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107th Congress
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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. Berreuter, 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
A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(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.
SEC. 2. AUDITOR OVERSIGHT.

(a) CERTIFIED FINANCIAL STATEMENT REQUIREMENTS.—If a financial statement is required by the securities laws or any rule or regulation thereunder to be certified by an independent public or certified accountant, an accountant shall not be considered to be qualified to certify such financial statement, and the Securities and Exchange Commission shall not accept a financial statement certified by an accountant, unless such accountant—

(1) is subject to a system of review by a public regulatory organization that complies with the requirements of this section and the rules prescribed by the Commission under this section; and

(2) has not been determined in the most recent review completed under such system to be not qualified to certify such a statement.

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

(1)(A) The board of such organization shall be comprised of five members, three of whom shall be public members who are not members of the accounting profession and two of whom shall be persons licensed to practice public accounting and who have recent experience in auditing public companies.
(B) Each member of the board of such organization shall be a person who meets such standards of financial literacy as are determined by the Commission.

(C) For purposes of this paragraph, a person shall not be considered a member of the accounting profession if such person has not worked in such profession for any of the last two years prior to the date of such person’s appointment to the board.

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

(A) to be able to carry out the purposes of this section and to comply, and to enforce compliance by accountants and persons associated with accountants, with the provisions of this Act, professional ethics and competency standards, and the rules of the organization;

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

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

(3) Such organization shall have the authority to impose sanctions, which, if there is a finding of knowing or intentional misconduct, may include a determination that an accountant is not qualified to certify a financial statement, or any categories of financial statements, required by the securities laws, or that a person associated with an accountant is not qualified to participate in such certification, if, after conducting a review and providing fair procedures and an opportunity for a hearing, the organization finds that—

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

(B) such accountant or person associated with an accountant has been found by the Commission or a court of competent jurisdiction to have violated the securities laws or a rule or regulation thereunder (provided in both cases that any applicable time period for appeal has expired);
(C) an audit conducted by such accountant or any person associated with an accountant has been materially affected by an impairment of auditor independence;

(D) such accountant or person associated with an accountant has performed both auditing services and consulting services in violation of the rules prescribed by the Commission pursuant to subsection (c); or

(E) such accountant or any person associated with an accountant has impeded, obstructed, or otherwise not cooperated in such review.

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

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

(6) Any such organization shall have in place procedures for notifying the boards of accountancy of the States of the results of reviews and evidence under paragraphs (2) and (3).
(7) Any such organization shall have in place procedures for notifying the Commission of any findings of such reviews, including any findings regarding suspected violations of the securities laws.

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

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

(10) Any such organization shall have the authority to request, in a manner established by the Commission, that the Commission, by subpoena or otherwise, compel the testimony of witnesses or the production of any books, papers, correspondence, memoranda, or other records relevant to any accountant review proceeding or necessary or appropriate for the organization to carry out its purposes. The Commission shall comply with any such request from such an organization if the Commission determines that compliance with the request would assist the organization in its accountant review proceeding or in carrying out its purposes, unless the Commission deter-
mines that compliance would not be in the public in-
terest. The issuance and enforcement of a subpoena re-
quested under this paragraph shall be deemed to be
made pursuant to, and shall be made in accordance
with, the provisions of subsections (b) and (c) of sec-
tion 21 of the Securities and Exchange Act of 1934
(15 U.S.C. 78u(b)–(c)). For purposes of taking evi-
dence, the Commission in its discretion may designate
the Board, or any member thereof, as officers pursu-
ant to section 21(b) of such Act.

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

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

(A) financial information system design or
implementation; or

(B) internal audit services.
(2) Review of prohibited nonaudit services.—The Commission is authorized to review the impact on the independence of auditors of the scope of services provided by auditors to issuers in order to determine whether the list of prohibited nonaudit services under paragraph (1) shall be modified. In conducting such review, the Commission shall consider the impact of the provision of a service on an auditor’s independence where provision of the service creates a conflict of interest with the audit client.

(3) Additions by rule.—After conducting the review required by paragraph (2) and at any other time, the Commission may, by rule consistent with the protection of investors and the public interest, modify the list of prohibited nonaudit services under paragraph (1).

