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Collection: Executive Clerk, Office of the

Series: Saunders, G. Timothy (Tim) - Bill Files

Folder Title: 07/30/2002 [H.R. 3763] [771351] [1]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/30/2002	P5;
002	Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/29/2002	P5;
003	Email	[Re: H. R. 3763] - To: James J. Jukes - From: Kristen Silverberg	1	07/29/2002	P5;
004	Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/29/2002	P5;
005	Letter	[Views of the Department of the Treasury] - To: Mitchell E. Daniels, Jr. - From: David D. Aufhauser	1	07/26/2002	P5;
006	Letter	[Views of the Secretary of Labor] - To: Mitchell E. Daniels, Jr. - From: Elaine L. Chao	2	07/29/2002	P5;

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07/30/2002 [H.R. 3763] [771351] [1]

FRC ID:
6359

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Barcode Scanning Sheet

Collection Code: **SECLOG**

Staff Name:

Document Date:

Correspondent: **TIM SAUNDERS**

Subject/Description: **OVERSIZE ATTACHMENT # 9466 NARA # 9357 BOX 2 FOLDER 17 BILL FILE RECEIVED FROM THE OFFICE OF THE EXECUTIVE CLERK - JUL 30 02 ENROLLED BILL H.R. 3763 - SARBANES-OXLEY ACT OF 2002**

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This Document was withdrawn on 9/16/2013 by TDF

Attachment

Other Provisions of H.R. 3763

Criminal Penalties and Related Provisions

Altering, Destroying, or Falsifying Documents. Anyone who knowingly alters, destroys, or falsifies any record with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of a Federal agency or any bankruptcy case would be subject to a fine, imprisonment for up to 20 years, or both.

Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

Defrauding Shareholders of Publicly Traded Companies. Anyone who knowingly executes, or attempts to execute, a "scheme or artifice" either to defraud any person in connection with certain Federally registered securities or obtain, by means of false pretenses, any money or property in connection with the purchase or sale of these securities, would be subject to a fine or imprisonment for up to 25 years, or both.

Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

Tampering with a Record or Otherwise Impeding an Official Proceeding. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

False Statements to SEC. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Retaliation Against Informants and Whistleblower Protections. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

Acceptance of Accounting Principles from a Standard Setting Body

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

H.R. 3763 would require the General Accounting Office to study and report to Congress on the plausibility of requiring the mandatory rotation of auditors and what ramifications have occurred from the consolidation of public accounting firms.

Miscellaneous Provisions

The Board would be required to submit an annual report to the SEC, and the SEC would be required to transmit a copy of that report to the Senate Banking and House Financial Services Committees within 30 days of receiving the report from the Board.

The enrolled bill would give the Board oversight over foreign public accounting firms that prepare or furnish, or play a substantial role in preparing or furnishing, audit reports to public companies in the United States.

The enrolled bill would authorize a court to prohibit persons from participating in an offering of penny stock.

The enrolled bill states the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of that corporation.

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

An Act

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

(1) by striking "$1,000,000, or imprisoned not more than 10 years" and inserting "$5,000,000, or imprisoned not more than 20 years"; and

(2) by striking "$2,500,000" and inserting "$25,000,000".

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.".

Speaker of the House of Representatives.

~~Vice President of the United States and~~
President of the Senate pro tempore.

