct for senior financial officers as necessary or appro-
21 priate in the public interest and consistent with the protec-
22 tion of investors.

23 (d) CHANGES IN CODES OF CONDUCT.—Within 180
24 days after the date of enactment of this Act, the Commis-
25 sion shall revise its regulations concerning matters requir-



1 ing prompt disclosure on Form 8K to require the imme-
2 diate disclosure, by means of such Form and by the Inter-
3 net or other electronic means, by any issuer of any change
4 in, or waiver of, the code of ethics of such issuer.

5 **SEC. 9. REVIEW OF FINANCIAL DISCLOSURES.**

6 (a) PERIODIC REVIEW STUDY.—The Commission
7 shall conduct a study and review of ways to improve its
8 selective review process for periodic reports filed under
9 Section 13 or 15 of the Securities Exchange Act of 1934.
10 Such study and review shall include a review of ways to
11 ensure that issuers with the largest market capitalization,
12 most actively traded securities, or most widely held securi-
13 ties will be subject to a regular and thorough review by
14 the Commission, including a review of the issuers' finan-
15 cial statements and other disclosures. Such study and re-
16 view shall also include a review of ways to use technology
17 and risk management techniques to improve the identifica-
18 tion of companies to be subject to the selective review
19 process.

20 (b) REPORT REQUIRED.—The Commission shall sub-
21 mit a report to the Committee on Financial Services of
22 the House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate on
24 the study and review required by this section no later than
25 one year after the date of enactment of this Act.



1 **SEC. 10. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**
2 **SURES BY ISSUERS.**

3 (a) **REGULAR AND SYSTEMATIC REVIEW.**—The Secu-
4 rities and Exchange Commission shall review disclosures
5 made by issuers pursuant to the Securities Exchange Act
6 of 1934 (including reports filed on form 10-K) on a basis
7 that is more regular and systematic than that in practice
8 on the date of enactment on this Act. Such review shall
9 include a review of an issuer's financial statements.

10 (b) **RISK RATING SYSTEM.**—For purposes of the re-
11 views required by subsection (a), the Commission shall es-
12 tablish a risk rating system whereby issuers receive a risk
13 rating by the Commission, which shall be used to deter-
14 mine the frequency of such reviews. In designing such a
15 risk rating system the Commission shall consider, among
16 other factors the following:

17 (1) Emerging companies with disparities in
18 price to earning ratios.

19 (2) Issuers with the largest market capitaliza-
20 tion.

21 (3) Issuers whose operations significantly im-
22 pact any material sector of the economy.

23 (4) Systemic factors such as the effect on niche
24 markets or important subsectors of the economy.

25 (5) Issuers that experience significant volatility
26 in their stock price as compared to other issuers.



1 (6) Any other factor the Commission may con-
2 sider relevant.

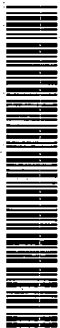
3 (c) MINIMUM REVIEW PERIOD.—In no event shall an
4 issuer be reviewed less than once every three years by the
5 Commission.

6 (d) PROHIBITION OF DISCLOSURE OF RISK RAT-
7 ING.—Notwithstanding any other provision of law, the
8 Commission shall not disclose the risk rating of any issuer
9 described in subsection (b).

10 **SEC. 11. RETENTION OF RECORDS.**

11 (a) DUTY TO RETAIN RECORDS.—Any independent
12 public or certified accountant who certifies a financial
13 statement as required by the securities laws or any rule
14 or regulation thereunder shall prepare and maintain for
15 a period of no less than 7 years, final audit work papers
16 and other information related to any accountants report
17 on such financial statements in sufficient detail to support
18 the opinion or assertion reached in such accountants re-
19 port. The Commission may prescribe rules specifying the
20 application and requirements of this section.

21 (b) ACCOUNTANT'S REPORT.—For purposes of sub-
22 section (a), the term "accountant's report" means a docu-
23 ment in which an accountant identifies a financial state-
24 ment and sets forth his opinion regarding such financial



1 statement or an assertion that an opinion cannot be ex-
2 pressed.