(4) Report.—The Commission shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its conduct of any reviews as required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.
(5) CONFORMING REVISION.—The Commission shall revise its regulations pertaining to accountant fee disclosure items, as set forth in paragraphs (e)(1) through (e)(3) of item 9 from Schedule 14A (17 CFR 240.14a–101), in light of paragraph (1) of this subsection and after making a determination as to whether such disclosures are necessary.

(6) DEADLINE FOR RULEMAKING.—The Commission shall—

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

(B) within 270 days after such date, prescribe,

the revisions to its regulations required by this subsection.

(d) PRO ACCOUNTANT REVIEW PROCEEDINGS.—

(1) REVIEW PROCEEDING FINDINGS.—Any findings made pursuant to an accountant review conducted under this section that a financial statement audited by such accountant and submitted to the Commission may have been materially affected by an impairment of auditor independence, or by a violation of professional ethics and competency standards, shall be submitted to the Commission. The Commission shall promptly notify an issuer of any such find-
ing that relates to the financial statements of such
issuer.

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

(A) No disclosure.—Except as otherwise
provided in this section, but notwithstanding
any other provision of law, neither the Commis-
sion, a recognized public regulatory organiza-
tion, nor any other person shall disclose any in-
formation concerning any accountant review
proceeding and the findings therein.

(B) Specific withholding not authorized.—Nothing in this subsection shall—

(i) authorize a recognized public regu-
laratory organization to withhold information
from the Commission;

(ii) authorize such board or the Com-
mmission to withhold information concerning
an accountant review proceeding from an
accountant or person associated with an ac-
countant that is the subject of such pro-
ceeding;

(iii) authorize the Commission to with-
hold information from Congress; or
(iv) prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(C) DURATION OF WITHHOLDING.—Neither the Commission nor the recognized public regulatory organization shall disclose the results of any such finding until the completion of any review by the Commission under subsections (e) and (f), or the conclusion of the 30-day period for seeking review if no motion seeking review is filed within such period.

(D) TREATMENT UNDER FOIA.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) NONPRECLUSIVE EFFECT OF PRO FINDINGS.—A finding by a recognized public regulatory organization that an individual audit of an issuer met or failed to meet any applicable standard with
respect to the quality of such audit shall not be con-
strued in any action arising out of the securities laws
as indicative of compliance or noncompliance with
the securities laws or with any standard of liability
arising thereunder.

(e) REVIEW OF SANCTIONS.—

(1) NOTICE.—If any recognized public regu-
laratory organization—

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

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

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

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

The notice shall be in such form and contain such in-
formation as the Commission, by rule, may prescribe
as necessary or appropriate in furtherance of the pur-
poses of this section.
(2) REVIEW BY COMMISSION.—Any action with respect to which a recognized public regulatory organ-
ization is required by paragraph (1) of this sub-
section to submit notice shall be subject to review by
the Commission, on its own motion, or upon applica-
tion by any person aggrieved thereby filed within 30
days after the date such notice was filed with the
Commission and received by such aggrieved person, or
within such longer period as the Commission may de-
determine. Application to the Commission for review, or
the institution of review by the Commission on its
own motion, shall not operate as a stay of such action
unless the Commission otherwise orders, summarily
or after notice and opportunity for hearing on the
question of a stay (which hearing may consist solely
of the submission of affidavits or presentation of oral
arguments). The Commission shall establish for ap-
propriate cases an expedited procedure for consider-
ation and determination of the question of a stay.

(f) CONDUCT OF COMMISSION REVIEW.—

(1) BASIS FOR ACTION.—In any proceeding to
review a final disciplinary sanction imposed by a
recognized public regulatory organization on an ac-
countant or a person associated with such accountant,
after notice and opportunity for hearing (which hear-
ing may consist solely of consideration of the record before the recognized public regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the Commission finds that such accountant or person associated with an accountant has engaged in such acts or practices, or has omitted such acts, as the recognized public regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this section, or of professional ethics and competency standards, and that such provisions are, and were applied in a manner, consistent with the purposes of this section, the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the recognized public regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the recognized public regulatory organization for further proceedings; or

(B) if the Commission does not make any such finding, it shall, by order, set aside the sanction imposed by the recognized public regu-
latory organization and, if appropriate, remand

to the recognized public regulatory organization

for further proceedings.

