

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3763

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2002

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

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,*

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

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

5 (b) **TABLE OF CONTENTS.**—

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

6 **SEC. 2. AUDITOR OVERSIGHT.**

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

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

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

8           (b) ESTABLISHMENT OF PRO.—The Commission  
9 shall by rule establish the criteria by which a public regu-  
10 latory organization may be recognized for purposes of this  
11 section. Such criteria shall include the following require-  
12 ments:

13           (1)(A) The board of such organization shall be  
14 comprised of five members—

15           (i) two of whom shall be persons who are  
16 licensed to practice public accounting and who  
17 have recent experience in auditing public com-  
18 panies;

19           (ii) two of whom may be persons who are  
20 licensed to practice public accounting, if such  
21 person has not worked in the accounting profes-  
22 sion for any of the last two years prior to the  
23 date of such person's appointment to the board;  
24 and

1 (iii) one of whom shall be a person who  
2 has never been licensed to practice public ac-  
3 counting.

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

8 (2) Such organization is so organized and has  
9 the capacity—

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

16 (B) to perform a review of the work prod-  
17 uct (including the quality thereof) of an ac-  
18 countant or a person associated with an ac-  
19 countant; and

20 (C) to perform a review of any potential  
21 conflicts of interest between an accountant (or  
22 a person associated with an accountant) and  
23 the issuer, the issuer's board of directors and  
24 committees thereof, officers, and affiliates of

1           such issuer, that may result in an impairment  
2           of auditor independence.

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

14                 (A) such accountant or person associated  
15                 with an accountant has violated the standards  
16                 of independence, ethics, or competency in the  
17                 profession;

18                 (B) such accountant or person associated  
19                 with an accountant has been found by the Com-  
20                 mission or a court of competent jurisdiction to  
21                 have violated the securities laws or a rule or  
22                 regulation thereunder (provided in both cases  
23                 that any applicable time period for appeal has  
24                 expired);

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

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

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

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

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

23 (6) Any such organization shall have in place  
24 procedures for notifying the boards of accountancy

1 of the States of the results of reviews and evidence  
2 under paragraphs (2) and (3).

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

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

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

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

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

13 (c) PROHIBITION ON THE OFFER OF BOTH AUDIT  
14 AND CONSULTING SERVICES.—

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



1 (A) financial information system design or  
2 implementation; or

3 (B) internal audit services.

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

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

20 (4) REPORT.—The Commission shall report to  
21 the Committee on Financial Services of the House of  
22 Representatives and the Committee on Banking,  
23 Housing, and Urban Affairs of the Senate on its  
24 conduct of any reviews as required by this section.

25 The report shall include a discussion of regulatory or

1 legislative steps that are recommended or that may  
2 be necessary to address concerns identified in the re-  
3 views.

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

11 (6) DEADLINE FOR RULEMAKING.—The Com-  
12 mission shall—

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

15 (B) within 270 days after such date, pre-  
16 scribe,

17 the revisions to its regulations required by this sub-  
18 section.

19 (d) PRO ACCOUNTANT REVIEW PROCEEDINGS.—

20 (1) REVIEW PROCEEDING FINDINGS.—Any find-  
21 ings made pursuant to an accountant review con-  
22 ducted under this section that a financial statement  
23 audited by such accountant and submitted to the  
24 Commission may have been materially affected by an  
25 impairment of auditor independence, or by a viola-

1       tion of professional ethics and competency stand-  
2       ards, shall be submitted to the Commission. The  
3       Commission shall promptly notify an issuer of any  
4       such finding that relates to the financial statements  
5       of such issuer.

6               (2) CONFIDENTIAL TREATMENT OF PRO-  
7       CEEDINGS PENDING SEC REVIEW.—

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

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

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

20              (ii) authorize such organization or the  
21      Commission to withhold information con-  
22      cerning an accountant review proceeding  
23      from an accountant or person associated  
24      with an accountant that is the subject of  
25      such proceeding;

1 (iii) authorize the Commission to  
2 withhold information from Congress; or

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

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

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

24 (3) NONPRECLUSIVE EFFECT OF PRO FIND-  
25 INGS.—A finding by a recognized public regulatory

1 organization that an individual audit of an issuer  
2 met or failed to meet any applicable standard with  
3 respect to the quality of such audit shall not be con-  
4 strued in any action arising out of the securities  
5 laws as indicative of compliance or noncompliance  
6 with the securities laws or with any standard of li-  
7 ability arising thereunder.

