

107TH CONGRESS
2D SESSION

H. R. 3763

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2002

Mr. OXLEY (for himself, Mr. BAKER, Mr. BOEHNER, Mrs. ROUKEMA, Mr. BE-REUTER, Mr. BACHUS, Mrs. KELLY, Mr. CASTLE, Mr. ROYCE, Mr. NEY, Mr. GILLMOR, Mr. COX, Mr. LATOURETTE, Mr. MANZULLO, Mr. JONES of North Carolina, Mr. OSE, Mr. GREEN of Wisconsin, Mr. TOOMEY, Mr. SHADEGG, Mr. FOSSELLA, Mr. CANTOR, Ms. HART, Mr. FERGUSON, Mr. ROGERS of Michigan, and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate and Audit-
5 ing Accountability, Responsibility, and Transparency Act
6 of 2002”.

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

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

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

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

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

23 (1) The board of such organization shall be
24 comprised of both members of the accounting profes-
25 sion and public members who are not members of
26 the accounting profession, and such public members

1 shall comprise at least two-thirds of the board of
2 such organization.

3 (2) Such organization is so organized and has
4 the capacity—

5 (A) to be able to carry out the purposes of
6 this section and to comply, and to enforce com-
7 pliance by accountants and persons associated
8 with accountants, with the provisions of this
9 Act, the securities laws, the rules and regula-
10 tions thereunder, and the rules of the organiza-
11 tion;

12 (B) to perform a review of the work prod-
13 uct (including the quality thereof) of an ac-
14 countant or a person associated with an ac-
15 countant; and

16 (C) to perform a review of any potential
17 conflicts of interest between an accountant (or
18 a person associated with an accountant) and
19 the issuer, the issuer's board of directors and
20 committees thereof, officers, and affiliates of
21 such issuer, that may result in an impairment
22 of auditor independence.

23 (3) Such organization shall have the authority
24 to impose sanctions, including a determination that
25 an accountant is not qualified to certify a financial

1 statement, or any categories of financial statements,
2 required by the securities laws, or that a person as-
3 sociated with an accountant is not qualified to par-
4 ticipate in such certification, if, after conducting a
5 review and providing an opportunity for a hearing,
6 the organization finds that—

7 (A) such accountant or person associated
8 with an accountant has violated the standards
9 of independence, ethics, or competency in the
10 profession;

11 (B) such accountant or person associated
12 with an accountant has violated the securities
13 laws or a rule or regulation thereunder;

14 (C) an audit conducted by such accountant
15 or any person associated with an accountant
16 has been materially affected by an impairment
17 of auditor independence;

18 (D) such accountant or person associated
19 with an accountant has performed both audit-
20 ing services and consulting services in violation
21 of the rules prescribed by the Commission pur-
22 suant to subsection (c); and

23 (E) such accountant or any person associ-
24 ated with an accountant has impeded, ob-

1 structured, or otherwise not cooperated in such
2 review.

3 (4) Any such organization shall disclose pub-
4 licly, and make available for public comment, pro-
5 posed procedures and methods for conducting such
6 reviews.

7 (5) Any such organization shall have in place
8 procedures to minimize and deter conflicts of inter-
9 est involving the public members of such organiza-
10 tion, and have in place procedures to resolve such
11 conflicts.

12 (6) Any such organization shall have in place
13 procedures for notifying the boards of accountancy
14 of the States of the results of reviews, including any
15 findings under paragraphs (2) and (3).

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

20 (8) Any such organization shall consult with
21 boards of accountancy of the States.

22 (9) Any such organization shall have in place a
23 mechanism to allow the organization to operate on
24 a self-funded basis. Such funding mechanism shall
25 ensure that such organization is not solely depend-

1 ent upon members of the accounting profession for
2 such funding and operations.