(2) REDUCTION OF SANCTIONS.—If the Commis-

sion, having due regard for the public interest and the

protection of investors, finds after a proceeding in ac-

cordance with paragraph (1) of this subsection that a

sanction imposed by a recognized public regulatory

organization upon an accountant or person associated

with an accountant imposes any burden on competi-
tion not necessary or appropriate in furtherance of

the purposes of this Act or is excessive or oppressive,
the Commission may cancel, reduce, or require the re-

mission of such sanction.

(g) REVIEW AND APPROVAL OF RULES.—

(1) SUBMISSION, PUBLICATION, AND COMMENT.—

Each recognized public regulatory organization shall

file with the Commission, in accordance with such

rules as the Commission may prescribe, copies of any

proposed rule or any proposed change in, addition to,
or deletion from the rules of such recognized public

regulatory organization (hereinafter in this subsection
collectively referred to as a “proposed rule change”) accom-

panied by a concise general statement of the basis and purpose of such proposed rule change. The
Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) Approval or Proceedings.—Within 35 days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the recognized public regulatory organization consents, the Commission shall—

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

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consider-
ation and opportunity for hearing and be con-
cluded within 180 days of the date of publication
of notice of the filing of the proposed rule change.
At the conclusion of such proceedings the Com-
mission, by order, shall approve or disapprove
such proposed rule change. The Commission may
extend the time for conclusion of such pro-
ceedings for up to 60 days if it finds good cause
for such extension and publishes its reasons for
so finding or for such longer period as to which
the recognized public regulatory organization
consents.

(3) BASIS FOR APPROVAL OR DISAPPROVAL.—
The Commission shall approve a proposed rule change
of a recognized public regulatory organization if it
finds that such proposed rule change is consistent
with the requirements of this Act and the rules and
regulations thereunder applicable to such organiza-
tion. The Commission shall disapprove a proposed
rule change of a recognized public regulatory organi-
zation if it does not make such finding. The Commiss-
ion shall not approve any proposed rule change prior
to the 30th day after the date of publication of notice
of the filing thereof, unless the Commission finds good
cause for so doing and publishes its reasons for so finding.

(4) Rules effective upon filing.—

(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the recognized public regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the recognized public regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the recognized public regulatory organization, or (iii) concerned solely with the administration of the recognized public regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as outside the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, or otherwise in accord-
ance with the purposes of this title. Any pro-
posed rule change so put into effect shall be filed
promptly thereafter in accordance with the pro-
visions of paragraph (1) of this subsection.

(C) Any proposed rule change of a recog-
nized public regulatory organization which has
taken effect pursuant to subparagraph (A) or (B)
of this paragraph may be enforced by such orga-
nization to the extent it is not inconsistent with
the provisions of this Act, the securities laws, the
rules and regulations thereunder, and applicable
Federal and State law. At any time within 60
days of the date of filing of such a proposed rule
change in accordance with the provisions of
paragraph (1) of this subsection, the Commission
summarily may abrogate the change in the rules
of the recognized public regulatory organization
made thereby and require that the proposed rule
change be refiled in accordance with the provi-
sions of paragraph (1) of this subsection and re-
viewed in accordance with the provisions of
paragraph (2) of this subsection, if it appears to
the Commission that such action is necessary or
appropriate in the public interest, for the protec-
tion of investors, or otherwise in furtherance of
the purposes of this Act. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect, shall not be subject to court review, and shall not be deemed to be “final agency action” for purposes of section 704 of title 5, United States Code.

(h) Commission Action To Change Rules.—The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as “amend”) the rules of a recognized public regulatory organization as the Commission deems necessary or appropriate to insure the fair administration of the recognized public regulatory organization, to conform its rules to requirements of this Act, the securities laws, and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this Act, in the following manner:

(1) The Commission shall notify the recognized public regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the recognized public regulatory organization and a statement of the Commission’s
reasons, including any pertinent facts, for commencing such proposed rulemaking.