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, or of profes-  
17              sional ethics and competency standards, and  
18              that such provisions are, and were applied in a  
19              manner, consistent with the purposes of this  
20              section, the Commission, by order, shall so de-  
21              clare and, as appropriate, affirm the sanction  
22              imposed by the recognized public regulatory or-  
23              ganization, modify the sanction in accordance  
24              with paragraph (2) of this subsection, or re-

1           mand to the recognized public regulatory orga-  
2           nization for further proceedings; or

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

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

20          (g) REVIEW AND APPROVAL OF RULES.—

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



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

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

1 (A) by order approve such proposed rule  
2 change; or

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

19 (3) BASIS FOR APPROVAL OR DISAPPROVAL.—  
20 The Commission shall approve a proposed rule  
21 change of a recognized public regulatory organiza-  
22 tion if it finds that such proposed rule change is  
23 consistent with the requirements of this Act and the  
24 rules and regulations thereunder applicable to such  
25 organization. The Commission shall disapprove a

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

8 (4) RULES EFFECTIVE UPON FILING.—

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

1 section, may specify as outside the provisions of  
2 such paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

21 (i) COMMISSION OVERSIGHT OF THE PRO.—

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

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

5 (2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—

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

16 (3) ANNUAL REPORT; PROPOSED BUDGET.—

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

23 (B) CONTENTS OF ANNUAL REPORT.—

24 Each annual report required by subparagraph  
25 (A) shall include—



- 1 (i) a detailed description of the activi-  
2 ties of the public regulatory organization;
- 3 (ii) the audited financial statements of  
4 the public regulatory organization;
- 5 (iii) a detailed explanation of the fees  
6 and charges imposed by the public regu-  
7 latory organization under subsection  
8 (b)(9); and
- 9 (iv) such other matters as the public  
10 regulatory organization or the Commission  
11 deems appropriate.

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

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

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

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

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

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

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

5           (1) EFFECTIVE DATE; TRANSITION PROVISIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) ELECTRONIC DISCLOSURE OF INSIDER TRANS-  
2 ACTIONS.—

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

5 (A) that a disclosure required by section  
6 16 of the Securities Exchange Act of 1934 (15  
7 U.S.C. 78p) of the sale of any securities of an  
8 issuer, or any security futures product (as de-  
9 fined in section 3(a)(56) of the Securities Ex-  
10 change Act of 1934 (15 U.S.C. 78c(a)(56))) or  
11 any security-based swap agreement (as defined  
12 in section 206B of the Gramm-Leach-Bliley  
13 Act) that is based in whole or in part on the  
14 securities of such issuer, by an officer or direc-  
15 tor of the issuer of those securities, or by a ben-  
16 efiticial owner of such securities, shall be made  
17 available electronically to the Commission and  
18 to the issuer by such officer, director, or bene-  
19 ficial owner before the end of the next business  
20 day after the day on which the transaction oc-  
21 curs;

22 (B) that the information in such disclosure  
23 be made available electronically to the public by  
24 the Commission, to the extent permitted under  
25 applicable law, upon receipt, but in no case

1 later than the end of the next business day  
2 after the day on which the disclosure is received  
3 under subparagraph (A); and

4 (C) that, in any case in which the issuer  
5 maintains a corporate website, such information  
6 shall be made available by such issuer on that  
7 website, before the end of the next business day  
8 after the day on which the disclosure is received  
9 by the Commission under subparagraph (A).

10 (2) TRANSACTIONS INCLUDED.—The rule pre-  
11 scribed under paragraph (1) shall require the disclo-  
12 sure of the following transactions:

13 (A) Direct or indirect sales or other trans-  
14 fers of securities of the issuer (or any interest  
15 therein) to the issuer or an affiliate of the  
16 issuer.

17 (B) Loans or other extensions of credit ex-  
18 tended to an officer, director, or other person  
19 affiliated with the issuer on terms or conditions  
20 not otherwise available to the public.

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

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

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

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

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



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

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

19 (d) DEFINITIONS.—For purposes of this section, the  
20 terms “officer”, “director”, and “beneficial owner” have  
21 the meanings provided such terms in rules or regulations  
22 issued by the Securities and Exchange Commission under  
23 section 16 of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78p).

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

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

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

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

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

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

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

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

1 (c) ANALYSIS REQUIRED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17      **SEC. 8. CODES OF CONDUCT.**

18      Within 180 days after the date of enactment of this  
19      Act, the Commission shall revise its regulations concerning  
20      matters requiring prompt disclosure on Form 8K to re-  
21      quire the immediate disclosure, by means of such Form  
22      and by the Internet or other electronic means, by any  
23      issuer of any change in, or waiver of, the code of ethics  
24      of such issuer.

1 **SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**  
2 **SURES BY ISSUERS.**

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

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

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

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

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

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

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



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

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

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

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

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

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

1 nancial statement or an assertion that he or she cannot  
2 express an opinion.