APPROVED

JUL 3 0 2002

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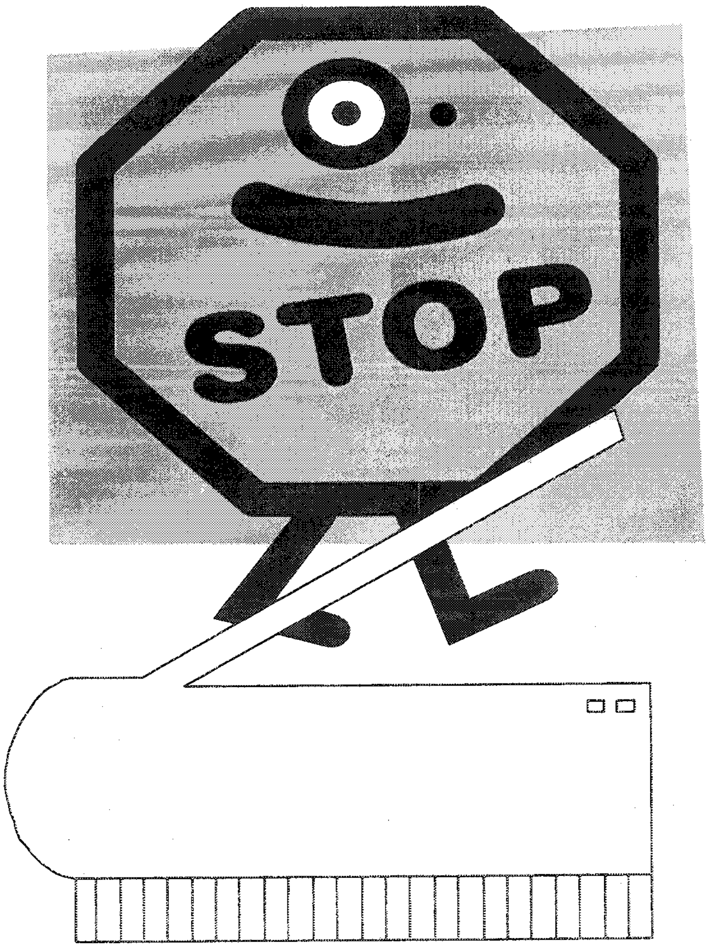

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B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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This Document was withdrawn on 9/16/2013 by TDF

Attachment

Other Provisions of H.R. 3763

Criminal Penalties and Related Provisions

Altering, Destroying, or Falsifying Documents. Anyone who knowingly alters, destroys, or falsifies any record with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of a Federal agency or any bankruptcy case would be subject to a fine, imprisonment for up to 20 years, or both.

Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

Defrauding Shareholders of Publicly Traded Companies. Anyone who knowingly executes, or attempts to execute, a "scheme or artifice" either to defraud any person in connection with certain Federally registered securities or obtain, by means of false pretenses, any money or property in connection with the purchase or sale of these securities, would be subject to a fine or imprisonment for up to 25 years, or both.

Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

Tampering with a Record or Otherwise Impeding an Official Proceeding. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

False Statements to SEC. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

Retaliation Against Informant. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Statute of Limitations for Securities Fraud. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

Whistleblower Protections. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

Acceptance of Accounting Principles from a Standard Setting Body

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

H.R. 3763 would require the General Accounting Office to study and report to Congress on the plausibility of requiring the mandatory rotation of auditors and what ramifications have occurred from the consolidation of public accounting firms.

Miscellaneous Provisions

The Board would be required to submit an annual report to the SEC, and the SEC would be required to transmit a copy of that report to the Senate Banking and House Financial Services Committees within 30 days of receiving the report from the Board.

The enrolled bill would give the Board oversight over foreign public accounting firms that prepare or furnish, or play a substantial role in preparing or furnishing, audit reports to public companies in the United States.

The enrolled bill would authorize a court to prohibit persons from participating in an offering of penny stock.

The enrolled bill states the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of that corporation.