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

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the recognized public regulatory organization and a statement of the Commission’s basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the recognized public regulatory agency to be based, including the reasons for the Commission’s conclusions as to any of such facts which were disputed in the rulemaking.

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

(B) Nothing in this subsection shall be construed to impair or limit the Commission’s power to make,
or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under the securities laws.

(C) Any amendment to the rules of a recognized public regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes to be part of the rules of such recognized public regulatory organization and shall not be considered to be a rule of the Commission.

(i) COMMISSION OVERSIGHT OF THE PRO.—

(1) RECORDS AND EXAMINATIONS.—A public regulatory organization shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws.

(2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—A public regulatory organization shall perform such other duties or functions as the Commission, by rule or order, determines are necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this Act and the securities laws, including conducting a special review of
a particular public accounting firm’s quality control system or a special review of a particular aspect of some or all public accounting firms’ quality control systems.

(3) ANNUAL REPORT; PROPOSED BUDGET.—

(A) Submission of Annual Report and Budget.—A public regulatory organization shall submit an annual report and its proposed budget to the Commission for review and approval, by order, at such times and in such form as the Commission shall prescribe.

(B) Contents of Annual Report.—Each annual report required by subparagraph (A) shall include—

(i) a detailed description of the activities of the public regulatory organization;

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

(iii) a detailed explanation of the fees and charges imposed by the public regulatory organization under subsection (b)(9); and

(iv) such other matters as the public regulatory organization or the Commission deems appropriate.
(C) **TRANSMITTAL OF ANNUAL REPORT TO CONGRESS.**—The Commission shall transmit each approved annual report received under subparagraph (A) to the Committee on Financial Services of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate. At the same time it transmits a public regulatory organization’s annual report under this subparagraph, the Commission shall include a written statement of its views of the functioning and operations of the public regulatory organization.

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

(4) **DISAPPROVAL OF ELECTION OF PRO MEMBER.**—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, to disapprove the election of any member of a public regulatory organization if the
Commission determines, after notice and opportunity for hearing, that the person elected is unfit to serve on the public regulatory organization.

(j) Clarification of Application of Pro Authority.—The authority granted to any such organization in this section shall only apply to the actions of accountants related to the certification of financial statements required by securities laws and not other actions or actions for other clients of the accounting firm or any accountant that does not certify financial statements for publicly traded companies.

(k) Deadline for Rulemaking.—The Commission shall—

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

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

(l) Effective Date; Transition Provisions.—

(1) Effective Date.—Except as provided in paragraph (2), subsection (a) of this section shall be effective with respect to any certified financial statement for any fiscal year that ends more than one year after the Commission recognizes a public regulatory organization pursuant to this section.
(2) **Delay in Establishment of Board.**—If the Commission has failed to recognize any public regulatory organization pursuant to this section within one year after the date of enactment of this Act, the Commission shall perform the duties of such organization with respect to any certified financial statement for any fiscal year that ends before one year after any such board is recognized by the Commission.

**SEC. 3. Improper Influence on Conduct of Audits.**

(a) **Rules To Prohibit.**—It shall be unlawful in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors for any officer, director, or affiliated person of an issuer of any security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of such issuer for the purpose of rendering such financial statements materially misleading. In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder.
(b) No Preemption of Other Law.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation thereunder.

(c) Deadline for Rulemaking.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and
(2) within 270 days after such date, prescribe, the rules or regulations required by this section.

SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMATION.

(a) Real-Time Issuer Disclosures Required.—

(1) Obligations.—Every issuer of a security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) shall file with the Commission and disclose to the public, on a rapid and essentially contemporaneous basis, such information concerning the financial condition or operations of such issuer as the Commission determines by rule is necessary in the public interest and for the protection of investors. Such rule shall—

(A) specify the events or circumstances giving rise to the obligation to disclose or update a disclosure;
(B) establish requirements regarding the rapidity and timeliness of such disclosure;

(C) identify the means whereby the disclosure required shall be made, which shall ensure the broad, rapid, and accurate dissemination of the information to the public via electronic or other communications device;

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

(E) without limiting the Commission’s general exemptive authority, specify any exemptions or exceptions from such requirements.

