

In the Senate of the United States,

July 15, 2002.

Resolved, That the bill from the House of Representatives (H.R. 3763) entitled “An Act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the*

3 *“Public Company Accounting Reform and Investor Protec-*

4 *tion Act of 2002”.*

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

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

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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

TITLE II—AUDITOR INDEPENDENCE

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

TITLE III—CORPORATE RESPONSIBILITY

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

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.*
Sec. 402. Enhanced conflict of interest provisions.
Sec. 403. Disclosures of transactions involving management and principal stockholders.
Sec. 404. Management assessment of internal controls.
Sec. 405. Exemption.
Sec. 406. Code of ethics for senior financial officers.
Sec. 407. Disclosure of audit committee financial expert.

TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations.*

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

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

TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.*
Sec. 702. Commission study and report regarding credit rating agencies.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

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

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

- Sec. 901. Short title.*
Sec. 902. Criminal penalties for conspiracy to commit offense or to defraud the United States.
Sec. 903. Criminal penalties for mail and wire fraud.
Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
Sec. 906. Corporate responsibility for financial reports.
Sec. 907. Higher maximum penalties for mail and wire fraud.
Sec. 908. Tampering with a record or otherwise impeding an official proceeding.
Sec. 909. Temporary freeze authority for the Securities and Exchange Commission.
Sec. 910. Amendment to the Federal sentencing guidelines.
Sec. 911. Authority of the Commission to prohibit persons from serving as officers or directors.

TITLE X—CORPORATE TAX RETURNS

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

1 SEC. 2. DEFINITIONS.

- 2 (a) IN GENERAL.—***In this Act, the following defini-*
3 tions shall apply:

1 (1) *APPROPRIATE STATE REGULATORY AUTHOR-*
2 *ITY.*—*The term “appropriate State regulatory author-*
3 *ity” means the State agency or other authority re-*
4 *sponsible for the licensure or other regulation of the*
5 *practice of accounting in the State or States having*
6 *jurisdiction over a registered public accounting firm*
7 *or associated person thereof, with respect to the mat-*
8 *ter in question.*

9 (2) *AUDIT.*—*The term “audit” means an exam-*
10 *ination of the financial statements of any issuer by*
11 *an independent public accounting firm in accordance*
12 *with the rules of the Board or the Commission (or, for*
13 *the period preceding the adoption of applicable rules*
14 *of the Board under section 103, in accordance with*
15 *then-applicable generally accepted auditing and re-*
16 *lated standards for such purposes), for the purpose of*
17 *expressing an opinion on such statements.*

18 (3) *AUDIT COMMITTEE.*—*The term “audit com-*
19 *mittee” means—*

20 (A) *a committee (or equivalent body) estab-*
21 *lished by and amongst the board of directors of*
22 *an issuer for the purpose of overseeing the ac-*
23 *counting and financial reporting processes of the*
24 *issuer and audits of the financial statements of*
25 *the issuer; and*

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

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

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

9 (B) in which a public accounting firm
10 either—

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

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

16 (5) *BOARD.*—The term “Board” means the Pub-
17 lic Company Accounting Oversight Board established
18 under section 101.

19 (6) *COMMISSION.*—The term “Commission”
20 means the Securities and Exchange Commission.

21 (7) *ISSUER.*—The term “issuer” means an issuer
22 (as defined in section 3 of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78c)), the securities of which
24 are registered under section 12 of that Act (15 U.S.C.
25 78l), or that is required to file reports pursuant to

1 *section 15(d) of that Act (15 U.S.C. 78o(d)), or that*
2 *will be required to file such reports at the end of a*
3 *fiscal year of the issuer in which a registration state-*
4 *ment filed by such issuer has become effective pursu-*
5 *ant to the Securities Act of 1933 (15 U.S.C. 77a et.*
6 *seq.), unless its securities are registered under section*
7 *12 of the Securities Exchange Act of 1934 (15 U.S.C.*
8 *78c) on or before the end of such fiscal year.*

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

15 (9) *PERSON ASSOCIATED WITH A PUBLIC AC-*
16 *COUNTING FIRM.—*

17 (A) *IN GENERAL.—The terms “person asso-*
18 *ciated with a public accounting firm” (or with*
19 *a “registered public accounting firm”) and “as-*
20 *sociated person of a public accounting firm” (or*
21 *of a “registered public accounting firm”) mean*
22 *any individual proprietor, partner, shareholder,*
23 *principal, accountant, or other professional em-*
24 *ployee of a public accounting firm, or any other*
25 *independent contractor or entity that, in connec-*

1 *tion with the preparation or issuance of any*
2 *audit report—*

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

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

9 *(B) EXEMPTION AUTHORITY.—The Board*
10 *may, by rule, exempt persons engaged only in*
11 *ministerial tasks from the definition in subpara-*
12 *graph (A), to the extent that the Board deter-*
13 *mines that any such exemption is consistent with*
14 *the purposes of this Act, the public interest, or*
15 *the protection of investors.*

16 *(10) PROFESSIONAL STANDARDS.—The term*
17 *“professional standards” means—*

18 *(A) accounting principles that are—*

19 *(i) established by the standard setting*
20 *body described in section 19(b) of the Secu-*
21 *rities Act of 1933, as amended by this Act,*
22 *or prescribed by the Commission under sec-*
23 *tion 19(a) of that Act (15 U.S.C. 17a(s)) or*
24 *section 13(b) of the Securities Exchange Act*
25 *of 1934 (15 U.S.C. 78a(m)); and*

1 (ii) relevant to audit reports for par-
2 ticular issuers, or dealt with in the quality
3 control system of a particular registered
4 public accounting firm; and

5 (B) auditing standards, standards for attes-
6 tation engagements, quality control policies and
7 procedures, ethical and competency standards,
8 and independence standards (including rules im-
9 plementing title II) that the Board or the Com-
10 mission determines—

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

13 (ii) are established or adopted by the
14 Board under section 103(a), or are promul-
15 gated as rules of the Commission.

16 (11) *PUBLIC ACCOUNTING FIRM.*—The term
17 “public accounting firm” means—

18 (A) a proprietorship, partnership, incor-
19 porated association, corporation, limited liabil-
20 ity company, limited liability partnership, or
21 other legal entity that is engaged in the practice
22 of public accounting or preparing or issuing
23 audit reports; and

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

4 (12) REGISTERED PUBLIC ACCOUNTING FIRM.—
5 The term “registered public accounting firm” means
6 a public accounting firm registered with the Board in
7 accordance with this Act.

8 (13) RULES OF THE BOARD.—The term “rules of
9 the Board” means the bylaws and rules of the Board
10 (as submitted to, and approved, modified, or amended
11 by the Commission, in accordance with section 107),
12 and those stated policies, practices, and interpreta-
13 tions of the Board that the Commission, by rule, may
14 deem to be rules of the Board, as necessary or appro-
15 priate in the public interest or for the protection of
16 investors.

17 (14) SECURITY.—The term “security” has the
18 same meaning as in section 3(a) of the Securities Ex-
19 change Act of 1934 (15 U.S.C. 78c(a)).

20 (15) SECURITIES LAWS.—The term “securities
21 laws” means the provisions of law referred to in sec-
22 tion 3(a)(47) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)(47)), as amended by this Act, and
24 includes the rules, regulations, and orders issued by
25 the Commission thereunder.

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

5 (b) *CONFORMING AMENDMENT*.—Section 3(a)(47) of
6 the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))
7 is amended by inserting “the Public Company Accounting
8 Reform and Investor Protection Act of 2002,” before “the
9 Public”.

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

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

15 (b) *ENFORCEMENT*.—

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

1 (2) *INVESTIGATIONS, INJUNCTIONS, AND PROS-*
2 *ECUTION OF OFFENSES.*—*Section 21 of the Securities*
3 *Exchange Act of 1934 (15 U.S.C. 78u) is amended*

4 (A) *in subsection (a)(1), by inserting “the*
5 *rules of the Public Company Accounting Over-*
6 *sight Board, of which such person is a registered*
7 *public accounting firm or a person associated*
8 *with such a firm,” after “is a participant,”;*

9 (B) *in subsection (d)(1), by inserting “the*
10 *rules of the Public Company Accounting Over-*
11 *sight Board, of which such person is a registered*
12 *public accounting firm or a person associated*
13 *with such a firm,” after “is a participant,”;*

14 (C) *in subsection (e), by inserting “the rules*
15 *of the Public Company Accounting Oversight*
16 *Board, of which such person is a registered pub-*
17 *lic accounting firm or a person associated with*
18 *such a firm,” after “is a participant,”; and*

19 (D) *in subsection (f), by inserting “or the*
20 *Public Company Accounting Oversight Board”*
21 *after “self-regulatory organization” each place*
22 *that term appears.*

23 (3) *CEASE-AND-DESIST PROCEEDINGS.*—*Section*
24 *21C(c)(2) of the Securities Exchange Act of 1934 (15*
25 *U.S.C. 78u–3(c)(2)) is amended by inserting “reg-*

1 *istered public accounting firm (as defined in section*
2 *2 of the Public Company Accounting Reform and In-*
3 *vestor Protection Act of 2002),” after “government se-*
4 *curities dealer,”.*

5 *(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in*
6 *this Act or the rules of the Board shall be construed to im-*
7 *pair or limit—*

8 *(1) the authority of the Commission to regulate*
9 *the accounting profession, accounting firms, or per-*
10 *sons associated with such firms for purposes of en-*
11 *forcement of the securities laws;*

12 *(2) the authority of the Commission to set stand-*
13 *ards for accounting or auditing practices or auditor*
14 *independence, derived from other provisions of the se-*
15 *curities laws or the rules or regulations thereunder,*
16 *for purposes of the preparation and issuance of any*
17 *audit report, or otherwise under applicable law; or*

18 *(3) the ability of the Commission to take, on the*
19 *initiative of the Commission, legal, administrative, or*
20 *disciplinary action against any registered public ac-*
21 *counting firm or any associated person thereof.*

1 **TITLE I—PUBLIC COMPANY AC-**
2 **COUNTING OVERSIGHT**
3 **BOARD**

4 **SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.**

5 (a) *ESTABLISHMENT OF BOARD.*—There is established
6 the Public Company Accounting Oversight Board, to oversee
7 the audit of public companies that are subject to the securi-
8 ties laws, and related matters, in order to protect the inter-
9 ests of investors and further the public interest in the prepa-
10 ration of informative, accurate, and independent audit re-
11 ports for companies the securities of which are sold to, and
12 held by and for, public investors. The Board shall be a body
13 corporate, operate as a nonprofit corporation, and have suc-
14 cession until dissolved by an Act of Congress.

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

23 (c) *DUTIES OF THE BOARD.*—The Board shall, subject
24 to action by the Commission under section 107, and once

1 *a determination is made by the Commission under sub-*
2 *section (d) of this section—*

3 (1) *register public accounting firms that prepare*
4 *audit reports for issuers, in accordance with section*
5 *102;*

6 (2) *establish or adopt, or both, by rule, auditing,*
7 *quality control, ethics, independence, and other stand-*
8 *ards relating to the preparation of audit reports for*
9 *issuers, in accordance with section 103;*

10 (3) *conduct inspections of registered public ac-*
11 *counting firms, in accordance with section 104 and*
12 *the rules of the Board;*

13 (4) *conduct investigations and disciplinary pro-*
14 *ceedings concerning, and impose appropriate sanc-*
15 *tions where justified upon, registered public account-*
16 *ing firms and associated persons of such firms, in ac-*
17 *cordance with section 105;*

18 (5) *perform such other duties or functions as the*
19 *Board determines are necessary or appropriate to*
20 *promote high professional standards among, and im-*
21 *prove the quality of audit services offered by, reg-*
22 *istered public accounting firms and associated per-*
23 *sons thereof, or otherwise to carry out this Act, in*
24 *order to protect investors, or to further the public in-*
25 *terest;*

1 (6) *enforce compliance with this Act, the rules of*
2 *the Board, professional standards, and the securities*
3 *laws relating to the preparation and issuance of audit*
4 *reports and the obligations and liabilities of account-*
5 *ants with respect thereto, by registered public ac-*
6 *counting firms and associated persons thereof; and*

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

9 (d) *COMMISSION DETERMINATION.—The members of*
10 *the Board shall take such action (including hiring of staff,*
11 *proposal of rules, and adoption of initial and transitional*
12 *auditing and other professional standards) as may be nec-*
13 *essary or appropriate to enable the Commission to deter-*
14 *mine, not later than 270 days after the date of enactment*
15 *of this Act, that the Board is so organized and has the ca-*
16 *capacity to carry out the requirements of this title, and to*
17 *enforce compliance with this title by registered public ac-*
18 *counting firms and associated persons thereof.*

19 (e) *BOARD MEMBERSHIP.—*

20 (1) *COMPOSITION.—The Board shall have 5*
21 *members, appointed from among prominent individ-*
22 *uals of integrity and reputation who have a dem-*
23 *onstrated commitment to the interests of investors and*
24 *the public, and an understanding of the responsibil-*
25 *ities for and nature of the financial disclosures re-*

1 *quired of issuers under the securities laws and the ob-*
2 *ligations of accountants with respect to the prepara-*
3 *tion and issuance of audit reports with respect to*
4 *such disclosures.*

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

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

24 (4) *APPOINTMENT OF BOARD MEMBERS.—*

1 (A) *INITIAL BOARD.*—Not later than 90
2 days after the date of enactment of this Act, the
3 Commission, after consultation with the Chair-
4 man of the Board of Governors of the Federal
5 Reserve System and the Secretary of the Treas-
6 ury, shall appoint the chairperson and other ini-
7 tial members of the Board, and shall designate
8 a term of service for each.

9 (B) *VACANCIES.*—A vacancy on the Board
10 shall not affect the powers of the Board, but shall
11 be filled in the same manner as provided for ap-
12 pointments under this section.

13 (5) *TERM OF SERVICE.*—

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

17 (i) the terms of office of the initial
18 Board members (other than the chairperson)
19 shall expire in annual increments, 1 on
20 each of the first 4 anniversaries of the ini-
21 tial date of appointment; and

22 (ii) any Board member appointed to
23 fill a vacancy occurring before the expira-
24 tion of the term for which the predecessor

1 *was appointed shall be appointed only for*
2 *the remainder of that term.*

3 (B) *TERM LIMITATION.*—*No person may*
4 *serve as a member of the Board, or as chair-*
5 *person of the Board, for more than 2 terms,*
6 *whether or not such terms of service are consec-*
7 *utive.*

8 (6) *REMOVAL FROM OFFICE.*—*A member of the*
9 *Board may be removed by the Commission from of-*
10 *ice, in accordance with section 107(d)(3), for good*
11 *cause shown before the expiration of the term of that*
12 *member.*

13 (f) *POWERS OF THE BOARD.*—*In addition to any au-*
14 *thority granted to the Board otherwise in this Act, the*
15 *Board shall have the power, subject to section 107—*

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

20 (2) *to conduct its operations and maintain of-*
21 *fices, and to exercise all other rights and powers au-*
22 *thorized by this Act, in any State, without regard to*
23 *any qualification, licensing, or other provision of law*
24 *in effect in such State (or a political subdivision*
25 *thereof);*

1 (3) to lease, purchase, accept gifts or donations
2 of or otherwise acquire, improve, use, sell, exchange,
3 or convey, all of or an interest in any property, wher-
4 ever situated;

5 (4) to appoint such employees, accountants, at-
6 torneys, and other agents as may be necessary or ap-
7 propriate, and to determine their qualifications, de-
8 fine their duties, and fix their salaries or other com-
9 pensation (at a level that is comparable to private
10 sector self-regulatory, accounting, technical, super-
11 visory, or other staff or management positions);

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

16 (6) to enter into contracts, execute instruments,
17 incur liabilities, and do any and all other acts and
18 things necessary, appropriate, or incidental to the
19 conduct of its operations and the exercise of its obliga-
20 tions, rights, and powers imposed or granted by this
21 title.

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

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

4 (2) *permit, as the Board determines necessary or*
5 *appropriate, delegation by the Board of any of its*
6 *functions to an individual member or employee of the*
7 *Board, or to a division of the Board, including func-*
8 *tions with respect to hearing, determining, ordering,*
9 *certifying, reporting, or otherwise acting as to any*
10 *matter, except that—*

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

14 (B) *a person shall be entitled to a review by*
15 *the Board with respect to any matter so dele-*
16 *gated, and the decision of the Board upon such*
17 *review shall be deemed to be the action of the*
18 *Board for all purposes (including appeal or re-*
19 *view thereof); and*

20 (C) *if the right to exercise a review de-*
21 *scribed in subparagraph (A) is declined, or if no*
22 *such review is sought within the time stated in*
23 *the rules of the Board, then the action taken by*
24 *the holder of such delegation shall for all pur-*

1 poses, including appeal or review thereof, be
2 deemed to be the action of the Board;

3 (3) establish ethics rules and standards of con-
4 duct for Board members and staff, including a bar on
5 practice before the Board (and the Commission, with
6 respect to Board-related matters) of 1 year for former
7 members of the Board, and appropriate periods (not
8 to exceed 1 year) for former staff of the Board; and
9 (4) provide as otherwise required by this Act.

10 (h) *ANNUAL REPORT TO THE COMMISSION.*—The
11 Board shall submit an annual report (including its audited
12 financial statements) to the Commission, and the Commis-
13 sion shall transmit a copy of that report to the Committee
14 on Banking, Housing, and Urban Affairs of the Senate, and
15 the Committee on Financial Services of the House of Rep-
16 resentatives, not later than 30 days after the date of receipt
17 of that report by the Commission.