3 (c) PROHIBITION ON THE OFFER OF BOTH AUDIT
4 AND CONSULTING SERVICES.—

5 (1) MODIFICATION OF REGULATIONS RE-
6 QUIRED.—The Commission shall revise its regula-
7 tions pertaining to auditor independence to require
8 that an accountant shall not be considered inde-
9 pendent with respect to an audit client if the ac-
10 countant provides to the client the following non-
11 audit services (as such term is defined in such regu-
12 lations as in effect on the date of enactment of this
13 Act)—

14 (A) financial information system design or
15 implementation; or

16 (B) internal audit services.

17 (2) DEADLINE FOR RULEMAKING.—The Com-
18 mission shall prescribe the revisions to its regula-
19 tions required by paragraph (1) within 180 days
20 after the date of enactment of this Act.

21 (d) PRO ACCOUNTANT REVIEW PROCEEDINGS.—

22 (1) REVIEW PROCEEDING FINDINGS.—Any ac-
23 countant review conducted under this section shall
24 include any finding that a financial statement au-
25 dited by such accountant and submitted to the Com-

1 mission may have been materially affected by an im-
2 pairment of independence, or by a violation of the
3 securities laws or a rule or regulation thereunder.
4 Such findings shall be submitted to the Commission.
5 The Commission shall immediately notify an issuer
6 of any such finding that relates to the financial
7 statements of such issuer.

8 (2) CONFIDENTIAL TREATMENT OF PRO-
9 CEEDINGS PENDING SEC REVIEW.—Except as other-
10 wise provided in this section, but notwithstanding
11 any other provision of law, neither the Commission
12 nor a recognized public regulatory organization shall
13 be compelled to disclose any information concerning
14 any accountant review proceeding and the findings
15 therein. Nothing in this subsection shall authorize
16 the Commission to withhold information from Con-
17 gress, or prevent the Commission from complying
18 with a request for information from any other Fed-
19 eral department or agency requesting information
20 for purposes within the scope of its jurisdiction, or
21 complying with an order of a court of the United
22 States in an action brought by the United States or
23 the Commission. Neither the Commission nor the
24 recognized public regulatory organization shall dis-
25 close the results of any such finding until the com-

1 pletion of any review by the Commission under sub-
2 sections (d) and (e), or the conclusion of the 30-day
3 period for seeking review if no motion seeking review
4 is filed within such period. For purposes of section
5 552 of title 5, United States Code, this subsection
6 shall be considered a statute described in subsection
7 (b)(3)(B) of such section 552.

8 (e) REVIEW OF SANCTIONS.—

9 (1) NOTICE.—If any recognized public regu-
10 latory organization—

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

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

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

22 the recognized public regulatory organization shall
23 promptly submit notice thereof with the Commission.

24 The notice shall be in such form and contain such
25 information as the Commission, by rule, may pre-

1 scribe as necessary or appropriate in furtherance of
2 the purposes of this section.

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

23 (f) CONDUCT OF COMMISSION REVIEW.—

24 (1) BASIS FOR ACTION.—In any proceeding to
25 review a final disciplinary sanction imposed by a rec-

1 ognized public regulatory organization on an ac-
2 countant or a person associated with such account-
3 ant, after notice and opportunity for hearing (which
4 hearing may consist solely of consideration of the
5 record before the recognized public regulatory orga-
6 nization and opportunity for the presentation of sup-
7 porting reasons to affirm, modify, or set aside the
8 sanction)—

9 (A) if the Commission finds that such ac-
10 countant or person associated with an account-
11 ant has engaged in such acts or practices, or
12 has omitted such acts, as the recognized public
13 regulatory organization has found him to have
14 engaged in or omitted, that such acts or prac-
15 tices, or omissions to act, are in violation of
16 such provisions of this section, the securities
17 laws, the rules or regulations thereunder, or the
18 rules of the recognized public regulatory organi-
19 zation, as have been specified in the determina-
20 tion of the public regulatory organization, and
21 that such provisions are, and were applied in a
22 manner, consistent with the purposes of this
23 section, the Commission, by order, shall so de-
24 clare and, as appropriate, affirm the sanction
25 imposed by the recognized public regulatory or-

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

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

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

22 (g) REVIEW AND APPROVAL OF RULES.—

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

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

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

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

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

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

21 (3) BASIS FOR APPROVAL OR DISAPPROVAL.—

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

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

10 (4) RULES EFFECTIVE UPON FILING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (i) RULEMAKING DEADLINE.—The Commission shall
22 prescribe rules to implement this section within 180 days
23 after the date of enactment of this Act.