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

(b) ELECTRONIC DISCLOSURE OF INSIDER TRANSACTIONS.—

(1) DISCLOSURES OF TRADING.—The Commission shall, by rule, require—

any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) that is based in whole or in part on the securities of such issuer, by an officer or director of the issuer of those securities, or by a beneficial owner of such securities, shall be made available electronically to the Commission and to the issuer by such officer, director, or beneficial owner before the end of the next business day after the day on which the transaction occurs;

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

(C) that, in any case in which the issuer maintains a corporate website, such information shall be made available by such issuer on that website, before the end of the next business day after the day on which the disclosure is received by the Commission under subparagraph (A).
(2) Transactions Included.—The rule prescribed under paragraph (1) shall require the disclosure of the following transactions:

(A) Direct or indirect sales or other transfers of securities of the issuer (or any interest therein) to the issuer or an affiliate of the issuer.

(B) Loans or other extensions of credit extended to an officer, director, or other person affiliated with the issuer on terms or conditions not otherwise available to the public.

(3) Other Formats; Forms.—In the rule prescribed under paragraph (1), the Commission shall provide that electronic filing and disclosure shall be in lieu of any other format required for such disclosures on the day before the date of enactment of this subsection. The Commission shall revise such forms and schedules required to be filed with the Commission pursuant to paragraph (1) as necessary to facilitate such electronic filing and disclosure.

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

(a) Prohibition.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under sec-
tion 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission
by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) Rulemaking Permitted.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

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

SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DISCLOSURES.

(a) Modification of Regulations Required.—The Commission shall revise its regulations under the securities laws pertaining to the disclosures required in periodic financial reports and registration statements to require such reports to include adequate and appropriate disclosure of—

(1) the issuer’s off-balance sheet transactions and relationships with unconsolidated entities or other persons, to the extent they are not disclosed in the financial statements and are reasonably likely to materially affect the liquidity or the availability of, or requirements for, capital resources, or the financial condition or results of operations of the issuer; and
(2) loans extended to officers, directors, or other persons affiliated with the issuer on terms or conditions that are not otherwise available to the public.

(b) Deadline for Rulemaking.—The Commission shall—

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

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

(c) Analysis Required.—

(1) Transparency, Completeness, and Usefulness of Financial Statements.—The Commission shall conduct an analysis of the extent to which, consistent with the protection of investors and the public interest, disclosure of additional or reorganized information may be required to improve the transparency, completeness, or usefulness of financial statements and other corporate disclosures filed under the securities laws.

(2) Alternatives to Be Considered.—In conducting the analysis required by paragraph (1), the Commission shall consider—

(A) requiring the identification of the key accounting principles that are most important to the issuer’s reported financial condition and re-
results of operation, and that require management’s most difficult, subjective, or complex judgments;

(B) requiring an explanation, where material, of how different available accounting principles applied, the judgments made in their application, and the likelihood of materially different reported results if different assumptions or conditions were to prevail;

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

(D) establishing requirements relating to the presentation of information in clear and understandable format and language; and

(E) requiring such other disclosures, included in the financial statements or in other disclosure by the issuer, as would in the Commission’s view improve the transparency of such
issuer’s financial statements and other required corporate disclosures.

(3) RULES REQUIRED.—If the Commission, on the basis of the analysis required by this subsection, determines that it is necessary in the public interest or for the protection of investors and would improve the transparency of issuer financial statements, the Commission may prescribe rules reflecting the results of such analysis and the considerations required by paragraph (2). In prescribing such rules, the Commission may seek to minimize the paperwork and cost burden on the issuer consistent with achieving the public interest and investor protection purposes of such rules.

SEC. 7. IMPROVEMENTS IN REPORTING ON INSIDER TRANSACTIONS AND RELATIONSHIPS.