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

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

25 (b) *APPLICATIONS FOR REGISTRATION.*—

1 (1) *FORM OF APPLICATION.*—A public account-
2 ing firm shall use such form as the Board may pre-
3 scribe, by rule, to apply for registration under this
4 section.

5 (2) *CONTENTS OF APPLICATIONS.*—Each public
6 accounting firm shall submit, as part of its applica-
7 tion for registration, in such detail as the Board shall
8 specify—

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

14 (B) the annual fees received by the firm
15 from each such issuer for audit services, other ac-
16 counting services, and non-audit services, respec-
17 tively;

18 (C) such other current financial informa-
19 tion for the most recently completed fiscal year
20 of the firm as the Board may reasonably request;

21 (D) a statement of the quality control poli-
22 cies of the firm for its accounting and auditing
23 practices;

24 (E) a list of all accountants associated with
25 the firm who participate in or contribute to the

1 *preparation of audit reports, stating the license*
2 *or certification number of each such person, as*
3 *well as the State license numbers of the firm*
4 *itself;*

5 *(F) information relating to criminal, civil,*
6 *or administrative actions or disciplinary pro-*
7 *ceedings pending against the firm or any associ-*
8 *ated person of the firm in connection with any*
9 *audit report;*

10 *(G) copies of any periodic or annual disclo-*
11 *sure filed by an issuer with the Commission dur-*
12 *ing the immediately preceding calendar year*
13 *which discloses accounting disagreements between*
14 *such issuer and the firm in connection with an*
15 *audit report furnished or prepared by the firm*
16 *for such issuer; and*

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

21 *(3) CONSENTS.—Each application for registra-*
22 *tion under this subsection shall include—*

23 *(A) a consent executed by the public ac-*
24 *counting firm to cooperation in and compliance*
25 *with any request for testimony or the production*

1 *of documents made by the Board in the further-*
2 *ance of its authority and responsibilities under*
3 *this title (and an agreement to secure and en-*
4 *force similar consents from each of the associated*
5 *persons of the public accounting firm as a condi-*
6 *tion of their continued employment by or other*
7 *association with such firm); and*

8 *(B) a statement that such firm understands*
9 *and agrees that cooperation and compliance, as*
10 *described in the consent required by subpara-*
11 *graph (A), and the securing and enforcement of*
12 *such consents from its associated persons, in ac-*
13 *cordance with the rules of the Board, shall be a*
14 *condition to the continuing effectiveness of the*
15 *registration of the firm with the Board.*

16 *(c) ACTION ON APPLICATIONS.—*

17 *(1) TIMING.—The Board shall approve a com-*
18 *pleted application for registration not later than 45*
19 *days after the date of receipt of the application, in ac-*
20 *cordance with the rules of the Board, unless the*
21 *Board, prior to such date, issues a written notice of*
22 *disapproval to, or requests more information from,*
23 *the prospective registrant.*

24 *(2) TREATMENT.—A written notice of dis-*
25 *approval of a completed application under paragraph*

1 (1) for registration shall be treated as a disciplinary
2 sanction for purposes of sections 105(d) and 107(c).

3 (d) *PERIODIC REPORTS.*—Each registered public ac-
4 counting firm shall submit an annual report to the Board,
5 and may be required to report more frequently, as necessary
6 to update the information contained in its application for
7 registration under this section, and to provide to the Board
8 such additional information as the Board or the Commis-
9 sion may specify, in accordance with subsection (b)(2).

10 (e) *PUBLIC AVAILABILITY.*—Registration applications
11 and annual reports required by this subsection, or such por-
12 tions of such applications or reports as may be designated
13 under rules of the Board, shall be made available for public
14 inspection, subject to rules of the Board or the Commission,
15 and to applicable laws relating to the confidentiality of pro-
16 prietary, personal, or other information contained in such
17 applications or reports, provided that, in all events, the
18 Board shall protect from public disclosure information rea-
19 sonably identified by the subject accounting firm as propri-
20 etary information.

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

1 **SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPEND-**
2 **ENCE STANDARDS AND RULES.**

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

5 “(1) *IN GENERAL.—The Board shall, by rule, es-*
6 *tablish, including, to the extent it determines appro-*
7 *priate, through adoption of standards proposed by 1*
8 *or more professional groups of accountants designated*
9 *pursuant to paragraph (3)(A) or advisory groups*
10 *convened pursuant to paragraph (4), and amend or*
11 *otherwise modify or alter, such auditing and related*
12 *attestation standards, such quality control standards,*
13 *and such ethics standards to be used by registered*
14 *public accounting firms in the preparation and*
15 *issuance of audit reports, as required by this Act or*
16 *the rules of the Commission, or as may be necessary*
17 *or appropriate in the public interest or for the protec-*
18 *tion of investors.*

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

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

24 (i) *prepare, and maintain for a period*
25 *of not less than 7 years, audit work papers,*
26 *and other information related to any audit*

1 report, in sufficient detail to support the
2 conclusions reached in such report;

3 (ii) provide a concurring or second
4 partner review and approval of such audit
5 report (and other related information), and
6 concurring approval in its issuance, by a
7 qualified person (as prescribed by the
8 Board) associated with the public account-
9 ing firm, other than the person in charge of
10 the audit, or by an independent reviewer
11 (as prescribed by the Board); and

12 (iii) describe the scope of the auditor's
13 testing of the system of internal accounting
14 controls of the issuer required by section
15 13(b)(2) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78m(b)(2)), and present
17 (in such report or in a separate report)—

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

20 (II) an evaluation of whether such
21 system of internal accounting
22 controls—

23 (aa) complies with the re-
24 quirements of that section
25 13(b)(2); and

1 *(bb) provides reasonable as-*
2 *urance that receipts and expendi-*
3 *tures of the issuer comply with*
4 *applicable law, and are being*
5 *made in accordance with proper*
6 *authorizations of the management*
7 *and directors of the issuer; and*

8 *(III) a description of significant*
9 *defects in such internal controls, and of*
10 *any material noncompliance, of which*
11 *the auditor should know on the basis of*
12 *such testing; and*

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

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

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

22 *(iii) supervision of audit work;*

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

1 (v) *the acceptance and continuation of*
2 *engagements;*

3 (vi) *internal inspection; and*

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

7 (3) *AUTHORITY TO ADOPT OTHER STANDARDS.—*

8 (A) *IN GENERAL.—In carrying out this sub-*
9 *section, the Board—*

10 (i) *may adopt as its rules, subject to*
11 *the terms of section 107, any portion of any*
12 *statement of auditing standards or other*
13 *professional standards that the Board deter-*
14 *mines satisfy the requirements of paragraph*
15 *(1), and that were proposed by 1 or more*
16 *professional groups of accountants that shall*
17 *be designated or recognized by the Board, by*
18 *rule, for such purpose, pursuant to this*
19 *paragraph or 1 or more advisory groups*
20 *convened pursuant to paragraph (4); and*

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

1 (B) *INITIAL AND TRANSITIONAL STAND-*
2 *ARDS.—The Board shall adopt standards de-*
3 *scribed in subparagraph (A)(i) as initial or*
4 *transitional standards, to the extent the Board*
5 *determines necessary, prior to a determination of*
6 *the Commission under section 101(d), and such*
7 *standards shall be separately approved by the*
8 *Commission at the time of that determination,*
9 *without regard to the procedures required by sec-*
10 *tion 107 that otherwise would apply to the ap-*
11 *proval of rules of the Board.*

12 (4) *ADVISORY GROUPS.—The Board shall con-*
13 *vene, or authorize its staff to convene, such expert ad-*
14 *visory groups as may be appropriate, which may in-*
15 *clude practicing accountants and other experts, as*
16 *well as representatives of other interested groups, sub-*
17 *ject to such rules as the Board may prescribe to pre-*
18 *vent conflicts of interest, to make recommendations*
19 *concerning the content (including proposed drafts) of*
20 *auditing, quality control, ethics, independence, or*
21 *other standards required to be established under this*
22 *section.*

23 (b) *INDEPENDENCE STANDARDS AND RULES.—The*
24 *Board shall establish such rules as may be necessary or ap-*
25 *propriate in the public interest or for the protection of in-*

1 *vestors, to implement, or as authorized under, title II of*
2 *this Act.*

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

5 *(1) IN GENERAL.—The Board shall cooperate on*
6 *an ongoing basis with professional groups of account-*
7 *ants designated under subsection (a)(3)(A) and advi-*
8 *sory groups convened under subsection (a)(4) in the*
9 *examination of the need for changes in any standards*
10 *subject to its authority under subsection (a), rec-*
11 *ommend issues for inclusion on the agendas of such*
12 *designated professional groups of accountants or advi-*
13 *sory groups, and take such other steps as it deems ap-*
14 *propriate to increase the effectiveness of the standard*
15 *setting process.*

16 *(2) BOARD RESPONSES.—The Board shall re-*
17 *spond in a timely fashion to requests from designated*
18 *professional groups of accountants and advisory*
19 *groups referred to in paragraph (1) for any changes*
20 *in standards over which the Board has authority.*

21 *(d) EVALUATION OF STANDARD SETTING PROCESS.—*
22 *The Board shall include in the annual report required by*
23 *section 101(h) the results of its standard setting responsibil-*
24 *ities during the period to which the report relates, including*
25 *a discussion of the work of the Board with any designated*

1 *professional groups of accountants and advisory groups de-*
 2 *scribed in paragraphs (3)(A) and (4) of subsection (a), and*
 3 *its pending issues agenda for future standard setting*
 4 *projects.*

5 **SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-**
 6 **ING FIRMS.**

7 (a) *IN GENERAL.*—*The Board shall conduct a con-*
 8 *tinuing program of inspections to assess the degree of com-*
 9 *pliance of each registered public accounting firm and asso-*
 10 *ciated persons of that firm with this Act, the rules of the*
 11 *Board, the rules of the Commission, or professional stand-*
 12 *ards, in connection with its performance of audits, issuance*
 13 *of audit reports, and related matters involving issuers.*

14 (b) *INSPECTION FREQUENCY.*—

15 (1) *IN GENERAL.*—*Subject to paragraph (2), in-*
 16 *spections required by this section shall be conducted—*

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

20 (B) *not less frequently than once every 3*
 21 *years with respect to each registered public ac-*
 22 *counting firm that regularly provides audit re-*
 23 *ports for 100 or fewer issuers.*

24 (2) *ADJUSTMENTS TO SCHEDULES.*—*The Board*
 25 *may, by rule, adjust the inspection schedules set*

1 *under paragraph (1) if the Board finds that different*
2 *inspection schedules are consistent with the purposes*
3 *of this Act, the public interest, and the protection of*
4 *investors.*

5 *(c) PROCEDURES.—The Board shall, in each inspec-*
6 *tion under this section, and in accordance with its rules*
7 *for such inspections—*

8 *(1) identify any act or practice or omission to*
9 *act by the registered public accounting firm, or by*
10 *any associated person thereof, revealed by such inspec-*
11 *tion that may be in violation of this Act, the rules of*
12 *the Board, the rules of the Commission, the firm's*
13 *own quality control policies, or professional stand-*
14 *ards;*

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

18 *(3) begin a formal investigation or take appro-*
19 *priate disciplinary action, if any, with respect to any*
20 *such violation, in accordance with this Act and the*
21 *rules of the Board.*

22 *(d) CONDUCT OF INSPECTIONS.—In conducting an in-*
23 *spection of a registered public accounting firm under this*
24 *section, the Board shall—*

1 (1) *inspect and review selected audit and review*
2 *engagements of the firm (which may include audit en-*
3 *gagements that are the subject of ongoing litigation or*
4 *other controversy between the firm and 1 or more*
5 *third parties), performed at various offices and by*
6 *various associated persons of the firm, as selected by*
7 *the Board;*

8 (2) *evaluate the sufficiency of the quality control*
9 *system of the firm, and the manner of the documenta-*
10 *tion and communication of that system by the firm;*
11 *and*

12 (3) *perform such other testing of the audit, su-*
13 *pervisory, and quality control procedures of the firm*
14 *as are necessary or appropriate in light of the pur-*
15 *pose of the inspection and the responsibilities of the*
16 *Board.*

17 (e) *RECORD RETENTION.*—*The rules of the Board may*
18 *require the retention by registered public accounting firms*
19 *for inspection purposes of records whose retention is not oth-*
20 *erwise required by section 103 or the rules issued there-*
21 *under.*

22 (f) *PROCEDURES FOR REVIEW.*—*The rules of the*
23 *Board shall provide a procedure for the review of and re-*
24 *sponse to a draft inspection report by the registered public*
25 *accounting firm under inspection. The Board shall take*

1 *such action with respect to such response as it considers*
2 *appropriate (including revising the draft report or con-*
3 *tinuing or supplementing its inspection activities before*
4 *issuing a final report), but the text of any such response,*
5 *appropriately redacted to protect information reasonably*
6 *identified by the accounting firm as confidential, shall be*
7 *attached to and made part of the inspection report.*

8 *(g) REPORT.—A written report of the findings of the*
9 *Board for each inspection under this section, subject to sub-*
10 *section (h), shall be—*

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

16 *(2) made available in appropriate detail to the*
17 *public (subject to section 105(b)(5)(A), and to the pro-*
18 *tection of such confidential and proprietary informa-*
19 *tion as the Board may determine to be appropriate,*
20 *or as may be required by law), except that no por-*
21 *tions of the inspection report that deal with criticisms*
22 *of or potential defects in the quality control systems*
23 *of the firm under inspection shall be made public if*
24 *those criticisms or defects are addressed by the firm,*

1 *to the satisfaction of the Board, not later than 12*
2 *months after the date of the inspection report.*

3 *(h) INTERIM COMMISSION REVIEW.—*

4 *(1) REVIEWABLE MATTERS.—A registered public*
5 *accounting firm may seek review by the Commission,*
6 *pursuant to such rules as the Commission shall pro-*
7 *mulgate, if the firm—*

8 *(A) has provided the Board with a response,*
9 *pursuant to rules issued by the Board under sub-*
10 *section (f), to the substance of particular items*
11 *in a draft inspection report, and disagrees with*
12 *the assessments contained in any final report*
13 *prepared by the Board following such response;*
14 *or*

15 *(B) disagrees with the determination of the*
16 *Board that criticisms or defects identified in an*
17 *inspection report have not been addressed to the*
18 *satisfaction of the Board within 12 months of the*
19 *date of the inspection report, for purposes of sub-*
20 *section (g)(2).*

21 *(2) TREATMENT OF REVIEW.—Any decision of*
22 *the Commission with respect to a review under para-*
23 *graph (1) shall not be reviewable under section 25 of*
24 *the Securities Exchange Act of 1934 (15 U.S.C. 78y),*

1 or deemed to be “final agency action” for purposes of
2 section 704 of title 5, United States Code.

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

7 **SEC. 105. INVESTIGATIONS AND DISCIPLINARY PRO-**
8 **CEEDINGS.**

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

13 (b) *INVESTIGATIONS.*—

14 (1) *AUTHORITY.*—In accordance with the rules of
15 the Board, the Board may conduct an investigation
16 of any act or practice, or omission to act, by a reg-
17 istered public accounting firm, any associated person
18 of such firm, or both, that may violate any provision
19 of this Act, the rules of the Board, the provisions of
20 the securities laws relating to the preparation and
21 issuance of audit reports and the obligations and li-
22 abilities of accountants with respect thereto, including
23 the rules of the Commission issued under this Act, or
24 professional standards, regardless of how the act,

1 *practice, or omission is brought to the attention of the*
2 *Board.*

3 (2) *TESTIMONY AND DOCUMENT PRODUCTION.—*
4 *In addition to such other actions as the Board deter-*
5 *mines to be necessary or appropriate, the rules of the*
6 *Board may—*

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

12 (B) *require the production of audit work*
13 *papers and any other document or information*
14 *in the possession of a registered public account-*
15 *ing firm or any associated person thereof, wher-*
16 *ever domiciled, that the Board considers relevant*
17 *or material to the investigation, and may in-*
18 *spect the books and records of such firm or asso-*
19 *ciated person to verify the accuracy of any docu-*
20 *ments or information supplied;*

21 (C) *request the testimony of, and production*
22 *of any document in the possession of, any other*
23 *person, including any client of a registered pub-*
24 *lic accounting firm that the Board considers rel-*
25 *evant or material to an investigation under this*

1 *section, with appropriate notice, subject to the*
2 *needs of the investigation, as permitted under the*
3 *rules of the Board; and*

4 *(D) provide for procedures to seek issuance*
5 *by the Commission, in a manner established by*
6 *the Commission, of a subpoena to require the tes-*
7 *timony of, and production of any document in*
8 *the possession of, any person, including any cli-*
9 *ent of a registered public accounting firm, that*
10 *the Board considers relevant or material to an*
11 *investigation under this section.*

12 (3) *NONCOOPERATION WITH INVESTIGATIONS.—*

13 (A) *IN GENERAL.—If a registered public ac-*
14 *counting firm or any associated person thereof*
15 *refuses to testify, produce documents, or other-*
16 *wise cooperate with the Board in connection*
17 *with an investigation under this section, the*
18 *Board may—*

19 (i) *suspend or bar such person from*
20 *being associated with a registered public ac-*
21 *counting firm, or require the registered pub-*
22 *lic accounting firm to end such association;*

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

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

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

7 (4) *REFERRAL*.—The Board may refer an inves-
8 tigation under this section—

9 (A) to the Commission;

10 (B) to any other Federal functional regu-
11 lator (as defined in section 509 of the Gramm-
12 Leach-Bliley Act (15 U.S.C. 6809)), in the case
13 of an investigation that concerns an audit report
14 for an institution that is subject to the jurisdic-
15 tion of such regulator; and

16 (C) at the direction of the Commission, to—

17 (i) the Attorney General of the United
18 States;

19 (ii) the attorney general of 1 or more
20 States; and

21 (iii) the appropriate State regulatory
22 authority.

