

Union Calendar No. 247

107TH CONGRESS
2^D SESSION

H. R. 3763

[Report No. 107-414]

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

MARCH 12, 2002

Additional sponsors: Mr. SHAYS, Mr. GRUCCI, and Mr. KING

APRIL 9, 2002

Additional sponsor: Mrs. BIGGERT

APRIL 22, 2002

Additional sponsors: Mr. PORTMAN and Mr. WELDON of Florida

APRIL 22, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 14, 2002]

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; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Cor-*
 5 *porate and Auditing Accountability, Responsibility, and*
 6 *Transparency Act of 2002”.*

7 (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.

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

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

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

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

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

21 (1)(A) *The board of such organization shall be*
22 *comprised of five members, three of whom shall be*
23 *public members who are not members of the account-*
24 *ing profession and two of whom shall be persons li-*
25 *censed to practice public accounting and who have re-*
26 *cent experience in auditing public companies.*

1 (B) *Each member of the board of such organiza-*
2 *tion shall be a person who meets such standards of fi-*
3 *nancial literacy as are determined by the Commis-*
4 *sion.*

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

10 (2) *Such organization is so organized and has*
11 *the capacity—*

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

18 (B) *to perform a review of the work product*
19 *(including the quality thereof) of an accountant*
20 *or a person associated with an accountant; and*

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

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

3 *(3) Such organization shall have the authority to*
4 *impose sanctions, which, if there is a finding of know-*
5 *ing or intentional misconduct, may include a deter-*
6 *mination that an accountant is not qualified to cer-*
7 *tify a financial statement, or any categories of finan-*
8 *cial statements, required by the securities laws, or*
9 *that a person associated with an accountant is not*
10 *qualified to participate in such certification, if, after*
11 *conducting a review and providing fair procedures*
12 *and an opportunity for a hearing, the organization*
13 *finds that—*

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

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 reg-*
22 *ulation thereunder (provided in both cases that*
23 *any applicable time period for appeal has ex-*
24 *pired);*

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

5 (D) such accountant or person associated
6 with an accountant has performed both auditing
7 services and consulting services in violation of
8 the rules prescribed by the Commission pursuant
9 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 re-
13 view.

14 (4) Any such organization shall disclose publicly,
15 and make available for public comment, proposed
16 procedures and methods for conducting such reviews.

17 (5) Any such organization shall have in place
18 procedures to minimize and deter conflicts of interest
19 involving the public members of such organization,
20 and have in place procedures to resolve such conflicts.

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

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

5 (8) *Any such organization shall consult with*
6 *boards of accountancy of the States.*

7 (9) *Any such organization shall have in place a*
8 *mechanism to allow the organization to operate on a*
9 *self-funded basis. Such funding mechanism shall en-*
10 *sure that such organization is not solely dependent*
11 *upon members of the accounting profession for such*
12 *funding and operations.*

13 (10) *Any such organization shall have the au-*
14 *thority to request, in a manner established by the*
15 *Commission, that the Commission, by subpoena or*
16 *otherwise, compel the testimony of witnesses or the*
17 *production of any books, papers, correspondence,*
18 *memoranda, or other records relevant to any account-*
19 *ant review proceeding or necessary or appropriate for*
20 *the organization to carry out its purposes. The Com-*
21 *mission shall comply with any such request from such*
22 *an organization if the Commission determines that*
23 *compliance with the request would assist the organi-*
24 *zation in its accountant review proceeding or in car-*
25 *rying out its purposes, unless the Commission deter-*

1 *mines that compliance would not be in the public in-*
2 *terest. The issuance and enforcement of a subpoena re-*
3 *quested under this paragraph shall be deemed to be*
4 *made pursuant to, and shall be made in accordance*
5 *with, the provisions of subsections (b) and (c) of sec-*
6 *tion 21 of the Securities and Exchange Act of 1934*
7 *(15 U.S.C. 78u(b)–(c)). For purposes of taking evi-*
8 *dence, the Commission in its discretion may designate*
9 *the Board, or any member thereof, as officers pursu-*
10 *ant to section 21(b) of such Act.*

11 *(c) PROHIBITION ON THE OFFER OF BOTH AUDIT AND*
12 *CONSULTING SERVICES.—*

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

23 *(A) financial information system design or*
24 *implementation; or*

25 *(B) internal audit services.*

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

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

17 (4) *REPORT.—The Commission shall report to*
18 *the Committee on Financial Services of the House of*
19 *Representatives and the Committee on Banking,*
20 *Housing, and Urban Affairs of the Senate on its con-*
21 *duct of any reviews as required by this section. The*
22 *report shall include a discussion of regulatory or leg-*
23 *islative steps that are recommended or that may be*
24 *necessary to address concerns identified in the study.*

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

8 (6) *DEADLINE FOR RULEMAKING.*—*The Commis-*
9 *sion shall—*

10 (A) *within 90 days after the date of enact-*
11 *ment of this Act, propose, and*

12 (B) *within 270 days after such date, pre-*
13 *scribe,*

14 *the revisions to its regulations required by this sub-*
15 *section.*

16 (d) *PRO ACCOUNTANT REVIEW PROCEEDINGS.*—

17 (1) *REVIEW PROCEEDING FINDINGS.*—*Any find-*
18 *ings made pursuant to an accountant review con-*
19 *ducted under this section that a financial statement*
20 *audited by such accountant and submitted to the*
21 *Commission may have been materially affected by an*
22 *impairment of auditor independence, or by a viola-*
23 *tion of professional ethics and competency standards,*
24 *shall be submitted to the Commission. The Commis-*
25 *sion shall promptly notify an issuer of any such find-*

1 *ing that relates to the financial statements of such*
2 *issuer.*

3 (2) *CONFIDENTIAL TREATMENT OF PROCEEDINGS*
4 *PENDING SEC REVIEW.—*

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

12 (B) *SPECIFIC WITHHOLDING NOT AUTHOR-*
13 *IZED.—Nothing in this subsection shall—*

14 (i) *authorize a recognized public regu-*
15 *latory organization to withhold information*
16 *from the Commission;*

17 (ii) *authorize such board or the Com-*
18 *mission to withhold information concerning*
19 *an accountant review proceeding from an*
20 *accountant or person associated with an ac-*
21 *countant that is the subject of such pro-*
22 *ceeding;*

23 (iii) *authorize the Commission to with-*
24 *hold information from Congress; or*

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

9 (C) *DURATION OF WITHHOLDING.*—Neither
10 the Commission nor the recognized public regu-
11 latory organization shall disclose the results of
12 any such finding until the completion of any re-
13 view by the Commission under subsections (e)
14 and (f), or the conclusion of the 30-day period
15 for seeking review if no motion seeking review is
16 filed within such period.