Withdrawal Marker
The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	[Re: H. R. 3763] - To: James J. Jukes - From: Kristen Silverberg	1	07/29/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

RESTRICTION CODES

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P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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This Document was withdrawn on 9/16/2013 by TDF

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	0322
CONNECTION TEL	66212
CONNECTION ID	
ST. TIME	07/29 23:24
USAGE T	07'06
PGS. SENT	18
RESULT	OK

SS/ RM NO. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 07-29-02 9:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 07-30-02 8:00 AM

Subject: ENROLLED BILL MEMO -- H.R. 3763 SARBANES-OXLEY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☑	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☐	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☑	SPELLINGS	☑	☐
GERSON	☐	☑	CLERK	☐	☑
GONZALES	☑	☐	____________	☐	☐
HAGIN	☐	☐	____________	☐	☐
HAWKINS	☑	☐	____________	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X53458, OR FAX 56148, BY 10:00 P.M., TONIGHT, MONDAY, JULY 29, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE

SS/ RM NO. ________________

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	0321
CONNECTION TEL	51005
CONNECTION ID	
ST. TIME	07/29 23:17
USAGE T	07'00
PGS. SENT	18
RESULT	OK

SS/ RM NO. ________

WHITE HOUSE STAFFING MEMORANDUM

Date: 07-29-02 9:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 07-30-02 8:00 AM

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VICE PRESIDENT	✓	☐	HUBBARD	✓	☐
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GERSON	☐	✓	CLERK	☐	✓
GONZALES	✓	☐	________	☐	☐
HAGIN	☐	☐	________	☐	☐
HAWKINS	✓	☐	________	☐	☐

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RESPONSE:

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Assistant to the President
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Ext. 62702

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TRANSMISSION OK

TX/RX NO	0320
CONNECTION TEL	56958
CONNECTION ID	
ST. TIME	07/29 23:09
USAGE T	07'01
PGS. SENT	18
RESULT	OK

SS/ RM NO. ____________

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Withdrawal Marker
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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/29/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

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Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

Tampering with a Record or Otherwise Impeding an Official Proceeding. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

False Statements to SEC. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

Retaliation Against Informant. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Statute of Limitations for Securities Fraud. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

Whistleblower Protections. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

Acceptance of Accounting Principles from a Standard Setting Body

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Views of the Department of the Treasury] - To: Mitchell E. Daniels, Jr. - From: David D. Aufhauser	1	07/26/2002	P5;

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COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Views of the Secretary of Labor] - To: Mitchell E. Daniels, Jr. - From: Elaine L. Chao	2	07/29/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/29/2002	P5;

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Attachment

Other Provisions of H.R. 3763

Criminal Penalties and Related Provisions

Altering, Destroying, or Falsifying Documents. Anyone who knowingly alters, destroys, or falsifies any record with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of a Federal agency or any bankruptcy case would be subject to a fine, imprisonment for up to 20 years, or both.

Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

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Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

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B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

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b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

This Document was withdrawn on 9/16/2013 by TDF

Attachment

Other Provisions of H.R. 3763

Criminal Penalties and Related Provisions

Altering, Destroying, or Falsifying Documents. Anyone who knowingly alters, destroys, or falsifies any record with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of a Federal agency or any bankruptcy case would be subject to a fine, imprisonment for up to 20 years, or both.

Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

Defrauding Shareholders of Publicly Traded Companies. Anyone who knowingly executes, or attempts to execute, a "scheme or artifice" either to defraud any person in connection with certain Federally registered securities or obtain, by means of false pretenses, any money or property in connection with the purchase or sale of these securities, would be subject to a fine or imprisonment for up to 25 years, or both.

Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

Tampering with a Record or Otherwise Impeding an Official Proceeding. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

False Statements to SEC. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Retaliation Against Informants and Whistleblower Protections. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

<u>Acceptance of Accounting Principles from a Standard Setting Body</u>

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

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SS/ RM NO. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 07-29-02 9:00 PM **ACTION / CONCURRENCE / COMMENT DUE BY:** 07-30-02 8:00 AM