24 (j) EFFECTIVE DATE; TRANSITION PROVISIONS.—

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

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

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

17 It shall be unlawful in contravention of such rules
18 and regulations as the Commission shall prescribe as nec-
19 essary and appropriate in the public interest or for the
20 protection of investors for any officer, director, or affili-
21 ated person of an issuer of any security registered under
22 section 12 of the Securities Exchange Act of 1934 (15
23 U.S.C. 78l) to take any action to willfully and improperly
24 influence, coerce, manipulate, or mislead any independent
25 public or certified accountant engaged in the performance

1 of an audit of the financial statements of such issuer for
2 the purpose of rendering such financial statements materi-
3 ally misleading. In any civil proceeding, the Commission
4 shall have exclusive authority to enforce this section and
5 any rule or regulation hereunder.

6 **SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMA-**
7 **TION.**

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

9 (1) OBLIGATIONS.—Every issuer of a security
10 registered under section 12 of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78l) shall file with
12 the Commission and disclose to the public, on a
13 rapid and essentially contemporaneous basis, such
14 information concerning the financial condition or op-
15 erations of such issuer as the Commission deter-
16 mines by rule is necessary in the public interest and
17 for the protection of investors. Such rule shall—

18 (A) specify the events or circumstances
19 giving rise to the obligation to disclose or up-
20 date a disclosure;

21 (B) establish requirements regarding the
22 rapidity and timeliness of such disclosure;

23 (C) identify the means whereby the disclo-
24 sure required shall be made, which shall ensure
25 the broad, rapid, and accurate dissemination of

1 the information to the public via electronic or
2 other communications device;

3 (D) identify the content of the information
4 to be disclosed; and

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

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

11 (b) ELECTRONIC DISCLOSURE OF INSIDER AND AF-
12 FILIATE TRANSACTIONS.—

13 (1) DISCLOSURES OF TRADING.—The Commis-
14 sion shall, by rule, require that any disclosure re-
15 quired by the securities laws or any rule or regula-
16 tion thereunder of the sale of any securities by an
17 officer, director, or other affiliated person of the
18 issuer of those securities shall be made available
19 electronically—

20 (A) to the Commission by the officer, di-
21 rector, or affiliated person, before the end of
22 the next business day after the day on which
23 the transaction occurs;

24 (B) to the public by the Commission, to
25 the extent permitted under applicable law, upon

1 receipt, but in no case later than the end of the
2 next business day after the day on which the
3 disclosure is received under subparagraph (A);
4 and

5 (C) in any case in which the issuer main-
6 tains a corporate website, on that website, be-
7 fore the end of the next business day after the
8 day on which the disclosure is received by the
9 Commission under subparagraph (A).

10 (2) OTHER FORMATS; FORMS.—In the rule pre-
11 scribed under paragraph (1), the Commission shall
12 provide that electronic filing and disclosure shall be
13 in lieu of any other format required for such disclo-
14 sures on the day before the date of enactment of this
15 subsection. The Commission shall revise all forms
16 and schedules required to be filed with the Commis-
17 sion pursuant to paragraph (1) in order to facilitate
18 such electronic filing and disclosure.

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

21 (a) PROHIBITION.—It shall be unlawful for any per-
22 son who is directly or indirectly the beneficial owner of
23 more than 10 percent of any class of any equity security
24 (other than an exempted security) which is registered
25 under section 12 of the Securities Exchange Act of 1934

1 (15 U.S.C. 78l) or who is a director or an officer of the
2 issuer of such security, directly or indirectly, to purchase
3 (or otherwise acquire) or sell (or otherwise transfer) any
4 equity security of any issuer (other than an exempted se-
5 curity), during any blackout period with respect to such
6 equity security.