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

22 (3) *NONPRECLUSIVE EFFECT OF PRO FIND-*
23 *INGS.*—A finding by a recognized public regulatory
24 organization that an individual audit of an issuer
25 met or failed to meet any applicable standard with

1 *respect to the quality of such audit shall not be con-*
2 *strued in any action arising out of the securities laws*
3 *as indicative of compliance or noncompliance with*
4 *the securities laws or with any standard of liability*
5 *arising thereunder.*

6 *(e) REVIEW OF SANCTIONS.—*

7 *(1) NOTICE.—If any recognized public regu-*
8 *latory organization—*

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

12 *(B) prohibits or limits any person in re-*
13 *spect to access to services offered by such organi-*
14 *zation; or*

15 *(C) makes a finding with respect to or im-*
16 *poses any final disciplinary sanction on any*
17 *person associated with an accountant or bars*
18 *any person from becoming associated with an*
19 *accountant,*

20 *the recognized public regulatory organization shall*
21 *promptly submit notice thereof with the Commission.*

22 *The notice shall be in such form and contain such in-*
23 *formation as the Commission, by rule, may prescribe*
24 *as necessary or appropriate in furtherance of the pur-*
25 *poses of this section.*

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

20 (f) *CONDUCT OF COMMISSION REVIEW.*—

21 (1) *BASIS FOR ACTION.*—In any proceeding to
22 review a final disciplinary sanction imposed by a
23 recognized public regulatory organization on an ac-
24 countant or a person associated with such accountant,
25 after notice and opportunity for hearing (which hear-

1 *ing may consist solely of consideration of the record*
2 *before the recognized public regulatory organization*
3 *and opportunity for the presentation of supporting*
4 *reasons to affirm, modify, or set aside the sanction)—*

5 *(A) if the Commission finds that such ac-*
6 *countant or person associated with an account-*
7 *ant has engaged in such acts or practices, or has*
8 *omitted such acts, as the recognized public regu-*
9 *latory organization has found him to have en-*
10 *gaged in or omitted, that such acts or practices,*
11 *or omissions to act, are in violation of such pro-*
12 *visions of this section, or of professional ethics*
13 *and competency standards, and that such provi-*
14 *sions are, and were applied in a manner, con-*
15 *sistent with the purposes of this section, the*
16 *Commission, by order, shall so declare and, as*
17 *appropriate, affirm the sanction imposed by the*
18 *recognized public regulatory organization, mod-*
19 *ify the sanction in accordance with paragraph*
20 *(2) of this subsection, or remand to the recog-*
21 *nized public regulatory organization for further*
22 *proceedings; or*

23 *(B) if the Commission does not make any*
24 *such finding, it shall, by order, set aside the*
25 *sanction imposed by the recognized public regu-*

1 *latory organization and, if appropriate, remand*
2 *to the recognized public regulatory organization*
3 *for further proceedings.*

4 (2) *REDUCTION OF SANCTIONS.*—*If the Commis-*
5 *sion, having due regard for the public interest and the*
6 *protection of investors, finds after a proceeding in ac-*
7 *cordance with paragraph (1) of this subsection that a*
8 *sanction imposed by a recognized public regulatory*
9 *organization upon an accountant or person associated*
10 *with an accountant imposes any burden on competi-*
11 *tion not necessary or appropriate in furtherance of*
12 *the purposes of this Act or is excessive or oppressive,*
13 *the Commission may cancel, reduce, or require the re-*
14 *mission of such sanction.*

15 (g) *REVIEW AND APPROVAL OF RULES.*—

16 (1) *SUBMISSION, PUBLICATION, AND COMMENT.*—
17 *Each recognized public regulatory organization shall*
18 *file with the Commission, in accordance with such*
19 *rules as the Commission may prescribe, copies of any*
20 *proposed rule or any proposed change in, addition to,*
21 *or deletion from the rules of such recognized public*
22 *regulatory organization (hereinafter in this subsection*
23 *collectively referred to as a “proposed rule change”)*
24 *accompanied by a concise general statement of the*
25 *basis and purpose of such proposed rule change. The*

1 *Commission shall, upon the filing of any proposed*
2 *rule change, publish notice thereof together with the*
3 *terms of substance of the proposed rule change or a*
4 *description of the subjects and issues involved. The*
5 *Commission shall give interested persons an oppor-*
6 *tunity to submit written data, views, and arguments*
7 *concerning such proposed rule change. No proposed*
8 *rule change shall take effect unless approved by the*
9 *Commission or otherwise permitted in accordance*
10 *with the provisions of this subsection.*

11 (2) *APPROVAL OR PROCEEDINGS.—Within 35*
12 *days of the date of publication of notice of the filing*
13 *of a proposed rule change in accordance with para-*
14 *graph (1) of this subsection, or within such longer pe-*
15 *riod as the Commission may designate up to 90 days*
16 *of such date if it finds such longer period to be appro-*
17 *priate and publishes its reasons for so finding or as*
18 *to which the recognized public regulatory organiza-*
19 *tion consents, the Commission shall—*

20 (A) *by order approve such proposed rule*
21 *change; or*

22 (B) *institute proceedings to determine*
23 *whether the proposed rule change should be dis-*
24 *approved. Such proceedings shall include notice*
25 *of the grounds for disapproval under consider-*

1 *ation and opportunity for hearing and be con-*
2 *cluded within 180 days of the date of publication*
3 *of notice of the filing of the proposed rule change.*
4 *At the conclusion of such proceedings the Com-*
5 *mission, by order, shall approve or disapprove*
6 *such proposed rule change. The Commission may*
7 *extend the time for conclusion of such pro-*
8 *ceedings for up to 60 days if it finds good cause*
9 *for such extension and publishes its reasons for*
10 *so finding or for such longer period as to which*
11 *the recognized public regulatory organization*
12 *consents.*