Subject: ENROLLED BILL MEMO -- H.R. 3763 SARBANES-OXLEY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	[x]	[ ]	HUBBARD	[x]	[ ]
CARD Comment	[x]	[ ]	IRASTORZA	[ ]	[ ]
BARTLETT	[x]	[ ]	JOHNSON	[ ]	[ ]
BLAKEMAN	[ ]	[ ]	LINDSEY	[x]	[ ]
BOLTEN comments	[x]	[ ]	MARBURGER	[ ]	[ ]
BRIDGELAND	[ ]	[ ]	MIERS	[ ]	[x]
CALIO ok	[x]	[ ]	RICE	[ ]	[ ]
CONNAUGHTON	[ ]	[ ]	RIDGE	[ ]	[ ]
DANIELS	[ ]	[x]	ROVE	[x]	[ ]
FLEISCHER	[ ]	[x]	SPELLINGS	[x]	[ ]
GERSON	[ ]	[x]	CLERK	[ ]	[x]
GONZALES	[x]	[ ]	____________	[ ]	[ ]
HAGIN	[ ]	[ ]	____________	[ ]	[ ]
HAWKINS	[x]	[ ]	____________	[ ]	[ ]

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X53458, OR FAX 56148, BY 10:00 P.M., TONIGHT, MONDAY, JULY 29, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

Withdrawal Marker
The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Sarbanes-Oxley Act of 2002 - To: POTUS - From: Mitchell E. Daniels, Jr.	9	07/29/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

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Statute of Limitations for Securities Fraud. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

Whistleblower Protections. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

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COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

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This Document was withdrawn on 9/16/2013 by TDF

Attachment

Other Provisions of H.R. 3763

Criminal Penalties and Related Provisions

Altering, Destroying, or Falsifying Documents. Anyone who knowingly alters, destroys, or falsifies any record with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of a Federal agency or any bankruptcy case would be subject to a fine, imprisonment for up to 20 years, or both.

Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

Defrauding Shareholders of Publicly Traded Companies. Anyone who knowingly executes, or attempts to execute, a "scheme or artifice" either to defraud any person in connection with certain Federally registered securities or obtain, by means of false pretenses, any money or property in connection with the purchase or sale of these securities, would be subject to a fine or imprisonment for up to 25 years, or both.

Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

<u>Tampering with a Record or Otherwise Impeding an Official Proceeding</u>. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

<u>False Statements to SEC</u>. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

<u>Retaliation Against Informant</u>. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

<u>Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws</u>. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

<u>Statute of Limitations for Securities Fraud</u>. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

<u>Whistleblower Protections</u>. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

<u>Acceptance of Accounting Principles from a Standard Setting Body</u>

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

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Miscellaneous Provisions

The Board would be required to submit an annual report to the SEC, and the SEC would be required to transmit a copy of that report to the Senate Banking and House Financial Services Committees within 30 days of receiving the report from the Board.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
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COLLECTION:
Executive Clerk, Office Of the

SERIES:
Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]

FRC ID:
6359

OA Num.:
9466

NARA Num.:
9357

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SS/ RM NO. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 07-29-02 9:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 07-30-02 8:00 AM

Subject: ENROLLED BILL MEMO -- H.R. 3763 SARBANES-OXLEY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☑	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☐	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☑	SPELLINGS	☑	☐
GERSON	☐	☑	CLERK	☐	☑
GONZALES	☑	☐	____________	☐	☐
HAGIN	☐	☐	____________	☐	☐
HAWKINS	☑	☐	____________	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X53458, OR FAX 56148, BY 10:00 P.M., TONIGHT, MONDAY, JULY 29, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

Withdrawal Marker
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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
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COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

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Any accountant who conducts an audit of a public company would have to maintain all audit or review work papers for a period of five years from the end of the fiscal period in which the audit or review was concluded. The SEC would have to promulgate, within 180 days, after providing an opportunity for comment, rules relating to the retention of relevant records connected to an audit or review. Anyone who knowingly and willfully violates these rules would be subject to a fine, imprisonment for up to 20 years, or both. These provisions would not diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

Defrauding Shareholders of Publicly Traded Companies. Anyone who knowingly executes, or attempts to execute, a "scheme or artifice" either to defraud any person in connection with certain Federally registered securities or obtain, by means of false pretenses, any money or property in connection with the purchase or sale of these securities, would be subject to a fine or imprisonment for up to 25 years, or both.

