

107TH CONGRESS
2D SESSION

H. R. 4083

To provide for enhanced corporate responsibility under the securities laws.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2002

Mr. LAFALCE (for himself, Mr. FRANK, Mr. KANJORSKI, Mr. SANDERS, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. SCHAKOWSKY, Mrs. JONES of Ohio, Mr. CLAY, Mr. DINGELL, Ms. DELAURO, and Mr. GEORGE MILLER of California) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for enhanced corporate responsibility under the securities laws.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Responsi-
5 bility Act of 2002”.

6 **SEC. 2. DISGORGEMENT REQUIRED.**

7 (a) ADMINISTRATIVE ACTIONS.—Within 30 days
8 after the date of enactment of this Act, the Securities and
9 Exchange Commission shall prescribe regulations to re-

1 quire disgorgement, in a proceeding pursuant to its au-
2 thority under section 21A, 21B, or 21C (15 U.S.C. 78u-
3 1, 78u-2, 78u-3), of salaries, commissions, fees, bonuses,
4 options, profits from securities transactions, and losses
5 avoided through securities transactions obtained by an of-
6 ficer or director of an issuer during or for a fiscal year
7 or other reporting period if such officer or director en-
8 gaged in misconduct resulting in, or made or caused to
9 be made in, the filing of a financial statement for such
10 fiscal year or reporting period which—

11 (1) was at the time, and in the light of the cir-
12 cumstances under which it was made, false or mis-
13 leading with respect to any material fact; or

14 (2) omitted to state a material fact necessary in
15 order to make the statements made, in the light of
16 the circumstances in which they were made, not mis-
17 leading,

18 (b) JUDICIAL PROCEEDINGS.—Section 21(d) of the
19 Securities Exchange Act of 1934 (15 U.S.C. 78u) is
20 amended by adding at the end the following new para-
21 graph:

22 “(5) ADDITIONAL DISGORGEMENT AUTHORITY.—In
23 any action or proceeding brought or instituted by the
24 Commission under the securities laws against any
25 person—

1 “(A) for engaging in misconduct resulting in, or
2 making or causing to be made in, the filing of a fi-
3 nancial statement which—

4 “(i) was at the time, and in the light of the
5 circumstances under which it was made, false
6 or misleading with respect to any material fact;
7 or

8 “(ii) omitted to state a material fact nec-
9 essary in order to make the statements made,
10 in the light of the circumstances in which they
11 were made, not misleading; or

12 “(B) for engaging in, causing, or aiding and
13 abetting any other violation of the securities laws or
14 the rules and regulations thereunder,

15 such person, in addition to being subject to any other ap-
16 propriate order, may be required to disgorge any or all
17 benefits received from any source in connection with the
18 conduct constituting, causing, or aiding and abetting the
19 violation, including (but not limited to) salary, commis-
20 sions, fees, bonuses, options, profits from securities trans-
21 actions, and losses avoided through securities trans-
22 actions.”.

23 **SEC. 3. CEO AND CFO ACCOUNTABILITY FOR DISCLOSURE.**

24 (a) REGULATIONS REQUIRED.—The Securities and
25 Exchange Commission shall by rule require, for each com-

1 pany filing periodic reports under section 13 or 15(d) of
2 the Securities Exchange Act of 1934 (15 U.S.C. 78m,
3 78o(d)), that the principal executive officer or officers and
4 the principal financial officer or officers, or persons per-
5 forming similar functions, certify in each annual or quar-
6 terly report filed or submitted under either such section
7 of such Act that—

8 (1) the signing officer has reviewed the report;

9 (2) based on the officer's knowledge, the report
10 does not contain any untrue statement of a material
11 fact or omit to state a material fact necessary in
12 order to make the statements made, in light of the
13 circumstances under which such statements were
14 made, not misleading;

15 (3) based on such officer's knowledge, the fi-
16 nancial statements, and other financial information
17 included in the report, fairly present in all material
18 respects the financial condition and results of oper-
19 ations of the issuer as of, and for, the periods pre-
20 sented in the report;