13 *(3) BASIS FOR APPROVAL OR DISAPPROVAL.—*
14 *The Commission shall approve a proposed rule change*
15 *of a recognized public regulatory organization if it*
16 *finds that such proposed rule change is consistent*
17 *with the requirements of this Act and the rules and*
18 *regulations thereunder applicable to such organiza-*
19 *tion. The Commission shall disapprove a proposed*
20 *rule change of a recognized public regulatory organi-*
21 *zation if it does not make such finding. The Commis-*
22 *sion shall not approve any proposed rule change prior*
23 *to the 30th day after the date of publication of notice*
24 *of the filing thereof, unless the Commission finds good*

1 *cause for so doing and publishes its reasons for so*
2 *finding.*

3 (4) *RULES EFFECTIVE UPON FILING.—*

4 (A) *Notwithstanding the provisions of para-*
5 *graph (2) of this subsection, a proposed rule*
6 *change may take effect upon filing with the Com-*
7 *mission if designated by the recognized public*
8 *regulatory organization as (i) constituting a*
9 *stated policy, practice, or interpretation with re-*
10 *spect to the meaning, administration, or enforce-*
11 *ment of an existing rule of the recognized public*
12 *regulatory organization, (ii) establishing or*
13 *changing a due, fee, or other charge imposed by*
14 *the recognized public regulatory organization, or*
15 *(iii) concerned solely with the administration of*
16 *the recognized public regulatory organization or*
17 *other matters which the Commission, by rule,*
18 *consistent with the public interest and the pur-*
19 *poses of this subsection, may specify as outside*
20 *the provisions of such paragraph (2).*

21 (B) *Notwithstanding any other provision of*
22 *this subsection, a proposed rule change may be*
23 *put into effect summarily if it appears to the*
24 *Commission that such action is necessary for the*
25 *protection of investors, or otherwise in accord-*

1 *ance with the purposes of this title. Any pro-*
2 *posed rule change so put into effect shall be filed*
3 *promptly thereafter in accordance with the pro-*
4 *visions of paragraph (1) of this subsection.*

5 *(C) Any proposed rule change of a recog-*
6 *nized public regulatory organization which has*
7 *taken effect pursuant to subparagraph (A) or (B)*
8 *of this paragraph may be enforced by such orga-*
9 *nization to the extent it is not inconsistent with*
10 *the provisions of this Act, the securities laws, the*
11 *rules and regulations thereunder, and applicable*
12 *Federal and State law. At any time within 60*
13 *days of the date of filing of such a proposed rule*
14 *change in accordance with the provisions of*
15 *paragraph (1) of this subsection, the Commission*
16 *summarily may abrogate the change in the rules*
17 *of the recognized public regulatory organization*
18 *made thereby and require that the proposed rule*
19 *change be refiled in accordance with the provi-*
20 *sions of paragraph (1) of this subsection and re-*
21 *viewed in accordance with the provisions of*
22 *paragraph (2) of this subsection, if it appears to*
23 *the Commission that such action is necessary or*
24 *appropriate in the public interest, for the protec-*
25 *tion of investors, or otherwise in furtherance of*

1 *the purposes of this Act. Commission action pur-*
2 *suant to the preceding sentence shall not affect*
3 *the validity or force of the rule change during*
4 *the period it was in effect, shall not be subject*
5 *to court review, and shall not be deemed to be*
6 *“final agency action” for purposes of section 704*
7 *of title 5, United States Code.*

8 *(h) COMMISSION ACTION TO CHANGE RULES.—The*
9 *Commission, by rule, may abrogate, add to, and delete from*
10 *(hereinafter in this subsection collectively referred to as*
11 *“amend”) the rules of a recognized public regulatory orga-*
12 *nization as the Commission deems necessary or appropriate*
13 *to insure the fair administration of the recognized public*
14 *regulatory organization, to conform its rules to require-*
15 *ments of this Act, the securities laws, and the rules and*
16 *regulations thereunder applicable to such organization, or*
17 *otherwise in furtherance of the purposes of this Act, in the*
18 *following manner:*

19 *(1) The Commission shall notify the recognized*
20 *public regulatory organization and publish notice of*
21 *the proposed rulemaking in the Federal Register. The*
22 *notice shall include the text of the proposed amend-*
23 *ment to the rules of the recognized public regulatory*
24 *organization and a statement of the Commission’s*

1 reasons, including any pertinent facts, for com-
2 mencing such proposed rulemaking.

3 (2) The Commission shall give interested persons
4 an opportunity for the oral presentation of data,
5 views, and arguments, in addition to an opportunity
6 to make written submissions. A transcript shall be
7 kept of any oral presentation.

8 (3) A rule adopted pursuant to this subsection
9 shall incorporate the text of the amendment to the
10 rules of the recognized public regulatory organization
11 and a statement of the Commission's basis for and
12 purpose in so amending such rules. This statement
13 shall include an identification of any facts on which
14 the Commission considers its determination so to
15 amend the rules of the recognized public regulatory
16 agency to be based, including the reasons for the Com-
17 mission's conclusions as to any of such facts which
18 were disputed in the rulemaking.

19 (4)(A) Except as provided in paragraphs (1)
20 through (3) of this subsection, rulemaking under this
21 subsection shall be in accordance with the procedures
22 specified in section 553 of title 5, United States Code,
23 for rulemaking not on the record.

24 (B) Nothing in this subsection shall be construed
25 to impair or limit the Commission's power to make,

1 *or to modify or alter the procedures the Commission*
2 *may follow in making, rules and regulations pursu-*
3 *ant to any other authority under the securities laws.*

4 *(C) Any amendment to the rules of a recognized*
5 *public regulatory organization made by the Commis-*
6 *sion pursuant to this subsection shall be considered*
7 *for all purposes to be part of the rules of such recog-*
8 *nized public regulatory organization and shall not be*
9 *considered to be a rule of the Commission.*

10 *(i) COMMISSION OVERSIGHT OF THE PRO.—*

11 *(1) RECORDS AND EXAMINATIONS.—A public*
12 *regulatory organization shall make and keep for pre-*
13 *scribed periods such records, furnish such copies there-*
14 *of, and make and disseminate such reports as the*
15 *Commission, by rule, prescribes as necessary or ap-*
16 *propriate in the public interest, for the protection of*
17 *investors, or otherwise in furtherance of the purposes*
18 *of this Act or the securities laws.*