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

(1) INSIDER RELATIONSHIPS AND TRANSACTIONS.—Relationships and transactions—
(A) between the issuer, affiliates of the issuer, and officers, directors, or employees of the issuer or such affiliates; and

(B) between officers, directors, employees, or affiliates of the issuer and entities that are not otherwise affiliated with the issuer,
to the extent such arrangement or transaction creates a conflict of interest for such persons. Such disclosure shall provide a description of such elements of the transaction as are necessary for an understanding of the business purpose and economic substance of such transaction (including contingencies). The disclosure shall provide sufficient information to determine the effect on the issuer’s financial statements and describe compensation arrangements of interested parties to such transactions.

(2) Relationships with philanthropic organizations.—Relationships between the registrant or any executive officer of the registrant and any not-for-profit organization on whose board a director or immediate family member serves or of which a director or immediate family member serves as an officer or in a similar capacity. Relationships that shall be disclosed include contributions to the organization in excess of $10,000 made by the registrant or any exec-
utive officer in the last five years and any other ac-
tivity undertaken by the registrant or any executive
officer that provides a material benefit to the organi-
ization. Material benefit includes lobbying.

(3) INSIDER-CONTROLLED AFFILIATES.—Rela-
relationships in which the registrant or any executive of-
officer exercises significant control over an entity in
which a director or immediate family member owns
an equity interest or to which a director or imme-
diate family member has extended credit. Significant
control should be defined with reference to the con-
tractual and governance arrangements between the
registrant or executive officer, as the case may be, and
the entity.

(4) JOINT OWNERSHIP.—Joint ownership by a
registrant or executive officer and a director or imme-
diate family member of any real or personal prop-
erty.

(5) PROVISION OF SERVICES BY RELATED PER-
sons.—The provision of any professional services, in-
cluding legal, financial advisory or medical services,
by a director or immediate family member to any ex-
ceutive officer of the registrant in the last five years.
(b) DEADLINES.—The Commission shall complete the rulemaking required by this section within 180 days after the date of enactment of this Act.

SEC. 8. CODES OF CONDUCT.

(a) RULES REQUIRED.—Within 180 days after the date of enactment of this Act, the New York Stock Exchange, the American Stock Exchange and the Nasdaq Stock Market (or any successor to such entities), shall file with the Commission proposed rule changes that would prohibit the listing of any security issued by an issuer that has not adopted a senior financial officers code of ethics applicable to its principal financial officer, its comptroller or principal accounting officer, or persons performing similar functions that establishes such standards as are reasonably necessary to promote honest and ethical conduct, the avoidance of conflicts of interest, full, fair, accurate, timely and understandable disclosure in the issuer’s periodic reports and compliance with applicable governmental rules and regulations. The Commission shall approve such proposed rule changes pursuant to the requirement of section 19(b)(2) of the Securities Act of 1934.

(b) OTHER EXCHANGES.—The Commission, by rule or regulation, may require any other national securities exchange, to propose rule changes necessary to comply with the provisions of subsection (a) of this section if the Com-
mission determines such action is necessary or appropriate
in the public interest and consistent with the protection of
investors.

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

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

SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLOSURES

BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Securi-
ties and Exchange Commission shall review disclosures
made by issuers pursuant to the Securities Exchange Act
of 1934 (including reports filed on form 10-K) on a basis
that is more regular and systematic than that in practice
on the date of enactment on this Act. Such review shall in-
clude a review of an issuer’s financial statements.
(b) **Risk Rating System.**—For purposes of the reviews required by subsection (a), the Commission shall establish a risk rating system whereby issuers receive a risk rating by the Commission, which shall be used to determine the frequency of such reviews. In designing such a risk rating system the Commission shall consider, among other factors the following:

1. Emerging companies with disparities in price to earning ratios.
2. Issuers with the largest market capitalization.
3. Issuers whose operations significantly impact any material sector of the economy.
4. Systemic factors such as the effect on niche markets or important subsectors of the economy.
5. Issuers that experience significant volatility in their stock price as compared to other issuers.
6. Any other factor the Commission may consider relevant.