3 **SEC. 12. COMMISSION AUTHORITY TO BAR PERSONS FROM**
4 **SERVING AS OFFICERS OR DIRECTORS.**

5 (a) COMMISSION AUTHORITY TO PROHIBIT PERSONS
6 FROM SERVING AS OFFICERS OR DIRECTORS.—Notwith-
7 standing any other provision of the securities laws, in any
8 cease-and-desist proceeding under section 8A(a) of the Se-
9 curities Act of 1933 or section 21C(a) of the Securities
10 and Exchange Act of 1934, the Commission may issue an
11 order to prohibit, conditionally or unconditionally, perma-
12 nently or for such period of time as it shall determine,
13 any person who has violated section 17(a)(1) of the Secu-
14 rities Act of 1933 or section 10(b) of the Securities Ex-
15 change Act of 1934 (or any rule or regulation thereunder)
16 from acting as an officer or director of any issuer that
17 has a class of securities registered pursuant to section 12
18 of the Securities Exchange Act of 1934 or that is required
19 to file reports pursuant to section 15(d) of such Act if
20 the person's conduct demonstrates substantial unfitness to
21 serve as an officer or director of any such issuer.

22 (b) FINDING OF SUBSTANTIAL UNFITNESS.—In
23 making any determination that a person's conduct dem-
24 onstrates substantial unfitness to serve as an officer or



1 director of any such issuer, the Commission shall
2 consider—

3 (1) the severity of the persons conduct giving
4 rise to the violation, and the persons role or position
5 when he engaged in the violation;

6 (2) the person's degree of scienter;

7 (3) the person's economic gain as a result of
8 the violation; and

9 (4) the likelihood that the conduct giving rise to
10 the violation, or similar conduct as defined in sub-
11 section (a), may recur if the person is not so prohib-
12 ited.

13 (c) AUTOMATIC STAY PENDING APPEAL.—The en-
14 forcement of any Commission order pursuant to section
15 (a) shall be stayed—

16 (1) for a period of at least 60 days after the
17 entry of any such order or decision; and

18 (2) upon the filing of a timely application for
19 judicial review of such order or decision, pending the
20 entry of a final order resolving the application for
21 judicial review.



1 **SEC. 13. DISGORGING INSIDERS PROFITS FROM TRADES**
2 **PRIOR TO CORRECTION OF ERRONEOUS FI-**
3 **NANCIAL STATEMENTS.**

4 (a) **ANALYSIS REQUIRED.**—The Commission shall
5 conduct an analysis of whether, and under what condi-
6 tions, any officer or director of an issuer should be re-
7 quired to disgorge profits gained, or losses avoided, in the
8 sale of the securities of such issuer during the six month
9 period immediately preceding the filing of a restated finan-
10 cial statement on the part of such issuer.

11 (b) **DISGORGEMENT RULES AUTHORIZED.**—If the
12 Commission determines that imposing the requirement de-
13 scribed in subsection (a) is necessary or appropriate in the
14 public interest or for the protection investors, and would
15 not unduly impair the operations of issuers or the orderly
16 operation of the securities markets, the Commission shall
17 prescribe a rule requiring the disgorgement of all profits
18 gained or losses avoided in the sale of the securities of
19 the issuer by any officer or director thereof. Such rule
20 shall—

21 (1) describe the conditions under which any of-
22 ficer or director shall be required to disgorge profits,
23 including what constitutes a restatement for pur-
24 poses of operation of the rule;



1 (2) establish exceptions and exemptions from
2 such rule as necessary to carry out the purposes of
3 this section;

4 (3) identify the scienter requirement that
5 should be used in order to determine to impose the
6 requirement to disgorge; and

7 (4) specify that the enforcement of such rule
8 shall lie solely with the Commission, and that any
9 profits so disgorged shall inure to the issuer.

10 (c) NO PREEMPTION OF OTHER LAW.—Unless other-
11 wise specified by the Commission, in the case of any rule
12 promulgated pursuant to subsection (b), such rule shall
13 be in addition to, and shall not supersede or preempt, the
14 Commission's authority to seek disgorgement under any
15 other provision of law.