7 (b) REMEDY.—Any profit realized by such beneficial
8 owner, director, or officer from any purchase (or other ac-
9 quisition) or sale (or other transfer) in violation of this
10 section shall inure to and be recoverable by the issuer irre-
11 spective of any intention on the part of such beneficial
12 owner, director, or officer in entering into the transaction.
13 Suit to recover such profit may be instituted at law or
14 in equity in any court of competent jurisdiction by the
15 issuer, or by the owner of any security of the issuer in
16 the name and in behalf of the issuer if the issuer shall
17 fail or refuse to bring such suit within 60 days after re-
18 quest or shall fail diligently to prosecute the same there-
19 after; but no such suit shall be brought more than 2 years
20 after the date such profit was realized. This subsection
21 shall not be construed to cover any transaction where such
22 beneficial owner was not such both at the time of the pur-
23 chase and sale, or the sale and purchase, of the security
24 or security-based swap (as defined in section 206B of the
25 Gramm-Leach-Bliley Act) involved, or any transaction or

1 transactions which the Commission by rules and regula-
2 tions may exempt as not comprehended within the pur-
3 poses of this subsection.

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

8 **SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DIS-**
9 **CLOSURES.**

10 (a) MODIFICATION OF REGULATIONS REQUIRED.—
11 The Commission shall revise its regulations under the se-
12 curities laws pertaining to the disclosures required in peri-
13 odic financial reports and registration statements to re-
14 quire such reports to include adequate and appropriate
15 disclosure of—

16 (1) the issuer's off-balance sheet transactions
17 and relationships with unconsolidated entities or
18 other persons, to the extent they are not disclosed in
19 the financial statements and are reasonably likely to
20 materially affect liquidity or the availability of, or
21 requirements for, capital resources, or otherwise ex-
22 pose the issuer to material current or future possible
23 liability, obligations, expenses, or cash flow changes,
24 or affect the recognition of revenue, carrying value,

1 or potential impairment of assets, credit ratings,
2 earnings, cash flows, or stock price; and

3 (2) relationships and material transactions with
4 related or other persons or entities that may involve
5 transactions on terms that differ materially from
6 those that would likely be negotiated with third par-
7 ties, including a description of the elements of the
8 transactions that are necessary for an understanding
9 of their business purpose and economic substance,
10 their effects on the financial statements, and the
11 special risks or contingencies arising from the trans-
12 actions.

13 (b) DEADLINE FOR RULEMAKING.—The Commission
14 shall prescribe the revisions to its regulations required by
15 paragraph (1) within 180 days after the date of enactment
16 of this Act.

17 (c) ANALYSIS REQUIRED.—

18 (1) TRANSPARENCY, COMPLETENESS, AND USE-
19 FULNESS OF FINANCIAL STATEMENTS.—The Com-
20 mission shall conduct an analysis of the extent to
21 which, consistent with the protection of investors
22 and the public interest, disclosure of additional or
23 reorganized information may be required to improve
24 the transparency, completeness, or usefulness of fi-

1 nancial statements and other corporate disclosures
2 filed under the securities laws.

3 (2) ALTERNATIVES TO BE CONSIDERED.—In
4 conducting the analysis required by paragraph (1),
5 the Commission shall consider—

6 (A) requiring the identification of the key
7 accounting principles that are most important
8 to the issuer’s reported financial condition or
9 results of operation, and that require manage-
10 ment’s most difficult, subjective, or complex
11 judgments;

12 (B) requiring an explanation, where mate-
13 rial, of how different available accounting prin-
14 ciples applied, the judgments made in their ap-
15 plication, and the likelihood of materially dif-
16 ferent reported results if different assumptions
17 of conditions were to prevail;

18 (C) in the case of any issuer engaged in
19 the business of trading non-exchange traded
20 contracts, requiring an explanation of such
21 trading activities when such activities require
22 the issuer to account for contracts at fair value,
23 but for which a lack of market price quotations
24 necessitates the use of fair value estimation
25 techniques;

1 (D) establishing requirements relating to
2 the presentation of information in plain lan-
3 guage; and

4 (E) requiring such other disclosures, in-
5 cluded in the financial statements or in other
6 disclosure by the issuer, as would in the Com-
7 mission's view improve the transparency of such
8 issuer's financial statements and other required
9 corporate disclosures.