(c) **Minimum Review Period.**—In no event shall an issuer be reviewed less than once every three years by the Commission.

(d) **Prohibition of Disclosure of Risk Rating.**—Notwithstanding any other provision of law, the Commis-
sion shall not disclose the risk rating of any issuer described in subsection (b).

SEC. 10. RETENTION OF RECORDS.

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

(b) ACCOUNTANT’S REPORT.—For purposes of subsection (a), the term “accountant’s report” means a document in which an accountant identifies a financial statement and sets forth his opinion regarding such financial statement or an assertion that an opinion cannot be expressed.

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

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

(b) Finding of Substantial Unfitness.—In making any determination that a person’s conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer, the Commission shall consider—

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

(2) the person’s degree of scienter;

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

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

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

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

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

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

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

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

(1) describe the conditions under which any officer or director shall be required to disgorge profits, including what constitutes a restatement for purposes of operation of the rule;

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

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

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

(c) No Preemption of Other Law.—Unless otherwise specified by the Commission, in the case of any rule promulgated pursuant to subsection (b), such rule shall be in addition to, and shall not supersede or preempt, the Commission’s authority to seek disgorgement under any other provision of law.
SEC. 13. SECURITIES AND EXCHANGE COMMISSION AUTHORITY TO PROVIDE RELIEF.

(a) PROCEEDS OF ENRON AND ANDERSEN ENFORCEMENT ACTIONS.—If in any administrative or judicial proceeding brought by the Securities and Exchange Commission against—

(1) the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate for any violation of the securities laws; or

(2) Arthur Andersen L.L.C., any subsidiary or affiliate of Arthur Andersen L.L.C., or any general or limited partner of Arthur Andersen L.L.C., or such subsidiary or affiliate, for any violation of the securities laws with respect to any services performed for or in relation to the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate;

the Commission obtains an order providing for an accounting and disgorgement of funds, such disgorgement fund (including any addition to such fund required or permitted under this section) shall be allocated in accordance with the requirements of this section.

(b) PRIORITY FOR FORMER ENRON EMPLOYEES.—The Commission shall, by order, establish an allocation system
for the disgorgement fund. Such system shall provide that, in allocating the disgorgement fund amount the victims of the securities laws violations described in subsection (a), the first priority shall be given to individuals who were employed by the Enron Corporation, or a subsidiary or affiliate of such Corporation, and who were participants in an individual account plan established by such Corporation, subsidiary, or affiliate. Such allocations among such individuals shall be in proportion to the extent to which the nonforfeitable accrued benefit of each such individual under the plan was invested in the securities of such Corporation, subsidiary, or affiliate.

(c) Addition of Civil Penalties.—If, in any proceeding described in subsection (a), the Commission assesses and collects any civil penalty, the Commission shall, notwithstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the Securities Exchange Act of 1934, or any other provision of the securities laws, be payable to the disgorgement fund.

(d) Acceptance of Additional Donations.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for the disgorgement fund. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises
shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (b).

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

(1) DISGORGEMENT FUND.—The term “disgorgement fund” means a disgorgement fund established in any administrative or judicial proceeding described in subsection (a).

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

(3) OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER.—The term “officer, director, or principal shareholder” when used in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation, means any person that is subject to the requirements of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation.

(4) NONFORFEITABLE; ACCRUED BENEFIT; INDIVIDUAL ACCOUNT PLAN.—The terms “nonforfeitable”, “accrued benefit”, and “individual account plan” have the meanings provided such terms, respectively, in paragraphs (19), (23), and (34) of section 3 of the
SEC. 14. STUDY OF RULES RELATING TO ANALYST CONFLICTS OF INTEREST.

(a) STUDY AND REVIEW REQUIRED.—The Commission shall conduct a study and review of any final rules by any self-regulatory organization registered with the Commission related to matters involving equity research analysts conflicts of interest. Such study and report shall include a review of the effectiveness of such final rules in addressing matters relating to the objectivity and integrity of equity research analyst reports and recommendations.