16 **SEC. 14. SECURITIES AND EXCHANGE COMMISSION AU-**
17 **THORITY TO PROVIDE RELIEF.**

18 (a) PROCEEDS OF ENRON AND ANDERSEN EN-
19 FORCEMENT ACTIONS.—If in any administrative or judi-
20 cial proceeding brought by the Securities and Exchange
21 Commission against—

22 (1) the Enron Corporation, any subsidiary or
23 affiliate of such Corporation, or any officer, director,
24 or principal shareholder of such Corporation, sub-



1 subsidiary, or affiliate for any violation of the securities
2 laws; or

3 (2) Arthur Andersen L.L.C., any subsidiary or
4 affiliate of Arthur Andersen L.L.C., or any general
5 or limited partner of Arthur Andersen L.L.C., or
6 such subsidiary or affiliate, for any violation of the
7 securities laws with respect to any services per-
8 formed for or in relation to the Enron Corporation,
9 any subsidiary or affiliate of such Corporation, or
10 any officer, director, or principal shareholder of such
11 Corporation, subsidiary, or affiliate;

12 the Commission obtains an order providing for an account-
13 ing and disgorgement of funds, such disgorgement fund
14 (including any addition to such fund required or permitted
15 under this section) shall be allocated in accordance with
16 the requirements of this section.

17 (b) PRIORITY FOR FORMER ENRON EMPLOYEES.—

18 The Commission shall, by order, establish an allocation
19 system for the disgorgement fund. Such system shall pro-
20 vide that, in allocating the disgorgement fund amount the
21 victims of the securities laws violations described in sub-
22 section (a), the first priority shall be given to individuals
23 who were employed by the Enron Corporation, or a sub-
24 sidiary or affiliate of such Corporation, and who were par-
25 ticipants in an individual account plan established by such



1 Corporation, subsidiary, or affiliate. Such allocations
2 among such individuals shall be in proportion to the extent
3 to which the nonforfeitable accrued benefit of each such
4 individual under the plan was invested in the securities
5 of such Corporation, subsidiary, or affiliate.

6 (c) ADDITION OF CIVIL PENALTIES.—If, in any pro-
7 ceeding described in subsection (a), the Commission as-
8 sesses and collects any civil penalty, the Commission shall,
9 notwithstanding sections 21(d)(3)(C)(i), 21A(d)(1), or
10 any other provision of the securities laws, be payable to
11 the disgorgement fund.

12 (d) ACCEPTANCE OF ADDITIONAL DONATIONS.—The
13 Commission is authorized to accept, hold, administer, and
14 utilize gifts, bequests and devises of property, both real
15 and personal, to the United States for the disgorgement
16 fund. Gifts, bequests, and devises of money and proceeds
17 from sales of other property received as gifts, bequests,
18 or devises shall be deposited in the disgorgement fund and
19 shall be available for allocation in accordance with sub-
20 section (b).

21 (e) DEFINITIONS.—As used in this section:

22 (1) DISGORGEMENT FUND.—The term
23 “disgorgement fund” means a disgorgement fund es-
24 tablished in any administrative or judicial proceeding
25 described in subsection (a).



1 (2) SUBSIDIARY OR AFFILIATE.—The term
2 “subsidiary or affiliate” when used in relation to a
3 person means any entity that controls, is controlled
4 by, or is under common control with such person.

5 (3) OFFICER, DIRECTOR, OR PRINCIPAL SHARE-
6 HOLDER.—The term “officer, director, or principal
7 shareholder” when used in relation to the Enron
8 Corporation, or any subsidiary or affiliate of such
9 Corporation, means any person that is subject to the
10 requirements of section 16 of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78p) in relation to
12 the Enron Corporation, or any subsidiary or affiliate
13 of such Corporation.

14 (4) NONFORFEITABLE; ACCRUED BENEFIT; IN-
15 DIVIDUAL ACCOUNT PLAN.—The terms “nonforfeit-
16 able”, “accrued benefit”, and “individual account
17 plan” have the meanings provided such terms, re-
18 spectively, in paragraphs (19), (23), and (34) of sec-
19 tion 3 of the Employee Retirement Income Security
20 Act of 1974 (29 U.S.C. 1002(19), (23), (34)).