Attempts and Conspiracies to Commit Criminal Fraud Offenses. Anyone who attempts or conspires to commit any criminal fraud offense against the United States would be subject to the same penalties as those prescribed for the offense itself.

Mail and Wire Fraud. The enrolled bill would increase from five years to 20 years the maximum sentence for anyone who commits mail or wire fraud when the violation does not affect a financial institution. (Persons who commit violations that affect financial institutions are subject to up to 30 years imprisonment under current law.)

Pension Fraud. The enrolled bill would increase the maximum fines for pension fraud violations under the Employee Retirement Income Security Act of 1974 from $5,000 to $100,000, and increase the maximum period of imprisonment from one year to 10 years.

Financial Reports. Anyone who certifies any financial statement knowing that the periodic report accompanying the statement does not comport with all the requirements of the law would be subject to a fine of up to $1 million or imprisonment for up to ten years, or both. A willful and knowing violation would be subject to a fine of up to $5 million, imprisonment for up to 20 years, or both.

Tampering with a Record or Otherwise Impeding an Official Proceeding. The enrolled bill would provide that anyone who corruptly: (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, would be subject to a fine, imprisonment for up to 20 years, or both.

False Statements to SEC. The enrolled bill would increase the maximum penalties against individuals who willfully file a false statement with the SEC from $1 million to $5 million in fines, and from 10 years to 20 years in prison. The enrolled bill would also increase the fine to which a corporation would be subject for committing this violation from $2.5 million to $25 million.

Retaliation Against Informant. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Statute of Limitations for Securities Fraud. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

Whistleblower Protections. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

Acceptance of Accounting Principles from a Standard Setting Body

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

H.R. 3763 would require the General Accounting Office to study and report to Congress on the plausibility of requiring the mandatory rotation of auditors and what ramifications have occurred from the consolidation of public accounting firms.

Miscellaneous Provisions

The Board would be required to submit an annual report to the SEC, and the SEC would be required to transmit a copy of that report to the Senate Banking and House Financial Services Committees within 30 days of receiving the report from the Board.

The enrolled bill would give the Board oversight over foreign public accounting firms that prepare or furnish, or play a substantial role in preparing or furnishing, audit reports to public companies in the United States.

The enrolled bill would authorize a court to prohibit persons from participating in an offering of penny stock.

The enrolled bill states the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of that corporation.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Views of the Department of the Treasury] - To: Mitchell E. Daniels, Jr. - From: David D. Aufhauser	1	07/26/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]
FRC ID:
6359
OA Num.:
9466
NARA Num.:
9357

RESTRICTION CODES

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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10:00pm.

Jim Jukes

Document Originally
Attached to
Following Page

Memo to the Record

Date: 10/25/2016

Collection: Executive Clerk, Office of the

Series: Subject Files – Saunders, G. Timothy (Tim) - Bill Files

Hollinger ID: 85221

RE: 07/30/2002 [H.R. 3763] [771251] [1]

Notes:

A copy of the report entitled "Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002" 107th Congress 2d Session House of Representatives report, 107-414. Report is included at this location in this folder. It was not scanned. Contact the George W. Bush Presidential Library for more information regarding this item.

In addition, more information regarding this item may be found at

https://www.congress.gov/107/crpt/hrpt414/CRPT-107hrpt414.pdf

SS/ RM NO. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 07-29-02 9:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 07-30-02 8:00 AM