21 (4) the signing officers—

22 (A) are responsible for establishing and
23 maintaining internal controls;

24 (B) have designed such internal controls to
25 ensure that material information relating to the

1 issuer and its consolidated subsidiaries is made
2 known to such officers by others within those
3 entities, particularly during the period in which
4 the periodic reports are being prepared;

5 (C) have evaluated the effectiveness of the
6 issuer's internal controls as of a date within 90
7 days prior to the report; and

8 (D) have presented in the report their con-
9 clusions about the effectiveness of their internal
10 controls based on their evaluation as of that
11 date;

12 (5) the signing officers have disclosed to the
13 issuer's auditors and the audit committee of the
14 board of directors (or persons fulfilling the equiva-
15 lent function)—

16 (A) all significant deficiencies in the design
17 or operation of internal controls which could ad-
18 versely affect the issuer's ability to record, proc-
19 ess, summarize, and report financial data and
20 have identified for the issuer's auditors any ma-
21 terial weaknesses in internal controls; and

22 (B) any fraud, whether or not material,
23 that involves management or other employees
24 who have a significant role in the issuer's inter-
25 nal controls; and

1 (6) the signing officers have indicated in the re-
2 port whether or not there were significant changes
3 in internal controls or in other factors that could
4 significantly affect internal controls subsequent to
5 the date of their evaluation, including any corrective
6 actions with regard to significant deficiencies and
7 material weaknesses.

8 (b) DEADLINE.—The rules required by subsection (a)
9 shall be effective not later than 30 days after the date
10 of enactment of this Act.

11 **SEC. 4. REMOVAL OF UNFIT CORPORATE OFFICERS.**

12 (a) REMOVAL IN JUDICIAL PROCEEDINGS.—

13 (1) SECURITIES ACT OF 1933.—Section 20(e) of
14 the Securities Act of 1933 (15 U.S.C. 77t(e)) is
15 amended by striking “substantial unfitness” and in-
16 serting “unfitness”.

17 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
18 tion 21(d)(2) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78u(d)(2)) is amended by striking
20 “substantial unfitness” and inserting “unfitness”.

21 (b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

22 (1) SECURITIES ACT OF 1933.—Section 8A of
23 the Securities Act of 1933 (15 U.S.C. 77h–1) is
24 amended by adding at the end the following new
25 subsection:

1 “(f) AUTHORITY TO PROHIBIT PERSONS FROM
2 SERVING AS OFFICERS OR DIRECTORS.—In any cease-
3 and-desist proceeding under subsection (a), the Commis-
4 sion may issue an order to prohibit, conditionally or un-
5 conditionally, and permanently or for such period of time
6 as it shall determine, any person who has violated section
7 17(a)(1) of this title from acting as an officer or director
8 of any issuer that has a class of securities registered pur-
9 suant to section 12 of the Securities Exchange Act of
10 1934 or that is required to file reports pursuant to section
11 15(d) of that Act if the person’s conduct demonstrates
12 unfitness to serve as an officer or director of any such
13 issuer.”.

14 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
15 tion 21C of the Securities Exchange Act of 1934 (15
16 U.S.C. 78u-3) is amended by adding at the end the
17 following new subsection:

18 “(f) AUTHORITY TO PROHIBIT PERSONS FROM
19 SERVING AS OFFICERS OR DIRECTORS.—In any cease-
20 and-desist proceeding under subsection (a), the Commis-
21 sion may issue an order to prohibit, conditionally or un-
22 conditionally, and permanently or for such period of time
23 as it shall determine, any person who has violated section
24 10(b) of this title or the rules or regulations thereunder
25 from acting as an officer or director of any issuer that

1 has a class of securities registered pursuant to section 12
2 of this title or that is required to file reports pursuant
3 to section 15(d) of this title if the person's conduct dem-
4 onstrates unfitness to serve as an officer or director of
5 any such issuer.”.

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