23 (5) *USE OF DOCUMENTS*.—

24 (A) *CONFIDENTIALITY*.—Except as provided
25 in subparagraph (B), all documents and infor-

1 *mation prepared or received by or specifically*
2 *for the Board, and deliberations of the Board*
3 *and its employees and agents, in connection with*
4 *an inspection under section 104 or with an in-*
5 *vestigation under this section, shall be confiden-*
6 *tial and privileged as an evidentiary matter*
7 *(and shall not be subject to civil discovery or*
8 *other legal process) in any proceeding in any*
9 *Federal or State court or administrative agency,*
10 *and shall be exempt from disclosure, in the*
11 *hands of an agency or establishment of the Fed-*
12 *eral Government, under the Freedom of Informa-*
13 *tion Act (5 U.S.C. 552a), or otherwise, unless*
14 *and until presented in connection with a public*
15 *proceeding or released in accordance with sub-*
16 *section (c).*

17 *(B) AVAILABILITY TO GOVERNMENT AGEN-*
18 *CIES.—All information referred to in subpara-*
19 *graph (A) may, in the discretion of the Board,*
20 *when determined by the Board to be necessary to*
21 *accomplish the purposes of this Act or to protect*
22 *investors, and without the loss of its status as*
23 *confidential and privileged in the hands of the*
24 *Board, be made available to the Commission, the*
25 *Attorney General of the United States, to the ap-*

1 *appropriate Federal functional regulator (as de-*
2 *defined in section 509 of the Gramm-Leach-Bliley*
3 *Act (15 U.S.C. 6809)), other than the Commis-*
4 *sion, with respect to an audit report for an insti-*
5 *tution subject to the jurisdiction of such regu-*
6 *lator, to State attorneys general in connection*
7 *with any criminal investigation, and to any ap-*
8 *propriate State regulatory authority, which shall*
9 *maintain such information as confidential and*
10 *privileged.*

11 (6) *IMMUNITY.*—*Any employee of the Board en-*
12 *gaged in carrying out an investigation under this Act*
13 *shall be immune from any civil liability arising out*
14 *of such investigation in the same manner and to the*
15 *same extent as an employee of the Federal Govern-*
16 *ment in similar circumstances.*

17 (c) *DISCIPLINARY PROCEDURES.*—

18 (1) *NOTIFICATION; RECORDKEEPING.*—*The rules*
19 *of the Board shall provide that in any proceeding by*
20 *the Board to determine whether a registered public*
21 *accounting firm, or an associated person thereof,*
22 *should be disciplined, the Board shall—*

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

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

4 (C) keep a record of the proceedings.

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

9 (3) *SUPPORTING STATEMENT.*—A determination
10 by the Board to impose a sanction under this sub-
11 section shall be supported by a statement setting
12 forth—

13 (A) each act or practice in which the reg-
14 istered public accounting firm, or associated per-
15 son, has engaged (or omitted to engage), or that
16 forms a basis for all or a part of such sanction;

17 (B) the specific provision of this Act, the se-
18 curities laws, the rules of the Board, or profes-
19 sional standards which the Board determines has
20 been violated; and

21 (C) the sanction imposed, including a jus-
22 tification for that sanction.

23 (4) *SANCTIONS.*—If the Board finds, based on all
24 of the facts and circumstances, that a registered pub-
25 lic accounting firm or associated person thereof has

1 *engaged in any act or practice, or omitted to act, in*
2 *violation of this Act, the rules of the Board, the provi-*
3 *sions of the securities laws relating to the preparation*
4 *and issuance of audit reports and the obligations and*
5 *liabilities of accountants with respect thereto, includ-*
6 *ing the rules of the Commission issued under this Act,*
7 *or professional standards, the Board may impose such*
8 *disciplinary or remedial sanctions as it determines*
9 *appropriate, subject to applicable limitations under*
10 *paragraph (5), including—*

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

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

16 *(C) temporary or permanent limitation on*
17 *the activities, functions, or operations of such*
18 *firm or person (other than in connection with re-*
19 *quired additional professional education or*
20 *training);*

21 *(D) a civil money penalty for each such vio-*
22 *lation, in an amount equal to—*

23 *(i) not more than \$100,000 for a nat-*
24 *ural person or \$2,000,000 for any other per-*
25 *son; and*

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

5 (E) censure;

6 (F) required additional professional edu-
7 cation or training; or

8 (G) any other appropriate sanction pro-
9 vided for in the rules of the Board.

10 (5) *INTENTIONAL OR OTHER KNOWING CON-*
11 *DUCT.—The sanctions and penalties described in sub-*
12 *paragraphs (A) through (C) and (D)(ii) of paragraph*
13 *(4) shall only apply to—*

14 (A) *intentional or knowing conduct, includ-*
15 *ing reckless conduct, that results in violation of*
16 *the applicable statutory, regulatory, or profes-*
17 *sional standard; or*

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

21 (6) *FAILURE TO SUPERVISE.—*

22 (A) *IN GENERAL.—The Board may impose*
23 *sanctions under this section on a registered ac-*
24 *counting firm or upon the supervisory personnel*
25 *of such firm, if the Board finds that—*

1 (i) the firm has failed reasonably to
2 supervise an associated person, either as re-
3 quired by the rules of the Board relating to
4 auditing or quality control standards, or
5 otherwise, with a view to preventing viola-
6 tions of this Act, the rules of the Board, the
7 provisions of the securities laws relating to
8 the preparation and issuance of audit re-
9 ports and the obligations and liabilities of
10 accountants with respect thereto, including
11 the rules of the Commission under this Act,
12 or professional standards; and

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

16 (B) *RULE OF CONSTRUCTION.*—No associ-
17 ated person of a registered public accounting
18 firm shall be deemed to have failed reasonably to
19 supervise any other person for purposes of sub-
20 paragraph (A), if—

21 (i) there have been established in and
22 for that firm procedures, and a system for
23 applying such procedures, that comply with
24 applicable rules of the Board and that
25 would reasonably be expected to prevent and

1 *detect any such violation by such associated*
2 *person; and*

3 *(ii) such person has reasonably dis-*
4 *charged the duties and obligations incum-*
5 *bent upon that person by reason of such*
6 *procedures and system, and had no reason-*
7 *able cause to believe that such procedures*
8 *and system were not being complied with.*

9 (7) *EFFECT OF SUSPENSION.—*

10 (A) *ASSOCIATION WITH A PUBLIC ACCOUNT-*
11 *ING FIRM.—It shall be unlawful for any person*
12 *that is suspended or barred from being associated*
13 *with a registered public accounting firm under*
14 *this subsection willfully to become or remain as-*
15 *sociated with any registered public accounting*
16 *firm, or for any registered public accounting*
17 *firm that knew, or, in the exercise of reasonable*
18 *care should have known, of the suspension or*
19 *bar, to permit such an association, without the*
20 *consent of the Board or the Commission.*

21 (B) *ASSOCIATION WITH AN ISSUER.—It*
22 *shall be unlawful for any person that is sus-*
23 *pended or barred from being associated with an*
24 *issuer under this subsection willfully to become*
25 *or remain associated with any issuer in an ac-*

1 *countancy or a financial management capacity,*
2 *and for any issuer that knew, or in the exercise*
3 *of reasonable care should have known, of such*
4 *suspension or bar, to permit such an association,*
5 *without the consent of the Board or the Commis-*
6 *sion.*

7 *(d) REPORTING OF SANCTIONS.—*

8 *(1) RECIPIENTS.—If the Board imposes a dis-*
9 *ciplinary sanction, in accordance with this section,*
10 *the Board shall report the sanction to—*

11 *(A) the Commission;*

12 *(B) any appropriate State regulatory au-*
13 *thority or any foreign accountancy licensing*
14 *board with which such firm or person is licensed*
15 *or certified; and*

16 *(C) the public (once any stay on the imposi-*
17 *tion of such sanction has been lifted).*

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

20 *(A) the name of the sanctioned person;*

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

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

25 *(e) STAY OF SANCTIONS.—*

1 (1) *IN GENERAL.*—*Application to the Commis-*
2 *sion for review, or the institution by the Commission*
3 *of review, of any disciplinary action of the Board*
4 *shall operate as a stay of any such disciplinary ac-*
5 *tion, unless and until the Commission orders (sum-*
6 *marily or after notice and opportunity for hearing on*
7 *the question of a stay, which hearing may consist*
8 *solely of the submission of affidavits or presentation*
9 *of oral arguments) that no such stay shall continue*
10 *to operate.*

11 (2) *EXPEDITED PROCEDURES.*—*The Commission*
12 *shall establish for appropriate cases an expedited pro-*
13 *cedure for consideration and determination of the*
14 *question of the duration of a stay pending review of*
15 *any disciplinary action of the Board under this sub-*
16 *section.*

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

18 (a) *APPLICABILITY TO CERTAIN FOREIGN FIRMS.*—

19 (1) *IN GENERAL.*—*Any foreign public accounting*
20 *firm that prepares or furnishes an audit report with*
21 *respect to any issuer, shall be subject to this Act and*
22 *the rules of the Board and the Commission issued*
23 *under this Act, in the same manner and to the same*
24 *extent as a public accounting firm that is organized*
25 *and operates under the laws of the United States or*

1 *any State, except that registration pursuant to sec-*
2 *tion 102 shall not by itself provide a basis for sub-*
3 *jecting such a foreign public accounting firm to the*
4 *jurisdiction of the Federal or State courts, other than*
5 *with respect to controversies between such firms and*
6 *the Board.*

7 (2) *BOARD AUTHORITY.—The Board may, by*
8 *rule, determine that a foreign public accounting firm*
9 *(or a class of such firms) that does not issue audit re-*
10 *ports nonetheless plays such a substantial role in the*
11 *preparation and furnishing of such reports for par-*
12 *ticular issuers, that it is necessary or appropriate, in*
13 *light of the purposes of this Act and in the public in-*
14 *terest or for the protection of investors, that such firm*
15 *(or class of firms) should be treated as a public ac-*
16 *counting firm (or firms) for purposes of registration*
17 *under, and oversight by the Board in accordance*
18 *with, this title.*

19 (b) *PRODUCTION OF AUDIT WORKPAPERS.—*

20 (1) *CONSENT BY FOREIGN FIRMS.—If a foreign*
21 *public accounting firm issues an opinion or otherwise*
22 *performs material services upon which a registered*
23 *public accounting firm relies in issuing all or part of*
24 *any audit report or any opinion contained in an*

1 *audit report, that foreign public accounting firm shall*
2 *be deemed to have consented—*

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

7 *(B) to be subject to the jurisdiction of the*
8 *courts of the United States for purposes of en-*
9 *forcement of any request for production of such*
10 *workpapers.*

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

15 *(A) to have consented to supplying the*
16 *audit workpapers of that foreign public account-*
17 *ing firm in response to a request for production*
18 *by the Board or the Commission; and*

19 *(B) to have secured the agreement of that*
20 *foreign public accounting firm to such produc-*
21 *tion, as a condition of its reliance on the opinion*
22 *of that foreign public accounting firm.*

23 *(c) EXEMPTION AUTHORITY.—The Commission, and*
24 *the Board, subject to the approval of the Commission, may,*
25 *by rule, regulation, or order, and as the Commission (or*

1 Board) determines necessary or appropriate in the public
2 interest or for the protection of investors, either uncondi-
3 tionally or upon specified terms and conditions exempt any
4 foreign public accounting firm, or any class of such firms,
5 from any provision of this Act or the rules of the Board
6 or the Commission issued under this Act.

7 (d) *DEFINITION.*—In this section, the term “foreign
8 public accounting firm” means a public accounting firm
9 that is organized and operates under the laws of a foreign
10 government or political subdivision thereof.

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

12 (a) *GENERAL OVERSIGHT RESPONSIBILITY.*—The
13 Commission shall have oversight and enforcement authority
14 over the Board, as provided in this Act.

15 (b) *RULES OF THE BOARD.*—

16 (1) *DEFINITION.*—In this section, the term “pro-
17 posed rule” means any proposed rule of the Board,
18 and any modification of any such rule.

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

24 (3) *APPROVAL CRITERIA.*—The Commission shall
25 approve a proposed rule, if it finds that the rule is

1 *consistent with the requirements of this Act and the*
2 *securities laws, or is necessary or appropriate in the*
3 *public interest or for the protection of investors.*

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

11 (A) *the phrase “consistent with the require-*
12 *ments of this title and the rules and regulations*
13 *thereunder applicable to such organization” in*
14 *section 19(b)(2) of that Act shall be deemed to*
15 *read “consistent with the requirements of title I*
16 *of the Public Company Accounting Reform and*
17 *Investor Protection Act of 2002, and the rules*
18 *and regulations issued thereunder applicable to*
19 *such organization, or as necessary or appro-*
20 *priate in the public interest or for the protection*
21 *of investors”;* and

22 (B) *the phrase “otherwise in furtherance of*
23 *the purposes of this title” in section 19(b)(3)(C)*
24 *of that Act shall be deemed to read “otherwise in*
25 *furtherance of the purposes of title I of the Public*

1 *Company Accounting Reform and Investor Pro-*
2 *tection Act of 2002”.*

3 (5) *COMMISSION AUTHORITY TO AMEND RULES*
4 *OF THE BOARD.—The provisions of section 19(c) of*
5 *the Securities Exchange Act of 1934 (15 U.S.C.*
6 *78s(c)) shall govern the abrogation, deletion, or addi-*
7 *tion to portions of the rules of the Board by the Com-*
8 *mission as fully as if the Board were a “registered se-*
9 *curities association” for purposes of that section*
10 *19(c), except that the phrase “to conform its rules to*
11 *the requirements of this title and the rules and regu-*
12 *lations thereunder applicable to such organization, or*
13 *otherwise in furtherance of the purposes of this title”*
14 *in section 19(c) of that Act shall, for purposes of this*
15 *paragraph, be deemed to read “to assure the fair ad-*
16 *ministration of the Public Company Accounting*
17 *Oversight Board, conform the rules promulgated by*
18 *that Board to the requirements of title I of the Public*
19 *Company Accounting Reform and Investor Protection*
20 *Act of 2002, or otherwise further the purposes of that*
21 *Act, the securities laws, and the rules and regulations*
22 *thereunder applicable to that Board”.*

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

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

7 (2) *REVIEW OF SANCTIONS.*—*The provisions of*
8 *sections 19(d)(2) and 19(e)(1) of the Securities Ex-*
9 *change Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1))*
10 *shall govern the review by the Commission of final*
11 *disciplinary sanctions imposed by the Board (includ-*
12 *ing sanctions imposed under section 105(b)(3) of this*
13 *Act for noncooperation in an investigation of the*
14 *Board), as fully as if the Board were a self-regulatory*
15 *organization and the Commission were the appro-*
16 *priate regulatory agency for such organization for*
17 *purposes of those sections 19(d)(2) and 19(e)(1), ex-*
18 *cept that, for purposes of this paragraph—*

19 (A) *section 105(e) of this Act (rather than*
20 *that section 19(d)(2)) shall govern the extent to*
21 *which application for, or institution by the Com-*
22 *mission on its own motion of, review of any dis-*
23 *ciplinary action of the Board operates as a stay*
24 *of such action;*

1 (B) references in that section 19(e)(1) to
2 “members” of such an organization shall be
3 deemed to be references to registered public ac-
4 counting firms;

5 (C) the phrase “consistent with the purposes
6 of this title” in that section 19(e)(1) shall be
7 deemed to read “consistent with the purposes of
8 this title and title I of the Public Company Ac-
9 counting Reform and Investor Protection Act of
10 2002”;

11 (D) references to rules of the Municipal Se-
12 curities Rulemaking Board in that section
13 19(e)(1) shall not apply; and

14 (E) the reference to section 19(e)(2) of the
15 Securities Exchange Act of 1934 shall refer in-
16 stead to section 107(c)(3) of this Act.

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

1 (A) is not necessary or appropriate in fur-
2 therance of this Act or the securities laws; or

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

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

7 (1) RESCISSION OF BOARD AUTHORITY.—The
8 Commission, by rule, consistent with the public inter-
9 est, the protection of investors, and the other purposes
10 of this Act and the securities laws, may relieve the
11 Board of any responsibility to enforce compliance
12 with any provision of this Act, the securities laws, the
13 rules of the Board, or professional standards.

14 (2) CENSURE OF THE BOARD; LIMITATIONS.—
15 The Commission may, by order, as it determines nec-
16 essary or appropriate in the public interest, for the
17 protection of investors, or otherwise in furtherance of
18 the purposes of this Act or the securities laws, censure
19 or impose limitations upon the activities, functions,
20 and operations of the Board, if the Commission finds,
21 on the record, after notice and opportunity for a hear-
22 ing, that the Board—

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

1 (B) without reasonable justification or ex-
2 cuse, has failed to enforce compliance with any
3 such provision or rule, or any professional
4 standard by a registered public accounting firm
5 or an associated person thereof.