21 **SEC. 15. STUDY OF RULES RELATING TO ANALYST CON-**
22 **FLICTS OF INTEREST.**

23 (a) STUDY AND REVIEW REQUIRED.—The Commis-
24 sion shall conduct a study and review of any final rules
25 by any self-regulatory organization registered with the



1 Commission related to matters involving equity research
2 analysts conflicts of interest. Such study and report shall
3 include a review of the effectiveness of such final rules
4 in addressing matters relating to the objectivity and integ-
5 rity of equity research analyst reports and recommenda-
6 tions.

7 (b) REPORT REQUIRED.—The Commission shall sub-
8 mit a report to the Committee on Financial Services of
9 the House of Representatives and the Committee on
10 Banking, Housing, and Urban Affairs of the Senate on
11 such study and review no later than 180 days after any
12 such final rules by any self-regulatory organization reg-
13 istered with the Commission are delivered to the Commis-
14 sion. Such report shall include recommendations to the
15 Congress, including any recommendations for additional
16 self-regulatory organization rulemaking regarding matters
17 involving equity research analysts. The Commission shall
18 annually submit an update on such review.

19 **SEC. 16. REVIEW OF CORPORATE GOVERNANCE PRAC-**
20 **TICES.**

21 (a) STUDY OF CORPORATE PRACTICES.—The Com-
22 mission shall conduct a study and review of current cor-
23 porate governance standards and practices to determine
24 whether such standards and practices are serving the best



1 interests of shareholders. Such study and review shall in-
2 clude an analysis of—

3 (1) whether current standards and practices
4 promote full disclosure of relevant information to
5 shareholders;

6 (2) whether corporate codes of ethics are ade-
7 quate to protect shareholders, and to what extent
8 deviations from such codes are tolerated;

9 (3) to what extent conflicts of interests are ag-
10 gressively reviewed, and whether adequate means for
11 redressing such conflicts exist;

12 (4) to what extent sufficient legal protections
13 exist or should be adopted to ensure that any man-
14 ager who attempts to manipulate or unduly influence
15 an audit will be subject to appropriate sanction and
16 liability, including liability to investors or share-
17 holders pursuing a private cause of action for such
18 manipulation or undue influence;

19 (5) whether rules, standards, and practices re-
20 lating to determining whether independent directors
21 are in fact independent are adequate;

22 (6) whether rules, standards, and practices re-
23 lating to the independence of directors serving on
24 audit committees are uniformly applied and ade-
25 quate to protect investor interests;



1 (7) whether the duties and responsibilities of
2 audit committees should be established by the Com-
3 mission; and

4 (8) what further or additional practices or
5 standards might best protect investors and promote
6 the interests of shareholders.

7 (b) PARTICIPATION OF STATE REGULATORS.—In
8 conducting the study required under subsection (a), the
9 Commission shall seek the views of the securities and cor-
10 porate regulators of the various States.

11 (c) REPORT REQUIRED.—The Commission shall sub-
12 mit a report on the analysis required under subsection (a)
13 as a part of the Commission's next annual report sub-
14 mitted after the date of enactment of this Act.

15 **SEC. 17. STUDY OF ENFORCEMENT ACTIONS.**

16 (a) STUDY REQUIRED.—The Commission shall re-
17 view and analyze all enforcement actions by the Commis-
18 sion involving violations of reporting requirements im-
19 posed under the securities laws, and restatements of finan-
20 cial statements, over the last five years to identify areas
21 of reporting that are most susceptible to fraud, inappro-
22 priate manipulation, or inappropriate earnings manage-
23 ment, such as revenue recognition and the accounting
24 treatment of off-balance sheet special purpose entities.



1 (b) REPORT REQUIRED.—The Commission shall re-
2 port its findings to the Committee on Financial Services
3 of the House of Representatives and the Committee on
4 Banking, Housing, and Urban Affairs of the Senate with-
5 in 180 days of the date of enactment of this Act and shall
6 use such findings to revise its rules and regulations, as
7 necessary. The report shall include a discussion of regu-
8 latory or legislative steps that are recommended or that
9 may be necessary to address concerns identified in the
10 study.