3 **SEC. 11. COMMISSION AUTHORITY TO BAR PERSONS FROM**  
4 **SERVING AS OFFICERS OR DIRECTORS.**

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

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

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

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

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

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

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

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

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

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

1 **SEC. 12. DISGORGING INSIDERS PROFITS FROM TRADES**  
2 **PRIOR TO CORRECTION OF ERRONEOUS FI-**  
3 **NANCIAL STATEMENTS.**

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

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

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

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

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

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

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

16         **SEC. 13. SECURITIES AND EXCHANGE COMMISSION AU-**  
17                 **THORITY TO PROVIDE RELIEF.**

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

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

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

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

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

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

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

6 (c) ADDITION OF CIVIL PENALTIES.—If, in any pro-  
7 ceeding described in subsection (a), the Commission as-  
8 sesses and collects any civil penalty, the Commission shall,  
9 notwithstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the  
10 Securities Exchange Act of 1934, or any other provision  
11 of the securities laws, be payable to the disgorgement  
12 fund.

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

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

23 (1) DISGORGEMENT FUND.—The term  
24 “disgorgement fund” means a disgorgement fund es-

1        established in any administrative or judicial proceeding  
2        described in subsection (a).

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

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

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



1 **SEC. 14. STUDY OF RULES RELATING TO ANALYST CON-**  
2 **FLICTS OF INTEREST.**

3 (a) **STUDY AND REVIEW REQUIRED.**—The Commis-  
4 sion shall conduct a study and review of any final rules  
5 by any self-regulatory organization registered with the  
6 Commission related to matters involving equity research  
7 analysts conflicts of interest. Such study and report shall  
8 include a review of the effectiveness of such final rules  
9 in addressing matters relating to the objectivity and integ-  
10 rity of equity research analyst reports and recommenda-  
11 tions.

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

1 **SEC. 15. REVIEW OF CORPORATE GOVERNANCE PRAC-**  
2 **TICES.**

3 (a) **STUDY OF CORPORATE PRACTICES.**—The Com-  
4 mission shall conduct a study and review of current cor-  
5 porate governance standards and practices to determine  
6 whether such standards and practices are serving the best  
7 interests of shareholders. Such study and review shall in-  
8 clude an analysis of—

9 (1) whether current standards and practices  
10 promote full disclosure of relevant information to  
11 shareholders;

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

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

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

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

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

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

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

14       (b) PARTICIPATION OF STATE REGULATORS.—In  
15 conducting the study required under subsection (a), the  
16 Commission shall seek the views of the securities and cor-  
17 porate regulators of the various States.

18       (c) REPORT REQUIRED.—The Commission shall sub-  
19 mit a report on the analysis required under subsection (a)  
20 as a part of the Commission’s next annual report sub-  
21 mitted after the date of enactment of this Act.

22 **SEC. 16. STUDY OF ENFORCEMENT ACTIONS.**

23       (a) STUDY REQUIRED.—The Commission shall re-  
24 view and analyze all enforcement actions by the Commis-  
25 sion involving violations of reporting requirements im-

1 posed under the securities laws, and restatements of finan-  
2 cial statements, over the last five years to identify areas  
3 of reporting that are most susceptible to fraud, inappro-  
4 priate manipulation, or inappropriate earnings manage-  
5 ment, such as revenue recognition and the accounting  
6 treatment of off-balance sheet special purpose entities.

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

17 **SEC. 17. STUDY OF CREDIT RATING AGENCIES.**

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

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

24 (2) the importance of that role to investors and  
25 the functioning of the securities markets;

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

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

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

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

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

1 **SEC. 18. STUDY OF INVESTMENT BANKS**

2 (a) GAO STUDY.—The Comptroller General shall  
3 conduct a study on whether investment banks and finan-  
4 cial advisors in assisted public companies in manipulating  
5 their earnings and obfuscating their true financial condi-  
6 tion. The study should address the role of the investment  
7 banks—

8 (1) in the collapse of the Enron Corporation,  
9 including with respect to the design and implementa-  
10 tion of derivatives transactions, transactions involv-  
11 ing special purpose vehicles, and other financing ar-  
12 rangements that may have had the effect of altering  
13 the company's reported financial statements in ways  
14 that obscured the true financial picture of the com-  
15 pany;

16 (2) in the failure of Global Crossing, including  
17 with respect to transactions involving swaps of fiber  
18 optic cable capacity, in designing transactions that  
19 may have had the effect of altering the company's  
20 reported financial statements in ways that obscured  
21 the true financial picture of the company; and

22 (3) generally, in creating and marketing trans-  
23 actions which may have been designed solely to en-  
24 able companies to manipulate revenue streams, ob-  
25 tain loans, or move liabilities off balance sheets with-  
26 out altering the economic and business risks faced

1 by the companies or any other mechanism to obscure  
2 a company's financial picture.