6 (3) CENSURE OF BOARD MEMBERS; REMOVAL
7 FROM OFFICE.—The Commission may, as necessary
8 or appropriate in the public interest, for the protec-
9 tion of investors, or otherwise in furtherance of the
10 purposes of this Act or the securities laws, remove
11 from office or censure any member of the Board, if the
12 Commission finds, on the record, after notice and op-
13 portunity for a hearing, that such member—

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

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

19 (C) without reasonable justification or ex-
20 cuse, has failed to enforce compliance with any
21 such provision or rule, or any professional
22 standard by any registered public accounting
23 firm or any associated person thereof.

1 **SEC. 108. ACCOUNTING STANDARDS.**

2 (a) *AMENDMENT TO SECURITIES ACT OF 1933.*—*Sec-*
3 *tion 19 of the Securities Act of 1933 (15 U.S.C. 77s) is*
4 *amended—*

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

7 (2) *by inserting after subsection (a) the fol-*
8 *lowing:*

9 “(b) *RECOGNITION OF ACCOUNTING STANDARDS.*—

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

16 “(A) *that—*

17 “(i) *is organized as a private entity;*

18 “(ii) *has, for administrative and oper-*
19 *ational purposes, a board of trustees (or*
20 *equivalent body) serving in the public inter-*
21 *est, the majority of whom are not, concur-*
22 *rent with their service on such board, and*
23 *have not been during the 2-year period pre-*
24 *ceding such service, associated persons of*
25 *any registered public accounting firm;*

1 “(iii) is funded as provided in section
2 109 of the Public Company Accounting Re-
3 form and Investor Protection Act of 2002;

4 “(iv) has adopted procedures to ensure
5 prompt consideration, by majority vote of
6 its members, of changes to accounting prin-
7 ciples necessary to reflect emerging account-
8 ing issues and changing business practices;

9 “(v) considers, in adopting accounting
10 principles, the need to keep standards cur-
11 rent in order to reflect changes in the busi-
12 ness environment, the extent to which inter-
13 national convergence on high quality ac-
14 counting standards is necessary or appro-
15 priate in the public interest and for the pro-
16 tection of investors; and

17 “(B) that the Commission determines has
18 the capacity to assist the Commission in ful-
19 filling the requirements of subsection (a) and sec-
20 tion 13(b) of the Securities Exchange Act of
21 1934, because, at a minimum, the standard set-
22 ting body is capable of improving the accuracy
23 and effectiveness of financial reporting and the
24 protection of investors under the securities laws.

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

6 (b) *COMMISSION AUTHORITY.*—*The Commission shall*
7 *promulgate such rules and regulations to carry out section*
8 *19(b) of the Securities Act of 1933, as added by this section,*
9 *as it deems necessary or appropriate in the public interest*
10 *or for the protection of investors.*

11 (c) *NO EFFECT ON COMMISSION POWERS.*—*Nothing in*
12 *this Act, including this section and the amendment made*
13 *by this section, shall be construed to impair or limit the*
14 *authority of the Commission to establish accounting prin-*
15 *ciples or standards for purposes of enforcement of the securi-*
16 *ties laws.*

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

19 (1) *STUDY.*—

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

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

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

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

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

13 (iv) *a thorough economic analysis of*
14 *the implementation of a principles-based*
15 *system.*

16 (2) *REPORT.*—*Not later than 1 year after the*
17 *date of enactment of this Act, the Commission shall*
18 *submit a report on the results of the study required*
19 *by paragraph (1) to the Committee on Banking,*
20 *Housing, and Urban Affairs of the Senate and the*
21 *Committee on Financial Services of the House of Rep-*
22 *resentatives.*

23 **SEC. 109. FUNDING.**

24 (a) *IN GENERAL.*—*The Board, and the standard set-*
25 *ting body designated pursuant to section 19(b) of the Secu-*

1 *rities Act of 1933, as amended by section 108, shall be fund-*
2 *ed as provided in this section.*

3 **(b) ANNUAL BUDGETS.**—*The Board and the standard*
4 *setting body referred to in subsection (a) shall each establish*
5 *a budget for each fiscal year, which shall be reviewed and*
6 *approved according to their respective internal procedures*
7 *not less than 1 month prior to the commencement of the*
8 *fiscal year to which the budget pertains. The budget of the*
9 *Board shall be subject to approval by the Commission.*

10 **(c) SOURCES AND USES OF FUNDS.**—

11 **(1) RECOVERABLE BUDGET EXPENSES.**—*The*
12 *budget of the Board (reduced by any registration or*
13 *annual fees received under section 102(e) for the year*
14 *preceding the year for which the budget is being com-*
15 *puted), and all of the budget of the standard setting*
16 *body referred to in subsection (a), for each fiscal year*
17 *of each of those 2 entities, shall be payable from an-*
18 *ual accounting support fees, in accordance with sub-*
19 *sections (d) and (e).*

20 **(2) FUNDS GENERATED FROM THE COLLECTION**
21 **OF MONETARY PENALTIES.**—*Subject to the avail-*
22 *ability in advance in an appropriations Act, and*
23 *notwithstanding subsection (h), all funds collected by*
24 *the Board as a result of the assessment of monetary*
25 *penalties shall be used to fund a merit scholarship*

1 *program for undergraduate and graduate students en-*
2 *rolled in accredited accounting degree programs,*
3 *which program is to be administered by the Board or*
4 *by an entity or agent identified by the Board.*

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

7 *(1) ESTABLISHMENT OF FEE.—The Board shall*
8 *establish, with the approval of the Commission, a rea-*
9 *sonable annual accounting support fee (or a formula*
10 *for the computation thereof), as may be necessary or*
11 *appropriate to establish and maintain the Board.*

12 *(2) ASSESSMENTS.—The rules of the Board*
13 *under paragraph (1) shall provide for the equitable*
14 *allocation, assessment, and collection by the Board (or*
15 *an agent appointed by the Board) of the fee estab-*
16 *lished under paragraph (1), among issuers, in accord-*
17 *ance with subsection (f), allowing for differentiation*
18 *among classes of issuers, as appropriate.*

19 *(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STAND-*
20 *ARD SETTING BODY.—The annual accounting support fee*
21 *for the standard setting body referred to in subsection (a)—*

22 *(1) shall be allocated in accordance with sub-*
23 *section (f), and assessed and collected against each*
24 *issuer, on behalf of the standard setting body, by 1 or*
25 *more appropriate designated collection agents, as may*

1 *be necessary or appropriate to pay for the budget and*
2 *provide for the expenses of that standard setting body,*
3 *and to provide for an independent, stable source of*
4 *funding for such body, subject to review by the Com-*
5 *mission; and*

6 *(2) may differentiate among different classes of*
7 *issuers.*

8 *(f) ALLOCATION OF ACCOUNTING SUPPORT FEES*
9 *AMONG ISSUERS.—Any amount due from issuers (or a par-*
10 *ticular class of issuers) under this section to fund the budget*
11 *of the Board or the standard setting body referred to in*
12 *subsection (a) shall be allocated among and payable by each*
13 *issuer (or each issuer in a particular class, as applicable)*
14 *in an amount equal to the total of such amount, multiplied*
15 *by a fraction—*

16 *(1) the numerator of which is the average month-*
17 *ly equity market capitalization of the issuer for the*
18 *12-month period immediately preceding the beginning*
19 *of the fiscal year to which such budget relates; and*

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

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

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

3 (2) *in subparagraph (B), by striking the period*
4 *at the end and inserting the following: “; and*

5 *“(C) notwithstanding any other provision of law,*
6 *pay the allocable share of such issuer of a reasonable*
7 *annual accounting support fee or fees, determined in*
8 *accordance with section 109 of the Public Company*
9 *Accounting Reform and Investor Protection Act of*
10 *2002.”.*

11 *(h) RULE OF CONSTRUCTION.—Nothing in this section*
12 *shall be construed to render either the Board, the standard*
13 *setting body referred to in subsection (a), or both, subject*
14 *to procedures in Congress to authorize or appropriate pub-*
15 *lic funds, or to prevent such organization from utilizing*
16 *additional sources of revenue for its activities, such as earn-*
17 *ings from publication sales, provided that each additional*
18 *source of revenue shall not jeopardize, in the judgment of*
19 *the Commission, the actual and perceived independence of*
20 *such organization.*

1 **TITLE II—AUDITOR**
2 **INDEPENDENCE**

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

5 (a) *PROHIBITED ACTIVITIES.*—Section 10A of the Se-
6 curities Exchange Act of 1934 (15 U.S.C. 78j-1) is amended
7 by adding at the end the following:

8 “(g) *PROHIBITED ACTIVITIES.*—It shall be unlawful
9 for a registered public accounting firm (and any associated
10 person of that firm, to the extent determined appropriate
11 by the Commission) that performs for any issuer any audit
12 required by this title or the rules of the Commission under
13 this title or, beginning 180 days after the date of commence-
14 ment of the operations of the Public Company Accounting
15 Oversight Board established under section 101 of the Public
16 Company Accounting Reform and Investor Protection Act
17 of 2002 (in this section referred to as the ‘Board’), the rules
18 of the Board, to provide to that issuer, contemporaneously
19 with the audit, any non-audit service, including—

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

23 “(2) financial information systems design and
24 implementation;

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

3 “(4) actuarial services;

4 “(5) internal audit outsourcing services;

5 “(6) management functions or human resources;

6 “(7) broker or dealer, investment adviser, or in-
7 vestment banking services;

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

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

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

19 (b) *EXEMPTION AUTHORITY.—The Board may, on a*
20 *case by case basis, exempt any person, issuer, public ac-*
21 *counting firm, or transaction from the prohibition on the*
22 *provision of services under section 10A(g) of the Securities*
23 *Exchange Act of 1934 (as added by this section), to the ex-*
24 *tent that such exemption is necessary or appropriate in the*
25 *public interest and is consistent with the protection of in-*

1 *vestors, and subject to review by the Commission in the*
2 *same manner as for rules of the Board under section 107.*

3 **SEC. 202. PREAPPROVAL REQUIREMENTS.**

4 *Section 10A of the Securities Exchange Act of 1934*
5 *(15 U.S.C. 78j-1), as amended by this Act, is amended by*
6 *adding at the end the following:*

7 *“(i) PREAPPROVAL REQUIREMENTS.—*

8 *“(1) IN GENERAL.—*

9 *“(A) AUDIT COMMITTEE ACTION.—All au-*
10 *ditng services (which may entail providing com-*
11 *fort letters in connection with securities*
12 *underwritings) and non-audit services, other*
13 *than as provided in subparagraph (B), provided*
14 *to an issuer by the auditor of the issuer shall be*
15 *preapproved by the audit committee of the issuer.*

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

20 *“(i) the aggregate amount of all such*
21 *non-audit services provided to the issuer*
22 *constitutes not more than 5 percent of the*
23 *total amount of revenues paid by the issuer*
24 *to its auditor;*

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

4 “(iii) such services are promptly
5 brought to the attention of the audit com-
6 mittee of the issuer and approved by the
7 audit committee prior to the completion of
8 the audit, by 1 or more members of the
9 audit committee who are members of the
10 board of directors to whom authority to
11 grant such approvals has been delegated by
12 the audit committee.

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

18 “(3) *DELEGATION AUTHORITY.*—The audit com-
19 mittee of an issuer may delegate to 1 or more des-
20 ignated members of the audit committee who are
21 independent directors of the board of directors, the au-
22 thority to grant preapprovals required by this sub-
23 section. The decisions of any member to whom author-
24 ity is delegated under this paragraph to preapprove
25 an activity under this subsection shall be presented to

1 *the full audit committee at each of its scheduled meet-*
2 *ings.*

3 *“(4) APPROVAL OF AUDIT SERVICES FOR OTHER*
4 *PURPOSES.—In carrying out its duties under sub-*
5 *section (m)(2), if the audit committee of an issuer ap-*
6 *proves an audit service within the scope of the engage-*
7 *ment of the auditor, such audit service shall be*
8 *deemed to have been preapproved for purposes of this*
9 *subsection.”.*

10 **SEC. 203. AUDIT PARTNER ROTATION.**

11 *Section 10A of the Securities Exchange Act of 1934*
12 *(15 U.S.C. 78j–1), as amended by this Act, is amended by*
13 *adding at the end the following:*

14 *“(j) AUDIT PARTNER ROTATION.—It shall be unlawful*
15 *for a registered public accounting firm to provide audit*
16 *services to an issuer if the lead audit partner (having pri-*
17 *mary responsibility for the audit) or the audit partner re-*
18 *sponsible for reviewing the audit that is assigned to perform*
19 *those audit services has performed audit services for that*
20 *issuer in each of the 5 previous fiscal years of that issuer.”.*

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

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

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

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

7 “(2) all alternative treatments of financial infor-
 8 mation within generally accepted accounting prin-
 9 ciples that have been discussed with management offi-
 10 cials of the issuer, ramifications of the use of such al-
 11 ternative disclosures and treatments, and the treat-
 12 ment preferred by the registered public accounting
 13 firm; and

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

18 **SEC. 205. CONFORMING AMENDMENTS.**

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

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

24 “(A) a committee (or equivalent body) es-
 25 tablished by and amongst the board of directors

1 of an issuer for the purpose of overseeing the ac-
2 counting and financial reporting processes of the
3 issuer and audits of the financial statements of
4 the issuer; and

5 “(B) if no such committee exists with re-
6 spect to an issuer, the entire board of directors
7 of the issuer.

8 “(59) REGISTERED PUBLIC ACCOUNTING FIRM.—
9 The term ‘registered public accounting firm’ has the
10 same meaning as in section 3 of the Public Company
11 Accounting Reform and Investor Protection Act of
12 2002.”.

13 (b) AUDITOR REQUIREMENTS.—Section 10A of the Se-
14 curities Exchange Act of 1934 (15 U.S.C. 78j-1) is
15 amended—

16 (1) by striking “an independent public account-
17 ant” each place that term appears and inserting “a
18 registered public accounting firm”;

19 (2) by striking “the independent public account-
20 ant” each place that term appears and inserting “the
21 registered public accounting firm”;

22 (3) in subsection (c), by striking “No inde-
23 pendent public accountant” and inserting “No reg-
24 istered public accounting firm”; and

25 (4) in subsection (b)—

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

3 (B) by striking “such accountant” each
4 place that term appears and inserting “such
5 firm”; and

6 (C) in paragraph (4), by striking “the ac-
7 countant’s report” and inserting “the report of
8 the firm”.

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

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

15 (2) in subsections (e) and (i) of section 17 (15
16 U.S.C. 78q), by striking “an independent public ac-
17 countant” each place that term appears and inserting
18 “a registered public accounting firm”.

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

22 (1) by striking “DEFINITION” and inserting
23 “DEFINITIONS”; and

24 (2) by adding at the end the following: “As used
25 in this section, the term ‘issuer’ means an issuer (as

1 *defined in section 3), the securities of which are reg-*
2 *istered under section 12, or that is required to file re-*
3 *ports pursuant to section 15(d), or that will be re-*
4 *quired to file such reports at the end of a fiscal year*
5 *of the issuer in which a registration statement filed*
6 *by such issuer has become effective pursuant to the*
7 *Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless*
8 *its securities are registered under section 12 of this*
9 *title on or before the end of such fiscal year.”.*

10 **SEC. 206. CONFLICTS OF INTEREST.**

11 *Section 10A of the Securities Exchange Act of 1934*
12 *(15 U.S.C. 78j-1), as amended by this Act, is amended by*
13 *adding at the end the following:*

14 “(l) **CONFLICTS OF INTEREST.**—*It shall be unlawful*
15 *for a registered public accounting firm to perform for an*
16 *issuer any audit service required by this title, if a chief*
17 *executive officer, controller, chief financial officer, chief ac-*
18 *counting officer or any person serving in an equivalent po-*
19 *sition for the issuer was employed by that registered inde-*
20 *pendent public accounting firm and participated in any*
21 *capacity in the audit of that issuer during the 1-year period*
22 *preceding the date of the initiation of the audit.”.*

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

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

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

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

18 **SEC. 208. COMMISSION AUTHORITY.**

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

24 (b) *AUDITOR INDEPENDENCE.*—It shall be unlawful
25 for any registered public accounting firm (or an associated
26 person thereof, as applicable) to prepare or issue any audit

1 report with respect to any issuer, if the firm or associated
2 person engages in any activity with respect to that issuer
3 prohibited by any of subsections (g) through (l) of section
4 10A of the Securities Exchange Act of 1934, as added by
5 this title, or any rule or regulation of the Commission or
6 of the Board issued thereunder.