10 (3) RULES REQUIRED.—If the Commission, on
11 the basis of the analysis required by this subsection,
12 determines that it is necessary in the public interest
13 or for the protection of investors, would improve the
14 transparency of issuer financial statements, and
15 would not be unduly burdensome on issuers, the
16 Commission shall prescribe rules reflecting the re-
17 sults of such analysis and the considerations re-
18 quired by paragraph (2).

19 **SEC. 7. STUDY OF RULES RELATING TO ANALYST CON-**
20 **FLICTS OF INTEREST.**

21 (a) STUDY AND REVIEW REQUIRED.—The Commis-
22 sion shall conduct a study and review of any final rules
23 by any self-regulatory organization registered with the
24 Commission related to matters involving equity research
25 analysts conflicts of interest. Such study and report shall

1 include a review of the effectiveness of such final rules
2 in addressing matters relating to the objectivity and integ-
3 rity of equity research analyst reports and recommenda-
4 tions.

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

17 **SEC. 8. OVERSIGHT OF FINANCIAL DISCLOSURES.**

18 (a) MINIMUM PERIODIC REVIEW REQUIREMENTS.—
19 The Commission shall set minimum periodic review re-
20 quirements to ensure that issuers with the largest market
21 capitalization, most actively traded securities, or most
22 widely held securities will be subject to a regular and thor-
23 ough review by the Commission, including substantive
24 comments where appropriate on the issuer's financial
25 statements and all other disclosures.

1 (b) ANNUAL REPORTS REQUIRED.—The Securities
2 and Exchange Commission shall report to the Committee
3 on Financial Services of the House of Representatives and
4 the Committee on Banking, Housing, and Urban Affairs
5 of the Senate on an annual basis on its compliance with
6 these requirements.

7 **SEC. 9. REVIEW OF CORPORATE GOVERNANCE PRACTICES.**

8 (a) STUDY OF CORPORATE PRACTICES.—The Presi-
9 dent’s Working Group on Financial Markets shall conduct
10 a study and review of current corporate governance stand-
11 ards and practices to determine whether such standards
12 and practices are serving the best interests of share-
13 holders. Such study and review shall include an analysis
14 of—

15 (1) whether current standards and practices
16 promote full disclosure of relevant information to
17 shareholders;

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

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

24 (4) to what extent sufficient legal protections
25 exist to ensure that any manager who attempts to

1 manipulate or unduly influence an audit is subject to
2 appropriate sanction and liability;

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

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

10 (7) whether the duties and responsibilities of
11 audit committees should be established by the Com-
12 mission; and

13 (8) what further or additional practices or
14 standards might best protect investors and promote
15 the interests of shareholders.

16 (b) PARTICIPATION OF STATE REGULATORS.—In
17 conducting the study required under subsection (a), the
18 President’s Working Group on Financial Markets shall
19 seek the views of, and consult with, the securities and cor-
20 porate regulators of the various States.

21 (c) REPORT REQUIRED.—The President’s Working
22 Group on Financial Markets shall submit a report on the
23 analysis required under subsection (a) to the Committee
24 on Financial Services of the House of Representatives and
25 the Committee on Banking, Housing, and Urban Affairs

1 of the Senate no later than 180 days after the date of
2 enactment of this Act.

3 **SEC. 10. STUDY OF ENFORCEMENT ACTIONS.**

4 (a) **STUDY REQUIRED.**—The Commission shall re-
5 view and analyze all enforcement actions by the Commis-
6 sion involving violations of reporting requirements im-
7 posed under the securities laws, and all restatements of
8 financial statements, over the last five years to identify
9 areas of reporting that are most susceptible to fraud, inap-
10 propriate manipulation, or inappropriate earnings man-
11 agement, such as revenue recognition and the accounting
12 treatment of off-balance sheet special purpose entities.