(b) REPORT REQUIRED.—The Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on such study and review no later than 180 days after any such final rules by any self-regulatory organization registered with the Commission are delivered to the Commission. Such report shall include recommendations to the Congress, including any recommendations for additional self-regulatory organization rulemaking regarding matters involving equity research analysts. The Commission shall annually submit an update on such review.
SEC. 15. REVIEW OF CORPORATE GOVERNANCE PRACTICES.

(a) Study of Corporate Practices.—The Commission shall conduct a study and review of current corporate governance standards and practices to determine whether such standards and practices are serving the best interests of shareholders. Such study and review shall include an analysis of:

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

(2) whether corporate codes of ethics are adequate to protect shareholders, and to what extent deviations from such codes are tolerated;

(3) to what extent conflicts of interests are aggressively reviewed, and whether adequate means for redressing such conflicts exist;

(4) to what extent sufficient legal protections exist or should be adopted to ensure that any manager who attempts to manipulate or unduly influence an audit will be subject to appropriate sanction and liability, including liability to investors or shareholders pursuing a private cause of action for such manipulation or undue influence;

(5) whether rules, standards, and practices relating to determining whether independent directors are in fact independent are adequate;
(6) whether rules, standards, and practices relating to the independence of directors serving on audit committees are uniformly applied and adequate to protect investor interests;

(7) whether the duties and responsibilities of audit committees should be established by the Commission; and

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

(b) PARTICIPATION OF STATE REGULATORS.—In conducting the study required under subsection (a), the Commission shall seek the views of the securities and corporate regulators of the various States.

(c) REPORT REQUIRED.—The Commission shall submit a report on the analysis required under subsection (a) as a part of the Commission’s next annual report submitted after the date of enactment of this Act.

SEC. 16. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the last five years to identify areas of reporting that are most susceptible to fraud, inappropriate manipula-
tion, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

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

SEC. 17. STUDY OF CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market. Such study shall examine—

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

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

(3) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;
(4) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings;

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

(6) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the analysis required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after the date of enactment of this Act. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 18. STUDY OF INVESTMENT BANKS

(a) GAO STUDY.—The Comptroller General shall conduct a study on the role played by investment banks and financial advisors in assisting public companies in manipulating their earnings and obfuscating their true financial
condition. The study should address the role of the investment banks—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financing arrangements that may have had the effect of altering the company’s reported financial statements in ways that obscured the true financial picture of the company;

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

(3) generally, in creating and marketing transactions designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company’s financial picture.

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

SEC. 19. STUDY OF MODEL RULES FOR ATTORNEYS OF
ISSUERS.

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

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

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

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

(C) manage potential conflicts of interests
with clients; and
(2) whether such rules provide sufficient protection to corporate shareholders, especially with regards to conflicts of interest between attorneys and their corporate clients.

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

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

(2) whether restrictions should be imposed to require that an attorney, having represented a corporation or having been employed by a firm which represented a corporation, may not be employed as general counsel to that corporation until a certain period of time has expired; and

(3) regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.
SEC. 20. ENFORCEMENT AUTHORITY.

For the purposes of enforcing and carrying out this Act, the Commission shall have all of the authorities granted to the Commission under the securities laws. Actions of the Commission under this Act, including actions on rules or regulations, shall be subject to review in the same manner as actions under the securities laws.

SEC. 21. EXCLUSION FOR INVESTMENT COMPANIES.

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

SEC. 22. DEFINITIONS.

As used in this Act:

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

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

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

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

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

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

(2) Boards of Accountancy of the
States.—The term “boards of accountancy of the
States” means any organization or association char-
tered or approved under the law of any State with re-
sponsibility for the registration, supervision, or regu-
lation of accountants.
(3) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

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

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

(6) **PERSON ASSOCIATED WITH AN ACCOUNTANT.**—The term “person associated with an accountant” means any partner, officer, director, or manager of such accountant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such accountant, or any employee of such accountant who performs a supervisory role in the auditing process.

(7) **RECOGNIZED PUBLIC REGULATORY ORGANIZATION.**—The term “recognized public regulatory organization” means a public regulatory organization that the Commission has recognized as meeting the criteria established by the Commission under subsection (b) of section 2.
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.