7 **SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGU-**
8 **LATORY AUTHORITIES.**

9 *In supervising nonregistered public accounting firms*
10 *and their associated persons, appropriate State regulatory*
11 *authorities should make an independent determination of*
12 *the proper standards applicable, particularly taking into*
13 *consideration the size and nature of the business of the ac-*
14 *counting firms they supervise and the size and nature of*
15 *the business of the clients of those firms. The standards ap-*
16 *plied by the Board under this Act should not be presumed*
17 *to be applicable for purposes of this section for small and*
18 *medium sized nonregistered public accounting firms.*

19 **TITLE III—CORPORATE**
20 **RESPONSIBILITY**

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

22 *Section 10A of the Securities Exchange Act of 1934*
23 *(15 U.S.C. 78f) is amended by adding at the end the fol-*
24 *lowing:*

1 “(m) *STANDARDS RELATING TO AUDIT COMMIT-*
2 *TEES.*—

3 “(1) *COMMISSION RULES.*—

4 “(A) *IN GENERAL.*—*Effective not later than*
5 *270 days after the date of enactment of this sub-*
6 *section, the Commission shall, by rule, direct the*
7 *national securities exchanges and national secu-*
8 *rities associations to prohibit the listing of any*
9 *security of an issuer that is not in compliance*
10 *with the requirements of any portion of para-*
11 *graphs (2) through (6).*

12 “(B) *OPPORTUNITY TO CURE DEFECTS.*—
13 *The rules of the Commission under subparagraph*
14 *(A) shall provide for appropriate procedures for*
15 *an issuer to have an opportunity to cure any de-*
16 *fects that would be the basis for a prohibition*
17 *under subparagraph (A), before the imposition of*
18 *such prohibition.*

19 “(2) *RESPONSIBILITIES RELATING TO REG-*
20 *ISTERED PUBLIC ACCOUNTING FIRMS.*—*The audit*
21 *committee of each issuer, in its capacity as a com-*
22 *mittee of the board of directors, shall be directly re-*
23 *sponsible for the appointment, compensation, and*
24 *oversight of the work of any registered public account-*
25 *ing firm employed by that issuer (including resolu-*

1 *tion of disagreements between management and the*
2 *auditor regarding financial reporting) for the purpose*
3 *of preparing or issuing an audit report or related*
4 *work, and each such registered public accounting firm*
5 *shall report directly to the audit committee.*

6 *“(3) INDEPENDENCE.—*

7 *“(A) IN GENERAL.—Each member of the*
8 *audit committee of the issuer shall be a member*
9 *of the board of directors of the issuer, and shall*
10 *otherwise be independent.*

11 *“(B) CRITERIA.—In order to be considered*
12 *to be independent for purposes of this paragraph,*
13 *a member of an audit committee of an issuer*
14 *may not, other than in his or her capacity as a*
15 *member of the audit committee, the board of di-*
16 *rectors, or any other board committee—*

17 *“(i) accept any consulting, advisory, or*
18 *other compensatory fee from the issuer; or*

19 *“(ii) be an affiliated person of the*
20 *issuer or any subsidiary thereof.*

21 *“(C) EXEMPTION AUTHORITY.—The Com-*
22 *mission may exempt from the requirements of*
23 *subparagraph (B) a particular relationship with*
24 *respect to audit committee members, as the Com-*

1 *mission determines appropriate in light of the*
2 *circumstances.*

3 “(4) *COMPLAINTS.*—*Each audit committee shall*
4 *establish procedures for—*

5 “(A) *the receipt, retention, and treatment of*
6 *complaints received by the issuer regarding ac-*
7 *counting, internal accounting controls, or audit-*
8 *ing matters; and*

9 “(B) *the confidential, anonymous submis-*
10 *sion by employees of the issuer of concerns re-*
11 *garding questionable accounting or auditing*
12 *matters.*

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

17 “(6) *FUNDING.*—*Each issuer shall provide for*
18 *appropriate funding, as determined by the audit com-*
19 *mittee, in its capacity as a committee of the board of*
20 *directors, for payment of compensation—*

21 “(A) *to the registered public accounting*
22 *firm employed by the issuer for the purpose of*
23 *rendering or issuing an audit report; and*

24 “(B) *to any advisers employed by the audit*
25 *committee under paragraph (5).”.*

1 **SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-**
2 **PORTS.**

3 (a) *CERTIFICATION OF PERIODIC REPORTS.*—Each
4 periodic report containing financial statements filed by an
5 issuer with the Commission pursuant to section 13(a) or
6 15(d) of the Securities Exchange Act of 1934, shall be ac-
7 companied by a written statement by the chief executive of-
8 ficer and chief financial officer (or the equivalent thereof)
9 of the issuer.

10 (b) *CONTENT.*—The statement required by subsection
11 (a) shall certify the appropriateness of the financial state-
12 ments and disclosures contained in the periodic report, and
13 that those financial statements and disclosures fairly
14 present, in all material respects, the operations and finan-
15 cial condition of the issuer.

16 (c) *FOREIGN REINCORPORATIONS HAVE NO EF-*
17 *FECT.*—Nothing in this section 302 shall be interpreted or
18 applied in any way to allow any issuer to lessen the legal
19 force of the statement required under this section 302, by
20 an issuer having reincorporated or having engaged in any
21 other transaction that resulted in the transfer of the cor-
22 porate domicile or offices of the issuer from inside the
23 United States to outside of the United States.

24 **SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

25 (a) *RULES TO PROHIBIT.*—It shall be unlawful, in
26 contravention of such rules or regulations as the Commis-

1 sion shall prescribe as necessary and appropriate in the
2 public interest or for the protection of investors, for any
3 officer or director of an issuer, or any other person acting
4 under the direction thereof, to take any action to fraudu-
5 lently influence, coerce, manipulate, or mislead any inde-
6 pendent public or certified accountant engaged in the per-
7 formance of an audit of the financial statements of that
8 issuer for the purpose of rendering such financial state-
9 ments materially misleading.

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

13 (c) *NO PREEMPTION OF OTHER LAW.*—The provisions
14 of subsection (a) shall be in addition to, and shall not super-
15 sede or preempt, any other provision of law or any rule
16 or regulation issued thereunder.

17 (d) *DEADLINE FOR RULEMAKING.*—The Commission
18 shall—

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

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

1 **SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROF-**
2 **ITS.**

3 (a) *ADDITIONAL COMPENSATION PRIOR TO NON-*
4 *COMPLIANCE WITH COMMISSION FINANCIAL REPORTING*
5 *REQUIREMENTS.*—*If an issuer is required to prepare an ac-*
6 *counting restatement due to the material noncompliance of*
7 *the issuer, as a result of misconduct, with any financial*
8 *reporting requirement under the securities laws, the chief*
9 *executive officer and chief financial officer of the issuer shall*
10 *reimburse the issuer for—*

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

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

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

22 **SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.**

23 (a) *UNFITNESS STANDARD.*—

24 (1) *SECURITIES EXCHANGE ACT OF 1934.*—*Sec-*
25 *tion 21(d)(2) of the Securities Exchange Act of 1934*

1 (15 U.S.C. 78u(d)(2)) is amended by striking “sub-
2 stantial unfitness” and inserting “unfitness”.

3 (2) *SECURITIES ACT OF 1933*.—Section 20(e) of
4 the Securities Act of 1933 (15 U.S.C. 77t(e)) is
5 amended by striking “substantial unfitness” and in-
6 sert “unfitness”.

7 (b) *EQUITABLE RELIEF*.—Section 21(d) of the *Securi-*
8 *ties Exchange Act of 1934* (15 U.S.C. 78u(d)) is amended—

9 (1) by redesignating paragraphs (2) through (4)
10 as paragraphs (3) through (5), respectively; and

11 (2) by inserting after paragraph (1) the fol-
12 lowing:

13 “(2) *EQUITABLE RELIEF*.—In any action or pro-
14 ceeding brought or instituted by the Commission under any
15 provision of the securities laws, the Commission may seek,
16 and any Federal court may grant, any equitable relief that
17 may be appropriate or necessary for the benefit of inves-
18 tors.”.

19 **SEC. 306. INSIDER TRADES DURING PENSION FUND BLACK-**
20 **OUT PERIODS PROHIBITED.**

21 (a) *PROHIBITION*.—It shall be unlawful for any direc-
22 tor or executive officer of an issuer of any equity security
23 (other than an exempted security), directly or indirectly,
24 to purchase, sell, or otherwise acquire or transfer any equity
25 security of the issuer (other than an exempted security),

1 *during any blackout period with respect to such equity secu-*
2 *rity, in accordance with any exception provided by rule of*
3 *the Commission pursuant to subsection (d).*

4 *(b) EFFECTIVENESS.—*

5 *(1) NOTICE REQUIREMENTS.—Except as pro-*
6 *vided in paragraph (2), no blackout period may take*
7 *effect earlier than 30 days after the date on which*
8 *written notice of such blackout period is provided by*
9 *the plan administrator to the participants or bene-*
10 *ficiaries.*

11 *(2) EXCEPTION.—The 30-day notice requirement*
12 *in paragraph (1) shall not apply, and notice under*
13 *paragraph (1) shall be furnished as soon as is reason-*
14 *ably possible, in any case in which—*

15 *(A) a deferral of the blackout period would*
16 *violate the requirements of subparagraph (A) or*
17 *(B) of section 404(a)(1) of the Employment Re-*
18 *irement Income Security Act of 1974, and a fi-*
19 *duciary of the plan so reasonably determines in*
20 *writing; or*

21 *(B) the inability to provide the 30-day no-*
22 *tice is due to events that were unforeseeable, or*
23 *circumstances beyond the reasonable control of*
24 *the plan administrator, and a fiduciary of the*
25 *plan so reasonably determines in writing.*

1 (3) *WRITTEN NOTICE.*—*The notice required to be*
2 *provided under paragraph (1) shall be in writing, ex-*
3 *cept that such notice may be in electronic form to the*
4 *extent that such form is reasonably accessible to the*
5 *recipient.*

6 (c) *REMEDY.*—

7 (1) *IN GENERAL.*—*Any profit realized by a di-*
8 *rector or executive officer referred to in subsection (a)*
9 *from any purchase, sale, or other acquisition or*
10 *transfer in violation of this section shall inure to and*
11 *be recoverable by the issuer, irrespective of any inten-*
12 *tion on the part of such director or executive officer*
13 *in entering into the transaction.*

14 (2) *ACTIONS TO RECOVER PROFITS.*—*An action*
15 *to recover profits in accordance with this section may*
16 *be instituted at law or in equity in any court of com-*
17 *petent jurisdiction by the issuer, or by the owner of*
18 *any security of the issuer in the name and in behalf*
19 *of the issuer if the issuer fails or refuses to bring such*
20 *action within 60 days after the date of request, or*
21 *fails diligently to prosecute the action thereafter, ex-*
22 *cept that no such suit shall be brought more than 2*
23 *years after the date on which such profit was realized.*

24 (d) *RULEMAKING AUTHORIZED.*—*The Commission*
25 *may issue rules to clarify the application of this subsection,*

1 *to ensure adequate notice to all persons affected by this sub-*
2 *section, and to prevent evasion thereof.*

3 *(e) DEFINITIONS.—For purposes of this section—*

4 *(1) the term “blackout period”, with respect to*
5 *the equity securities of any issuer—*

6 *(A) means any period during which the*
7 *ability of not fewer than 50 percent of the par-*
8 *ticipants or beneficiaries under all applicable in-*
9 *dividual account plans maintained by the issuer*
10 *to purchase, sell, or otherwise acquire or transfer*
11 *an interest in any equity of such issuer held in*
12 *such an individual account plan, is suspended*
13 *by the issuer or a fiduciary of the plan; and*

14 *(B) does not include—*

15 *(i) a period in which the employees of*
16 *an issuer may not allocate their interests in*
17 *the individual account plan due to an ex-*
18 *press investment restriction—*

19 *(I) incorporated into the indi-*
20 *vidual account plan; and*

21 *(II) timely disclosed to employees*
22 *before joining the individual account*
23 *plan or as a subsequent amendment to*
24 *the plan; or*

1 (ii) any suspension described in sub-
2 paragraph (A) that is imposed solely in
3 connection with persons becoming partici-
4 pants or beneficiaries, or ceasing to be par-
5 ticipants or beneficiaries, in an applicable
6 individual account plan by reason of a cor-
7 porate merger, acquisition, divestiture, or
8 similar transaction; and

9 (2) the term “individual account plan” has the
10 same meaning as in section 3(34) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1002(34)).

13 **TITLE IV—ENHANCED** 14 **FINANCIAL DISCLOSURES**

15 **SEC. 401. DISCLOSURES IN PERIODIC REPORTS.**

16 (a) *DISCLOSURES REQUIRED.*—Section 13 of the Secu-
17 rities Exchange Act of 1934 (15 U.S.C. 78m) is amended
18 by adding at the end the following:

19 “(i) *ACCURACY OF FINANCIAL REPORTS.*—Each finan-
20 cial report that is required to be prepared in accordance
21 with generally accepted accounting principles under this
22 title and filed with the Commission shall reflect all material
23 correcting adjustments that have been identified by a reg-
24 istered public accounting firm in accordance with generally

1 *accepted accounting principles and the rules and regula-*
2 *tions of the Commission.*

3 “(j) *OFF-BALANCE SHEET TRANSACTIONS.*—Not later
4 *than 180 days after the date of enactment of the Public*
5 *Company Accounting Reform and Investor Protection Act*
6 *of 2002, the Commission shall issue final rules providing*
7 *that each annual and quarterly financial report required*
8 *to be filed with the Commission shall disclose all material*
9 *off-balance sheet transactions, arrangements, obligations*
10 *(including contingent obligations), and other relationships*
11 *of the issuer with unconsolidated entities or other persons,*
12 *that may have a material current or future effect on finan-*
13 *cial condition, changes in financial condition, results of op-*
14 *erations, liquidity, capital expenditures, capital resources,*
15 *or significant components of revenues or expenses.”.*

16 “(b) *COMMISSION RULES ON PRO FORMA FIGURES.*—
17 *Not later than 180 days after the date of enactment of this*
18 *Act, the Commission shall issue final rules providing that*
19 *pro forma financial information included in any periodic*
20 *or other report filed with the Commission pursuant to the*
21 *securities laws, or in any public disclosure or press or other*
22 *release, shall be presented in a manner that—*

23 (1) *does not contain an untrue statement of a*
24 *material fact or omit to state a material fact nec-*
25 *essary in order to make the pro forma financial infor-*

1 *mation, in light of the circumstances under which it*
2 *is presented, not misleading; and*

3 *(2) reconciles it with the financial condition and*
4 *results of operations of the issuer under generally ac-*
5 *cepted accounting principles.*

6 *(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTI-*
7 *TIES.—*

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

14 *(A) the extent of off-balance sheet trans-*
15 *actions, including assets, liabilities, leases, losses,*
16 *and the use of special purpose entities; and*

17 *(B) whether generally accepted accounting*
18 *rules result in financial statements of issuers re-*
19 *fecting the economics of such off-balance sheet*
20 *transactions to investors in a transparent fash-*
21 *ion.*

22 *(2) REPORT AND RECOMMENDATIONS.—Not later*
23 *than 6 months after the date of completion of the*
24 *study required by paragraph (1), the Commission*
25 *shall submit a report to the President, the Committee*

1 *on Banking, Housing, and Urban Affairs of the Sen-*
2 *ate, and the Committee on Financial Services of the*
3 *House of Representatives, setting forth—*

4 *(A) the amount or an estimate of the*
5 *amount of off-balance sheet transactions, includ-*
6 *ing assets, liabilities, leases, and losses of, and*
7 *the use of special purpose entities by, issuers fil-*
8 *ing periodic reports pursuant to section 13 or 15*
9 *of the Securities Exchange Act of 1934;*

10 *(B) the extent to which special purpose enti-*
11 *ties are used to facilitate off-balance sheet trans-*
12 *actions;*

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

18 *(D) whether generally accepted accounting*
19 *principles specifically result in the consolidation*
20 *of special purpose entities sponsored by an issuer*
21 *in cases in which the issuer has the majority of*
22 *the risks and rewards of the special purpose enti-*
23 *ty; and*

24 *(E) any recommendations of the Commis-*
25 *sion for improving the transparency and quality*

1 *of reporting off-balance sheet transactions in the*
2 *financial statements and disclosures required to*
3 *be filed by an issuer with the Commission.*

4 **SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.**

5 *(a) PROHIBITION ON PERSONAL LOANS TO EXECU-*
6 *TIVES.—Section 13 of the Securities Exchange Act of 1934*
7 *(15 U.S.C. 78m), as amended by this Act, is amended by*
8 *adding at the end the following:*

9 *“(k) PROHIBITION ON PERSONAL LOANS TO EXECU-*
10 *TIVES.—*

11 *“(1) IN GENERAL.—It shall be unlawful for any*
12 *issuer, directly or indirectly, to extend or maintain*
13 *credit, or arrange for the extension of credit, in the*
14 *form of a personal loan to or for any director or exec-*
15 *utive officer (or equivalent thereof) of that issuer.*

16 *“(2) LIMITATION.—Paragraph (1) does not pre-*
17 *clude any home improvement and manufactured home*
18 *loans (as that term is defined in section 5 of the*
19 *Home Owners Loan Act), consumer credit (as defined*
20 *in section 103 of the Truth in Lending Act), or any*
21 *extension of credit under an open end credit plan (as*
22 *defined in section 103 of the Truth in Lending Act*
23 *(15 U.S.C. 1602)), that is—*

24 *“(A) made in the ordinary course of the*
25 *consumer credit business of such issuer;*

1 “(B) of a type that is generally made avail-
2 able by such issuer to the public; and

3 “(C) made by such issuer on market terms,
4 or terms that are no more favorable than those
5 offered by the issuer to the general public for
6 such loans.”.