11 **SEC. 18. STUDY OF CREDIT RATING AGENCIES.**

12 (a) STUDY REQUIRED.—The Commission shall con-
13 duct a study of the role and function of credit rating agen-
14 cies in the operation of the securities market. Such study
15 shall examine—

16 (1) the role of the credit rating agencies in the
17 evaluation of issuers of securities;

18 (2) the importance of that role to investors and
19 the functioning of the securities markets;

20 (3) any impediments to the accurate appraisal
21 by credit rating agencies of the financial resources
22 and risks of issuers of securities;

23 (4) any measures which may be required to im-
24 prove the dissemination of information concerning



1 such resources and risks when credit rating agencies
2 announce credit ratings;

3 (5) any barriers to entry into the business of
4 acting as a credit rating agency, and any measures
5 needed to remove such barriers; and

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

10 (b) **REPORT REQUIRED.**—The Commission shall sub-
11 mit a report on the analysis required by subsection (a)
12 to the President, the Committee on Financial Services of
13 the House of Representatives, and the Committee on
14 Banking, Housing, and Urban Affairs of the Senate with-
15 in 180 days after the date of enactment of this Act. The
16 report shall include a discussion of regulatory or legislative
17 steps that are recommended or that may be necessary to
18 address concerns identified in the study.

19 **SEC. 19. STUDY OF INVESTMENT BANKS**

20 (a) **GAO STUDY.**—The Comptroller General shall
21 conduct a study on the role played by investment banks
22 and financial advisors in assisting public companies in ma-
23 nipulating their earnings and obfuscating their true finan-
24 cial condition. The study should address the role of the
25 investment banks—



1 (1) in the collapse of the Enron Corporation,
2 including with respect to the design and implementa-
3 tion of derivatives transactions, transactions involv-
4 ing special purpose vehicles, and other financing ar-
5 rangements that may have had the effect of altering
6 the company's reported financial statements in ways
7 that obscured the true financial picture of the com-
8 pany;

9 (2) in the failure of Global Crossing, including
10 with respect to transactions involving swaps of fiber
11 optic cable capacity, in designing transactions that
12 may have had the effect of altering the company's
13 reported financial statements in ways that obscured
14 the true financial picture of the company; and

15 (3) generally, in creating and marketing trans-
16 actions designed solely to enable companies to ma-
17 nipulate revenue streams, obtain loans, or move li-
18 abilities off balance sheets without altering the eco-
19 nomic and business risks faced by the companies or
20 any other mechanism to obscure a company's finan-
21 cial picture.

22 (b) REPORT.—The General Accounting Office shall
23 report to the Congress within 180 days after the date of
24 enactment of this Act on the results of the study required
25 by this section. The report shall include a discussion of



1 regulatory or legislative steps that are recommended or
2 that may be necessary to address concerns identified in
3 the study.

4 **SEC. 20. STUDY OF MODEL RULES FOR ATTORNEYS OF**
5 **ISSUERS.**

6 (a) IN GENERAL.—The Comptroller General shall
7 conduct a study of the Model Rules of Professional Con-
8 duct promulgated by the American Bar Association and
9 rules of professional conduct applicable to attorneys estab-
10 lished by the Commission to determine—

11 (1) whether such rules provide sufficient guid-
12 ance to attorneys representing corporate clients who
13 are issuers required to file periodic disclosures under
14 section 13 or 15 of the Securities Exchange Act of
15 1934 (15 U.S.C. 78m, 78o), as to the ethical re-
16 sponsibilities of such attorneys to—

17 (A) warn clients of possible fraudulent or
18 illegal activities of such clients and possible con-
19 sequences of such activities;

20 (B) disclose such fraudulent or illegal ac-
21 tivities to appropriate regulatory or law enforce-
22 ment authorities; and

23 (C) manage potential conflicts of interests
24 with clients; and



1 (2) whether such rules provide sufficient protec-
2 tion to corporate shareholders, especially with re-
3 gards to conflicts of interest between attorneys and
4 their corporate clients.

5 (b) REPORT REQUIRED.—The Comptroller General
6 shall report to the Committee on Financial Services of the
7 House of Representatives and the Committee on Banking,
8 Housing, and Urban Affairs of the Senate on the results
9 of the study required by this section. Such report shall
10 include any recommendations of the General Accounting
11 Office with regards to—

12 (1) possible changes to the Model Rules and the
13 rules of professional conduct applicable to attorneys
14 established by the Commission to provide increased
15 protection to shareholders;

16 (2) whether restrictions should be imposed to
17 require that an attorney, having represented a cor-
18 poration or having been employed by a firm which
19 represented a corporation, may not be employed as
20 general counsel to that corporation until a certain
21 period of time has expired; and

22 (3) the regulatory or legislative steps that are
23 recommended or that may be necessary to address
24 concerns identified in the study.