3 (b) REPORT.—The General Accounting Office shall  
4 report to the Congress within 180 days after the date of  
5 enactment of this Act on the results of the study required  
6 by this section. The report shall include a discussion of  
7 regulatory or legislative steps that are recommended or  
8 that may be necessary to address concerns identified in  
9 the study.

10 **SEC. 19. STUDY OF MODEL RULES FOR ATTORNEYS OF**  
11 **ISSUERS.**

12 (a) IN GENERAL.—The Comptroller General shall  
13 conduct a study of the Model Rules of Professional Con-  
14 duct promulgated by the American Bar Association and  
15 rules of professional conduct applicable to attorneys estab-  
16 lished by the Commission to determine—

17 (1) whether such rules provide sufficient guid-  
18 ance to attorneys representing corporate clients who  
19 are issuers required to file periodic disclosures under  
20 section 13 or 15 of the Securities Exchange Act of  
21 1934 (15 U.S.C. 78m, 78o), as to the ethical re-  
22 sponsibilities of such attorneys to—

23 (A) warn clients of possible fraudulent or  
24 illegal activities of such clients and possible con-  
25 sequences of such activities;

1 (B) disclose such fraudulent or illegal ac-  
2 tivities to appropriate regulatory or law enforce-  
3 ment authorities; and

4 (C) manage potential conflicts of interests  
5 with clients; and

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

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

17 (1) possible changes to the Model Rules and the  
18 rules of professional conduct applicable to attorneys  
19 established by the Commission to provide increased  
20 protection to shareholders;

21 (2) whether restrictions should be imposed to  
22 require that an attorney, having represented a cor-  
23 poration or having been employed by a firm which  
24 represented a corporation, may not be employed as



1 general counsel to that corporation until a certain  
2 period of time has expired; and

3 (3) regulatory or legislative steps that are rec-  
4 ommended or that may be necessary to address con-  
5 cerns identified in the study.

6 **SEC. 20. ENFORCEMENT AUTHORITY.**

7 For the purposes of enforcing and carrying out this  
8 Act, the Commission shall have all of the authorities  
9 granted to the Commission under the securities laws. Ac-  
10 tions of the Commission under this Act, including actions  
11 on rules or regulations, shall be subject to review in the  
12 same manner as actions under the securities laws.

13 **SEC. 21. EXCLUSION FOR INVESTMENT COMPANIES.**

14 Sections 4, 6, 7, 8, 9, and 15 of this Act shall not  
15 apply to an investment company registered under section  
16 8 of the Investment Company Act of 1940 (15 U.S.C.  
17 80a-8).

18 **SEC. 22. DEFINITIONS.**

19 As used in this Act:

20 (1) **BLACKOUT PERIOD.**—The term “blackout  
21 period” with respect to the equity securities of any  
22 issuer—

23 (A) means any period during which the  
24 ability of at least fifty percent of the partici-  
25 pants or beneficiaries under all applicable indi-

1           vidual account plans maintained by the issuer  
2           to purchase (or otherwise acquire) or sell (or  
3           otherwise transfer) an interest in any equity of  
4           such issuer is suspended by the issuer or a fidu-  
5           ciary of the plan; but

6                   (B) does not include—

7                           (i) a period in which the employees of  
8                           an issuer may not allocate their interests  
9                           in the individual account plan due to an  
10                          express investment restriction—

11                                  (I) incorporated into the indi-  
12                                  vidual account plan; and

13                                  (II) timely disclosed to employees  
14                                  before joining the individual account  
15                                  plan or as a subsequent amendment  
16                                  to the plan; or

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

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

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

9           (4) INDIVIDUAL ACCOUNT PLAN.—The term  
10 “individual account plan” has the meaning provided  
11 such term in section 3(34) of the Employee Retirement  
12 Income Security Act of 1974 (29 U.S.C.  
13 1002(34)).

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

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

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

7           (8) SECURITIES LAWS.—The term “securities  
 8           laws” means the Securities Act of 1933 (15 U.S.C.  
 9           77a et seq.), the Securities Exchange Act of 1934  
 10          (15 U.S.C. 78a et seq.), the Trust Indenture Act of  
 11          1939 (15 U.S.C. 77aaa et seq.), the Investment  
 12          Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the  
 13          Investment Advisers Act of 1940 (15 U.S.C. 80b et  
 14          seq.), and the Securities Investor Protection Act of  
 15          1970 (15 U.S.C. 78aaa et seq.), notwithstanding  
 16          any contrary provision of any such Act.

Passed the House of Representatives April 24, 2002.

Attest:

JEFF TRANDAHL,

*Clerk.*