Subject: ENROLLED BILL MEMO -- H.R. 3763 SARBANES-OXLEY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	[x]	[ ]	HUBBARD	[x]	[ ]
CARD	[x]	[ ]	IRASTORZA	[ ]	[ ]
BARTLETT	[x]	[ ]	JOHNSON	[ ]	[ ]
BLAKEMAN	[ ]	[ ]	LINDSEY	[x]	[ ]
BOLTEN	[x]	[ ]	MARBURGER	[ ]	[ ]
BRIDGELAND	[ ]	[ ]	MIERS	[ ]	[x]
CALIO	[x]	[ ]	RICE	[ ]	[ ]
CONNAUGHTON	[ ]	[ ]	RIDGE	[ ]	[ ]
DANIELS	[ ]	[x]	ROVE	[x]	[ ]
FLEISCHER	[ ]	[x]	SPELLINGS	[x]	[ ]
GERSON	[ ]	[x]	CLERK	[ ]	[x]
GONZALES	[x]	[ ]	____________	[ ]	[ ]
HAGIN	[ ]	[ ]	____________	[ ]	[ ]
HAWKINS	[x]	[ ]	____________	[ ]	[ ]

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X53458, OR FAX 56148, BY 10:00 P.M., TONIGHT, MONDAY, JULY 29, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE. THANK YOU.

RESPONSE:

Legislative Affairs (Howard) - ok

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

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Attachment

Other Provisions of H.R. 3763

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Retaliation Against Informant. The enrolled bill would provide that anyone who knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of that person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of a Federal offense, would be subject to a fine, imprisonment for up to ten years, or both.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws. The enrolled bill would prohibit individuals from using bankruptcy laws to discharge debts arising from any court or administrative order or from any settlement agreement entered into by the debtor for the violation of any Federal or State securities laws or regulations, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

Statute of Limitations for Securities Fraud. A private right of action involving claims of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning securities laws could be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. This provision would apply to all proceedings that are commenced on or after the date of enactment of the enrolled bill.

Whistleblower Protections. The enrolled bill would prohibit any officer, employee, contractor, subcontractor, or agent of a company from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against any employee because of any lawful act done by the employee: (1) to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC rule, or any Federal securities fraud law, when the investigation is conducted by a Federal regulatory or law enforcement agency, by Congress, or by a person with supervisory authority over the employee; or (2) to assist in a proceeding filed or about to be filed relating to an alleged violation of any SEC rule or Federal securities fraud law. Any person who alleges discharge or other discrimination because of his or her action could seek relief by: (1) filing a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days of the filing of the complaint, bringing an action at law or equity for de novo review in the appropriate district court of the United States.

SEC Temporary Freeze Authority. The enrolled bill would allow the SEC to petition a Federal district court for a temporary order requiring a public company to escrow payments in an interest-bearing account for 45 days if it appears to the SEC, during the course of a lawful investigation involving possible violations of Federal securities laws, that the public company is likely to make extraordinary payments to its directors, officers, partners, controlling persons, agents, or employees.

Amendment to the Federal Sentencing Guidelines. H.R. 3763 would request the U.S. Sentencing Commission (USSC) to: (1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses; (2) expeditiously consider the promulgation of new or amended sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and (3) submit to the Congress an explanation of actions it takes or additional policy recommendations it may have for combating securities and accounting fraud and related offenses. In carrying out this review, the USSC would be requested, among other things, to: (1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses; (2) assure reasonable consistency with other relevant directives and with other guidelines; and (3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

Authority to Prohibit Persons from Serving as Officers or Directors. The enrolled bill would authorize the SEC to prohibit from acting as an officer or director of a company any person who has violated laws or regulations related to fraud, manipulation, or insider trading in connection with the purchase or sale of securities, if the conduct of that person demonstrates unfitness to serve as an officer or director of the company.

Enhanced Reporting Requirements

The enrolled bill would require each financial report that is prepared under current law and filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm and require companies to disclose "on a rapid and current basis" any material changes in their financial condition and any off-balance sheet transactions.

The SEC would have to issue, within 180 days of the enrolled bill's enactment, final rules providing that each annual and quarterly financial report required to be filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the public company with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

Within 180 days of the enrolled bill's enactment, the SEC would be required to issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC must be presented in a manner that: (1) does not contain an untrue statement of a material fact or fail to state a material fact necessary to make the pro forma financial information not misleading, in light of the circumstances under which it is presented; and (2) reconciles it with the financial condition and results of operations of the public company under generally accepted accounting principles.