1 **SEC. 21. ENFORCEMENT AUTHORITY.**

2 For the purposes of enforcing and carrying out this
3 Act, the Commission shall have all of the authorities
4 granted to the Commission under the securities laws. Ac-
5 tions of the Commission under this Act, including actions
6 on rules or regulations, shall be subject to review in the
7 same manner as actions under the securities laws.

8 **SEC. 22. EXCLUSION FOR INVESTMENT COMPANIES.**

9 Sections 4, 6, 8, and 9 of this Act shall not apply
10 to an investment company registered under section 8 of
11 the Investment Company Act of 1940 (15 U.S.C. 80a-
12 8).

13 **SEC. 23. DEFINITIONS.**

14 As used in this Act:

15 (1) **BLACKOUT PERIOD.**—The term “blackout
16 period” with respect to the equity securities of any
17 issuer—

18 (A) means any period during which the
19 ability of at least fifty percent of the partici-
20 pants or beneficiaries under all applicable indi-
21 vidual account plans maintained by the issuer
22 to purchase (or otherwise acquire) or sell (or
23 otherwise transfer) an interest in any equity of
24 such issuer is suspended by the issuer or a fidu-
25 ciary of the plan; but

26 (B) does not include—

1 (i) a period in which the employees of
2 an issuer may not allocate their interests
3 in the individual account plan due to an
4 express investment restriction—

5 (I) incorporated into the indi-
6 vidual account plan; and

7 (II) timely disclosed to employees
8 before joining the individual account
9 plan or as a subsequent amendment
10 to the plan; [and/or?]

11 (ii) any suspension described in sub-
12 paragraph (A) that is imposed solely in
13 connection with persons becoming partici-
14 pants or beneficiaries, or ceasing to be par-
15 ticipants or beneficiaries, in an applicable
16 individual account plan by reason of a cor-
17 porate merger, acquisition, divestiture, or
18 similar transaction.

19 (2) BOARDS OF ACCOUNTANCY OF THE
20 STATES.—The term “boards of accountancy of the
21 States” means any organization or association char-
22 tered or approved under the law of any State with
23 responsibility for the registration, supervision, or
24 regulation of accountants.



1 (3) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (4) INDIVIDUAL ACCOUNT PLAN.—The term
4 “individual account plan” has the meaning provided
5 such term in section 3(34) of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C.
7 1002(34)).

8 (5) ISSUER.—The term “issuer” shall have the
9 meaning set forth in section 2(a)(4) of the Securities
10 Act of 1933 (15 U.S.C. 77b(a)(4)).

11 (6) PERSON ASSOCIATED WITH AN ACCOUNT-
12 ANT.—The term “person associated with an ac-
13 countant” means any partner, officer, director, or
14 manager of such accountant (or any person occu-
15 pying a similar status or performing similar func-
16 tions), any person directly or indirectly controlling,
17 controlled by, or under common control with such
18 accountant, or any employee of such accountant who
19 performs a supervisory role in the auditing process.

20 (7) RECOGNIZED PUBLIC REGULATORY ORGANI-
21 ZATION.—The term “recognized public regulatory
22 organization” means a public regulatory organiza-
23 tion that the Commission has recognized as meeting
24 the criteria established by the Commission under
25 subsection (b) of section 2.



1 (8) SECURITIES LAWS.—The term “securities
2 laws” means the Securities Act of 1933 (15 U.S.C.
3 77a et seq.), the Securities Exchange Act of 1934
4 (15 U.S.C. 78a et seq.), the Trust Indenture Act of
5 1939 (15 U.S.C. 77aaa et seq.), the Investment
6 Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the
7 Investment Advisers Act of 1940 (15 U.S.C. 80b et
8 seq.), and the Securities Investor Protection Act of
9 1970 (15 U.S.C. 78aaa et seq.), notwithstanding
10 any contrary provision of any such Act.