19 *(2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—A*
20 *public regulatory organization shall perform such*
21 *other duties or functions as the Commission, by rule*
22 *or order, determines are necessary or appropriate in*
23 *the public interest or for the protection of investors*
24 *and to carry out the purposes of this Act and the se-*
25 *curities laws, including conducting a special review of*

1 *a particular public accounting firm's quality control*
2 *system or a special review of a particular aspect of*
3 *some or all public accounting firms' quality control*
4 *systems.*

5 (3) *ANNUAL REPORT; PROPOSED BUDGET.—*

6 (A) *SUBMISSION OF ANNUAL REPORT AND*
7 *BUDGET.—A public regulatory organization*
8 *shall submit an annual report and its proposed*
9 *budget to the Commission for review and ap-*
10 *proval, by order, at such times and in such form*
11 *as the Commission shall prescribe.*

12 (B) *CONTENTS OF ANNUAL REPORT.—Each*
13 *annual report required by subparagraph (A)*
14 *shall include—*

15 (i) *a detailed description of the activi-*
16 *ties of the public regulatory organization;*

17 (ii) *the audited financial statements of*
18 *the public regulatory organization;*

19 (iii) *a detailed explanation of the fees*
20 *and charges imposed by the public regu-*
21 *latory organization under subsection (b)(9);*
22 *and*

23 (iv) *such other matters as the public*
24 *regulatory organization or the Commission*
25 *deems appropriate.*

1 (C) *TRANSMITTAL OF ANNUAL REPORT TO*
2 *CONGRESS.—The Commission shall transmit*
3 *each approved annual report received under sub-*
4 *paragraph (A) to the Committee on Financial*
5 *Services of the United States House of Represent-*
6 *atives and the Committee on Banking, Housing,*
7 *and Urban Affairs of the United States Senate.*
8 *At the same time it transmits a public regu-*
9 *latory organization’s annual report under this*
10 *subparagraph, the Commission shall include a*
11 *written statement of its views of the functioning*
12 *and operations of the public regulatory organiza-*
13 *tion.*

14 (D) *PUBLIC AVAILABILITY.—Following*
15 *transmittal of each approved annual report*
16 *under subparagraph (C), the Commission and*
17 *the public regulatory organization shall make the*
18 *approved annual report publicly available.*

19 (4) *DISAPPROVAL OF ELECTION OF PRO MEM-*
20 *BER.—The Commission is authorized, by order, if in*
21 *its opinion such action is necessary or appropriate in*
22 *the public interest, for the protection of investors, or*
23 *otherwise in furtherance of the purposes of this Act or*
24 *the securities laws, to disapprove the election of any*
25 *member of a public regulatory organization if the*

1 *Commission determines, after notice and opportunity*
2 *for hearing, that the person elected is unfit to serve*
3 *on the public regulatory organization.*

4 *(j) CLARIFICATION OF APPLICATION OF PRO AUTHOR-*
5 *ITY.—The authority granted to any such organization in*
6 *this section shall only apply to the actions of accountants*
7 *related to the certification of financial statements required*
8 *by securities laws and not other actions or actions for other*
9 *clients of the accounting firm or any accountant that does*
10 *not certify financial statements for publicly traded compa-*
11 *nies.*

12 *(k) DEADLINE FOR RULEMAKING.—The Commission*
13 *shall—*

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

16 *(2) within 270 days after such date, prescribe,*
17 *rules to implement this section.*

18 *(l) EFFECTIVE DATE; TRANSITION PROVISIONS.—*

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

1 (2) *DELAY IN ESTABLISHMENT OF BOARD.*—If
2 the Commission has failed to recognize any public
3 regulatory organization pursuant to this section with-
4 in one year after the date of enactment of this Act,
5 the Commission shall perform the duties of such orga-
6 nization with respect to any certified financial state-
7 ment for any fiscal year that ends before one year
8 after any such board is recognized by the Commis-
9 sion.

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

11 (a) *RULES TO PROHIBIT.*—It shall be unlawful in
12 contravention of such rules or regulations as the Commis-
13 sion shall prescribe as necessary and appropriate in the
14 public interest or for the protection of investors for any offi-
15 cer, director, or affiliated person of an issuer of any security
16 registered under section 12 of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78l) to take any action to fraudulently
18 influence, coerce, manipulate, or mislead any independent
19 public or certified accountant engaged in the performance
20 of an audit of the financial statements of such issuer for
21 the purpose of rendering such financial statements materi-
22 ally misleading. In any civil proceeding, the Commission
23 shall have exclusive authority to enforce this section and
24 any rule or regulation hereunder.

1 (B) establish requirements regarding the ra-
2 pidity and timeliness of such disclosure;

3 (C) identify the means whereby the disclo-
4 sure required shall be made, which shall ensure
5 the broad, rapid, and accurate dissemination of
6 the information to the public via electronic or
7 other communications device;

8 (D) identify the content of the information
9 to be disclosed; and

10 (E) without limiting the Commission's gen-
11 eral exemptive authority, specify any exemptions
12 or exceptions from such requirements.

13 (2) *ENFORCEMENT.*—The Commission shall have
14 exclusive authority to enforce this section and any
15 rule or regulation hereunder in civil proceedings.

16 (b) *ELECTRONIC DISCLOSURE OF INSIDER TRANS-*
17 *ACTIONS.*—

18 (1) *DISCLOSURES OF TRADING.*—The Commis-
19 sion shall, by rule, require—

20 (A) that a disclosure required by section 16
21 of the Securities Exchange Act of 1934 (15
22 U.S.C. 78p) of the sale of any securities of an
23 issuer, or any security futures product (as de-
24 fined in section 3(a)(56) of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78c(a)(56))) or

1 *any security-based swap agreement (as defined*
2 *in section 206B of the Gramm-Leach-Bliley Act)*
3 *that is based in whole or in part on the securi-*
4 *ties of such issuer, by an officer or director of the*
5 *issuer of those securities, or by a beneficial owner*
6 *of such securities, shall be made available elec-*
7 *tronically to the Commission and to the issuer*
8 *by such officer, director, or beneficial owner be-*
9 *fore the end of the next business day after the*
10 *day on which the transaction occurs;*

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

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

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

4 (A) *Direct or indirect sales or other trans-*
5 fers of securities of the issuer (or any interest
6 therein) to the issuer or an affiliate of the issuer.