Management and principal stockholders would have to file notice with the SEC within two business days of a purchase or sale of a security or a security-based swap agreement.

The SEC would have to prescribe rules requiring public companies' annual reports to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment, as of the end of the most recent fiscal year of the public company, of the effectiveness of the internal control structure and procedures of the public company for financial reporting.

The above reporting requirements would not apply to investment companies registered with the SEC.

H.R. 3763 would require the SEC to issue final rules, within 180 days of enactment, requiring every public company to indicate in its periodic reports required under current law whether or not, with the reason if not: (1) it has adopted a code of ethics for senior financial officers; and (2) the audit committee of that public company is comprised of at least one member who is a financial expert, as defined by the SEC.

Acceptance of Accounting Principles from a Standard Setting Body

The enrolled bill would allow the SEC to recognize generally accepted accounting principles established by the Financial Accounting Standards Board. H.R. 3763 would literally authorize the SEC to recognize accounting principles as "generally accepted" that are established by a "standard setting body," if the SEC determines the body: (1) is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws; (2) is organized as a private entity; (3) has a board of trustees (or equivalent body), the majority of whom are not, and have not been during the two previous years, affiliated with any registered public accounting firm; (4) is funded through annual accounting support fees; (5) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (6) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment and the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors. Such a body would be required to submit a public annual report to the SEC containing audited financial statements of that standard setting body.

Studies and Reports

H.R. 3763 would require the SEC to study, and submit a report within one year of the enrolled bill's enactment to the House Financial Services and Senate Banking Committees, on the adoption by the U.S. financial reporting system of a principles-based accounting system including an examination of: (1) the extent to which principles-based accounting and financial reporting exists in the United States; (2) the length of time required for change from a rules-based to a principles-based financial reporting system; (3) the feasibility of and proposed methods by which a principles-based system may be implemented; and (4) a thorough economic analysis of the implementation of a principles-based system.

The SEC would be required to conduct a study to determine, for the period from 1998 through 2001, the number of public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals who have been found to have aided and abetted a violation of the Federal securities laws, but who have not been penalized as a primary violator in any administrative action or civil proceeding. The SEC would have to report to the House Financial Services and Senate Banking Committees on this study within six months of the enactment of H.R. 3763.

H.R. 3763 would require the SEC to study its enforcement practices over the five years previous to the enrolled bill's enactment and report to the House Financial Services and Senate Banking Committees on any regulatory or legislative recommendations it has to make the proceedings to obtain civil penalties and disgorgements more effective and fair to investors.

H.R. 3763 would require the General Accounting Office to study and report to Congress on the plausibility of requiring the mandatory rotation of auditors and what ramifications have occurred from the consolidation of public accounting firms.

Miscellaneous Provisions

The Board would be required to submit an annual report to the SEC, and the SEC would be required to transmit a copy of that report to the Senate Banking and House Financial Services Committees within 30 days of receiving the report from the Board.

The enrolled bill would give the Board oversight over foreign public accounting firms that prepare or furnish, or play a substantial role in preparing or furnishing, audit reports to public companies in the United States.

The enrolled bill would authorize a court to prohibit persons from participating in an offering of penny stock.

The enrolled bill states the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of that corporation.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Views of the Department of the Treasury] - To: Mitchell E. Daniels, Jr. - From: David D. Aufhauser	1	07/26/2002	P5;

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COLLECTION:
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Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:
07/30/2002 [H.R. 3763] [771351] [1]

FRC ID:
6359

OA Num.:
9466

NARA Num.:
9357

RESTRICTION CODES

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Letter	[Views of the Secretary of Labor] - To: Mitchell E. Daniels, Jr. - From: Elaine L. Chao	2	07/29/2002	P5;

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