7 **SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING**
8 **MANAGEMENT AND PRINCIPAL STOCK-**
9 **HOLDERS.**

10 Section 16(a) of the Securities Exchange Act of 1934
11 (15 U.S.C. 78p(a)) is amended—

12 (1) by striking “security, shall file,” and insert-
13 ing the following:

14 “(1) shall file”; and

15 (2) by striking “beneficial owner, and” and all
16 that follows through the end of the subsection and in-
17 serting the following: “beneficial owner; and

18 “(2) if there has been a change in such owner-
19 ship, or if such person shall have purchased or sold
20 a security-based swap agreement (as defined in sec-
21 tion 206B of the Gramm-Leach-Bliley Act) involving
22 such equity security, shall file with the Commission
23 (and if such security is registered on a national secu-
24 rities exchange, shall also file with the exchange), a
25 statement before the end of the second business day

1 following the day on which the subject transaction has
2 been executed, or at such other time as the Commis-
3 sion shall establish, by rule, in any case in which the
4 Commission determines that such 2-day period is not
5 feasible, indicating ownership by that person at the
6 date of filing, any such changes in such ownership,
7 and such purchases and sales of the security-based
8 swap agreements as have occurred since the most re-
9 cent such filing under this paragraph.”.

10 **SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CON-**
11 **TROLS.**

12 (a) *RULES REQUIRED.*—The Commission shall pre-
13 scribe rules requiring each annual report required by sec-
14 tion 13 of the Securities Exchange Act of 1934 (15 U.S.C.
15 78m) to contain an internal control report, which shall—

16 (1) state the responsibility of management for es-
17 tablishing and maintaining an adequate internal
18 control structure and procedures for financial report-
19 ing; and

20 (2) contain an assessment, as of the end of the
21 most recent fiscal year of the issuer, of the effective-
22 ness of the internal control structure and procedures
23 of the issuer for financial reporting.

24 (b) *INTERNAL CONTROL EVALUATION AND REPORT-*
25 *ING.*—With respect to the internal control assessment re-

1 *quired by subsection (a), each registered public accounting*
2 *firm that prepares or issues the audit report for the issuer*
3 *shall attest to, and report on, the assessment made by the*
4 *management of the issuer. An attestation made under this*
5 *subsection shall be made in accordance with standards for*
6 *attestation engagements issued or adopted by the Board.*
7 *Any such attestation shall not be the subject of a separate*
8 *engagement.*

9 **SEC. 405. EXEMPTION.**

10 *Nothing in section 401, 402, or 404, the amendments*
11 *made by those sections, or the rules of the Commission*
12 *under those sections shall apply to any investment company*
13 *registered under section 8 of the Investment Company Act*
14 *of 1940 (15 U.S.C. 80a–8).*

15 **SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFI-**
16 **CERS.**

17 *(a) CODE OF ETHICS DISCLOSURE.—The Commission*
18 *shall issue rules to require each issuer, together with peri-*
19 *odic reports required pursuant to sections 13(a) and 15(d)*
20 *of the Securities Exchange Act of 1934, to disclose whether*
21 *or not, and if not, the reason therefor, such issuer has adopt-*
22 *ed a code of ethics for senior financial officers, applicable*
23 *to its principal financial officer, comptroller or principal*
24 *accounting officer, or persons performing similar functions.*

1 (b) *CHANGES IN CODES OF ETHICS.*—*The Commission*
2 *shall revise its regulations concerning matters requiring*
3 *prompt disclosure on Form 8-K (or any successor thereto)*
4 *to require the immediate disclosure, by means of the filing*
5 *of such form, dissemination by the Internet or by other elec-*
6 *tronic means, by any issuer of any change in or waiver*
7 *of the code of ethics of the issuer.*

8 (c) *DEFINITION.*—*In this section, the term “code of*
9 *ethics” means such standards as are reasonably necessary*
10 *to promote—*

11 (1) *honest and ethical conduct, including the eth-*
12 *ical handling of actual or apparent conflicts of inter-*
13 *est between personal and professional relationships;*

14 (2) *full, fair, accurate, timely, and understand-*
15 *able disclosure in the periodic reports required to be*
16 *filed by the issuer; and*

17 (3) *compliance with applicable governmental*
18 *rules and regulations.*

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

21 (1) *propose rules to implement this section, not*
22 *later than 90 days after the date of enactment of this*
23 *Act; and*

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

1 **SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL**
2 **EXPERT.**

3 (a) *RULES DEFINING “FINANCIAL EXPERT”.*—The
4 Commission shall issue rules, as necessary or appropriate
5 in the public interest and consistent with the protection of
6 investors, to require each issuer, together with periodic re-
7 ports required pursuant to sections 13(a) and 15(d) of the
8 Securities Exchange Act of 1934, to disclose whether or not,
9 and if not, the reasons therefor, the audit committee of that
10 issuer is comprised of at least 1 member who is a financial
11 expert, as such term is defined by the Commission.

12 (b) *CONSIDERATIONS.*—In defining the term “finan-
13 cial expert” for purposes of subsection (a), the Commission
14 shall consider whether a person has, through education and
15 experience as a public accountant or auditor or a principal
16 financial officer, comptroller, or principal accounting offi-
17 cer of an issuer, or from a position involving the perform-
18 ance of similar functions—

19 (1) *an understanding of generally accepted ac-*
20 *counting principles and financial statements;*

21 (2) *experience in—*

22 (A) *the preparation or auditing of financial*
23 *statements of generally comparable issuers; and*

24 (B) *the application of such principles in*
25 *connection with the accounting for estimates, ac-*
26 *cruals, and reserves;*

1 (3) *experience with internal accounting controls;*
2 *and*

3 (4) *an understanding of audit committee func-*
4 *tions.*

5 (c) *DEADLINE FOR RULEMAKING.—The Commission*
6 *shall—*

7 (1) *propose rules to implement this section, not*
8 *later than 90 days after the date of enactment of this*
9 *Act; and*

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

12 **TITLE V—ANALYST CONFLICTS**
13 **OF INTEREST**

14 **SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REG-**
15 **ISTERED SECURITIES ASSOCIATIONS.**

16 (a) *RULES REGARDING SECURITIES ANALYSTS.—Sec-*
17 *tion 15A of the Securities Exchange Act of 1934 (15 U.S.C.*
18 *780–3) is amended by adding at the end the following:*

19 “(n) *RULES REGARDING SECURITIES ANALYSTS.—*

20 (1) *ANALYST PROTECTIONS.—The Commission,*
21 *or upon the authorization and direction of the Com-*
22 *mission, a registered securities association or national*
23 *securities exchange, shall have adopted, not later than*
24 *1 year after the date of enactment of this subsection,*
25 *rules reasonably designed to address conflicts of inter-*

1 *est that can arise when research analysts recommend*
2 *equity securities in research reports and public ap-*
3 *pearances, in order to improve the objectivity of re-*
4 *search and provide investors with more useful and re-*
5 *liable information, including rules designed—*

6 *“(A) to foster greater public confidence in*
7 *securities research, and to protect the objectivity*
8 *and independence of securities analysts, by—*

9 *“(i) restricting the prepublication*
10 *clearance or approval of research reports by*
11 *persons employed by the broker or dealer*
12 *who are engaged in investment banking ac-*
13 *tivities, or persons not directly responsible*
14 *for investment research, other than legal or*
15 *compliance staff;*

16 *“(ii) limiting the supervision and com-*
17 *pensatory evaluation of securities analysts*
18 *to officials employed by the broker or dealer*
19 *who are not engaged in investment banking*
20 *activities; and*

21 *“(iii) requiring that a broker or dealer*
22 *and persons employed by a broker or dealer*
23 *who are involved with investment banking*
24 *activities may not, directly or indirectly,*
25 *retaliate against or threaten to retaliate*

1 *against any securities analyst employed by*
2 *that broker or dealer or its affiliates as a re-*
3 *sult of an adverse, negative, or otherwise*
4 *unfavorable research report that may ad-*
5 *versely affect the present or prospective in-*
6 *vestment banking relationship of the broker*
7 *or dealer with the issuer that is the subject*
8 *of the research report, except that such rules*
9 *may not limit the authority of a broker or*
10 *dealer to discipline a securities analyst for*
11 *causes other than such research report in*
12 *accordance with the policies and procedures*
13 *of the firm;*

14 *“(B) to define periods during which brokers*
15 *or dealers who have participated, or are to par-*
16 *ticipate, in a public offering of securities as un-*
17 *derwriters or dealers should not publish or other-*
18 *wise distribute research reports relating to such*
19 *securities or to the issuer of such securities;*

20 *“(C) to establish structural and institu-*
21 *tional safeguards within registered brokers or*
22 *dealers to assure that securities analysts are sep-*
23 *arated by appropriate informational partitions*
24 *within the firm from the review, pressure, or*
25 *oversight of those whose involvement in invest-*

1 *ment banking activities might potentially bias*
2 *their judgment or supervision; and*

3 “(D) *to address such other issues as the*
4 *Commission, or such association or exchange, de-*
5 *termines appropriate.*

6 “(2) *DISCLOSURE.—The Commission, or upon*
7 *the authorization and direction of the Commission, a*
8 *registered securities association or national securities*
9 *exchange, shall have adopted, not later than 1 year*
10 *after the date of enactment of this subsection, rules*
11 *reasonably designed to require each securities analyst*
12 *to disclose in public appearances, and each registered*
13 *broker or dealer to disclose in each research report, as*
14 *applicable, conflicts of interest that are known or*
15 *should have been known by the securities analyst or*
16 *the broker or dealer, to exist at the time of the ap-*
17 *pearance or the date of distribution of the report,*
18 *including—*

19 “(A) *the extent to which the securities ana-*
20 *lyst has debt or equity investments in the issuer*
21 *that is the subject of the appearance or research*
22 *report;*

23 “(B) *whether any compensation has been re-*
24 *ceived by the registered broker or dealer, or any*
25 *affiliate thereof, including the securities analyst,*

1 *from the issuer that is the subject of the appear-*
2 *ance or research report, subject to such exemp-*
3 *tions as the Commission may determine appro-*
4 *priate and necessary to prevent disclosure by*
5 *virtue of this subparagraph of material non-pub-*
6 *lic information regarding specific potential fu-*
7 *ture investment banking transactions of such*
8 *issuer, as is appropriate in the public interest*
9 *and consistent with the protection of investors;*

10 “(C) *whether an issuer, the securities of*
11 *which are recommended in the appearance or re-*
12 *search report, currently is, or during the 1-year*
13 *period preceding the date of the appearance or*
14 *date of distribution of the report has been, a cli-*
15 *ent of the registered broker or dealer, and if so,*
16 *stating the types of services provided to the*
17 *issuer;*

18 “(D) *whether the securities analyst received*
19 *compensation with respect to a research report,*
20 *based upon (among any other factors) the invest-*
21 *ment banking revenues (either generally or spe-*
22 *cifically earned from the issuer being analyzed)*
23 *of the registered broker or dealer; and*

24 “(E) *such other disclosures of conflicts of in-*
25 *terest that are material to investors, research an-*

1 *alysts, or the broker or dealer as the Commission,*
2 *or such association or exchange, determines ap-*
3 *propriate.*

4 “(3) *DEFINITIONS.—In this subsection—*

5 “(A) *the term ‘securities analyst’ means*
6 *any associated person of a registered broker or*
7 *dealer that is principally responsible for, and*
8 *any associated person who reports directly or in-*
9 *directly to a securities analyst in connection*
10 *with, the preparation of the substance of a re-*
11 *search report, whether or not any such person*
12 *has the job title of ‘securities analyst’; and*

13 “(B) *the term ‘research report’ means a*
14 *written or electronic communication that in-*
15 *cludes an analysis of equity securities of indi-*
16 *vidual companies or industries, and that pro-*
17 *vides information reasonably sufficient upon*
18 *which to base an investment decision.”.*

19 (b) *ENFORCEMENT.—Section 21B(a) of the Securities*
20 *Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by*
21 *inserting “15A(n),” before “15B”.*

22 (c) *COMMISSION AUTHORITY.—The Commission may*
23 *promulgate and amend its regulations, or direct a reg-*
24 *istered securities association or national securities exchange*
25 *to promulgate and amend its rules, to carry out section*

1 15A(n) of the Securities Exchange Act of 1934, as added
2 by this section, as is necessary for the protection of investors
3 and in the public interest.

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

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

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

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

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

15 “(1) \$102,700,000 shall be available to fund ad-
16 ditional compensation, including salaries and bene-
17 fits, as authorized in the Investor and Capital Mar-
18 kets Fee Relief Act (Public Law 107–123; 115 Stat.
19 2390 et seq.);

20 “(2) \$108,400,000 shall be available for informa-
21 tion technology, security enhancements, and recovery
22 and mitigation activities in light of the terrorist at-
23 tacks of September 11, 2001; and

24 “(3) \$98,000,000 shall be available to add not
25 fewer than an additional 200 qualified professionals

1 to provide enhanced oversight of auditors and audit
2 services required by the Federal securities laws, and
3 to improve Commission investigative and discipli-
4 nary efforts with respect to such auditors and serv-
5 ices, as well as for additional professional support
6 staff necessary to strengthen the programs of the Com-
7 mission involving Full Disclosure and Prevention and
8 Suppression of Fraud, risk management, industry
9 technology review, compliance, inspections, examina-
10 tions, market regulation, and investment manage-
11 ment.”.

12 **SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COM-**
13 **MISSION.**

14 (a) *IN GENERAL.*—The Securities Exchange Act of
15 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
16 section 4B the following:

17 **“SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COM-**
18 **MISSION.**

19 “(a) *AUTHORITY TO CENSURE.*—The Commission
20 may censure any person, or deny, temporarily or perma-
21 nently, to any person the privilege of appearing or prac-
22 ticing before the Commission in any way, if that person
23 is found by the Commission, after notice and opportunity
24 for hearing in the matter—

1 “(1) not to possess the requisite qualifications to
2 represent others;

3 “(2) to be lacking in character or integrity, or
4 to have engaged in unethical or improper professional
5 conduct; or

6 “(3) to have willfully violated, or willfully aided
7 and abetted the violation of, any provision of the se-
8 curities laws or the rules and regulations issued there-
9 under.

10 “(b) *DEFINITION.*—With respect to any registered pub-
11 lic accounting firm, for purposes of this section, the term
12 ‘improper professional conduct’ means—

13 “(1) intentional or knowing conduct, including
14 reckless conduct, that results in a violation of appli-
15 cable professional standards; and

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

17 “(A) a single instance of highly unreason-
18 able conduct that results in a violation of appli-
19 cable professional standards in circumstances in
20 which the registered public accounting firm
21 knows, or should know, that heightened scrutiny
22 is warranted; or

23 “(B) repeated instances of unreasonable
24 conduct, each resulting in a violation of applica-

1 *ble professional standards, that indicate a lack of*
2 *competence to practice before the Commission.*

3 “(c) *STUDY AND REPORT.*—(1) *The Commission shall*
4 *conduct a study to determine based upon information for*
5 *the period from January 1, 1998 to December 31, 2001—*

6 “(A) *the number of ‘securities professionals’,*
7 *which term shall mean public accountants, public ac-*
8 *counting firms, investment bankers, investment advis-*
9 *ers, brokers, dealers, attorneys, and other securities*
10 *professionals practicing before the Commission—*

11 “(i) *who have been found to have aided and*
12 *abetted a violation of the Federal securities laws,*
13 *including rules or regulations promulgated there-*
14 *under (hereinafter collectively referred to as ‘Fed-*
15 *eral securities laws’), but who have not been*
16 *sanctioned, disciplined, or otherwise penalized as*
17 *a primary violator in any administrative action*
18 *or civil proceeding, including in any settlement*
19 *of such actions or proceedings (referred to herein-*
20 *after as ‘aiders and abettors’); and*

21 “(ii) *who have been found to have been pri-*
22 *mary violators of the Federal securities laws;*

23 “(B) *a description of the Federal securities laws*
24 *violations committed by aiders and abettors and by*
25 *primary violators, including—*

1 “(i) the specific provisions of the Federal se-
2 curities laws violated;

3 “(ii) the specific sanctions and penalties
4 imposed upon, such aiders and abettors and pri-
5 mary violators, including the amount of any
6 monetary penalties assessed upon and collected
7 from such persons;

8 “(iii) the occurrence of multiple violations
9 by the same person or persons either as an aider
10 or abettor or as a primary violator; and

11 “(iv) whether as to each such violator dis-
12 ciplinary sanctions have been imposed, including
13 any censure, suspension, temporary bar, or per-
14 manent bar to practice before the Commission;
15 and

16 “(C) the amount of disgorgement, restitution or
17 any other fines or payments the Commission has (i)
18 assessed upon and (ii) collected from, aiders and abet-
19 tors and from primary violators.

20 “(2) A report based upon the study conducted pursu-
21 ant to subsection (c)(1) shall be submitted to the Senate
22 Committee on Banking, Housing, and Urban Affairs no
23 later than 6 months after the date of enactment of the ‘Pub-
24 lic Company Accounting Reform and Investor Protection
25 Act of 2002’.