7 (B) *Loans or other extensions of credit ex-*
8 tended to an officer, director, or other person af-
9 filiated with the issuer on terms or conditions
10 not otherwise available to the public.

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

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

22 (a) *PROHIBITION.*—It shall be unlawful for any person
23 who is directly or indirectly the beneficial owner of more
24 than 10 percent of any class of any equity security (other
25 than an exempted security) which is registered under sec-

1 *tion 12 of the Securities Exchange Act of 1934 (15 U.S.C.*
2 *78l) or who is a director or an officer of the issuer of such*
3 *security, directly or indirectly, to purchase (or otherwise*
4 *acquire) or sell (or otherwise transfer) any equity security*
5 *of any issuer (other than an exempted security), during any*
6 *blackout period with respect to such 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 sec-*
10 *tion shall inure to and be recoverable by the issuer irrespec-*
11 *tive of any intention on the part of such beneficial owner,*
12 *director, or officer in entering into the transaction. Suit*
13 *to recover such profit may be instituted at law or in equity*
14 *in any court of competent jurisdiction by the issuer, or by*
15 *the owner of any security of the issuer in the name and*
16 *in behalf of the issuer if the issuer shall fail or refuse to*
17 *bring such suit within 60 days after request or shall fail*
18 *diligently to prosecute the same thereafter; but no such suit*
19 *shall be brought more than 2 years after the date such profit*
20 *was realized. This subsection shall not be construed to cover*
21 *any transaction where such beneficial owner was not such*
22 *both at the time of the purchase and sale, or the sale and*
23 *purchase, of the security or security-based swap (as defined*
24 *in section 206B of the Gramm-Leach-Bliley Act) involved,*
25 *or any transaction or transactions which the Commission*

1 *by rules and regulations may exempt as not comprehended*
2 *within the purposes of this subsection.*

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

7 (d) *DEFINITION.*—*For purposes of this section, the*
8 *term “beneficial owner” has the meaning provided such*
9 *term in rules or regulations issued by the Securities and*
10 *Exchange Commission under section 16 of the Securities*
11 *Exchange Act of 1934 (15 U.S.C. 78p).*

12 **SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DIS-**
13 **CLOSURES.**

14 (a) *MODIFICATION OF REGULATIONS REQUIRED.*—*The*
15 *Commission shall revise its regulations under the securities*
16 *laws pertaining to the disclosures required in periodic fi-*
17 *nancial reports and registration statements to require such*
18 *reports to include adequate and appropriate disclosure of—*

19 (1) *the issuer’s off-balance sheet transactions and*
20 *relationships with unconsolidated entities or other*
21 *persons, to the extent they are not disclosed in the fi-*
22 *nancial statements and are reasonably likely to mate-*
23 *rially affect the liquidity or the availability of, or re-*
24 *quirements for, capital resources, or the financial con-*
25 *dition or results of operations of the issuer; and*

1 (2) *loans extended to officers, directors, or other*
2 *persons affiliated with the issuer on terms or condi-*
3 *tions that are not otherwise available to the public.*

4 **(b) DEADLINE FOR RULEMAKING.**—*The Commission*
5 *shall—*

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

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

10 **(c) ANALYSIS REQUIRED.**—

11 (1) **TRANSPARENCY, COMPLETENESS, AND USE-**
12 **FULNESS OF FINANCIAL STATEMENTS.**—*The Commis-*
13 *sion shall conduct an analysis of the extent to which,*
14 *consistent with the protection of investors and the*
15 *public interest, disclosure of additional or reorganized*
16 *information may be required to improve the trans-*
17 *parency, completeness, or usefulness of financial state-*
18 *ments and other corporate disclosures filed under the*
19 *securities laws.*

20 (2) **ALTERNATIVES TO BE CONSIDERED.**—*In con-*
21 *ducting the analysis required by paragraph (1), the*
22 *Commission shall consider—*

23 (A) *requiring the identification of the key*
24 *accounting principles that are most important to*
25 *the issuer's reported financial condition and re-*

1 *sults of operation, and that require manage-*
2 *ment's most difficult, subjective, or complex judg-*
3 *ments;*

4 *(B) requiring an explanation, where mate-*
5 *rial, of how different available accounting prin-*
6 *ciples applied, the judgments made in their ap-*
7 *plication, and the likelihood of materially dif-*
8 *ferent reported results if different assumptions or*
9 *conditions were to prevail;*

10 *(C) in the case of any issuer engaged in the*
11 *business of trading non-exchange traded con-*
12 *tracts, requiring an explanation of such trading*
13 *activities when such activities require the issuer*
14 *to account for contracts at fair value, but for*
15 *which a lack of market price quotations neces-*
16 *sitates the use of fair value estimation tech-*
17 *niques;*

18 *(D) establishing requirements relating to the*
19 *presentation of information in clear and under-*
20 *standable format and language; and*

21 *(E) requiring such other disclosures, in-*
22 *cluded in the financial statements or in other*
23 *disclosure by the issuer, as would in the Commis-*
24 *sion's view improve the transparency of such*

1 (A) between the issuer, affiliates of the
2 issuer, and officers, directors, or employees of the
3 issuer or such affiliates; and

4 (B) between officers, directors, employees, or
5 affiliates of the issuer and entities that are not
6 otherwise affiliated with the issuer,

7 to the extent such arrangement or transaction creates
8 a conflict of interest for such persons. Such disclosure
9 shall provide a description of such elements of the
10 transaction as are necessary for an understanding of
11 the business purpose and economic substance of such
12 transaction (including contingencies). The disclosure
13 shall provide sufficient information to determine the
14 effect on the issuer's financial statements and describe
15 compensation arrangements of interested parties to
16 such transactions.