13 (b) **REPORT REQUIRED.**—The Commission shall re-
14 port its findings to the Committee on Financial Services
15 of the House of Representatives and the Committee on
16 Banking, Housing, and Urban Affairs of the Senate with-
17 in 180 days of the date of enactment of this Act and shall
18 use such findings to revise its rules and regulations, as
19 necessary.

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

21 (a) **STUDY REQUIRED.**—The Commission shall con-
22 duct a study of the role and function of credit rating agen-
23 cies in the operation of the securities market. Such study
24 shall examine—

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

3 (2) the importance of that role to investors and
4 the functioning of the securities markets;

5 (3) any impediments to the accurate appraisal
6 by credit rating agencies of the financial resources
7 and risks of issuers of securities;

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

11 (5) any measures which may be required to im-
12 prove the dissemination of information concerning
13 such resources and risks when credit rating agencies
14 announce credit ratings; and

15 (6) any conflicts of interest in the operation of
16 credit rating agencies and measures to prevent such
17 conflicts or ameliorate the consequences of such con-
18 flicts.

19 (b) REPORT REQUIRED.—The Commission shall sub-
20 mit a report on the analysis required by subsection (a)
21 to the President, the Committee on Financial Services of
22 the House of Representatives, and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate with-
24 in 180 days after the date of enactment of this Act.

1 **SEC. 12. ENFORCEMENT AUTHORITY.**

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

8 **SEC. 13. DEFINITIONS.**

9 As used in this Act:

10 (1) **BLACKOUT PERIOD.**—The term “blackout
11 period” with respect to the equity securities of any
12 issuer—

13 (A) means any period during which the
14 employees of such issuer are precluded from
15 purchasing (or otherwise acquiring) or selling
16 (or otherwise transferring) their interest in any
17 equity security of such issuer held in an indi-
18 vidual account plan of such issuer; but

19 (B) does not include a period in which the
20 employees of an issuer may not allocate their
21 interests in the individual account plan due to
22 an express investment restriction—

23 (i) incorporated into the individual ac-
24 count plan; and

1 (ii) timely disclosed to employees be-
2 fore joining the individual account plan or
3 as a subsequent amendment to the plan.

4 (2) BOARDS OF ACCOUNTANCY OF THE
5 STATES.—The term “boards of accountancy of the
6 States” means any organization or association char-
7 tered or approved under the law of any State with
8 responsibility for the registration, supervision, or
9 regulation of accountants.

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

12 (4) INDIVIDUAL ACCOUNT PLAN.—The term
13 “individual account plan” has the meaning provided
14 such term in section 3(34) of the Employee Retire-
15 ment Income Security Act of 1974 (29 U.S.C.
16 1002(34)).

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

20 (6) PERSON ASSOCIATED WITH AN ACCOUNT-
21 ANT.—The term “person associated with an ac-
22 countant” means any partner, officer, director, or
23 manager of such accountant (or any person occu-
24 pying a similar status or performing similar func-
25 tions), any person directly or indirectly controlling,

1 controlled by, or under common control with such
2 accountant, or any employee of such accountant who
3 performs a supervisory role in the auditing process.

4 (7) RECOGNIZED PUBLIC REGULATORY ORGANI-
5 ZATION.—The term “recognized public regulatory
6 organization” means a public regulatory organiza-
7 tion that the Commission has recognized as meeting
8 the criteria established by the Commission under
9 subsection (b) of section 2.

10 (8) SECURITIES LAWS.—The term “securities
11 laws” means the Securities Act of 1933 (15 U.S.C.
12 77a et seq.), the Securities Exchange Act of 1934
13 (15 U.S.C. 78a et seq.), the Trust Indenture Act of
14 1939 (15 U.S.C. 77aaa et seq.), the Investment
15 Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the
16 Investment Advisers Act of 1940 (15 U.S.C. 80b et
17 seq.), and the Securities Investor Protection Act of
18 1970 (15 U.S.C. 78aaa et seq.), notwithstanding
19 any contrary provision of any such Act.

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