1 “(d) *RULES OF PROFESSIONAL RESPONSIBILITY FOR*
2 *ATTORNEYS.—Not later than 180 days after the date of en-*
3 *actment of this section, the Commission shall establish rules,*
4 *in the public interest and for the protection of investors,*
5 *setting forth minimum standards of professional conduct*
6 *for attorneys appearing and practicing before the Commis-*
7 *sion in any way in the representation of public companies,*
8 *including a rule requiring an attorney to report evidence*
9 *of a material violation of securities law or breach of fidu-*
10 *ciary duty or similar violation by the company or any*
11 *agent thereof to the chief legal counsel or the chief executive*
12 *officer of the company (or the equivalent thereof) and, if*
13 *the counsel or officer does not appropriately respond to the*
14 *evidence (adopting, as necessary, appropriate remedial*
15 *measures or sanctions with respect to the violation), requir-*
16 *ing the attorney to report the evidence to the audit com-*
17 *mittee of the board of directors or to another committee of*
18 *the board of directors comprised solely of directors not em-*
19 *ployed directly or indirectly by the company, or to the*
20 *board of directors.”.*

21 (b) *ELECTRONIC FILING.—Notwithstanding the provi-*
22 *sions of section 403 of this Act, section 16(a)(2) of the Secu-*
23 *rities and Exchange Act of 1934, as added by section 403,*
24 *is amended to read as follows:*

1 “(2) if there has been a change in such owner-
2 ship, or if such person shall have purchased or sold
3 a security-based swap agreement (as defined in sec-
4 tion 206B of the Gramm-Leach-Bliley Act) involving
5 such equity security, shall file electronically with the
6 Commission (and if such security is registered on a
7 national securities exchange, shall also file with the
8 exchange), a statement before the end of the second
9 business day following the day on which the subject
10 transaction has been executed, or at such other times
11 as the Commission shall establish, by rule, in any
12 case in which the Commission determines that such 2
13 day period is not feasible, and the Commission shall
14 provide that statement on a publicly accessible Inter-
15 net site not later than the end of the business day fol-
16 lowing that filing, and the issuer (if the issuer main-
17 tains a corporate website) shall provide that state-
18 ment on that corporate website not later than the end
19 of the business day following that filing (the require-
20 ments of this paragraph with respect to electronic fil-
21 ing and providing the statement on a corporate
22 website shall take effect 1 year after the date of enact-
23 ment of this paragraph), indicating ownership by
24 that person at the date of filing, any such changes in
25 such ownership, and such purchases and sales of the

1 Commission may, by rule or regulation, define such
2 term to include other activities, and may, by rule,
3 regulation, or order, exempt any person or class of
4 persons, in whole or in part, conditionally or uncon-
5 ditionally, from inclusion in such term.

6 (b) *SECURITIES ACT OF 1933.*—Section 20 of the *Secu-*
7 *rities Act of 1933 (15 U.S.C. 77t)* is amended by adding
8 at the end the following:

9 “(g) *AUTHORITY OF A COURT TO PROHIBIT PERSONS*
10 *FROM PARTICIPATING IN AN OFFERING OF PENNY*
11 *STOCK.*—

12 “(1) *IN GENERAL.*—In any proceeding under
13 subsection (a) against any person participating in,
14 or, at the time of the alleged misconduct, who was
15 participating in, an offering of penny stock, the court
16 may prohibit that person from participating in an
17 offering of penny stock, conditionally or uncondition-
18 ally, and permanently or for such period of time as
19 the court shall determine.

20 “(2) *DEFINITION.*—For purposes of this sub-
21 section, the term ‘person participating in an offering
22 of penny stock’ includes any person engaging in ac-
23 tivities with a broker, dealer, or issuer for purposes
24 of issuing, trading, or inducing or attempting to in-
25 duce the purchase or sale of, any penny stock. The

1 *Federal Deposit Insurance Act (12 U.S.C. 1813(q)),*
2 *or the National Credit Union Administration, that—*

3 *“(i) bars such person from association with*
4 *an entity regulated by such commission, author-*
5 *ity, agency, or officer, or from engaging in the*
6 *business of securities, insurance, banking, sav-*
7 *ings association activities, or credit union activi-*
8 *ties; or*

9 *“(ii) constitutes a final order based on vio-*
10 *lations of any laws or regulations that prohibit*
11 *fraudulent, manipulative, or deceptive conduct.”.*

12 *(b) INVESTMENT ADVISERS.—Section 203(e) of the In-*
13 *vestment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is*
14 *amended by striking paragraphs (7) and (8) and inserting*
15 *the following:*

16 *“(7) is subject to any order of the Commission*
17 *barring or suspending the right of the person to be as-*
18 *sociated with an investment adviser; or*

19 *“(8) is subject to any final order of a State secu-*
20 *rities commission (or any agency or officer per-*
21 *forming like functions), State authority that super-*
22 *vises or examines banks, savings associations, or cred-*
23 *it unions, State insurance commission (or any agency*
24 *or office performing like functions), an appropriate*
25 *Federal banking agency (as defined in section 3 of the*

1 *Federal Deposit Insurance Act (12 U.S.C. 1813(q)),*
2 *or the National Credit Union Administration, that—*

3 “(A) bars such person from association with
4 an entity regulated by such commission, author-
5 ity, agency, or officer, or from engaging in the
6 business of securities, insurance, banking, sav-
7 ings association activities, or credit union activi-
8 ties; or

9 “(B) constitutes a final order based on vio-
10 lations of any laws or regulations that prohibit
11 fraudulent, manipulative, or deceptive conduct.”.

12 (c) *CONFORMING AMENDMENTS.—*

13 (1) *SECURITIES EXCHANGE ACT OF 1934.—The*
14 *Securities Exchange Act of 1934 (15 U.S.C. 78a et*
15 *seq.) is amended—*

16 (A) in section 3(a)(39)(F) (15 U.S.C.
17 78c(a)(39)(F)), by inserting “, or is subject to an
18 order or finding,” before “enumerated”;

19 (B) in each of sections 15(b)(6)(A)(i) (15
20 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4)
21 of section 15B(c) (15 U.S.C. 78o–4(c)), and sub-
22 paragraphs (A) and (C) of section 15C(c)(1) (15
23 U.S.C. 78o–5(c)(1)) by striking “or omission”
24 each place that term appears, and inserting “, or
25 is subject to an order or finding,”; and

1 (C) in each of paragraphs (3)(A) and
 2 (4)(C) of section 17A(c) (15 U.S.C. 78q-1(c)), by
 3 inserting “, or is subject to an order or finding,”
 4 before “enumerated” each place that term ap-
 5 pears.

6 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
 7 tion 203(f) of the Investment Advisers Act of 1940 (15
 8 U.S.C. 80b-3(f)) is amended, by inserting “or (3)”
 9 after “paragraph (2)”.

10 **TITLE VII—STUDIES AND**
 11 **REPORTS**

12 **SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLI-**
 13 **DATION OF PUBLIC ACCOUNTING FIRMS.**

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

16 (1) to identify—

17 (A) the factors that have led to the consoli-
 18 dation of public accounting firms since 1989 and
 19 the consequent reduction in the number of firms
 20 capable of providing audit services to large na-
 21 tional and multi-national business organizations
 22 that are subject to the securities laws;

23 (B) the present and future impact of the
 24 condition described in subparagraph (A) on cap-

1 *ital formation and securities markets, both do-*
2 *mestic and international; and*

3 *(C) solutions to any problems identified*
4 *under subparagraph (B), including ways to in-*
5 *crease competition and the number of firms ca-*
6 *pable of providing audit services to large na-*
7 *tional and multinational business organizations*
8 *that are subject to the securities laws;*

9 *(2) of the problems, if any, faced by business or-*
10 *ganizations that have resulted from limited competi-*
11 *tion among public accounting firms, including—*

12 *(A) higher costs;*

13 *(B) lower quality of services;*

14 *(C) impairment of auditor independence; or*

15 *(D) lack of choice; and*

16 *(3) whether and to what extent Federal or State*
17 *regulations impede competition among public ac-*
18 *counting firms.*

19 *(b) CONSULTATION.—In planning and conducting the*
20 *study under this section, the Comptroller General shall con-*
21 *sult with—*

22 *(1) the Commission;*

23 *(2) the regulatory agencies that perform func-*
24 *tions similar to the Commission within the other*

1 *member countries of the Group of Seven Industri-*
2 *alized Nations;*

3 *(3) the Department of Justice; and*

4 *(4) any other public or private sector organiza-*
5 *tion that the Comptroller General considers appro-*
6 *priate.*

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

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

15 *(a) STUDY REQUIRED.—*

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

19 *(2) AREAS OF CONSIDERATION.—The study re-*
20 *quired by this subsection shall examine—*

21 *(A) the role of credit rating agencies in the*
22 *evaluation of issuers of securities;*

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

1 (C) any impediments to the accurate ap-
2 praisal by credit rating agencies of the financial
3 resources and risks of issuers of securities;

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

7 (E) any measures which may be required to
8 improve the dissemination of information con-
9 cerning such resources and risks when credit rat-
10 ing agencies announce credit ratings; and

11 (F) any conflicts of interest in the operation
12 of credit rating agencies and measures to prevent
13 such conflicts or ameliorate the consequences of
14 such conflicts.

15 (b) *REPORT REQUIRED.*—The Commission shall sub-
16 mit a report on the study required by subsection (a) to the
17 President, the Committee on Financial Services of the
18 House of Representatives, and the Committee on Banking,
19 Housing, and Urban Affairs of the Senate not later than
20 180 days after the date of enactment of this Act.

1 **TITLE VIII—CORPORATE AND**
2 **CRIMINAL FRAUD ACCOUNT-**
3 **ABILITY**

4 **SEC. 801. SHORT TITLE.**

5 *This title may be cited as the “Corporate and Crimi-*
6 *nal Fraud Accountability Act of 2002”.*

7 **SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCU-**
8 **MENTS.**

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

11 **“§ 1519. Destruction, alteration, or falsification of**
12 **records in Federal investigations and**
13 **bankruptcy**

14 *“Whoever knowingly alters, destroys, mutilates, con-*
15 *ceals, covers up, falsifies, or makes a false entry in any*
16 *record, document, or tangible object with the intent to im-*
17 *pede, obstruct, or influence the investigation or proper ad-*
18 *ministration of any matter within the jurisdiction of any*
19 *department or agency of the United States or any case filed*
20 *under title 11, or in relation to or contemplation of any*
21 *such matter or case, shall be fined under this title, impris-*
22 *oned not more than 10 years, or both.*

23 **“§ 1520. Destruction of corporate audit records**

24 *“(a)(1) Any accountant who conducts an audit of an*
25 *issuer of securities to which section 10A(a) of the Securities*

1 *Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall*
2 *maintain all audit or review workpapers for a period of*
3 *5 years from the end of the fiscal period in which the audit*
4 *or review was concluded.*

5 “(2) *The Securities and Exchange Commission shall*
6 *promulgate, within 180 days, after adequate notice and an*
7 *opportunity for comment, such rules and regulations, as are*
8 *reasonably necessary, relating to the retention of relevant*
9 *records such as workpapers, documents that form the basis*
10 *of an audit or review, memoranda, correspondence, commu-*
11 *nications, other documents, and records (including elec-*
12 *tronic records) which are created, sent, or received in con-*
13 *nection with an audit or review and contain conclusions,*
14 *opinions, analyses, or financial data relating to such an*
15 *audit or review, which is conducted by any accountant who*
16 *conducts an audit of an issuer of securities to which section*
17 *10A(a) of the Securities Exchange Act of 1934 (15 U.S.C.*
18 *78j-1(a)) applies.*

19 “(b) *Whoever knowingly and willfully violates sub-*
20 *section (a)(1), or any rule or regulation promulgated by*
21 *the Securities and Exchange Commission under subsection*
22 *(a)(2), shall be fined under this title, imprisoned not more*
23 *than 5 years, or both.*

24 “(c) *Nothing in this section shall be deemed to dimin-*
25 *ish or relieve any person of any other duty or obligation,*

1 *imposed by Federal or State law or regulation, to maintain,*
 2 *or refrain from destroying, any document.”.*

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

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

“1520. Destruction of corporate audit records.”.

6 ***SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-***
 7 ***LATION OF SECURITIES FRAUD LAWS.***

8 *Section 523(a) of title 11, United States Code, is*
 9 *amended—*

10 (1) *in paragraph (17), by striking “or” after the*
 11 *semicolon;*

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

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

15 *“(19) that—*

16 *“(A) arises under a claim relating to—*

17 *“(i) the violation of any of the Federal*
 18 *securities laws (as that term is defined in*
 19 *section 3(a)(47) of the Securities Exchange*
 20 *Act of 1934 (15 U.S.C. 78c(a)(47)), any*
 21 *State securities laws, or any regulations or*
 22 *orders issued under such Federal or State*
 23 *securities laws; or*

1 “(ii) common law fraud, deceit, or ma-
2 nipulation in connection with the purchase
3 or sale of any security; and

4 “(B) results, in relation to any claim de-
5 scribed in subparagraph (A), from—

6 “(i) any judgment, order, consent
7 order, or decree entered in any Federal or
8 State judicial or administrative proceeding;

9 “(ii) any settlement agreement entered
10 into by the debtor; or

11 “(iii) any court or administrative
12 order for any damages, fine, penalty, cita-
13 tion, restitutionary payment, disgorgement
14 payment, attorney fee, cost, or other pay-
15 ment owed by the debtor.”.

16 **SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES**
17 **FRAUD.**

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

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

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

22 “(b) Notwithstanding subsection (a), a private right
23 of action that involves a claim of fraud, deceit, manipula-
24 tion, or contrivance in contravention of a regulatory re-
25 quirement concerning the securities laws, as defined in sec-

1 tion 3(a)(47) of the Securities Exchange Act of 1934 (15
2 U.S.C. 78c(a)(47)), may be brought not later than the ear-
3 lier of—

4 “(1) two years after the discovery of the facts
5 constituting the violation; or

6 “(2) five years after such violation.”.

7 (b) *EFFECTIVE DATE.*—The limitations period pro-
8 vided by section 1658(b) of title 28, United States Code,
9 as added by this section, shall apply to all proceedings ad-
10 dressed by this section that are commenced on or after the
11 date of enactment of this Act.

12 (c) *NO CREATION OF ACTIONS.*—Nothing in this sec-
13 tion shall create a new, private right of action.

14 **SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES**
15 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
16 **SIVE CRIMINAL FRAUD.**

17 Pursuant to section 994 of title 28, United States Code,
18 and in accordance with this section, the United States Sen-
19 tencing Commission shall review and amend, as appro-
20 priate, the Federal Sentencing Guidelines and related pol-
21 icy statements to ensure that—

22 (1) the base offense level and existing enhance-
23 ments contained in United States Sentencing Guide-
24 line 2J1.2 relating to obstruction of justice are suffi-
25 cient to deter and punish that activity;

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

4 (A) *documents and other physical evidence*
5 *are actually destroyed, altered, or fabricated;*

6 (B) *the destruction, alteration, or fabrica-*
7 *tion of evidence involves—*

8 (i) *a large amount of evidence, a large*
9 *number of participants, or is otherwise ex-*
10 *tensive;*

11 (ii) *the selection of evidence that is*
12 *particularly probative or essential to the in-*
13 *vestigation; or*

14 (iii) *more than minimal planning; or*

15 (C) *the offense involved abuse of a special*
16 *skill or a position of trust;*

17 (3) *the guideline offense levels and enhancements*
18 *for violations of section 1519 or 1520 of title 18,*
19 *United States Code, as added by this title, are suffi-*
20 *cient to deter and punish that activity;*

21 (4) *the guideline offense levels and enhancements*
22 *under United States Sentencing Guideline 2B1.1 (as*
23 *in effect on the date of enactment of this Act) are suf-*
24 *ficient for a fraud offense when the number of victims*
25 *adversely involved is significantly greater than 50;*

1 (5) a specific offense characteristic enhancing
2 sentencing is provided under United States Sen-
3 tencing Guideline 2B1.1 (as in effect on the date of
4 enactment of this Act) for a fraud offense that endan-
5 gers the solvency or financial security of a substantial
6 number of victims; and

7 (6) the guidelines that apply to organizations in
8 United States Sentencing Guidelines, chapter 8, are
9 sufficient to deter and punish organizational criminal
10 misconduct.

11 **SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY**
12 **TRADED COMPANIES WHO PROVIDE EVI-**
13 **DENCE OF FRAUD.**

14 (a) *IN GENERAL.*—Chapter 73 of title 18, United
15 States Code, is amended by inserting after section 1514 the
16 following:

17 “**§ 1514A. Civil action to protect against retaliation in**
18 **fraud cases**

19 “(a) *WHISTLEBLOWER PROTECTION FOR EMPLOYEES*
20 *OF PUBLICLY TRADED COMPANIES.*—No company with a
21 class of securities registered under section 12 of the *Securi-*
22 *ties Exchange Act of 1934 (15 U.S.C. 78l)*, or that is re-
23 quired to file reports under section 15(d) of the *Securities*
24 *Exchange Act of 1934 (15 U.S.C. 78o(d))*, or any officer,
25 employee, contractor, subcontractor, or agent of such com-

1 *pany, may discharge, demote, suspend, threaten, harass, or*
2 *in any other manner discriminate against an employee in*
3 *the terms and conditions of employment because of any law-*
4 *ful act done by the employee—*

5 *“(1) to provide information, cause information*
6 *to be provided, or otherwise assist in an investigation*
7 *regarding any conduct which the employee reasonably*
8 *believes constitutes a violation of section 1341, 1343,*
9 *1344, or 1348, any rule or regulation of the Securities*
10 *and Exchange Commission, or any provision of Fed-*
11 *eral law relating to fraud against shareholders, when*
12 *the information or assistance is provided to or the in-*
13 *vestigation is conducted by—*

14 *“(A) a Federal regulatory or law enforce-*
15 *ment agency;*

16 *“(B) any Member of Congress or any com-*
17 *mittee of Congress; or*

18 *“(C) a person with supervisory authority*
19 *over the employee (or such other person working*
20 *for the employer who has the authority to inves-*
21 *tigate, discover, or terminate misconduct); or*

22 *“(2) to file, cause to be filed, testify, participate*
23 *in, or otherwise assist in a proceeding filed or about*
24 *to be filed (with any knowledge of the employer) relat-*
25 *ing to an alleged violation of section 1341, 1343,*

1 1344, or 1348, any rule or regulation of the Securities
2 and Exchange Commission, or any provision of Fed-
3 eral law relating to fraud against shareholders.