17 (2) *RELATIONSHIPS WITH PHILANTHROPIC OR-*
18 *GANIZATIONS.—Relationships between the registrant*
19 *or any executive officer of the registrant and any not-*
20 *for-profit organization on whose board a director or*
21 *immediate family member serves or of which a direc-*
22 *tor or immediate family member serves as an officer*
23 *or in a similar capacity. Relationships that shall be*
24 *disclosed include contributions to the organization in*
25 *excess of \$10,000 made by the registrant or any exec-*

1 *utive officer in the last five years and any other ac-*
2 *tivity undertaken by the registrant or any executive*
3 *officer that provides a material benefit to the organi-*
4 *zation. Material benefit includes lobbying.*

5 (3) *INSIDER-CONTROLLED AFFILIATES.—Rela-*
6 *tionships in which the registrant or any executive of-*
7 *ficer exercises significant control over an entity in*
8 *which a director or immediate family member owns*
9 *an equity interest or to which a director or imme-*
10 *di-ate family member has extended credit. Significant*
11 *control should be defined with reference to the con-*
12 *tractual and governance arrangements between the*
13 *registrant or executive officer, as the case may be, and*
14 *the entity.*

15 (4) *JOINT OWNERSHIP.—Joint ownership by a*
16 *registrant or executive officer and a director or imme-*
17 *di-ate family member of any real or personal prop-*
18 *erty.*

19 (5) *PROVISION OF SERVICES BY RELATED PER-*
20 *SONS.—The provision of any professional services, in-*
21 *cluding legal, financial advisory or medical services,*
22 *by a director or immediate family member to any ex-*
23 *ecutive officer of the registrant in the last five years.*

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

4 **SEC. 8. CODES OF CONDUCT.**

5 **(a) RULES REQUIRED.**—*Within 180 days after the*
6 *date of enactment of this Act, the New York Stock Exchange,*
7 *the American Stock Exchange and the Nasdaq Stock Market*
8 *(or any successor to such entities), shall file with the Com-*
9 *mission proposed rule changes that would prohibit the list-*
10 *ing of any security issued by an issuer that has not adopted*
11 *a senior financial officers code of ethics applicable to its*
12 *principal financial officer, its comptroller or principal ac-*
13 *counting officer, or persons performing similar functions*
14 *that establishes such standards as are reasonably necessary*
15 *to promote honest and ethical conduct, the avoidance of con-*
16 *flicts of interest, full, fair, accurate, timely and understand-*
17 *able disclosure in the issuer's periodic reports and compli-*
18 *ance with applicable governmental rules and regulations.*
19 *The Commission shall approve such proposed rule changes*
20 *pursuant to the requirement of section 19(b)(2) of the Secu-*
21 *rities Act of 1934.*

22 **(b) OTHER EXCHANGES.**—*The Commission, by rule or*
23 *regulation, may require any other national securities ex-*
24 *change, to propose rule changes necessary to comply with*
25 *the provisions of subsection (a) of this section if the Com-*

1 mission determines such action is necessary or appropriate
2 in the public interest and consistent with the protection of
3 investors.

4 (c) *FURTHER STANDARDS.*—In addition to the re-
5 quirements of subsections (a) and (b), the Commission may,
6 by rule or regulation, prescribe further standards of conduct
7 for senior financial officers as necessary or appropriate in
8 the public interest and consistent with the protection of in-
9 vestors.

10 (d) *CHANGES IN CODES OF CONDUCT.*—Within 180
11 days after the date of enactment of this Act, the Commission
12 shall revise its regulations concerning matters requiring
13 prompt disclosure on Form 8K to require the immediate
14 disclosure, by means of such Form and by the Internet or
15 other electronic means, by any issuer of any change in, or
16 waiver of, the code of ethics of such issuer.

17 **SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLOSURES**
18 **BY ISSUERS.**

19 (a) *REGULAR AND SYSTEMATIC REVIEW.*—The Securi-
20 ties and Exchange Commission shall review disclosures
21 made by issuers pursuant to the Securities Exchange Act
22 of 1934 (including reports filed on form 10-K) on a basis
23 that is more regular and systematic than that in practice
24 on the date of enactment on this Act. Such review shall in-
25 clude a review of an issuer's financial statements.

1 **(b) RISK RATING SYSTEM.**—For purposes of the re-
2 views required by subsection (a), the Commission shall es-
3 tablish a risk rating system whereby issuers receive a risk
4 rating by the Commission, which shall be used to determine
5 the frequency of such reviews. In designing such a risk rat-
6 ing system the Commission shall consider, among other fac-
7 tors the following:

8 (1) Emerging companies with disparities in
9 price to earning ratios.

10 (2) Issuers with the largest market capitaliza-
11 tion.

12 (3) Issuers whose operations significantly impact
13 any material sector of the economy.

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

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

18 (6) Any other factor the Commission may con-
19 sider relevant.

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

23 **(d) PROHIBITION OF DISCLOSURE OF RISK RATING.**—
24 Notwithstanding any other provision of law, the Commis-

1 sion shall not disclose the risk rating of any issuer described
2 in subsection (b).

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

4 (a) *DUTY TO RETAIN RECORDS.*—Any independent
5 public or certified accountant who certifies a financial
6 statement as required by the securities laws or any rule or
7 regulation thereunder shall prepare and maintain for a pe-
8 riod of no less than 7 years, final audit work papers and
9 other information related to any accountants report on such
10 financial statements in sufficient detail to support the opin-
11 ion or assertion reached in such accountants report. The
12 Commission may prescribe rules specifying the application
13 and requirements of this section.

14 (b) *ACCOUNTANT’S REPORT.*—For purposes of sub-
15 section (a), the term “accountant’s report” means a docu-
16 ment in which an accountant identifies a financial state-
17 ment and sets forth his opinion regarding such financial
18 statement or an assertion that an opinion cannot be ex-
19 pressed.

20 **SEC. 11. COMMISSION AUTHORITY TO BAR PERSONS FROM**
21 **SERVING AS OFFICERS OR DIRECTORS.**

22 (a) *COMMISSION AUTHORITY TO PROHIBIT PERSONS*
23 *FROM SERVING AS OFFICERS OR DIRECTORS.*—Notwith-
24 standing any other provision of the securities laws, in any
25 cease-and-desist proceeding under section 8A(a) of the Secu-

1 *rities Act of 1933 or section 21C(a) of the Securities and*
2 *Exchange Act of 1934, the Commission may issue an order*
3 *to prohibit, conditionally or unconditionally, permanently*
4 *or for such period of time as it shall determine, any person*
5 *who has violated section 17(a)(1) of the Securities Act of*
6 *1933 or section 10(b) of the Securities Exchange Act of 1934*
7 *(or any rule or regulation thereunder) from acting as an*
8 *officer or director of any issuer that has a class of securities*
9 *registered pursuant to section 12 of the Securities Exchange*
10 *Act of 1934 or that is required to file reports pursuant to*
11 *section 15(d) of such Act if the person's conduct dem-*
12 *onstrates substantial unfitness to serve as an officer or di-*
13 *rector of any such issuer.*