4 “(b) *ENFORCEMENT ACTION.*—

5 “(1) *IN GENERAL.*—A person who alleges dis-
6 charge or other discrimination by any person in vio-
7 lation of subsection (a) may seek relief under sub-
8 section (c), by—

9 “(A) *filing a complaint with the Secretary*
10 *of Labor; or*

11 “(B) *if the Secretary has not issued a final*
12 *decision within 180 days of the filing of the com-*
13 *plaint and there is no showing that such delay*
14 *is due to the bad faith of the claimant, bringing*
15 *an action at law or equity for de novo review in*
16 *the appropriate district court of the United*
17 *States, which shall have jurisdiction over such*
18 *an action without regard to the amount in con-*
19 *troversy.*

20 “(2) *PROCEDURE.*—

21 “(A) *IN GENERAL.*—An action under para-
22 graph (1)(A) shall be governed under the rules
23 and procedures set forth in section 42121(b) of
24 title 49, United States Code.

1 “(B) *EXCEPTION.*—Notification made under
2 section 42121(b)(1) of title 49, United States
3 Code, shall be made to the person named in the
4 complaint and to the employer.

5 “(C) *BURDENS OF PROOF.*—An action
6 brought under paragraph (1)(B) shall be gov-
7 erned by the legal burdens of proof set forth in
8 section 42121(b) of title 49, United States Code.

9 “(D) *STATUTE OF LIMITATIONS.*—An action
10 under paragraph (1) shall be commenced not
11 later than 90 days after the date on which the
12 violation occurs.

13 “(c) *REMEDIES.*—

14 “(1) *IN GENERAL.*—An employee prevailing in
15 any action under subsection (b)(1) shall be entitled to
16 all relief necessary to make the employee whole.

17 “(2) *COMPENSATORY DAMAGES.*—Relief for any
18 action under paragraph (1) shall include—

19 “(A) reinstatement with the same seniority
20 status that the employee would have had, but for
21 the discrimination;

22 “(B) the amount of back pay, with interest;
23 and

24 “(C) compensation for any special damages
25 sustained as a result of the discrimination, in-

1 *cluding litigation costs, expert witness fees, and*
 2 *reasonable attorney fees.*

3 “(d) *RIGHTS RETAINED BY EMPLOYEE.*—*Nothing in*
 4 *this section shall be deemed to diminish the rights, privi-*
 5 *leges, or remedies of any employee under any Federal or*
 6 *State law, or under any collective bargaining agreement.”.*

7 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 8 *the beginning of chapter 73 of title 18, United States Code,*
 9 *is amended by inserting after the item relating to section*
 10 *1514 the following new item:*

“1514A. Civil action to protect against retaliation in fraud cases.”.

11 ***SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-***
 12 ***HOLDERS OF PUBLICLY TRADED COMPANIES.***

13 (a) *IN GENERAL.*—*Chapter 63 of title 18, United*
 14 *States Code, is amended by adding at the end the following:*

15 ***“§ 1348. Securities fraud***

16 *“Whoever knowingly executes, or attempts to execute,*
 17 *a scheme or artifice—*

18 *“(1) to defraud any person in connection with*
 19 *any security of an issuer with a class of securities*
 20 *registered under section 12 of the Securities Exchange*
 21 *Act of 1934 (15 U.S.C. 78l) or that is required to file*
 22 *reports under section 15(d) of the Securities Exchange*
 23 *Act of 1934 (15 U.S.C. 78o(d)); or*

24 *“(2) to obtain, by means of false or fraudulent*
 25 *pretenses, representations, or promises, any money or*

1 *property in connection with the purchase or sale of*
 2 *any security of an issuer with a class of securities*
 3 *registered under section 12 of the Securities Exchange*
 4 *Act of 1934 (15 U.S.C. 78l) or that is required to file*
 5 *reports under section 15(d) of the Securities Exchange*
 6 *Act of 1934 (15 U.S.C. 78o(d));*

7 *shall be fined under this title, or imprisoned not more than*
 8 *10 years, or both.”.*

9 (b) *CLERICAL AMENDMENT.—The table of sections at*
 10 *the beginning of chapter 63 of title 18, United States Code,*
 11 *is amended by adding at the end the following new item:*
 “1348. Securities fraud.”.

12 ***TITLE IX—WHITE-COLLAR CRIME***
 13 ***PENALTY ENHANCEMENTS***

14 ***SEC. 901. SHORT TITLE.***

15 *This title may be cited as the “White-Collar Crime*
 16 *Penalty Enhancement Act of 2002”.*

17 ***SEC. 902. CRIMINAL PENALTIES FOR CONSPIRACY TO COM-***
 18 ***MIT OFFENSE OR TO DEFRAUD THE UNITED***
 19 ***STATES.***

20 *Section 371 of title 18, United States Code, is amended*
 21 *by striking “If two or more” and all that follows through*
 22 *“If, however,” and inserting the following:*

23 “(a) *IN GENERAL.—If 2 or more persons—*

24 “(1) *conspire to commit any offense against the*
 25 *United States, in any manner or for any purpose,*

1 *and 1 or more of such persons do any act to effect the*
 2 *object of the conspiracy, each person shall be fined or*
 3 *imprisoned, or both, as set forth in the specific sub-*
 4 *stantive offense which was the object of the con-*
 5 *spiracy; or*

6 *“(2) conspire to defraud the United States, or*
 7 *any agency thereof in any manner or for any pur-*
 8 *pose, and 1 or more of such persons do any act to ef-*
 9 *fect the object of the conspiracy, each person shall be*
 10 *fined under this title, or imprisoned not more than 10*
 11 *years, or both.*

12 *“(b) MISDEMEANOR OFFENSE.—If, however,”.*

13 **SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE**
 14 **FRAUD.**

15 *(a) MAIL FRAUD.—Section 1341 of title 18, United*
 16 *States Code, is amended by striking “five years” and insert-*
 17 *ing “10 years”.*

18 *(b) WIRE FRAUD.—Section 1343 of title 18, United*
 19 *States Code, is amended by striking “five years” and insert-*
 20 *ing “10 years”.*

21 **SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE**
 22 **EMPLOYEE RETIREMENT INCOME SECURITY**
 23 **ACT OF 1974.**

24 *Section 501 of the Employee Retirement Income Secu-*
 25 *rity Act of 1974 (29 U.S.C. 1131) is amended—*

1 (1) by striking “\$5,000” and inserting
2 “\$100,000”;

3 (1) by striking “one year” and inserting “10
4 years”; and

5 (3) by striking “\$100,000” and inserting
6 “\$500,000”.

7 **SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RE-**
8 **LATING TO CERTAIN WHITE-COLLAR OF-**
9 **FENSES.**

10 (a) *DIRECTIVE TO THE UNITED STATES SENTENCING*
11 *COMMISSION.*—Pursuant to its authority under section
12 994(p) of title 18, United States Code, and in accordance
13 with this section, the United States Sentencing Commission
14 shall review and, as appropriate, amend the Federal Sen-
15 tencing Guidelines and related policy statements to imple-
16 ment the provisions of this title.

17 (b) *REQUIREMENTS.*—In carrying out this section, the
18 Sentencing Commission shall—

19 (1) ensure that the sentencing guidelines and
20 policy statements reflect the serious nature of the of-
21 fenses and the penalties set forth in this title, the
22 growing incidence of serious fraud offenses which are
23 identified above, and the need to modify the sen-
24 tencing guidelines and policy statements to deter, pre-
25 vent, and punish such offenses;

1 (2) *consider the extent to which the guidelines*
2 *and policy statements adequately address—*

3 (A) *whether the guideline offense levels and*
4 *enhancements for violations of the sections*
5 *amended by this title are sufficient to deter and*
6 *punish such offenses, and specifically, are ade-*
7 *quate in view of the statutory increases in pen-*
8 *alties contained in this title; and*

9 (B) *whether a specific offense characteristic*
10 *should be added in United States Sentencing*
11 *Guideline section 2B1.1 in order to provide for*
12 *stronger penalties for fraud when the crime is*
13 *committed by a corporate officer or director;*

14 (3) *assure reasonable consistency with other rel-*
15 *evant directives and sentencing guidelines;*

16 (4) *account for any additional aggravating or*
17 *mitigating circumstances that might justify excep-*
18 *tions to the generally applicable sentencing ranges;*

19 (5) *make any necessary conforming changes to*
20 *the sentencing guidelines; and*

21 (6) *assure that the guidelines adequately meet*
22 *the purposes of sentencing as set forth in section*
23 *3553(a)(2) of title 18, United States Code.*

1 **SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-**
2 **PORTS.**

3 (a) *IN GENERAL.*—Chapter 63 of title 18, United
4 States Code, is amended by adding at the end the following:

5 **“§ 1348. Failure of corporate officers to certify finan-**
6 **cial reports**

7 “(a) *CERTIFICATION OF PERIODIC FINANCIAL RE-*
8 *PORTS.*—Each periodic report containing financial state-
9 ments filed by an issuer with the Securities Exchange Com-
10 mission pursuant to section 13(a) or 15(d) of the Securities
11 Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall
12 be accompanied by a written statement by the chairman
13 of the board, chief executive officer, and chief financial offi-
14 cer (or equivalent thereof) of the issuer.

15 “(b) *CONTENT.*—The statement required under sub-
16 section (a) shall certify the appropriateness of the financial
17 statements and disclosures contained in the periodic report
18 or financial report, and that those financial statements and
19 disclosures fairly present, in all material respects, the oper-
20 ations and financial condition of the issuer.

21 “(c) *CRIMINAL PENALTIES.*—Notwithstanding any
22 other provision of law—

23 “(1) any person who recklessly and knowingly
24 violates any provision of this section shall upon con-
25 viction be fined not more than \$500,000, or impris-
26 oned not more than 5 years, or both; or

1 “(1) alters, destroys, mutilates, or conceals a
2 record, document, or other object, or attempts to do so,
3 with the intent to impair the object’s integrity or
4 availability for use in an official proceeding; or

5 “(2) otherwise obstructs, influences, or impedes
6 any official proceeding, or attempts to do so;

7 shall be fined under this title or imprisoned not more than
8 10 years, or both.”.

9 **SEC. 909. TEMPORARY FREEZE AUTHORITY FOR THE SECU-**
10 **RITIES AND EXCHANGE COMMISSION.**

11 (a) *IN GENERAL.*—The Securities Exchange Act of
12 1934 is amended by inserting after section 21C(c)(2) (15
13 U.S.C. 78u–3(c)(2)) the following:

14 “(3) *TEMPORARY FREEZE.*—(A) Whenever, dur-
15 ing the course of a lawful investigation involving pos-
16 sible violations of the Federal securities laws by an
17 issuer of publicly traded securities or any of its direc-
18 tors, officers, partners, controlling persons, agents, or
19 employees, it shall appear to the Commission that it
20 is likely that the issuer will make extraordinary pay-
21 ments (whether compensation or otherwise) to any of
22 the foregoing persons, the Commission may petition a
23 Federal district court for a temporary order requiring
24 the issuer to escrow, subject to court supervision, those
25 payments in an interest-bearing account for 45 days.

1 *Such an order shall be entered, if the court finds that*
2 *the issuer is likely to make such extraordinary pay-*
3 *ments, only after notice and opportunity for a hear-*
4 *ing, unless the court determines that notice and hear-*
5 *ing prior to entry of the order would be impracticable*
6 *or contrary to the public interest. A temporary order*
7 *shall become effective immediately and shall be served*
8 *upon the parties subject to it and, unless set aside,*
9 *limited or suspended by court of competent jurisdic-*
10 *tion, shall remain effective and enforceable for 45*
11 *days. The period of the order may be extended by the*
12 *court upon good cause shown for not longer than 45*
13 *days, provided that the combined period of the order*
14 *not exceed 90 days.*

15 *“(B) If the individual affected by such order is*
16 *charged with violations of the Federal securities laws*
17 *by the expiration of the 45 days (or the expiration of*
18 *any extended period), the escrow would continue, sub-*
19 *ject to court approval, until the conclusion of any*
20 *legal proceedings. The issuer and the affected director,*
21 *officer, partner, controlling person, agent or employee*
22 *would have the right to petition the court for review*
23 *of the order. If the individual affected by such order*
24 *is not charged, the escrow will terminate at the expi-*
25 *ration of the 45 days (or the expiration of any ex-*

1 *tended period), and the payments (with accrued in-*
2 *terest) returned to the issuer.”.*

3 (b) *TECHNICAL AMENDMENT.*—*Section 21C(c)(2) of*
4 *the Securities Exchange Act of 1934 (15 U.S.C. 78u-*
5 *3(c)(2)) is amended by striking “This” and inserting*
6 *“Paragraph (1) of this”.*

7 **SEC. 910. AMENDMENT TO THE FEDERAL SENTENCING**
8 **GUIDELINES.**

9 (a) *REQUEST FOR IMMEDIATE CONSIDERATION BY*
10 *THE UNITED STATES SENTENCING COMMISSION.*—*Pursu-*
11 *ant to its authority under section 994(p) of title 28, United*
12 *States Code, and in accordance with this section, the United*
13 *States Sentencing Commission is requested to—*

14 (1) *promptly review the sentencing guidelines*
15 *applicable to securities and accounting fraud and re-*
16 *lated offenses;*

17 (2) *expeditiously consider promulgation of new*
18 *sentencing guidelines or amendments to existing sen-*
19 *tencing guidelines to provide an enhancement for offi-*
20 *cers or directors of publicly traded corporations who*
21 *commit fraud and related offenses; and*

22 (3) *submit to Congress an explanation of actions*
23 *taken by the Commission pursuant to paragraph (2)*
24 *and any additional policy recommendations the Com-*

1 mission may have for combating offenses described in
2 paragraph (1).

3 (b) *OTHER.*—In carrying out this section, the Sen-
4 tencing Commission is requested to—

5 (1) ensure that the sentencing guidelines and
6 policy statements reflect the serious nature of securi-
7 ties, pension, and accounting fraud and the need for
8 aggressive and appropriate law enforcement action to
9 prevent such offenses;

10 (2) assure reasonable consistency with other rel-
11 evant directives and with other guidelines;

12 (3) account for any aggravating or mitigating
13 circumstances that might justify exceptions, including
14 circumstances for which the sentencing guidelines cur-
15 rently provide sentencing enhancements;

16 (4) make any necessary conforming changes to
17 the sentencing guidelines; and

18 (5) assure that the guidelines adequately meet
19 the purposes of sentencing as set forth in section
20 3553(a)(2) of title 18, United States Code.

21 (c) *EMERGENCY AUTHORITY AND DEADLINE FOR COM-*
22 *MISSION ACTION.*—The Commission is requested to promul-
23 gate the guidelines or amendments provided for under this
24 section as soon as practicable, and in any event not later
25 than the 120 days after the date of the enactment of this

1 *Act, in accordance with the procedures set forth in section*
2 *21(a) of the Sentencing Reform Act of 1987, as though the*
3 *authority under that Act had not expired.*

4 **SEC. 911. AUTHORITY OF THE COMMISSION TO PROHIBIT**
5 **PERSONS FROM SERVING AS OFFICERS OR DI-**
6 **RECTORS.**

7 *(a) In section 21C of the Securities Exchange Act of*
8 *1934, add at the end a new subsection as follows:*

9 *“(f) AUTHORITY OF THE COMMISSION TO PROHIBIT*
10 *PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—*
11 *In any cease-and-desist proceeding under subsection (a), the*
12 *Commission may issue an order to prohibit, conditionally*
13 *or unconditionally, and permanently or for such period of*
14 *time as it shall determine, any person who has violated sec-*
15 *tion 10(b) of this title or the rules or regulations thereunder*
16 *from acting as an officer or director of any issuer that has*
17 *a class of securities registered pursuant to section 12 of this*
18 *title or that is required to file reports pursuant to section*
19 *15(d) of this title if the person’s conduct demonstrates*
20 *unfitness to serve as an officer or director of any such*
21 *issuer.”.*

22 *(b) In section 8A of the Securities Act of 1933 add*
23 *at the end a new subsection as follows:*

24 *“(f) AUTHORITY OF THE COMMISSION TO PROHIBIT*
25 *PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—*

1 *In any cease-and-desist proceeding under subsection (a), the*
2 *Commission may issue an order to prohibit, conditionally*
3 *or unconditionally, and permanently or for such period of*
4 *time as it shall determine, any person who has violated sec-*
5 *tion 17(a)(1) of this title from acting as an officer or direc-*
6 *tor of any issuer that has a class of securities registered*
7 *pursuant to section 12 of the Securities Exchange Act of*
8 *1934 or that is required to file reports pursuant to section*
9 *15(d) of that Act if the person's conduct demonstrates*
10 *unfitness to serve as an officer or director of any such*
11 *issuer.”.*

12 **TITLE X—CORPORATE TAX**
13 **RETURNS**

14 **SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGN-**
15 **ING OF CORPORATE TAX RETURNS BY CHIEF**
16 **EXECUTIVE OFFICERS.**

17 *It is the sense of the Senate that the Federal income*
18 *tax return of a corporation should be signed by the chief*
19 *executive officer of such corporation.*

Attest:

Secretary.

107TH CONGRESS
2D SESSION

H. R. 3763

AMENDMENT