14 *(b) FINDING OF SUBSTANTIAL UNFITNESS.—In mak-*
15 *ing any determination that a person's conduct demonstrates*
16 *substantial unfitness to serve as an officer or director of*
17 *any such issuer, the Commission shall consider—*

18 *(1) the severity of the persons conduct giving rise*
19 *to the violation, and the persons role or position when*
20 *he engaged in the violation;*

21 *(2) the person's degree of scienter;*

22 *(3) the person's economic gain as a result of the*
23 *violation; and*

24 *(4) the likelihood that the conduct giving rise to*
25 *the violation, or similar conduct as defined in sub-*

1 section (a), may recur if the person is not so prohib-
2 ited.

3 (c) *AUTOMATIC STAY PENDING APPEAL.*—The enforce-
4 ment of any Commission order pursuant to subsection (a)
5 shall be stayed—

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

8 (2) upon the filing of a timely application for
9 judicial review of such order or decision, pending the
10 entry of a final order resolving the application for ju-
11 dicial review.

12 **SEC. 12. DISGORGING INSIDERS PROFITS FROM TRADES**
13 **PRIOR TO CORRECTION OF ERRONEOUS FI-**
14 **NANCIAL STATEMENTS.**

15 (a) *ANALYSIS REQUIRED.*—The Commission shall con-
16 duct an analysis of whether, and under what conditions,
17 any officer or director of an issuer should be required to
18 disgorge profits gained, or losses avoided, in the sale of the
19 securities of such issuer during the six month period imme-
20 diately preceding the filing of a restated financial statement
21 on the part of such issuer.

22 (b) *DISGORGEMENT RULES AUTHORIZED.*—If the
23 Commission determines that imposing the requirement de-
24 scribed in subsection (a) is necessary or appropriate in the
25 public interest or for the protection investors, and would

1 *not unduly impair the operations of issuers or the orderly*
2 *operation of the securities markets, the Commission shall*
3 *prescribe a rule requiring the disgorgement of all profits*
4 *gained or losses avoided in the sale of the securities of the*
5 *issuer by any officer or director thereof. Such rule shall—*

6 (1) *describe the conditions under which any offi-*
7 *cer or director shall be required to disgorge profits,*
8 *including what constitutes a restatement for purposes*
9 *of operation of the rule;*

10 (2) *establish exceptions and exemptions from*
11 *such rule as necessary to carry out the purposes of*
12 *this section;*

13 (3) *identify the scienter requirement that should*
14 *be used in order to determine to impose the require-*
15 *ment to disgorge; and*

16 (4) *specify that the enforcement of such rule shall*
17 *lie solely with the Commission, and that any profits*
18 *so disgorged shall inure to the issuer.*

19 (c) *NO PREEMPTION OF OTHER LAW.—Unless other-*
20 *wise specified by the Commission, in the case of any rule*
21 *promulgated pursuant to subsection (b), such rule shall be*
22 *in addition to, and shall not supersede or preempt, the*
23 *Commission’s authority to seek disgorgement under any*
24 *other provision of law.*

1 **SEC. 13. SECURITIES AND EXCHANGE COMMISSION AU-**
2 **THORITY TO PROVIDE RELIEF.**

3 (a) *PROCEEDS OF ENRON AND ANDERSEN ENFORCE-*
4 *MENT ACTIONS.*—*If in any administrative or judicial pro-*
5 *ceeding brought by the Securities and Exchange Commis-*
6 *sion against—*

7 (1) *the Enron Corporation, any subsidiary or af-*
8 *iliate of such Corporation, or any officer, director, or*
9 *principal shareholder of such Corporation, subsidiary,*
10 *or affiliate for any violation of the securities laws; or*

11 (2) *Arthur Andersen L.L.C., any subsidiary or*
12 *affiliate of Arthur Andersen L.L.C., or any general or*
13 *limited partner of Arthur Andersen L.L.C., or such*
14 *subsidiary or affiliate, for any violation of the securi-*
15 *ties laws with respect to any services performed for or*
16 *in relation to the Enron Corporation, any subsidiary*
17 *or affiliate of such Corporation, or any officer, direc-*
18 *tor, or principal shareholder of such Corporation, sub-*
19 *subsidiary, or affiliate;*

20 *the Commission obtains an order providing for an account-*
21 *ing and disgorgement of funds, such disgorgement fund (in-*
22 *cluding any addition to such fund required or permitted*
23 *under this section) shall be allocated in accordance with the*
24 *requirements of this section.*

25 (b) *PRIORITY FOR FORMER ENRON EMPLOYEES.*—*The*
26 *Commission shall, by order, establish an allocation system*

1 *for the disgorgement fund. Such system shall provide that,*
2 *in allocating the disgorgement fund amount the victims of*
3 *the securities laws violations described in subsection (a), the*
4 *first priority shall be given to individuals who were em-*
5 *ployed by the Enron Corporation, or a subsidiary or affil-*
6 *iate of such Corporation, and who were participants in an*
7 *individual account plan established by such Corporation,*
8 *subsidiary, or affiliate. Such allocations among such indi-*
9 *viduals shall be in proportion to the extent to which the*
10 *nonforfeitable accrued benefit of each such individual under*
11 *the plan was invested in the securities of such Corporation,*
12 *subsidiary, or affiliate.*

13 *(c) ADDITION OF CIVIL PENALTIES.—If, in any pro-*
14 *ceeding described in subsection (a), the Commission assesses*
15 *and collects any civil penalty, the Commission shall, not-*
16 *withstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the Se-*
17 *curities Exchange Act of 1934, or any other provision of*
18 *the securities laws, be payable to the disgorgement fund.*

19 *(d) ACCEPTANCE OF ADDITIONAL DONATIONS.—The*
20 *Commission is authorized to accept, hold, administer, and*
21 *utilize gifts, bequests and devises of property, both real and*
22 *personal, to the United States for the disgorgement fund.*
23 *Gifts, bequests, and devises of money and proceeds from*
24 *sales of other property received as gifts, bequests, or devises*

1 *shall be deposited in the disgorgement fund and shall be*
2 *available for allocation in accordance with subsection (b).*

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

4 *(1) DISGORGEMENT FUND.—The term*
5 *“disgorgement fund” means a disgorgement fund es-*
6 *tablished in any administrative or judicial pro-*
7 *ceeding described in subsection (a).*

8 *(2) SUBSIDIARY OR AFFILIATE.—The term “sub-*
9 *subsidiary or affiliate” when used in relation to a person*
10 *means any entity that controls, is controlled by, or is*
11 *under common control with such person.*

12 *(3) OFFICER, DIRECTOR, OR PRINCIPAL SHARE-*
13 *HOLDER.—The term “officer, director, or principal*
14 *shareholder” when used in relation to the Enron Cor-*
15 *poration, or any subsidiary or affiliate of such Cor-*
16 *poration, means any person that is subject to the re-*
17 *quirements of section 16 of the Securities Exchange*
18 *Act of 1934 (15 U.S.C. 78p) in relation to the Enron*
19 *Corporation, or any subsidiary or affiliate of such*
20 *Corporation.*

21 *(4) NONFORFEITABLE; ACCRUED BENEFIT; INDI-*
22 *VIDUAL ACCOUNT PLAN.—The terms “nonforfeitable”,*
23 *“accrued benefit”, and “individual account plan”*
24 *have the meanings provided such terms, respectively,*
25 *in paragraphs (19), (23), and (34) of section 3 of the*

1 **SEC. 15. REVIEW OF CORPORATE GOVERNANCE PRACTICES.**

2 (a) *STUDY OF CORPORATE PRACTICES.*—*The Commis-*
3 *sion shall conduct a study and review of current corporate*
4 *governance standards and practices to determine whether*
5 *such standards and practices are serving the best interests*
6 *of shareholders. Such study and review shall include an*
7 *analysis of—*

8 (1) *whether current standards and practices pro-*
9 *mote full disclosure of relevant information to share-*
10 *holders;*

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

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

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

24 (5) *whether rules, standards, and practices relat-*
25 *ing to determining whether independent directors are*
26 *in fact independent are adequate;*

1 (6) *whether rules, standards, and practices relat-*
2 *ing to the independence of directors serving on audit*
3 *committees are uniformly applied and adequate to*
4 *protect investor interests;*

5 (7) *whether the duties and responsibilities of*
6 *audit committees should be established by the Com-*
7 *mission; and*

8 (8) *what further or additional practices or*
9 *standards might best protect investors and promote*
10 *the interests of shareholders.*

11 (b) *PARTICIPATION OF STATE REGULATORS.*—*In con-*
12 *ducting the study required under subsection (a), the Com-*
13 *mission shall seek the views of the securities and corporate*
14 *regulators of the various States.*

15 (c) *REPORT REQUIRED.*—*The Commission shall sub-*
16 *mit a report on the analysis required under subsection (a)*
17 *as a part of the Commission’s next annual report submitted*
18 *after the date of enactment of this Act.*

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

20 (a) *STUDY REQUIRED.*—*The Commission shall review*
21 *and analyze all enforcement actions by the Commission in-*
22 *volving violations of reporting requirements imposed under*
23 *the securities laws, and restatements of financial state-*
24 *ments, over the last five years to identify areas of reporting*
25 *that are most susceptible to fraud, inappropriate manipula-*

1 *tion, or inappropriate earnings management, such as rev-*
2 *enue recognition and the accounting treatment of off-bal-*
3 *ance sheet special purpose entities.*

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

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

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

18 **(1)** *the role of the credit rating agencies in the*
19 *evaluation of issuers of securities;*

20 **(2)** *the importance of that role to investors and*
21 *the functioning of the securities markets;*

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

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

5 (5) *any barriers to entry into the business of act-*
6 *ing as a credit rating agency, and any measures*
7 *needed to remove such barriers; and*

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

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

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

22 (a) *GAO STUDY.—The Comptroller General shall con-*
23 *duct a study on the role played by investment banks and*
24 *financial advisors in assisting public companies in manip-*
25 *ulating their earnings and obfuscating their true financial*

1 *condition. The study should address the role of the invest-*
2 *ment banks—*

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

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

17 *(3) generally, in creating and marketing trans-*
18 *actions designed solely to enable companies to manip-*
19 *ulate revenue streams, obtain loans, or move liabil-*
20 *ities off balance sheets without altering the economic*
21 *and business risks faced by the companies or any*
22 *other mechanism to obscure a company's financial*
23 *picture.*

24 *(b) REPORT.—The General Accounting Office shall re-*
25 *port to the Congress within 180 days after the date of enact-*

1 *ment of this Act on the results of the study required by this*
2 *section. The report shall include a discussion of regulatory*
3 *or legislative steps that are recommended or that may be*
4 *necessary to address concerns identified in the study.*

5 **SEC. 19. STUDY OF MODEL RULES FOR ATTORNEYS OF**
6 **ISSUERS.**

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

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

18 *(A) warn clients of possible fraudulent or il-*
19 *legal activities of such clients and possible con-*
20 *sequences of such activities;*

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

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

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

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

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

16 (2) *whether restrictions should be imposed to re-*
17 *quire that an attorney, having represented a corpora-*
18 *tion or having been employed by a firm which rep-*
19 *resented a corporation, may not be employed as gen-*
20 *eral counsel to that corporation until a certain period*
21 *of time has expired; and*

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

1 **SEC. 20. ENFORCEMENT AUTHORITY.**

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

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

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

12 **SEC. 22. DEFINITIONS.**

13 *As used in this Act:*

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

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

25 (B) *does not include—*

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

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

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

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

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

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

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

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

11 (6) *PERSON ASSOCIATED WITH AN ACCOUNT-*
12 *ANT.*—*The term “person associated with an account-*
13 *ant” means any partner, officer, director, or manager*
14 *of such accountant (or any person occupying a simi-*
15 *lar status or performing similar functions), any per-*
16 *son directly or indirectly controlling, controlled by, or*
17 *under common control with such accountant, or any*
18 *employee of such accountant who performs a super-*
19 *visory role in the auditing process.*

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

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

Union Calendar No. 247

107TH CONGRESS
2^D SESSION

H. R. 3763

[Report No. 107-414]

A BILL

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

APRIL 22, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed