

107TH CONGRESS
2^D SESSION

H. R. 5070

To improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2002

Mr. LAFALCE (for himself, Mr. DINGELL, and Mr. GEPHARDT) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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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
 5 “Public Company Accounting Reform and Investor Pro-
 6 tection Act of 2002”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods prohibited.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.

- Sec. 402. Enhanced conflict of interest disclosures.
 Sec. 403. Disclosures of transactions involving management and principal stockholders.
 Sec. 404. Management assessment of internal controls.
 Sec. 405. Exemption.
 Sec. 406. Code of ethics for senior financial officers.
 Sec. 407. Disclosure of audit committee financial expert.

TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

- Sec. 601. Authorization of appropriations.
 Sec. 602. Appearance and practice before the Commission.
 Sec. 603. Federal court authority to impose penny stock bars.
 Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.
 Sec. 702. Commission study and report regarding credit rating agencies.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act, the following defini-
 3 tions shall apply:

4 (1) APPROPRIATE STATE REGULATORY AU-
 5 THORITY.—The term “appropriate State regulatory
 6 authority” means the State agency or other author-
 7 ity responsible for the licensure or other regulation
 8 of the practice of accounting in the State or States
 9 having jurisdiction over a registered public account-
 10 ing firm or associated person thereof, with respect to
 11 the matter in question.

12 (2) AUDIT.—The term “audit” means an exam-
 13 ination of the financial statements of any issuer by
 14 an independent public accounting firm in accordance
 15 with the rules of the Board or the Commission (or,

1 for the period preceding the adoption of applicable
2 rules of the Board under section 103, in accordance
3 with then-applicable generally accepted auditing and
4 related standards for such purposes), for the pur-
5 pose of expressing an opinion on such statements.

6 (3) AUDIT COMMITTEE.—The term “audit com-
7 mittee” means—

8 (A) a committee (or equivalent body) es-
9 tablished by and amongst the board of directors
10 of an issuer for the purpose of overseeing the
11 accounting and financial reporting processes of
12 the issuer and audits of the financial state-
13 ments of the issuer; and

14 (B) if no such committee exists with re-
15 spect to an issuer, the entire board of directors
16 of the issuer.

17 (4) AUDIT REPORT.—The term “audit report”
18 means a document or other record—

19 (A) prepared following an audit performed
20 for purposes of compliance by an issuer with
21 the requirements of the securities laws; and

22 (B) in which a public accounting firm
23 either—

1 (i) sets forth the opinion of that firm
2 regarding a financial statement, report, or
3 other document; or

4 (ii) asserts that no such opinion can
5 be expressed.

6 (5) BOARD.—The term “Board” means the
7 Public Company Accounting Oversight Board estab-
8 lished under section 101.

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

11 (7) ISSUER.—The term “issuer” means an
12 issuer (as defined in section 3 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78c)), the securities
14 of which are registered under section 12 of that Act
15 (15 U.S.C. 78l), or that is required to file reports
16 pursuant to section 15(d) of that Act (15 U.S.C.
17 78o(d)), or that will be required to file such reports
18 at the end of a fiscal year of the issuer in which a
19 registration statement filed by such issuer has be-
20 come effective pursuant to the Securities Act of
21 1933 (15 U.S.C. 77a et. seq.), unless its securities
22 are registered under section 12 of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78c) on or before the
24 end of such fiscal year.

1 (8) NON-AUDIT SERVICES.—The term “non-
2 audit services” means any professional services pro-
3 vided to an issuer by a registered public accounting
4 firm, other than those provided to an issuer in con-
5 nection with an audit or a review of the financial
6 statements of an issuer.

7 (9) PERSON ASSOCIATED WITH A PUBLIC AC-
8 COUNTING FIRM.—

9 (A) IN GENERAL.—The terms “person as-
10 sociated with a public accounting firm” (or with
11 a “registered public accounting firm”) and “as-
12 sociated person of a public accounting firm” (or
13 of a “registered public accounting firm”) mean
14 any individual proprietor, partner, shareholder,
15 principal, accountant, or other professional em-
16 ployee of a public accounting firm, or any other
17 independent contractor or entity that, in con-
18 nection with the preparation or issuance of any
19 audit report—

20 (i) shares in the profits of, or receives
21 compensation in any other form from, that
22 firm; or

23 (ii) participates as agent or otherwise
24 on behalf of such accounting firm in any
25 activity of that firm.

1 (B) EXEMPTION AUTHORITY.—The Board
2 may, by rule, exempt persons engaged only in
3 ministerial tasks from the definition in subpara-
4 graph (A), to the extent that the Board deter-
5 mines that any such exemption is consistent
6 with the purposes of this Act, the public inter-
7 est, or the protection of investors.

8 (10) PROFESSIONAL STANDARDS.—The term
9 “professional standards” means—

10 (A) accounting principles that are—

11 (i) established by the standard setting
12 body described in section 19(b) of the Se-
13 curities Act of 1933, as amended by this
14 Act, or prescribed by the Commission
15 under section 19(a) of that Act (15 U.S.C.
16 17a(s)) or section 13(b) of the Securities
17 Exchange Act of 1934 (15 U.S.C. 78a(m));
18 and

19 (ii) relevant to audit reports for par-
20 ticular issuers, or dealt with in the quality
21 control system of a particular registered
22 public accounting firm; and

23 (B) auditing standards, standards for at-
24 testation engagements, quality control policies
25 and procedures, ethical and competency stand-

1 ards, and independence standards (including
2 rules implementing title II) that the Board or
3 the Commission determines—

4 (i) relate to the preparation or
5 issuance of audit reports for issuers; and

6 (ii) are established or adopted by the
7 Board under section 103(a), or are pro-
8 mulgated as rules of the Commission.

9 (11) PUBLIC ACCOUNTING FIRM.—The term
10 “public accounting firm” means—

11 (A) a proprietorship, partnership, incor-
12 porated association, corporation, limited liability
13 company, limited liability partnership, or other
14 legal entity that is engaged in the practice of
15 public accounting or preparing or issuing audit
16 reports; and

17 (B) to the extent so designated by the
18 rules of the Board, any associated person of
19 any entity described in subparagraph (A).

20 (12) REGISTERED PUBLIC ACCOUNTING
21 FIRM.—The term “registered public accounting
22 firm” means a public accounting firm registered
23 with the Board in accordance with this Act.

24 (13) RULES OF THE BOARD.—The term “rules
25 of the Board” means the bylaws and rules of the

1 Board (as submitted to, and approved, modified, or
2 amended by the Commission, in accordance with sec-
3 tion 107), and those stated policies, practices, and
4 interpretations of the Board that the Commission,
5 by rule, may deem to be rules of the Board, as nec-
6 essary or appropriate in the public interest or for
7 the protection of investors.

8 (14) SECURITY.—The term “security” has the
9 same meaning as in section 3(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)).

11 (15) SECURITIES LAWS.—The term “securities
12 laws” means the provisions of law referred to in sec-
13 tion 3(a)(47) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78c(a)(47)), as amended by this
15 Act, and includes the rules, regulations, and orders
16 issued by the Commission thereunder.

17 (16) STATE.—The term “State” means any
18 State of the United States, the District of Columbia,
19 Puerto Rico, the Virgin Islands, or any other terri-
20 tory or possession of the United States.

21 (b) CONFORMING AMENDMENT.—Section 3(a)(47) of
22 the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(47)) is amended by inserting “the Public Company
24 Accounting Reform and Investor Protection Act of 2002,”
25 before “the Public”.

1 **SEC. 3. COMMISSION RULES AND ENFORCEMENT.**

2 (a) REGULATORY ACTION.—The Commission shall
3 promulgate such rules and regulations, as may be nec-
4 essary or appropriate in the public interest or for the pro-
5 tection of investors, and in furtherance of this Act.

6 (b) ENFORCEMENT.—

7 (1) IN GENERAL.—A violation by any person of
8 this Act, any rule or regulation of the Commission
9 issued under this Act, or any rule of the Board shall
10 be treated for all purposes in the same manner as
11 a violation of the Securities Exchange Act of 1934
12 (15 U.S.C. 78a et seq.) or the rules and regulations
13 issued thereunder, consistent with the provisions of
14 this Act, and any such person shall be subject to the
15 same penalties, and to the same extent, as for a vio-
16 lation of that Act or such rules or regulations.

17 (2) INVESTIGATIONS, INJUNCTIONS, AND PROS-
18 ECUTION OF OFFENSES.—Section 21 of the Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78u) is
20 amended

21 (A) in subsection (a)(1), by inserting “the
22 rules of the Public Company Accounting Over-
23 sight Board, of which such person is a reg-
24 istered public accounting firm or a person asso-
25 ciated with such a firm,” after “is a partici-
26 pant,”;

1 (B) in subsection (d)(1), by inserting “the
2 rules of the Public Company Accounting Over-
3 sight Board, of which such person is a reg-
4 istered public accounting firm or a person asso-
5 ciated with such a firm,” after “is a partici-
6 pant,”;

7 (C) in subsection (e), by inserting “the
8 rules of the Public Company Accounting Over-
9 sight Board, of which such person is a reg-
10 istered public accounting firm or a person asso-
11 ciated with such a firm,” after “is a partici-
12 pant,”; and

13 (D) in subsection (f), by inserting “or the
14 Public Company Accounting Oversight Board”
15 after “self-regulatory organization” each place
16 that term appears.

17 (3) CEASE-AND-DESIST PROCEEDINGS.—Section
18 21C(c)(2) of the Securities Exchange Act of 1934
19 (15 U.S.C. 78u-3(c)(2)) is amended by inserting
20 “registered public accounting firm (as defined in
21 section 2 of the Public Company Accounting Reform
22 and Investor Protection Act of 2002),” after “gov-
23 ernment securities dealer,”.

1 (c) EFFECT ON COMMISSION AUTHORITY.—Nothing
2 in this Act or the rules of the Board shall be construed
3 to impair or limit—

4 (1) the authority of the Commission to regulate
5 the accounting profession, accounting firms, or per-
6 sons associated with such firms for purposes of en-
7 forcement of the securities laws;

8 (2) the authority of the Commission to set
9 standards for accounting or auditing practices or
10 auditor independence, derived from other provisions
11 of the securities laws or the rules or regulations
12 thereunder, for purposes of the preparation and
13 issuance of any audit report, or otherwise under ap-
14 plicable law; or

15 (3) the ability of the Commission to take, on
16 the initiative of the Commission, legal, administra-
17 tive, or disciplinary action against any registered
18 public accounting firm or any associated person
19 thereof.

20 **TITLE I—PUBLIC COMPANY AC-**
21 **COUNTING OVERSIGHT**
22 **BOARD**

23 **SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.**

24 (a) ESTABLISHMENT OF BOARD.—There is estab-
25 lished the Public Company Accounting Oversight Board,

1 to oversee the audit of public companies that are subject
2 to the securities laws, and related matters, in order to pro-
3 tect the interests of investors and further the public inter-
4 est in the preparation of informative, accurate, and inde-
5 pendent audit reports for companies the securities of
6 which are sold to, and held by and for, public investors.
7 The Board shall be a body corporate, operate as a non-
8 profit corporation, and have succession until dissolved by
9 an Act of Congress.

10 (b) STATUS.—The Board shall not be an agency or
11 establishment of the United States Government, and, ex-
12 cept as otherwise provided in this Act, shall be subject to,
13 and have all the powers conferred upon a nonprofit cor-
14 poration by, the District of Columbia Nonprofit Corpora-
15 tion Act. No member or person employed by, or agent for,
16 the Board shall be deemed to be an officer or employee
17 of or agent for the Federal Government by reason of such
18 service.

19 (c) DUTIES OF THE BOARD.—The Board shall, sub-
20 ject to action by the Commission under section 107, and
21 once a determination is made by the Commission under
22 subsection (d) of this section—

23 (1) register public accounting firms that pre-
24 pare audit reports for issuers, in accordance with
25 section 102;

1 (2) establish or adopt, or both, by rule, audit-
2 ing, quality control, ethics, independence, and other
3 standards relating to the preparation of audit re-
4 ports for issuers, in accordance with section 103;

5 (3) conduct inspections of registered public ac-
6 counting firms, in accordance with section 104 and
7 the rules of the Board;

8 (4) conduct investigations and disciplinary pro-
9 ceedings concerning, and impose appropriate sanc-
10 tions where justified upon, registered public account-
11 ing firms and associated persons of such firms, in
12 accordance with section 105;

13 (5) perform such other duties or functions as
14 the Board determines are necessary or appropriate
15 to promote high professional standards among, and
16 improve the quality of audit services offered by, reg-
17 istered public accounting firms and associated per-
18 sons thereof, or otherwise to carry out this Act, in
19 order to protect investors, or to further the public
20 interest;

21 (6) enforce compliance with this Act, the rules
22 of the Board, professional standards, and the securi-
23 ties laws relating to the preparation and issuance of
24 audit reports and the obligations and liabilities of
25 accountants with respect thereto, by registered pub-

1 lic accounting firms and associated persons thereof;
2 and

3 (7) set the budget and manage the operations
4 of the Board and the staff of the Board.

5 (d) COMMISSION DETERMINATION.—The members of
6 the Board shall take such action (including hiring of staff,
7 proposal of rules, and adoption of initial and transitional
8 auditing and other professional standards) as may be nec-
9 essary or appropriate to enable the Commission to deter-
10 mine, not later than 270 days after the date of enactment
11 of this Act, that the Board is so organized and has the
12 capacity to carry out the requirements of this title, and
13 to enforce compliance with this title by registered public
14 accounting firms and associated persons thereof.

15 (e) BOARD MEMBERSHIP.—

16 (1) COMPOSITION.—The Board shall have 5
17 members, appointed from among prominent individ-
18 uals of integrity and reputation who have a dem-
19 onstrated commitment to the interests of investors
20 and the public, and an understanding of the respon-
21 sibilities for and nature of the financial disclosures
22 required of issuers under the securities laws and the
23 obligations of accountants with respect to the prepa-
24 ration and issuance of audit reports with respect to
25 such disclosures.

1 (2) LIMITATION.—Two members, and only 2
2 members, of the Board shall be or have been cer-
3 tified public accountants pursuant to the laws of 1
4 or more States, provided that, if 1 of those 2 mem-
5 bers is the chairperson, he or she may not have been
6 a practicing certified public accountant for at least
7 5 years prior to his or her appointment to the
8 Board.

9 (3) FULL-TIME INDEPENDENT SERVICE.—Each
10 member of the Board shall serve on a full-time basis,
11 and may not, concurrent with service on the Board,
12 be employed by any other person or engage in any
13 other professional or business activity. No member
14 of the Board may share in any of the profits of, or
15 receive payments from, a public accounting firm (or
16 any other person, as determined by rule of the Com-
17 mission), other than fixed continuing payments, sub-
18 ject to such conditions as the Commission may im-
19 pose, under standard arrangements for the retire-
20 ment of members of public accounting firms.

21 (4) APPOINTMENT OF BOARD MEMBERS.—

22 (A) INITIAL BOARD.—Not later than 90
23 days after the date of enactment of this Act,
24 the Commission, after consultation with the
25 Chairman of the Board of Governors of the

1 Federal Reserve System and the Secretary of
2 the Treasury, shall appoint the chairperson and
3 other initial members of the Board, and shall
4 designate a term of service for each.

5 (B) VACANCIES.—A vacancy on the Board
6 shall not affect the powers of the Board, but
7 shall be filled in the same manner as provided
8 for appointments under this section.

9 (5) TERM OF SERVICE.—

10 (A) IN GENERAL.—The term of service of
11 each Board member shall be 5 years, and until
12 a successor is appointed, except that—

13 (i) the terms of office of the initial
14 Board members (other than the chair-
15 person) shall expire in annual increments,
16 1 on each of the first 4 anniversaries of
17 the initial date of appointment; and

18 (ii) any Board member appointed to
19 fill a vacancy occurring before the expira-
20 tion of the term for which the predecessor
21 was appointed shall be appointed only for
22 the remainder of that term.

23 (B) TERM LIMITATION.—No person may
24 serve as a member of the Board, or as chair-
25 person of the Board, for more than 2 terms,

1 whether or not such terms of service are con-
2 secutive.

3 (6) REMOVAL FROM OFFICE.—A member of the
4 Board may be removed by the Commission from of-
5 fice, in accordance with section 107(d)(3), for good
6 cause shown before the expiration of the term of
7 that member.

8 (f) POWERS OF THE BOARD.—In addition to any au-
9 thority granted to the Board otherwise in this Act, the
10 Board shall have the power, subject to section 107—

11 (1) to sue and be sued, complain and defend, in
12 its corporate name and through its own counsel,
13 with the approval of the Commission, in any Fed-
14 eral, State, or other court;

15 (2) to conduct its operations and maintain of-
16 fices, and to exercise all other rights and powers au-
17 thorized by this Act, in any State, without regard to
18 any qualification, licensing, or other provision of law
19 in effect in such State (or a political subdivision
20 thereof);

21 (3) to lease, purchase, accept gifts or donations
22 of or otherwise acquire, improve, use, sell, exchange,
23 or convey, all of or an interest in any property,
24 wherever situated;

1 (4) to appoint such employees, accountants, at-
2 torneys, and other agents as may be necessary or
3 appropriate, and to determine their qualifications,
4 define their duties, and fix their salaries or other
5 compensation (at a level that is comparable to pri-
6 vate sector self-regulatory, accounting, technical, su-
7 pervisory, or other staff or management positions);

8 (5) to allocate, assess, and collect accounting
9 support fees established pursuant to section 109, for
10 the Board, and other fees and charges imposed
11 under this title; and

12 (6) to enter into contracts, execute instruments,
13 incur liabilities, and do any and all other acts and
14 things necessary, appropriate, or incidental to the
15 conduct of its operations and the exercise of its obli-
16 gations, rights, and powers imposed or granted by
17 this title.

18 (g) RULES OF THE BOARD.—The rules of the Board
19 shall, subject to the approval of the Commission—

20 (1) provide for the operation and administration
21 of the Board, the exercise of its authority, and the
22 performance of its responsibilities under this Act;

23 (2) permit, as the Board determines necessary
24 or appropriate, delegation by the Board of any of its
25 functions to an individual member or employee of

1 the Board, or to a division of the Board, including
2 functions with respect to hearing, determining, or-
3 dering, certifying, reporting, or otherwise acting as
4 to any matter, except that—

5 (A) the Board shall retain a discretionary
6 right to review any action pursuant to any such
7 delegated function, upon its own motion;

8 (B) a person shall be entitled to a review
9 by the Board with respect to any matter so del-
10 egated, and the decision of the Board upon
11 such review shall be deemed to be the action of
12 the Board for all purposes (including appeal or
13 review thereof); and

14 (C) if the right to exercise a review de-
15 scribed in subparagraph (A) is declined, or if no
16 such review is sought within the time stated in
17 the rules of the Board, then the action taken by
18 the holder of such delegation shall for all pur-
19 poses, including appeal or review thereof, be
20 deemed to be the action of the Board;

21 (3) establish ethics rules and standards of con-
22 duct for Board members and staff, including a bar
23 on practice before the Board (and the Commission,
24 with respect to Board-related matters) of 1 year for
25 former members of the Board, and appropriate peri-

1 ods (not to exceed 1 year) for former staff of the
2 Board; and

3 (4) provide as otherwise required by this Act.

4 (h) ANNUAL REPORT TO THE COMMISSION.—The
5 Board shall submit an annual report (including its audited
6 financial statements) to the Commission, and the Commis-
7 sion shall transmit a copy of that report to the Committee
8 on Banking, Housing, and Urban Affairs of the Senate,
9 and the Committee on Financial Services of the House of
10 Representatives, not later than 30 days after the date of
11 receipt of that report by the Commission.

12 **SEC. 102. REGISTRATION WITH THE BOARD.**

13 (a) MANDATORY REGISTRATION.—Beginning 180
14 days after the date of the determination of the Commis-
15 sion under section 101(d), it shall be unlawful for any per-
16 son that is not a registered public accounting firm to pre-
17 pare or issue, or to participate in the preparation or
18 issuance of, any audit report with respect to any issuer.

19 (b) APPLICATIONS FOR REGISTRATION.—

20 (1) FORM OF APPLICATION.—A public account-
21 ing firm shall use such form as the Board may pre-
22 scribe, by rule, to apply for registration under this
23 section.

24 (2) CONTENTS OF APPLICATIONS.—Each public
25 accounting firm shall submit, as part of its applica-

1 tion for registration, in such detail as the Board
2 shall specify—

3 (A) the names of all issuers for which the
4 firm prepared or issued audit reports during
5 the immediately preceding calendar year, and
6 for which the firm expects to prepare or issue
7 audit reports during the current calendar year;

8 (B) the annual fees received by the firm
9 from each such issuer for audit services, other
10 accounting services, and non-audit services, re-
11 spectively;

12 (C) such other current financial informa-
13 tion for the most recently completed fiscal year
14 of the firm as the Board may reasonably re-
15 quest;

16 (D) a statement of the quality control poli-
17 cies of the firm for its accounting and auditing
18 practices;

19 (E) a list of all accountants associated
20 with the firm who participate in or contribute
21 to the preparation of audit reports, stating the
22 license or certification number of each such per-
23 son, as well as the State license numbers of the
24 firm itself;

1 (F) information relating to criminal, civil,
2 or administrative actions or disciplinary pro-
3 ceedings pending against the firm or any associ-
4 ated person of the firm in connection with any
5 audit report;

6 (G) copies of any periodic or annual disclo-
7 sure filed by an issuer with the Commission
8 during the immediately preceding calendar year
9 which discloses accounting disagreements be-
10 tween such issuer and the firm in connection
11 with an audit report furnished or prepared by
12 the firm for such issuer; and

13 (H) such other information as the rules of
14 the Board or the Commission shall specify as
15 necessary or appropriate in the public interest
16 or for the protection of investors.

17 (3) CONSENTS.—Each application for registra-
18 tion under this subsection shall include—

19 (A) a consent executed by the public ac-
20 counting firm to cooperation in and compliance
21 with any request for testimony or the produc-
22 tion of documents made by the Board in the
23 furtherance of its authority and responsibilities
24 under this title (and an agreement to secure
25 and enforce similar consents from each of the

1 associated persons of the public accounting firm
2 as a condition of their continued employment by
3 or other association with such firm); and

4 (B) a statement that such firm under-
5 stands and agrees that cooperation and compli-
6 ance, as described in the consent required by
7 subparagraph (A), and the securing and en-
8 forcement of such consents from its associated
9 persons, in accordance with the rules of the
10 Board, shall be a condition to the continuing ef-
11 fectiveness of the registration of the firm with
12 the Board.

13 (c) ACTION ON APPLICATIONS.—

14 (1) TIMING.—The Board shall approve a com-
15 pleted application for registration not later than 45
16 days after the date of receipt of the application, in
17 accordance with the rules of the Board, unless the
18 Board, prior to such date, issues a written notice of
19 disapproval to, or requests more information from,
20 the prospective registrant.

21 (2) TREATMENT.—A written notice of dis-
22 approval of a completed application under paragraph
23 (1) for registration shall be treated as a disciplinary
24 sanction for purposes of sections 105(d) and 107(e).

1 (d) PERIODIC REPORTS.—Each registered public ac-
2 counting firm shall submit an annual report to the Board,
3 and may be required to report more frequently, as nec-
4 essary to update the information contained in its applica-
5 tion for registration under this section, and to provide to
6 the Board such additional information as the Board or
7 the Commission may specify, in accordance with sub-
8 section (b)(2).

9 (e) PUBLIC AVAILABILITY.—Registration applica-
10 tions and annual reports required by this subsection, or
11 such portions of such applications or reports as may be
12 designated under rules of the Board, shall be made avail-
13 able for public inspection, subject to rules of the Board
14 or the Commission, and to applicable laws relating to the
15 confidentiality of proprietary, personal, or other informa-
16 tion contained in such applications or reports, provided
17 that, in all events, the Board shall protect from public dis-
18 closure information reasonably identified by the subject
19 accounting firm as proprietary information.

20 (f) REGISTRATION AND ANNUAL FEES.—The Board
21 shall assess and collect a registration fee and an annual
22 fee from each registered public accounting firm, in
23 amounts that are sufficient to recover the costs of proc-
24 essing and reviewing applications and annual reports.

1 **SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPEND-**
2 **ENCE STANDARDS AND RULES.**

3 (a) AUDITING, QUALITY CONTROL, AND ETHICS
4 STANDARDS.—

5 “(1) IN GENERAL.—The Board shall, by rule,
6 establish, including, to the extent it determines ap-
7 propriate, through adoption of standards proposed
8 by 1 or more professional groups of accountants des-
9 igned pursuant to paragraph (3)(A) or advisory
10 groups convened pursuant to paragraph (4), and
11 amend or otherwise modify or alter, such auditing
12 and related attestation standards, such quality con-
13 trol standards, and such ethics standards to be used
14 by registered public accounting firms in the prepara-
15 tion and issuance of audit reports, as required by
16 this Act or the rules of the Commission, or as may
17 be necessary or appropriate in the public interest or
18 for the protection of investors.

19 (2) RULE REQUIREMENTS.—In carrying out
20 paragraph (1), the Board—

21 (A) shall include in the auditing standards
22 that it adopts, requirements that each reg-
23 istered public accounting firm shall—

24 (i) prepare, and maintain for a period
25 of not less than 7 years, audit work pa-
26 pers, and other information related to any

1 audit report, in sufficient detail to support
2 the conclusions reached in such report;

3 (ii) provide a concurring or second
4 partner review and approval of such audit
5 report (and other related information), and
6 concurring approval in its issuance, by a
7 qualified person (as prescribed by the
8 Board) associated with the public account-
9 ing firm, other than the person in charge
10 of the audit, or by an independent reviewer
11 (as prescribed by the Board); and

12 (iii) describe the scope of the auditor's
13 testing of the system of internal account-
14 ing controls of the issuer required by sec-
15 tion 13(b)(2) of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78m(b)(2)), and
17 present (in such report or in a separate re-
18 port)—

19 (I) the findings of the auditor
20 from such testing;

21 (II) an evaluation of whether
22 such system of internal accounting
23 controls—

1 (aa) complies with the re-
2 quirements of that section
3 13(b)(2); and

4 (bb) provides reasonable as-
5 surance that receipts and expend-
6 itures of the issuer comply with
7 applicable law, and are being
8 made in accordance with proper
9 authorizations of the manage-
10 ment and directors of the issuer;
11 and

12 (III) a description of significant
13 defects in such internal controls, and
14 of any material noncompliance, of
15 which the auditor should know on the
16 basis of such testing; and

17 (B) shall include, in the quality control
18 standards that it adopts with respect to the
19 issuance of audit reports, requirements for
20 every registered public accounting firm relating
21 to—

22 (i) monitoring of professional ethics
23 and independence from issuers on behalf of
24 which the firm issues audit reports;

- 1 (ii) consultation within such firm on
2 accounting and auditing questions;
3 (iii) supervision of audit work;
4 (iv) hiring, professional development,
5 and advancement of personnel;
6 (v) the acceptance and continuation of
7 engagements;
8 (vi) internal inspection; and
9 (vii) such other requirements as the
10 Board may prescribe, subject to subsection
11 (a)(1).

12 (3) AUTHORITY TO ADOPT OTHER STAND-
13 ARDS.—

14 (A) IN GENERAL.—In carrying out this
15 subsection, the Board—

- 16 (i) may adopt as its rules, subject to
17 the terms of section 107, any portion of
18 any statement of auditing standards or
19 other professional standards that the
20 Board determines satisfy the requirements
21 of paragraph (1), and that were proposed
22 by 1 or more professional groups of ac-
23 countants that shall be designated or rec-
24 ognized by the Board, by rule, for such
25 purpose, pursuant to this paragraph or 1

1 or more advisory groups convened pursu-
2 ant to paragraph (4); and

3 (ii) notwithstanding clause (i), shall
4 retain full authority to modify, supplement,
5 revise, or subsequently amend, modify, or
6 repeal, in whole or in part, any portion of
7 any statement described in clause (i).

8 (B) INITIAL AND TRANSITIONAL STAND-
9 ARDS.—The Board shall adopt standards de-
10 scribed in subparagraph (A)(i) as initial or
11 transitional standards, to the extent the Board
12 determines necessary, prior to a determination
13 of the Commission under section 101(d), and
14 such standards shall be separately approved by
15 the Commission at the time of that determina-
16 tion, without regard to the procedures required
17 by section 107 that otherwise would apply to
18 the approval of rules of the Board.

19 (4) ADVISORY GROUPS.—The Board shall con-
20 vene, or authorize its staff to convene, such expert
21 advisory groups as may be appropriate, which may
22 include practicing accountants and other experts, as
23 well as representatives of other interested groups,
24 subject to such rules as the Board may prescribe to
25 prevent conflicts of interest, to make recommenda-

1 tions concerning the content (including proposed
2 drafts) of auditing, quality control, ethics, independ-
3 ence, or other standards required to be established
4 under this section.

5 (b) INDEPENDENCE STANDARDS AND RULES.—The
6 Board shall establish such rules as may be necessary or
7 appropriate in the public interest or for the protection of
8 investors, to implement, or as authorized under, title II
9 of this Act.

10 (c) COOPERATION WITH DESIGNATED PROFES-
11 SIONAL GROUPS OF ACCOUNTANTS AND ADVISORY
12 GROUPS.—

13 (1) IN GENERAL.—The Board shall cooperate
14 on an ongoing basis with professional groups of ac-
15 countants designated under subsection (a)(3)(A) and
16 advisory groups convened under subsection (a)(4) in
17 the examination of the need for changes in any
18 standards subject to its authority under subsection
19 (a), recommend issues for inclusion on the agendas
20 of such designated professional groups of account-
21 ants or advisory groups, and take such other steps
22 as it deems appropriate to increase the effectiveness
23 of the standard setting process.

24 (2) BOARD RESPONSES.—The Board shall re-
25 spond in a timely fashion to requests from des-

1 (1) IN GENERAL.—Subject to paragraph (2),
2 inspections required by this section shall be
3 conducted—

4 (A) annually with respect to each reg-
5 istered public accounting firm that regularly
6 provides audit reports for more than 100
7 issuers; and

8 (B) not less frequently than once every 3
9 years with respect to each registered public ac-
10 counting firm that regularly provides audit re-
11 ports for 100 or fewer issuers.

12 (2) ADJUSTMENTS TO SCHEDULES.—The
13 Board may, by rule, adjust the inspection schedules
14 set under paragraph (1) if the Board finds that dif-
15 ferent inspection schedules are consistent with the
16 purposes of this Act, the public interest, and the
17 protection of investors.

18 (c) PROCEDURES.—The Board shall, in each inspec-
19 tion under this section, and in accordance with its rules
20 for such inspections—

21 (1) identify any act or practice or omission to
22 act by the registered public accounting firm, or by
23 any associated person thereof, revealed by such in-
24 spection that may be in violation of this Act, the
25 rules of the Board, the rules of the Commission, the

1 firm's own quality control policies, or professional
2 standards;

3 (2) report any such act, practice, or omission,
4 if appropriate, to the Commission and each appro-
5 priate State regulatory authority; and

6 (3) begin a formal investigation or take appro-
7 priate disciplinary action, if any, with respect to any
8 such violation, in accordance with this Act and the
9 rules of the Board.

10 (d) CONDUCT OF INSPECTIONS.—In conducting an
11 inspection of a registered public accounting firm under
12 this section, the Board shall—

13 (1) inspect and review selected audit and review
14 engagements of the firm (which may include audit
15 engagements that are the subject of ongoing litiga-
16 tion or other controversy between the firm and 1 or
17 more third parties), performed at various offices and
18 by various associated persons of the firm, as selected
19 by the Board;

20 (2) evaluate the sufficiency of the quality con-
21 trol system of the firm, and the manner of the docu-
22 mentation and communication of that system by the
23 firm; and

24 (3) perform such other testing of the audit, su-
25 pervisory, and quality control procedures of the firm

1 as are necessary or appropriate in light of the pur-
2 pose of the inspection and the responsibilities of the
3 Board.

4 (e) RECORD RETENTION.—The rules of the Board
5 may require the retention by registered public accounting
6 firms for inspection purposes of records whose retention
7 is not otherwise required by section 103 or the rules issued
8 thereunder.

9 (f) PROCEDURES FOR REVIEW.—The rules of the
10 Board shall provide a procedure for the review of and re-
11 sponse to a draft inspection report by the registered public
12 accounting firm under inspection. The Board shall take
13 such action with respect to such response as it considers
14 appropriate (including revising the draft report or con-
15 tinuing or supplementing its inspection activities before
16 issuing a final report), but the text of any such response,
17 appropriately redacted to protect information reasonably
18 identified by the accounting firm as confidential, shall be
19 attached to and made part of the inspection report.

20 (g) REPORT.—A written report of the findings of the
21 Board for each inspection under this section, subject to
22 subsection (h), shall be—

23 (1) transmitted, in appropriate detail, to the
24 Commission and each appropriate State regulatory
25 authority, accompanied by any letter or comments

1 by the Board or the inspector, and any letter of re-
2 sponse from the registered public accounting firm;
3 and

4 (2) made available in appropriate detail to the
5 public (subject to section 105(b)(5)(A), and to the
6 protection of such confidential and proprietary infor-
7 mation as the Board may determine to be appro-
8 priate, or as may be required by law), except that
9 no portions of the inspection report that deal with
10 criticisms of or potential defects in the quality con-
11 trol systems of the firm under inspection shall be
12 made public if those criticisms or defects are ad-
13 dressed by the firm, to the satisfaction of the Board,
14 not later than 12 months after the date of the in-
15 spection report.

16 (h) INTERIM COMMISSION REVIEW.—

17 (1) REVIEWABLE MATTERS.—A registered pub-
18 lic accounting firm may seek review by the Commis-
19 sion, pursuant to such rules as the Commission shall
20 promulgate, if the firm—

21 (A) has provided the Board with a re-
22 sponse, pursuant to rules issued by the Board
23 under subsection (f), to the substance of par-
24 ticular items in a draft inspection report, and
25 disagrees with the assessments contained in any

1 final report prepared by the Board following
2 such response; or

3 (B) disagrees with the determination of the
4 Board that criticisms or defects identified in an
5 inspection report have not been addressed to
6 the satisfaction of the Board within 12 months
7 of the date of the inspection report, for pur-
8 poses of subsection (g)(2).

9 (2) TREATMENT OF REVIEW.—Any decision of
10 the Commission with respect to a review under para-
11 graph (1) shall not be reviewable under section 25
12 of the Securities Exchange Act of 1934 (15 U.S.C.
13 78y), or deemed to be “final agency action” for pur-
14 poses of section 704 of title 5, United States Code.

15 (3) TIMING.—Review under paragraph (1) may
16 be sought during the 30-day period following the
17 date of the event giving rise to the review under sub-
18 paragraph (A) or (B) of paragraph (1).

19 **SEC. 105. INVESTIGATIONS AND DISCIPLINARY PRO-**
20 **CEEDINGS.**

21 (a) IN GENERAL.—The Board shall establish, by
22 rule, subject to the requirements of this section, fair proce-
23 dures for the investigation and disciplining of registered
24 public accounting firms and associated persons of such
25 firms.

1 (b) INVESTIGATIONS.—

2 (1) AUTHORITY.—In accordance with the rules
3 of the Board, the Board may conduct an investiga-
4 tion of any act or practice, or omission to act, by a
5 registered public accounting firm, any associated
6 person of such firm, or both, that may violate any
7 provision of this Act, the rules of the Board, the
8 provisions of the securities laws relating to the prep-
9 aration and issuance of audit reports and the obliga-
10 tions and liabilities of accountants with respect
11 thereto, including the rules of the Commission issued
12 under this Act, or professional standards, regardless
13 of how the act, practice, or omission is brought to
14 the attention of the Board.

15 (2) TESTIMONY AND DOCUMENT PRODUC-
16 TION.—In addition to such other actions as the
17 Board determines to be necessary or appropriate,
18 the rules of the Board may—

19 (A) require the testimony of the firm or of
20 any person associated with a registered public
21 accounting firm, with respect to any matter
22 that the Board considers relevant or material to
23 an investigation;

24 (B) require the production of audit work
25 papers and any other document or information

1 in the possession of a registered public account-
2 ing firm or any associated person thereof, wher-
3 ever domiciled, that the Board considers rel-
4 evant or material to the investigation, and may
5 inspect the books and records of such firm or
6 associated person to verify the accuracy of any
7 documents or information supplied;

8 (C) request the testimony of, and produc-
9 tion of any document in the possession of, any
10 other person, including any client of a reg-
11 istered public accounting firm that the Board
12 considers relevant or material to an investiga-
13 tion under this section, with appropriate notice,
14 subject to the needs of the investigation, as per-
15 mitted under the rules of the Board; and

16 (D) provide for procedures to seek issuance
17 by the Commission, in a manner established by
18 the Commission, of a subpoena to require the
19 testimony of, and production of any document
20 in the possession of, any person, including any
21 client of a registered public accounting firm,
22 that the Board considers relevant or material to
23 an investigation under this section.

24 (3) NONCOOPERATION WITH INVESTIGA-
25 TIONS.—

1 (A) IN GENERAL.—If a registered public
2 accounting firm or any associated person there-
3 of refuses to testify, produce documents, or oth-
4 erwise cooperate with the Board in connection
5 with an investigation under this section, the
6 Board may—

7 (i) suspend or bar such person from
8 being associated with a registered public
9 accounting firm, or require the registered
10 public accounting firm to end such associa-
11 tion;

12 (ii) suspend or revoke the registration
13 of the public accounting firm; and

14 (iii) invoke such other lesser sanctions
15 as the Board considers appropriate, and as
16 specified by rule of the Board.

17 (B) PROCEDURE.—Any action taken by
18 the Board under this paragraph shall be subject
19 to the terms of section 107(e).

20 (4) REFERRAL.—The Board may refer an in-
21 vestigation under this section—

22 (A) to the Commission;

23 (B) to any other Federal functional regu-
24 lator (as defined in section 509 of the Gramm-
25 Leach-Bliley Act (15 U.S.C. 6809)), in the case

1 of an investigation that concerns an audit re-
2 port for an institution that is subject to the ju-
3 risdiction of such regulator; and

4 (C) at the direction of the Commission,
5 to—

6 (i) the Attorney General of the United
7 States;

8 (ii) the attorney general of 1 or more
9 States; and

10 (iii) the appropriate State regulatory
11 authority.

12 (5) USE OF DOCUMENTS.—

13 (A) CONFIDENTIALITY.—Except as pro-
14 vided in subparagraph (B), all documents and
15 information prepared or received by or specifi-
16 cally for the Board, and deliberations of the
17 Board and its employees and agents, in connec-
18 tion with an inspection under section 104 or
19 with an investigation under this section, shall
20 be confidential and privileged as an evidentiary
21 matter (and shall not be subject to civil dis-
22 covery or other legal process) in any proceeding
23 in any Federal or State court or administrative
24 agency, and shall be exempt from disclosure, in
25 the hands of an agency or establishment of the

1 Federal Government, under the Freedom of In-
2 formation Act (5 U.S.C. 552a), or otherwise,
3 unless and until presented in connection with a
4 public proceeding or released in accordance with
5 subsection (c).

6 (B) AVAILABILITY TO GOVERNMENT AGEN-
7 CIES.—All information referred to in subpara-
8 graph (A) may, in the discretion of the Board,
9 when determined by the Board to be necessary
10 to accomplish the purposes of this Act or to
11 protect investors, and without the loss of its
12 status as confidential and privileged in the
13 hands of the Board, be made available to the
14 Commission, the Attorney General of the
15 United States, to the appropriate Federal func-
16 tional regulator (as defined in section 509 of
17 the Gramm-Leach-Bliley Act (15 U.S.C.
18 6809)), other than the Commission, with re-
19 spect to an audit report for an institution sub-
20 ject to the jurisdiction of such regulator, to
21 State attorneys general in connection with any
22 criminal investigation, and to any appropriate
23 State regulatory authority, which shall maintain
24 such information as confidential and privileged.

1 (6) IMMUNITY.—Any employee of the Board en-
2 engaged in carrying out an investigation under this
3 Act shall be immune from any civil liability arising
4 out of such investigation in the same manner and to
5 the same extent as an employee of the Federal Gov-
6 ernment in similar circumstances.

7 (c) DISCIPLINARY PROCEDURES.—

8 (1) NOTIFICATION; RECORDKEEPING.—The
9 rules of the Board shall provide that in any pro-
10 ceeding by the Board to determine whether a reg-
11 istered public accounting firm, or an associated per-
12 son thereof, should be disciplined, the Board shall—

13 (A) bring specific charges with respect to
14 the firm or associated person;

15 (B) notify such firm or associated person
16 of, and provide to the firm or associated person
17 an opportunity to defend against, such charges;
18 and

19 (C) keep a record of the proceedings.

20 (2) PUBLIC HEARINGS.—Hearings under this
21 section shall not be public, unless otherwise ordered
22 by the Board for good cause shown, with the consent
23 of the parties to such hearing.

24 (3) SUPPORTING STATEMENT.—A determina-
25 tion by the Board to impose a sanction under this

1 subsection shall be supported by a statement setting
2 forth—

3 (A) each act or practice in which the reg-
4 istered public accounting firm, or associated
5 person, has engaged (or omitted to engage), or
6 that forms a basis for all or a part of such
7 sanction;

8 (B) the specific provision of this Act, the
9 securities laws, the rules of the Board, or pro-
10 fessional standards which the Board determines
11 has been violated; and

12 (C) the sanction imposed, including a jus-
13 tification for that sanction.

14 (4) SANCTIONS.—If the Board finds, based on
15 all of the facts and circumstances, that a registered
16 public accounting firm or associated person thereof
17 has engaged in any act or practice, or omitted to
18 act, in violation of this Act, the rules of the Board,
19 the provisions of the securities laws relating to the
20 preparation and issuance of audit reports and the
21 obligations and liabilities of accountants with respect
22 thereto, including the rules of the Commission issued
23 under this Act, or professional standards, the Board
24 may impose such disciplinary or remedial sanctions

1 as it determines appropriate, subject to applicable
2 limitations under paragraph (5), including—

3 (A) temporary suspension or permanent
4 revocation of registration under this title;

5 (B) temporary or permanent suspension or
6 bar of a person from further association with
7 any registered public accounting firm;

8 (C) temporary or permanent limitation on
9 the activities, functions, or operations of such
10 firm or person (other than in connection with
11 required additional professional education or
12 training);

13 (D) a civil money penalty for each such
14 violation, in an amount equal to—

15 (i) not more than \$100,000 for a nat-
16 ural person or \$2,000,000 for any other
17 person; and

18 (ii) in any case to which paragraph
19 (5) applies, not more than \$750,000 for a
20 natural person or \$15,000,000 for any
21 other person;

22 (E) censure;

23 (F) required additional professional edu-
24 cation or training; or

1 (G) any other appropriate sanction pro-
2 vided for in the rules of the Board.

3 (5) INTENTIONAL OR OTHER KNOWING CON-
4 DUCT.—The sanctions and penalties described in
5 subparagraphs (A) through (C) and (D)(ii) of para-
6 graph (4) shall only apply to—

7 (A) intentional or knowing conduct, includ-
8 ing reckless conduct, that results in violation of
9 the applicable statutory, regulatory, or profes-
10 sional standard; or

11 (B) repeated instances of negligent con-
12 duct, each resulting in a violation of the appli-
13 cable statutory, regulatory, or professional
14 standard.

15 (6) FAILURE TO SUPERVISE.—

16 (A) IN GENERAL.—The Board may impose
17 sanctions under this section on a registered ac-
18 counting firm or upon the supervisory personnel
19 of such firm, if the Board finds that—

20 (i) the firm has failed reasonably to
21 supervise an associated person, either as
22 required by the rules of the Board relating
23 to auditing or quality control standards, or
24 otherwise, with a view to preventing viola-
25 tions of this Act, the rules of the Board,

1 the provisions of the securities laws relat-
2 ing to the preparation and issuance of
3 audit reports and the obligations and li-
4 abilities of accountants with respect there-
5 to, including the rules of the Commission
6 under this Act, or professional standards;
7 and

8 (ii) such associated person commits a
9 violation of this Act, or any of such rules,
10 laws, or standards.

11 (B) RULE OF CONSTRUCTION.—No associ-
12 ated person of a registered public accounting
13 firm shall be deemed to have failed reasonably
14 to supervise any other person for purposes of
15 subparagraph (A), if—

16 (i) there have been established in and
17 for that firm procedures, and a system for
18 applying such procedures, that comply with
19 applicable rules of the Board and that
20 would reasonably be expected to prevent
21 and detect any such violation by such asso-
22 ciated person; and

23 (ii) such person has reasonably dis-
24 charged the duties and obligations incum-
25 bent upon that person by reason of such

1 procedures and system, and had no reason-
2 able cause to believe that such procedures
3 and system were not being complied with.

4 (7) EFFECT OF SUSPENSION.—

5 (A) ASSOCIATION WITH A PUBLIC AC-
6 COUNTING FIRM.—It shall be unlawful for any
7 person that is suspended or barred from being
8 associated with a registered public accounting
9 firm under this subsection willfully to become
10 or remain associated with any registered public
11 accounting firm, or for any registered public ac-
12 counting firm that knew, or, in the exercise of
13 reasonable care should have known, of the sus-
14 pension or bar, to permit such an association,
15 without the consent of the Board or the Com-
16 mission.

17 (B) ASSOCIATION WITH AN ISSUER.—It
18 shall be unlawful for any person that is sus-
19 pended or barred from being associated with an
20 issuer under this subsection willfully to become
21 or remain associated with any issuer in an ac-
22 countancy or a financial management capacity,
23 and for any issuer that knew, or in the exercise
24 of reasonable care should have known, of such
25 suspension or bar, to permit such an associa-

1 tion, without the consent of the Board or the
2 Commission.

3 (d) REPORTING OF SANCTIONS.—

4 (1) RECIPIENTS.—If the Board imposes a dis-
5 ciplinary sanction, in accordance with this section,
6 the Board shall report the sanction to—

7 (A) the Commission;

8 (B) any appropriate State regulatory au-
9 thority or any foreign accountancy licensing
10 board with which such firm or person is li-
11 censed or certified; and

12 (C) the public (once any stay on the impo-
13 sition of such sanction has been lifted).

14 (2) CONTENTS.—The information reported
15 under paragraph (1) shall include—

16 (A) the name of the sanctioned person;

17 (B) a description of the sanction and the
18 basis for its imposition; and

19 (C) such other information as the Board
20 deems appropriate.

21 (e) STAY OF SANCTIONS.—

22 (1) IN GENERAL.—Application to the Commis-
23 sion for review, or the institution by the Commission
24 of review, of any disciplinary action of the Board
25 shall operate as a stay of any such disciplinary ac-

1 tion, unless and until the Commission orders (sum-
2 marily or after notice and opportunity for hearing on
3 the question of a stay, which hearing may consist
4 solely of the submission of affidavits or presentation
5 of oral arguments) that no such stay shall continue
6 to operate.

7 (2) EXPEDITED PROCEDURES.—The Commis-
8 sion shall establish for appropriate cases an expe-
9 dited procedure for consideration and determination
10 of the question of the duration of a stay pending re-
11 view of any disciplinary action of the Board under
12 this subsection.

13 **SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.**

14 (a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

15 (1) IN GENERAL.—Any foreign public account-
16 ing firm that prepares or furnishes an audit report
17 with respect to any issuer, shall be subject to this
18 Act and the rules of the Board and the Commission
19 issued under this Act, in the same manner and to
20 the same extent as a public accounting firm that is
21 organized and operates under the laws of the United
22 States or any State, except that registration pursu-
23 ant to section 102 shall not by itself provide a basis
24 for subjecting such a foreign public accounting firm
25 to the jurisdiction of the Federal or State courts,

1 other than with respect to controversies between
2 such firms and the Board.

3 (2) BOARD AUTHORITY.—The Board may, by
4 rule, determine that a foreign public accounting firm
5 (or a class of such firms) that does not issue audit
6 reports nonetheless plays such a substantial role in
7 the preparation and furnishing of such reports for
8 particular issuers, that it is necessary or appro-
9 priate, in light of the purposes of this Act and in the
10 public interest or for the protection of investors, that
11 such firm (or class of firms) should be treated as a
12 public accounting firm (or firms) for purposes of
13 registration under, and oversight by the Board in ac-
14 cordance with, this title.

15 (b) PRODUCTION OF AUDIT WORKPAPERS.—

16 (1) CONSENT BY FOREIGN FIRMS.—If a foreign
17 public accounting firm issues an opinion or other-
18 wise performs material services upon which a reg-
19 istered public accounting firm relies in issuing all or
20 part of any audit report or any opinion contained in
21 an audit report, that foreign public accounting firm
22 shall be deemed to have consented—

23 (A) to produce its audit workpapers for the
24 Board or the Commission in connection with

1 any investigation by either body with respect to
2 that audit report; and

3 (B) to be subject to the jurisdiction of the
4 courts of the United States for purposes of en-
5 forcement of any request for production of such
6 workpapers.

7 (2) CONSENT BY DOMESTIC FIRMS.—A reg-
8 istered public accounting firm that relies upon the
9 opinion of a foreign public accounting firm, as de-
10 scribed in paragraph (1), shall be deemed—

11 (A) to have consented to supplying the
12 audit workpapers of that foreign public ac-
13 counting firm in response to a request for pro-
14 duction by the Board or the Commission; and

15 (B) to have secured the agreement of that
16 foreign public accounting firm to such produc-
17 tion, as a condition of its reliance on the opin-
18 ion of that foreign public accounting firm.

19 (c) EXEMPTION AUTHORITY.—The Commission, and
20 the Board, subject to the approval of the Commission,
21 may, by rule, regulation, or order, and as the Commission
22 (or Board) determines necessary or appropriate in the
23 public interest or for the protection of investors, either un-
24 conditionally or upon specified terms and conditions ex-
25 empt any foreign public accounting firm, or any class of

1 such firms, from any provision of this Act or the rules
2 of the Board or the Commission issued under this Act.

3 (d) DEFINITION.—In this section, the term “foreign
4 public accounting firm” means a public accounting firm
5 that is organized and operates under the laws of a foreign
6 government or political subdivision thereof.

7 **SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.**

8 (a) GENERAL OVERSIGHT RESPONSIBILITY.—The
9 Commission shall have oversight and enforcement author-
10 ity over the Board, as provided in this Act.

11 (b) RULES OF THE BOARD.—

12 (1) DEFINITION.—In this section, the term
13 “proposed rule” means any proposed rule of the
14 Board, and any modification of any such rule.

15 (2) PRIOR APPROVAL REQUIRED.—No rule of
16 the Board shall become effective without prior ap-
17 proval of the Commission in accordance with this
18 section, other than as provided in section
19 103(a)(3)(B) with respect to initial or transitional
20 standards.

21 (3) APPROVAL CRITERIA.—The Commission
22 shall approve a proposed rule, if it finds that the
23 rule is consistent with the requirements of this Act
24 and the securities laws, or is necessary or appro-

1 appropriate in the public interest or for the protection of
2 investors.

3 (4) PROPOSED RULE PROCEDURES.—The provi-
4 sions of paragraphs (1) through (3) of section 19(b)
5 of the Securities Exchange Act of 1934 (15 U.S.C.
6 78s(b)) shall govern the proposed rules of the
7 Board, as fully as if the Board were a “registered
8 securities association” for purposes of that section
9 19(b), except that, for purposes of this paragraph—

10 (A) the phrase “consistent with the re-
11 quirements of this title and the rules and regu-
12 lations thereunder applicable to such organiza-
13 tion” in section 19(b)(2) of that Act shall be
14 deemed to read “consistent with the require-
15 ments of title I of the Public Company Ac-
16 counting Reform and Investor Protection Act of
17 2002, and the rules and regulations issued
18 thereunder applicable to such organization, or
19 as necessary or appropriate in the public inter-
20 est or for the protection of investors”; and

21 (B) the phrase “otherwise in furtherance
22 of the purposes of this title” in section
23 19(b)(3)(C) of that Act shall be deemed to read
24 “otherwise in furtherance of the purposes of

1 title I of the Public Company Accounting Re-
2 form and Investor Protection Act of 2002”.

3 (5) COMMISSION AUTHORITY TO AMEND RULES
4 OF THE BOARD.—The provisions of section 19(c) of
5 the Securities Exchange Act of 1934 (15 U.S.C.
6 78s(c)) shall govern the abrogation, deletion, or ad-
7 dition to portions of the rules of the Board by the
8 Commission as fully as if the Board were a “reg-
9 istered securities association” for purposes of that
10 section 19(c), except that the phrase “to conform its
11 rules to the requirements of this title and the rules
12 and regulations thereunder applicable to such orga-
13 nization, or otherwise in furtherance of the purposes
14 of this title” in section 19(c) of that Act shall, for
15 purposes of this paragraph, be deemed to read “to
16 assure the fair administration of the Public Com-
17 pany Accounting Oversight Board, conform the rules
18 promulgated by that Board to the requirements of
19 title I of the Public Company Accounting Reform
20 and Investor Protection Act of 2002, or otherwise
21 further the purposes of that Act, the securities laws,
22 and the rules and regulations thereunder applicable
23 to that Board”.

24 (c) COMMISSION REVIEW OF DISCIPLINARY ACTION
25 TAKEN BY THE BOARD.—

1 (1) NOTICE OF SANCTION.—The Board shall
2 promptly file notice with the Commission of any
3 final sanction on any registered public accounting
4 firm or on any associated person thereof, in such
5 form and containing such information as the Com-
6 mission, by rule, may prescribe.

7 (2) REVIEW OF SANCTIONS.—The provisions of
8 sections 19(d)(2) and 19(e)(1) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78s (d)(2) and
10 (e)(1)) shall govern the review by the Commission of
11 final disciplinary sanctions imposed by the Board
12 (including sanctions imposed under section
13 105(b)(3) of this Act for noncooperation in an inves-
14 tigation of the Board), as fully as if the Board were
15 a self-regulatory organization and the Commission
16 were the appropriate regulatory agency for such or-
17 ganization for purposes of those sections 19(d)(2)
18 and 19(e)(1), except that, for purposes of this
19 paragraph—

20 (A) section 105(e) of this Act (rather than
21 that section 19(d)(2)) shall govern the extent to
22 which application for, or institution by the
23 Commission on its own motion of, review of any
24 disciplinary action of the Board operates as a
25 stay of such action;

1 (B) references in that section 19(e)(1) to
2 “members” of such an organization shall be
3 deemed to be references to registered public ac-
4 counting firms;

5 (C) the phrase “consistent with the pur-
6 poses of this title” in that section 19(e)(1) shall
7 be deemed to read “consistent with the pur-
8 poses of this title and title I of the Public Com-
9 pany Accounting Reform and Investor Protec-
10 tion Act of 2002”;

11 (D) references to rules of the Municipal
12 Securities Rulemaking Board in that section
13 19(e)(1) shall not apply; and

14 (E) the reference to section 19(e)(2) of the
15 Securities Exchange Act of 1934 shall refer in-
16 stead to section 107(c)(3) of this Act.

17 (3) COMMISSION MODIFICATION AUTHORITY.—

18 The Commission may enhance, modify, cancel, re-
19 duce, or require the remission of a sanction imposed
20 by the Board upon a registered public accounting
21 firm or associated person thereof, if the Commission,
22 having due regard for the public interest and the
23 protection of investors, finds, after a proceeding in
24 accordance with this subsection, that the sanction—

1 (A) is not necessary or appropriate in fur-
2 therance of this Act or the securities laws; or

3 (B) is excessive, oppressive, inadequate, or
4 otherwise not appropriate to the finding or the
5 basis on which the sanction was imposed.

6 (d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

7 (1) RESCISSION OF BOARD AUTHORITY.—The
8 Commission, by rule, consistent with the public in-
9 terest, the protection of investors, and the other pur-
10 poses of this Act and the securities laws, may relieve
11 the Board of any responsibility to enforce compli-
12 ance with any provision of this Act, the securities
13 laws, the rules of the Board, or professional stand-
14 ards.

15 (2) CENSURE OF THE BOARD; LIMITATIONS.—
16 The Commission may, by order, as it determines
17 necessary or appropriate in the public interest, for
18 the protection of investors, or otherwise in further-
19 ance of the purposes of this Act or the securities
20 laws, censure or impose limitations upon the activi-
21 ties, functions, and operations of the Board, if the
22 Commission finds, on the record, after notice and
23 opportunity for a hearing, that the Board—

1 (A) has violated or is unable to comply
2 with any provision of this Act, the rules of the
3 Board, or the securities laws; or

4 (B) without reasonable justification or ex-
5 cuse, has failed to enforce compliance with any
6 such provision or rule, or any professional
7 standard by a registered public accounting firm
8 or an associated person thereof.

9 (3) CENSURE OF BOARD MEMBERS; REMOVAL
10 FROM OFFICE.—The Commission may, as necessary
11 or appropriate in the public interest, for the protec-
12 tion of investors, or otherwise in furtherance of the
13 purposes of this Act or the securities laws, remove
14 from office or censure any member of the Board, if
15 the Commission finds, on the record, after notice
16 and opportunity for a hearing, that such member—

17 (A) has willfully violated any provision of
18 this Act, the rules of the Board, or the securi-
19 ties laws;

20 (B) has willfully abused the authority of
21 that member; or

22 (C) without reasonable justification or ex-
23 cuse, has failed to enforce compliance with any
24 such provision or rule, or any professional

1 standard by any registered public accounting
2 firm or any associated person thereof.

3 **SEC. 108. ACCOUNTING STANDARDS.**

4 (a) AMENDMENT TO SECURITIES ACT OF 1933.—
5 Section 19 of the Securities Act of 1933 (15 U.S.C. 77s)
6 is amended—

7 (1) by redesignating subsections (b) and (c) as
8 subsections (c) and (d), respectively; and

9 (2) by inserting after subsection (a) the fol-
10 lowing:

11 “(b) RECOGNITION OF ACCOUNTING STANDARDS.—

12 “(1) IN GENERAL.—In carrying out its author-
13 ity under subsection (a) and under section 13(b) of
14 the Securities Exchange Act of 1934, the Commis-
15 sion may recognize, as ‘generally accepted’ for pur-
16 poses of the securities laws, any accounting prin-
17 ciples established by a standard setting body—

18 “(A) that—

19 “(i) is organized as a private entity;

20 “(ii) has, for administrative and oper-
21 ational purposes, a board of trustees (or
22 equivalent body) serving in the public in-
23 terest, the majority of whom are not, con-
24 current with their service on such board,
25 and have not been during the 2-year period

1 preceding such service, associated persons
2 of any registered public accounting firm;

3 “(iii) is funded as provided in section
4 109 of the Public Company Accounting
5 Reform and Investor Protection Act of
6 2002;

7 “(iv) has adopted procedures to en-
8 sure prompt consideration, by majority
9 vote of its members, of changes to account-
10 ing principles necessary to reflect emerging
11 accounting issues and changing business
12 practices;

13 “(v) considers, in adopting accounting
14 principles, the need to keep standards cur-
15 rent in order to reflect changes in the busi-
16 ness environment, the extent to which
17 international convergence on high quality
18 accounting standards is necessary or ap-
19 propriate in the public interest and for the
20 protection of investors; and

21 “(B) that the Commission determines has
22 the capacity to assist the Commission in ful-
23 filling the requirements of subsection (a) and
24 section 13(b) of the Securities Exchange Act of
25 1934, because, at a minimum, the standard set-

1 ting body is capable of improving the accuracy
2 and effectiveness of financial reporting and the
3 protection of investors under the securities
4 laws.

5 “(2) ANNUAL REPORT.—A standard setting
6 body described in paragraph (1) shall submit an an-
7 nual report to the Commission and the public, con-
8 taining audited financial statements of that standard
9 setting body.”.

10 (b) COMMISSION AUTHORITY.—The Commission
11 shall promulgate such rules and regulations to carry out
12 section 19(b) of the Securities Act of 1933, as added by
13 this section, as it deems necessary or appropriate in the
14 public interest or for the protection of investors.

15 (c) NO EFFECT ON COMMISSION POWERS.—Nothing
16 in this Act, including this section and the amendment
17 made by this section, shall be construed to impair or limit
18 the authority of the Commission to establish accounting
19 principles or standards for purposes of enforcement of the
20 securities laws.

21 (d) STUDY AND REPORT ON ADOPTING PRINCIPLES-
22 BASED ACCOUNTING.—

23 (1) STUDY.—

24 (A) IN GENERAL.—The Commission shall
25 conduct a study on the adoption by the United

1 States financial reporting system of a prin-
2 ciples-based accounting system.

3 (B) STUDY TOPICS.—The study required
4 by subparagraph (A) shall include an examina-
5 tion of—

6 (i) the extent to which principles-
7 based accounting and financial reporting
8 exists in the United States;

9 (ii) the length of time required for
10 change from a rules-based to a principles-
11 based financial reporting system;

12 (iii) the feasibility of and proposed
13 methods by which a principles-based sys-
14 tem may be implemented; and

15 (iv) a thorough economic analysis of
16 the implementation of a principles-based
17 system.

18 (2) REPORT.—Not later than 1 year after the
19 date of enactment of this Act, the Commission shall
20 submit a report on the results of the study required
21 by paragraph (1) to the Committee on Banking,
22 Housing, and Urban Affairs of the Senate and the
23 Committee on Financial Services of the House of
24 Representatives.

1 **SEC. 109. FUNDING.**

2 (a) IN GENERAL.—The Board, and the standard set-
3 ting body designated pursuant to section 19(b) of the Se-
4 curities Act of 1933, as amended by section 108, shall be
5 funded as provided in this section.

6 (b) ANNUAL BUDGETS.—The Board and the stand-
7 ard setting body referred to in subsection (a) shall each
8 establish a budget for each fiscal year, which shall be re-
9 viewed and approved according to their respective internal
10 procedures not less than 1 month prior to the commence-
11 ment of the fiscal year to which the budget pertains. The
12 budget of the Board shall be subject to approval by the
13 Commission.

14 (c) SOURCES AND USES OF FUNDS.—

15 (1) RECOVERABLE BUDGET EXPENSES.—The
16 budget of the Board (reduced by any registration or
17 annual fees received under section 102(e) for the
18 year preceding the year for which the budget is
19 being computed), and all of the budget of the stand-
20 ard setting body referred to in subsection (a), for
21 each fiscal year of each of those 2 entities, shall be
22 payable from annual accounting support fees, in ac-
23 cordance with subsections (d) and (e).

24 (2) FUNDS GENERATED FROM THE COLLEC-
25 TION OF MONETARY PENALTIES.—All funds collected
26 by the Board as a result of the assessment of mone-

1 tary penalties shall be used to fund a merit scholar-
2 ship program for undergraduate and graduate stu-
3 dents enrolled in accredited accounting degree pro-
4 grams, which program is to be administered by the
5 Board or by an entity or agent identified by the
6 Board.

7 (d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE
8 BOARD.—

9 (1) ESTABLISHMENT OF FEE.—The Board shall
10 establish, with the approval of the Commission, a
11 reasonable annual accounting support fee (or a for-
12 mula for the computation thereof), as may be nec-
13 essary or appropriate to establish and maintain the
14 Board.

15 (2) ASSESSMENTS.—The rules of the Board
16 under paragraph (1) shall provide for the equitable
17 allocation, assessment, and collection by the Board
18 (or an agent appointed by the Board) of the fee es-
19 tablished under paragraph (1), among issuers, in ac-
20 cordance with subsection (f), allowing for differentia-
21 tion among classes of issuers, as appropriate.

22 (e) ANNUAL ACCOUNTING SUPPORT FEE FOR
23 STANDARD SETTING BODY.—The annual accounting sup-
24 port fee for the standard setting body referred to in sub-
25 section (a)—

1 (1) shall be allocated in accordance with sub-
2 section (f), and assessed and collected against each
3 issuer, on behalf of the standard setting body, by 1
4 or more appropriate designated collection agents, as
5 may be necessary or appropriate to pay for the
6 budget and provide for the expenses of that standard
7 setting body, and to provide for an independent, sta-
8 ble source of funding for such body, subject to re-
9 view by the Commission; and

10 (2) may differentiate among different classes of
11 issuers.

12 (f) ALLOCATION OF ACCOUNTING SUPPORT FEES
13 AMONG ISSUERS.—Any amount due from issuers (or a
14 particular class of issuers) under this section to fund the
15 budget of the Board or the standard setting body referred
16 to in subsection (a) shall be allocated among and payable
17 by each issuer (or each issuer in a particular class, as ap-
18 plicable) in an amount equal to the total of such amount,
19 multiplied by a fraction—

20 (1) the numerator of which is the average
21 monthly equity market capitalization of the issuer
22 for the 12-month period immediately preceding the
23 beginning of the fiscal year to which such budget re-
24 lates; and

1 (2) the denominator of which is the average
2 monthly equity market capitalization of all such
3 issuers for such 12-month period.

4 (g) CONFORMING AMENDMENTS.—Section 13(b)(2)
5 of the Securities Exchange Act of 1934 (15 U.S.C.
6 78m(b)(2)) is amended—

7 (1) in subparagraph (A), by striking “and” at
8 the end;

9 (2) in subparagraph (B), by striking the period
10 at the end and inserting the following: “; and

11 “(C) notwithstanding any other provision of
12 law, pay the allocable share of such issuer of a rea-
13 sonable annual accounting support fee or fees, deter-
14 mined in accordance with section 109 of the Public
15 Company Accounting Reform and Investor Protec-
16 tion Act of 2002.”.

17 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
18 tion shall be construed to render either the Board, the
19 standard setting body referred to in subsection (a), or
20 both, subject to procedures in Congress to authorize or
21 appropriate public funds, or to prevent such organization
22 from utilizing additional sources of revenue for its activi-
23 ties, such as earnings from publication sales, provided that
24 each additional source of revenue shall not jeopardize, in

1 the judgment of the Commission, the actual and perceived
2 independence of such organization.

3 **TITLE II—AUDITOR**
4 **INDEPENDENCE**

5 **SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF**
6 **AUDITORS.**

7 (a) PROHIBITED ACTIVITIES.—Section 10A of the
8 Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is
9 amended by adding at the end the following:

10 “(g) PROHIBITED ACTIVITIES.—It shall be unlawful
11 for a registered public accounting firm (and any associated
12 person of that firm, to the extent determined appropriate
13 by the Commission) that performs for any issuer any audit
14 required by this title or the rules of the Commission under
15 this title or, beginning 180 days after the date of com-
16 mencement of the operations of the Public Company Ac-
17 counting Oversight Board established under section 101
18 of the Public Company Accounting Reform and Investor
19 Protection Act of 2002 (in this section referred to as the
20 ‘Board’), the rules of the Board, to provide to that issuer,
21 contemporaneously with the audit, any non-audit service,
22 including—

23 “(1) bookkeeping or other services related to
24 the accounting records or financial statements of the
25 audit client;

1 “(2) financial information systems design and
2 implementation;

3 “(3) appraisal or valuation services, fairness
4 opinions, or contribution-in-kind reports;

5 “(4) actuarial services;

6 “(5) internal audit outsourcing services;

7 “(6) management functions or human re-
8 sources;

9 “(7) broker or dealer, investment adviser, or in-
10 vestment banking services;

11 “(8) legal services and expert services unrelated
12 to the audit; and

13 “(9) any other service that the Board deter-
14 mines, by regulation, is impermissible.

15 “(h) PREAPPROVAL REQUIRED FOR NON-AUDIT
16 SERVICES.—A registered public accounting firm may en-
17 gage in any non-audit service, including tax services, that
18 is not described in any of paragraphs (1) through (9) of
19 subsection (g) for an audit client, only if the activity is
20 approved in advance by the audit committee of the issuer,
21 in accordance with subsection (i).”.

22 (b) EXEMPTION AUTHORITY.—The Board may, on a
23 case by case basis, exempt any person, issuer, public ac-
24 counting firm, or transaction from the prohibition on the
25 provision of services under section 10A(g) of the Securities

1 Exchange Act of 1934 (as added by this section), to the
2 extent that such exemption is necessary or appropriate in
3 the public interest and is consistent with the protection
4 of investors, and subject to review by the Commission in
5 the same manner as for rules of the Board under section
6 107.

7 **SEC. 202. PREAPPROVAL REQUIREMENTS.**

8 Section 10A of the Securities Exchange Act of 1934
9 (15 U.S.C. 78j-1), as amended by this Act, is amended
10 by adding at the end the following:

11 “(i) PREAPPROVAL REQUIREMENTS.—

12 “(1) IN GENERAL.—

13 “(A) AUDIT COMMITTEE ACTION.—All au-
14 diting services (which may entail providing com-
15 fort letters in connection with securities
16 underwritings) and non-audit services, other
17 than as provided in subparagraph (B), provided
18 to an issuer by the auditor of the issuer shall
19 be preapproved by the audit committee of the
20 issuer.

21 “(B) DE MINIMUS EXCEPTION.—The
22 preapproval requirement under subparagraph
23 (A) is waived with respect to the provision of
24 non-audit services for an issuer, if—

1 “(i) the aggregate amount of all such
2 non-audit services provided to the issuer
3 constitutes not more than 5 percent of the
4 total amount of revenues paid by the issuer
5 to its auditor;

6 “(ii) such services were not recognized
7 by the issuer at the time of the engage-
8 ment to be non-audit services; and

9 “(iii) such services are promptly
10 brought to the attention of the audit com-
11 mittee of the issuer and approved by the
12 audit committee prior to the completion of
13 the audit, by 1 or more members of the
14 audit committee who are members of the
15 board of directors to whom authority to
16 grant such approvals has been delegated by
17 the audit committee.

18 “(2) DISCLOSURE TO INVESTORS.—Approval by
19 an audit committee of an issuer under this sub-
20 section of a non-audit service to be performed by the
21 auditor of the issuer shall be disclosed to investors
22 in periodic reports required by section 13(a).

23 “(3) DELEGATION AUTHORITY.—The audit
24 committee of an issuer may delegate to 1 or more
25 designated members of the audit committee who are

1 independent directors of the board of directors, the
2 authority to grant preapprovals required by this sub-
3 section. The decisions of any member to whom au-
4 thority is delegated under this paragraph to
5 preapprove an activity under this subsection shall be
6 presented to the full audit committee at each of its
7 scheduled meetings.

8 “(4) APPROVAL OF AUDIT SERVICES FOR
9 OTHER PURPOSES.—In carrying out its duties under
10 subsection (m)(2), if the audit committee of an
11 issuer approves an audit service within the scope of
12 the engagement of the auditor, such audit service
13 shall be deemed to have been preapproved for pur-
14 poses of this subsection.”.

15 **SEC. 203. AUDIT PARTNER ROTATION.**

16 Section 10A of the Securities Exchange Act of 1934
17 (15 U.S.C. 78j-1), as amended by this Act, is amended
18 by adding at the end the following:

19 “(j) AUDIT PARTNER ROTATION.—It shall be unlaw-
20 ful for a registered public accounting firm to provide audit
21 services to an issuer if the lead audit partner (having pri-
22 mary responsibility for the audit) or the audit partner re-
23 sponsible for reviewing the audit that is assigned to per-
24 form those audit services has performed audit services for

1 that issuer in each of the 5 previous fiscal years of that
2 issuer.”.

3 **SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.**

4 Section 10A of the Securities Exchange Act of 1934
5 (15 U.S.C. 78j-1), as amended by this Act, is amended
6 by adding at the end the following:

7 “(k) REPORTS TO AUDIT COMMITTEES.—Each reg-
8 istered public accounting firm that performs for any issuer
9 any audit required by this title shall timely report to the
10 audit committee of the issuer—

11 “(1) all critical accounting policies and prac-
12 tices to be used;

13 “(2) all alternative treatments of financial in-
14 formation within generally accepted accounting prin-
15 ciples that have been discussed with management of-
16 ficials of the issuer, ramifications of the use of such
17 alternative disclosures and treatments, and the
18 treatment preferred by the registered public account-
19 ing firm; and

20 “(3) other material written communications be-
21 tween the registered public accounting firm and the
22 management of the issuer, such as any management
23 letter or schedule of unadjusted differences.”.

1 **SEC. 205. CONFORMING AMENDMENTS.**

2 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78c(a)) is amended by
4 adding at the end the following:

5 “(58) AUDIT COMMITTEE.—The term ‘audit
6 committee’ means—

7 “(A) a committee (or equivalent body) es-
8 tablished by and amongst the board of directors
9 of an issuer for the purpose of overseeing the
10 accounting and financial reporting processes of
11 the issuer and audits of the financial state-
12 ments of the issuer; and

13 “(B) if no such committee exists with re-
14 spect to an issuer, the entire board of directors
15 of the issuer.

16 “(59) REGISTERED PUBLIC ACCOUNTING
17 FIRM.—The term ‘registered public accounting firm’
18 has the same meaning as in section 3 of the Public
19 Company Accounting Reform and Investor Protec-
20 tion Act of 2002.”.

21 (b) AUDITOR REQUIREMENTS.—Section 10A of the
22 Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is
23 amended—

24 (1) by striking “an independent public account-
25 ant” each place that term appears and inserting “a
26 registered public accounting firm”;

1 (2) by striking “the independent public ac-
2 countant” each place that term appears and insert-
3 ing “the registered public accounting firm”;

4 (3) in subsection (c), by striking “No inde-
5 pendent public accountant” and inserting “No reg-
6 istered public accounting firm”; and

7 (4) in subsection (b)—

8 (A) by striking “the accountant” each
9 place that term appears and inserting “the
10 firm”;

11 (B) by striking “such accountant” each
12 place that term appears and inserting “such
13 firm”; and

14 (C) in paragraph (4), by striking “the ac-
15 countant’s report” and inserting “the report of
16 the firm”.

17 (c) OTHER REFERENCES.—The Securities Exchange
18 Act of 1934 (15 U.S.C. 78a et seq.) is amended—

19 (1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)),
20 by striking “independent public accountants” each
21 place that term appears and inserting “a registered
22 public accounting firm”; and

23 (2) in subsections (e) and (i) of section 17 (15
24 U.S.C. 78q), by striking “an independent public ac-

1 on Financial Services of the House of Representatives on
2 the results of the study and review required by this sec-
3 tion.

4 (c) DEFINITION.—For purposes of this section, the
5 term “mandatory rotation” refers to the imposition of a
6 limit on the period of years in which a particular reg-
7 istered public accounting firm may be the auditor of
8 record for a particular issuer.

9 **SEC. 208. COMMISSION AUTHORITY.**

10 (a) COMMISSION REGULATIONS.—Not later than 180
11 days after the date of enactment of this Act, the Commis-
12 sion shall issue final regulations to carry out each of sub-
13 sections (g) through (l) of section 10A of the Securities
14 Exchange Act of 1934, as added by this title.

15 (b) AUDITOR INDEPENDENCE.—It shall be unlawful
16 for any registered public accounting firm (or an associated
17 person thereof, as applicable) to prepare or issue any audit
18 report with respect to any issuer, if the firm or associated
19 person engages in any activity with respect to that issuer
20 prohibited by any of subsections (g) through (l) of section
21 10A of the Securities Exchange Act of 1934, as added
22 by this title, or any rule or regulation of the Commission
23 or of the Board issued thereunder.

1 **SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGU-**
 2 **LATORY AUTHORITIES.**

3 It is the intention of this Act that, in supervising non-
 4 registered public accounting firms and their associated
 5 persons, appropriate State regulatory authorities should
 6 make an independent determination of the proper stand-
 7 ards applicable, particularly taking into consideration the
 8 size and nature of the business of the accounting firms
 9 they supervise. The standards applied by the Board under
 10 this Act should not be presumed to be applicable for pur-
 11 poses of this section for small- and medium-sized nonreg-
 12 istered public accounting firms.

13 **TITLE III—CORPORATE**
 14 **RESPONSIBILITY**

15 **SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.**

16 Section 10A of the Securities Exchange Act of 1934
 17 (15 U.S.C. 78f) is amended by adding at the end the fol-
 18 lowing:

19 “(m) STANDARDS RELATING TO AUDIT COMMIT-
 20 TEES.—

21 “(1) COMMISSION RULES.—

22 “(A) IN GENERAL.—Effective not later
 23 than 270 days after the date of enactment of
 24 this subsection, the Commission shall, by rule,
 25 direct the national securities exchanges and na-
 26 tional securities associations to prohibit the list-

1 ing of any security of an issuer that is not in
2 compliance with the requirements of any por-
3 tion of paragraphs (2) through (6).

4 “(B) OPPORTUNITY TO CURE DEFECTS.—
5 The rules of the Commission under subpara-
6 graph (A) shall provide for appropriate proce-
7 dures for an issuer to have an opportunity to
8 cure any defects that would be the basis for a
9 prohibition under subparagraph (A), before the
10 imposition of such prohibition.

11 “(2) RESPONSIBILITIES RELATING TO REG-
12 ISTERED PUBLIC ACCOUNTING FIRMS.—The audit
13 committee of each issuer, in its capacity as a com-
14 mittee of the board of directors, shall be directly re-
15 sponsible for the appointment, compensation, and
16 oversight of the work of any registered public ac-
17 counting firm employed by that issuer (including
18 resolution of disagreements between management
19 and the auditor regarding financial reporting) for
20 the purpose of preparing or issuing an audit report
21 or related work, and each such registered public ac-
22 counting firm shall report directly to the audit com-
23 mittee.

24 “(3) INDEPENDENCE.—

1 “(A) IN GENERAL.—Each member of the
2 audit committee of the issuer shall be a member
3 of the board of directors of the issuer, and shall
4 otherwise be independent.

5 “(B) CRITERIA.—In order to be considered
6 to be independent for purposes of this para-
7 graph, a member of an audit committee of an
8 issuer may not, other than in his or her capac-
9 ity as a member of the audit committee, the
10 board of directors, or any other board
11 committee—

12 “(i) accept any consulting, advisory,
13 or other compensatory fee from the issuer;
14 or

15 “(ii) be an affiliated person of the
16 issuer or any subsidiary thereof.

17 “(C) EXEMPTION AUTHORITY.—The Com-
18 mission may exempt from the requirements of
19 subparagraph (B) a particular relationship with
20 respect to audit committee members, as the
21 Commission determines appropriate in light of
22 the circumstances.

23 “(4) COMPLAINTS.—Each audit committee shall
24 establish procedures for—

1 “(A) the receipt, retention, and treatment
2 of complaints received by the issuer regarding
3 accounting, internal accounting controls, or au-
4 diting matters; and

5 “(B) the confidential, anonymous submis-
6 sion by employees of the issuer of concerns re-
7 garding questionable accounting or auditing
8 matters.

9 “(5) AUTHORITY TO ENGAGE ADVISERS.—Each
10 audit committee shall have the authority to engage
11 independent counsel and other advisers, as it deter-
12 mines necessary to carry out its duties.

13 “(6) FUNDING.—Each issuer shall provide for
14 appropriate funding, as determined by the audit
15 committee, in its capacity as a committee of the
16 board of directors, for payment of compensation—

17 “(A) to the registered public accounting
18 firm employed by the issuer for the purpose of
19 rendering or issuing an audit report; and

20 “(B) to any advisers employed by the audit
21 committee under paragraph (5).”.

22 **SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL**
23 **REPORTS.**

24 (a) CERTIFICATION OF PERIODIC REPORTS.—Each
25 periodic report containing financial statements filed by an

1 issuer with the Commission pursuant to section 13(a) or
2 15(d) of the Securities Exchange Act of 1934, shall be
3 accompanied by a written statement by the chief executive
4 officer and chief financial officer (or the equivalent there-
5 of) of the issuer.

6 (b) **CONTENT.**—The statement required by sub-
7 section (a) shall certify the appropriateness of the finan-
8 cial statements and disclosures contained in the periodic
9 report, and that those financial statements and disclosures
10 fairly present, in all material respects, the operations and
11 financial condition of the issuer.

12 **SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

13 (a) **RULES TO PROHIBIT.**—It shall be unlawful, in
14 contravention of such rules or regulations as the Commis-
15 sion shall prescribe as necessary and appropriate in the
16 public interest or for the protection of investors, for any
17 officer or director of an issuer, or any other person acting
18 under the direction thereof, to take any action to fraudu-
19 lently influence, coerce, manipulate, or mislead any inde-
20 pendent public or certified accountant engaged in the per-
21 formance of an audit of the financial statements of that
22 issuer for the purpose of rendering such financial state-
23 ments materially misleading.

24 (b) **ENFORCEMENT.**—In any civil proceeding, the
25 Commission shall have exclusive authority to enforce this

1 section and any rule or regulation issued under this sec-
2 tion.

3 (c) NO PREEMPTION OF OTHER LAW.—The provi-
4 sions of subsection (a) shall be in addition to, and shall
5 not supersede or preempt, any other provision of law or
6 any rule or regulation issued thereunder.

7 (d) DEADLINE FOR RULEMAKING.—The Commission
8 shall—

9 (1) propose the rules or regulations required by
10 this section, not later than 90 days after the date of
11 enactment of this Act; and

12 (2) issue final rules or regulations required by
13 this section, not later than 270 days after that date
14 of enactment.

15 **SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROF-**
16 **ITS.**

17 (a) ADDITIONAL COMPENSATION PRIOR TO NON-
18 COMPLIANCE WITH COMMISSION FINANCIAL REPORTING
19 REQUIREMENTS.—If an issuer is required to prepare an
20 accounting restatement due to the material noncompliance
21 of the issuer, as a result of misconduct, with any financial
22 reporting requirement under the securities laws, the chief
23 executive officer and chief financial officer of the issuer
24 shall reimburse the issuer for—

1 (1) any bonus or other incentive-based or equity-based compensation received by that person
2 from the issuer during the 12-month period following the first public issuance or filing with the
3 Commission (whichever first occurs) of the financial
4 document embodying such financial reporting requirement; and

5 (2) any profits realized from the sale of securities of the issuer during that 12-month period.

6 (b) COMMISSION EXEMPTION AUTHORITY.—The
7 Commission may exempt any person from the application
8 of subsection (a), as it deems necessary and appropriate.

9 **SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.**

10 (a) UNFITNESS STANDARD.—

11 (1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78u(d)(2)) is amended by striking
13 “substantial unfitness” and inserting “unfitness”.

14 (2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is
15 amended by striking “substantial unfitness” and insert “unfitness”.

16 (b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is
17 amended—

1 the plan administrator to the participants or bene-
2 ficiaries.

3 (2) EXCEPTION.—The 30-day notice require-
4 ment in paragraph (1) shall not apply, and notice
5 under paragraph (1) shall be furnished as soon as
6 is reasonably possible, in any case in which—

7 (A) a deferral of the blackout period would
8 violate the requirements of subparagraph (A) or
9 (B) of section 404(a)(1) of the Employment Re-
10 tirement Income Security Act of 1974, and a fi-
11 duciary of the plan so reasonably determines in
12 writing; or

13 (B) the inability to provide the 30-day no-
14 tice is due to events that were unforeseeable, or
15 circumstances beyond the reasonable control of
16 the plan administrator, and a fiduciary of the
17 plan so reasonably determines in writing.

18 (3) WRITTEN NOTICE.—The notice required to
19 be provided under paragraph (1) shall be in writing,
20 except that such notice may be in electronic form to
21 the extent that such form is reasonably accessible to
22 the recipient.

23 (c) REMEDY.—

24 (1) IN GENERAL.—Any profit realized by a di-
25 rector or executive officer referred to in subsection

1 (a) from any purchase, sale, or other acquisition or
2 transfer in violation of this section shall inure to and
3 be recoverable by the issuer, irrespective of any in-
4 tention on the part of such director or executive offi-
5 cer in entering into the transaction.

6 (2) ACTIONS TO RECOVER PROFITS.—An action
7 to recover profits in accordance with this section
8 may be instituted at law or in equity in any court
9 of competent jurisdiction by the issuer, or by the
10 owner of any security of the issuer in the name and
11 in behalf of the issuer if the issuer fails or refuses
12 to bring such action within 60 days after the date
13 of request, or fails diligently to prosecute the action
14 thereafter, except that no such suit shall be brought
15 more than 2 years after the date on which such
16 profit was realized.

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

21 (e) DEFINITIONS.—For purposes of this section—

22 (1) the term “blackout period”, with respect to
23 the equity securities of any issuer—

24 (A) means any period during which the
25 ability of not fewer than 50 percent of the par-

1 participants or beneficiaries under all applicable in-
2 dividual account plans maintained by the issuer
3 to purchase, sell, or otherwise acquire or trans-
4 fer an interest in any equity of such issuer held
5 in such an individual account plan, is suspended
6 by the issuer or a fiduciary of the plan; and

7 (B) does not include—

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

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

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

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

1 (2) the term “individual account plan” has the
2 same meaning as in section 3(34) of the Employee
3 Retirement Income Security Act of 1974 (29 U.S.C.
4 1002(34)).

5 **TITLE IV—ENHANCED**
6 **FINANCIAL DISCLOSURES**

7 **SEC. 401. DISCLOSURES IN PERIODIC REPORTS.**

8 (a) **DISCLOSURES REQUIRED.**—Section 13 of the Se-
9 curities Exchange Act of 1934 (15 U.S.C. 78m) is amend-
10 ed by adding at the end the following:

11 “(i) **ACCURACY OF FINANCIAL REPORTS.**—Each fi-
12 nancial report that is required to be prepared in accord-
13 ance with generally accepted accounting principles under
14 this title and filed with the Commission shall reflect all
15 material correcting adjustments that have been identified
16 by a registered public accounting firm in accordance with
17 generally accepted accounting principles and the rules and
18 regulations of the Commission.

19 “(j) **OFF-BALANCE SHEET TRANSACTIONS.**—Not
20 later than 180 days after the date of enactment of the
21 Public Company Accounting Reform and Investor Protec-
22 tion Act of 2002, the Commission shall issue final rules
23 providing that each annual and quarterly financial report
24 required to be filed with the Commission shall disclose all
25 material off-balance sheet transactions, arrangements, ob-

1 ligations (including contingent obligations), and other re-
2 lationships of the issuer with unconsolidated entities or
3 other persons, that may have a material current or future
4 effect on financial condition, changes in financial condi-
5 tion, results of operations, liquidity, capital expenditures,
6 capital resources, or significant components of revenues
7 or expenses.”.

8 (b) COMMISSION RULES ON PRO FORMA FIGURES.—

9 Not later than 180 days after the date of enactment of
10 this Act, the Commission shall issue final rules providing
11 that pro forma financial information included in any peri-
12 odic or other report filed with the Commission pursuant
13 to the securities laws, or in any public disclosure or press
14 or other release, shall be presented in a manner that—

15 (1) does not contain an untrue statement of a
16 material fact or omit to state a material fact nec-
17 essary in order to make the pro forma financial in-
18 formation, in light of the circumstances under which
19 it is presented, not misleading; and

20 (2) reconciles it with the financial condition and
21 results of operations of the issuer under generally
22 accepted accounting principles.

1 **SEC. 402. ENHANCED CONFLICT OF INTEREST DISCLO-**
2 **SURES.**

3 Section 13 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78m), as amended by this Act, is amended by
5 adding at the end the following:

6 “(k) ENHANCED DISCLOSURES OF LOANS.—

7 “(1) IN GENERAL.—The Commission shall, by
8 rule, require each issuer of any securities registered
9 pursuant to section 12 to disclose to the Commis-
10 sion, in writing—

11 “(A) other than as provided in paragraph
12 (2), each loan by that issuer, or an affiliate
13 thereof, to a director or executive officer of that
14 issuer, or a loan guarantee or similar arrange-
15 ment from that issuer in favor of another per-
16 son who lends, or agrees to lend, money to the
17 director or executive officer of the issuer, in-
18 cluding the amounts loaned and balances owed,
19 not later than 7 calendar days after the date on
20 which the loan, guarantee, or other arrange-
21 ment is made, or such other time period, as de-
22 termined appropriate by the Commission;

23 “(B) together with each report or other
24 document required to be filed under this section
25 in the case of each loan, guarantee, or similar

1 arrangement described in subparagraph (A),
2 whether—

3 “(i) the obligation has been forgiven;

4 “(ii) the issuer or its affiliate makes
5 payment on the obligation; and

6 “(iii) any collateral is foreclosed upon
7 with respect to the obligation; and

8 “(C) any conflict of interest, as defined by
9 the Commission, on the part of any partner, of-
10 ficer, director, or other management official or
11 affiliated person of the issuer.

12 “(2) EXCEPTIONS.—Paragraph (1)(A) does not
13 require disclosure by an issuer of any extension of
14 credit under an open end credit plan (as defined in
15 section 103 of the Truth in Lending Act (15 U.S.C.
16 1602)) that is—

17 “(A) made in the ordinary course of the
18 consumer credit business of an issuer;

19 “(B) of a type that is generally made avail-
20 able by the issuer to the public; and

21 “(C) made on market terms, or terms that
22 are no more favorable than those offered by the
23 issuer to the general public for such loans.

24 “(3) FORM OF DISCLOSURES.—Disclosures re-
25 quired by this subsection shall be in such form and

1 subject to such terms and conditions as the Commis-
2 sion shall specify.”.

3 **SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING**
4 **MANAGEMENT AND PRINCIPAL STOCK-**
5 **HOLDERS.**

6 Section 16(a) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78p(a)) is amended—

8 (1) by striking “security, shall file,” and insert-
9 ing the following:

10 “(1) shall file”; and

11 (2) by striking “beneficial owner, and” and all
12 that follows through the end of the subsection and
13 inserting the following: “beneficial owner; and

14 “(2) if there has been a change in such owner-
15 ship, or if such person shall have purchased or sold
16 a security-based swap agreement (as defined in sec-
17 tion 206B of the Gramm-Leach-Bliley Act) involving
18 such equity security, shall file with the Commission
19 (and if such security is registered on a national se-
20 curities exchange, shall also file with the exchange),
21 a statement before the end of the second business
22 day following the day on which the subject trans-
23 action has been executed, or at such other time as
24 the Commission shall establish, by rule, in any case
25 in which the Commission determines that such 2-day

1 period is not feasible, indicating ownership by that
2 person at the date of filing, any such changes in
3 such ownership, and such purchases and sales of the
4 security-based swap agreements as have occurred
5 since the most recent such filing under this para-
6 graph.”.

7 **SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CON-**
8 **TROLS.**

9 (a) **RULES REQUIRED.**—The Commission shall pre-
10 scribe rules requiring each annual report required by sec-
11 tion 13 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78m) to contain an internal control report, which shall—

13 (1) state the responsibility of management for
14 establishing and maintaining an adequate internal
15 control structure and procedures for financial re-
16 porting; and

17 (2) contain an assessment, as of the end of the
18 most recent fiscal year of the issuer, of the effective-
19 ness of the internal control structure and procedures
20 of the issuer for financial reporting.

21 (b) **INTERNAL CONTROL EVALUATION AND REPORT-**
22 **ING.**—With respect to the internal control assessment re-
23 quired by subsection (a), each registered public accounting
24 firm that prepares or issues the audit report for the issuer
25 shall attest to, and report on, the assessment made by the

1 management of the issuer. An attestation made under this
2 subsection shall be made in accordance with standards for
3 attestation engagements issued or adopted by the Board.
4 Any such attestation shall not be the subject of a separate
5 engagement.

6 **SEC. 405. EXEMPTION.**

7 Nothing in section 401, 402, or 404, the amendments
8 made by those sections, or the rules of the Commission
9 under those sections shall apply to any investment com-
10 pany registered under section 8 of the Investment Com-
11 pany Act of 1940 (15 U.S.C. 80a–8).

12 **SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFI-**
13 **CERS.**

14 (a) **CODE OF ETHICS DISCLOSURE.**—The Commis-
15 sion shall issue rules to require each issuer, together with
16 periodic reports required pursuant to sections 13(a) and
17 15(d) of the Securities Exchange Act of 1934, to disclose
18 whether or not, and if not, the reason therefor, such issuer
19 has adopted a code of ethics for senior financial officers,
20 applicable to its principal financial officer, comptroller or
21 principal accounting officer, or persons performing similar
22 functions.

23 (b) **CHANGES IN CODES OF ETHICS.**—The Commis-
24 sion shall revise its regulations concerning matters requir-
25 ing prompt disclosure on Form 8–K (or any successor

1 thereto) to require the immediate disclosure, by means of
2 the filing of such form, dissemination by the Internet or
3 by other electronic means, by any issuer of any change
4 in or waiver of the code of ethics of the issuer.

5 (c) DEFINITION.—In this section, the term “code of
6 ethics” means such standards as are reasonably necessary
7 to promote—

8 (1) honest and ethical conduct, including the
9 ethical handling of actual or apparent conflicts of in-
10 terest between personal and professional relation-
11 ships;

12 (2) full, fair, accurate, timely, and understand-
13 able disclosure in the periodic reports required to be
14 filed by the issuer; and

15 (3) compliance with applicable governmental
16 rules and regulations.

17 (d) DEADLINE FOR RULEMAKING.—The Commission
18 shall—

19 (1) propose rules to implement this section, not
20 later than 90 days after the date of enactment of
21 this Act; and

22 (2) issue final rules to implement this section,
23 not later than 180 days after that date of enact-
24 ment.

1 **SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL**
2 **EXPERT.**

3 (a) RULES DEFINING “FINANCIAL EXPERT”.—The
4 Commission shall issue rules, as necessary or appropriate
5 in the public interest and consistent with the protection
6 of investors, to require each issuer, together with periodic
7 reports required pursuant to sections 13(a) and 15(d) of
8 the Securities Exchange Act of 1934, to disclose whether
9 or not, and if not, the reasons therefor, the audit com-
10 mittee of that issuer is comprised of at least 1 member
11 who is a financial expert, as such term is defined by the
12 Commission.

13 (b) CONSIDERATIONS.—In defining the term “finan-
14 cial expert” for purposes of subsection (a), the Commis-
15 sion shall consider whether a person has, through edu-
16 cation and experience as a public accountant or auditor
17 or a principal financial officer, comptroller, or principal
18 accounting officer of an issuer, or from a position involv-
19 ing the performance of similar functions—

20 (1) an understanding of generally accepted ac-
21 counting principles and financial statements;

22 (2) experience in—

23 (A) the preparation or auditing of financial
24 statements of generally comparable issuers; and

1 (B) the application of such principles in
2 connection with the accounting for estimates,
3 accruals, and reserves;

4 (3) experience with internal accounting controls;
5 and

6 (4) an understanding of audit committee func-
7 tions.

8 (c) DEADLINE FOR RULEMAKING.—The Commission
9 shall—

10 (1) propose rules to implement this section, not
11 later than 90 days after the date of enactment of
12 this Act; and

13 (2) issue final rules to implement this section,
14 not later than 180 days after that date of enact-
15 ment.

16 **TITLE V—ANALYST CONFLICTS** 17 **OF INTEREST**

18 **SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REG-** 19 **ISTERED SECURITIES ASSOCIATIONS.**

20 (a) RULES REGARDING SECURITIES ANALYSTS.—
21 Section 15A of the Securities Exchange Act of 1934 (15
22 U.S.C. 78o–3) is amended by adding at the end the fol-
23 lowing:

24 “(n) RULES REGARDING SECURITIES ANALYSTS.—

1 “(1) ANALYST PROTECTIONS.—The Commis-
2 sion, or upon the authorization and direction of the
3 Commission, a registered securities association or
4 national securities exchange, shall have adopted, not
5 later than 1 year after the date of enactment of this
6 subsection, rules reasonably designed to address con-
7 flicts of interest that can arise when research ana-
8 lysts recommend equity securities in research reports
9 and public appearances, in order to improve the ob-
10 jectivity of research and provide investors with more
11 useful and reliable information, including rules
12 designed—

13 “(A) to foster greater public confidence in
14 securities research, and to protect the objec-
15 tivity and independence of securities analysts,
16 by—

17 “(i) restricting the prepublication
18 clearance or approval of research reports
19 by persons employed by the broker or deal-
20 er who are engaged in investment banking
21 activities, or persons not directly respon-
22 sible for investment research, other than
23 legal or compliance staff;

24 “(ii) limiting the supervision and com-
25 pensatory evaluation of securities analysts

1 to officials employed by the broker or deal-
2 er who are not engaged in investment
3 banking activities; and

4 “(iii) requiring that a broker or dealer
5 and persons employed by a broker or deal-
6 er who are involved with investment bank-
7 ing activities may not, directly or indi-
8 rectly, retaliate against or threaten to re-
9 taliate against any securities analyst em-
10 ployed by that broker or dealer or its affili-
11 ates as a result of an adverse, negative, or
12 otherwise unfavorable research report that
13 may adversely affect the present or pro-
14 spective investment banking relationship of
15 the broker or dealer with the issuer that is
16 the subject of the research report, except
17 that such rules may not limit the authority
18 of a broker or dealer to discipline a securi-
19 ties analyst for causes other than such re-
20 search report in accordance with the poli-
21 cies and procedures of the firm;

22 “(B) to define periods during which bro-
23 kers or dealers who have participated, or are to
24 participate, in a public offering of securities as
25 underwriters or dealers should not publish or

1 otherwise distribute research reports relating to
2 such securities or to the issuer of such securi-
3 ties;

4 “(C) to establish structural and institu-
5 tional safeguards within registered brokers or
6 dealers to assure that securities analysts are
7 separated by appropriate informational parti-
8 tions within the firm from the review, pressure,
9 or oversight of those whose involvement in in-
10 vestment banking activities might potentially
11 bias their judgment or supervision; and

12 “(D) to address such other issues as the
13 Commission, or such association or exchange,
14 determines appropriate.

15 “(2) DISCLOSURE.—The Commission, or upon
16 the authorization and direction of the Commission,
17 a registered securities association or national securi-
18 ties exchange, shall have adopted, not later than 1
19 year after the date of enactment of this subsection,
20 rules reasonably designed to require each securities
21 analyst to disclose in public appearances, and each
22 registered broker or dealer to disclose in each re-
23 search report, as applicable, conflicts of interest that
24 are known or should have been known by the securi-
25 ties analyst or the broker or dealer, to exist at the

1 time of the appearance or the date of distribution
2 of the report, including—

3 “(A) the extent to which the securities an-
4 alyst has debt or equity investments in the
5 issuer that is the subject of the appearance or
6 research report;

7 “(B) whether any compensation has been
8 received by the registered broker or dealer, or
9 any affiliate thereof, including the securities an-
10 alyst, from the issuer that is the subject of the
11 appearance or research report, subject to such
12 exemptions as the Commission may determine
13 appropriate and necessary to prevent disclosure
14 by virtue of this subparagraph of material non-
15 public information regarding specific potential
16 future investment banking transactions of such
17 issuer, as is appropriate in the public interest
18 and consistent with the protection of investors;

19 “(C) whether an issuer, the securities of
20 which are recommended in the appearance or
21 research report, currently is, or during the 1-
22 year period preceding the date of the appear-
23 ance or date of distribution of the report has
24 been, a client of the registered broker or dealer,

1 and if so, stating the types of services provided
2 to the issuer;

3 “(D) whether the securities analyst re-
4 ceived compensation with respect to a research
5 report, based upon (among any other factors)
6 the investment banking revenues (either gen-
7 erally or specifically earned from the issuer
8 being analyzed) of the registered broker or deal-
9 er; and

10 “(E) such other disclosures of conflicts of
11 interest that are material to investors, research
12 analysts, or the broker or dealer as the Com-
13 mission, or such association or exchange, deter-
14 mines appropriate.

15 “(3) DEFINITIONS.—In this subsection—

16 “(A) the term ‘securities analyst’ means
17 any associated person of a registered broker or
18 dealer that is principally responsible for, and
19 any associated person who reports directly or
20 indirectly to a securities analyst in connection
21 with, the preparation of the substance of a re-
22 search report, whether or not any such person
23 has the job title of ‘securities analyst’; and

24 “(B) the term ‘research report’ means a
25 written or electronic communication that in-

1 cludes an analysis of equity securities of indi-
 2 vidual companies or industries, and that pro-
 3 vides information reasonably sufficient upon
 4 which to base an investment decision.”.

5 (b) ENFORCEMENT.—Section 21B(a) of the Securi-
 6 ties Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is
 7 amended by inserting “15A(n),” before “15B”.

8 (c) COMMISSION AUTHORITY.—The Commission may
 9 promulgate and amend its regulations, or direct a reg-
 10 istered securities association or national securities ex-
 11 change to promulgate and amend its rules, to carry out
 12 section 15A(n) of the Securities Exchange Act of 1934,
 13 as added by this section, as is necessary for the protection
 14 of investors and in the public interest.

15 **TITLE VI—COMMISSION** 16 **RESOURCES AND AUTHORITY**

17 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 35 of the Securities Exchange Act of 1934
 19 (15 U.S.C. 78kk) is amended to read as follows:

20 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

21 “In addition to any other funds authorized to be ap-
 22 propriated to the Commission, there are authorized to be
 23 appropriated to carry out the functions, powers, and du-
 24 ties of the Commission, \$776,000,000 for fiscal year 2003,
 25 of which—

1 “(1) \$102,700,000 shall be available to fund
2 additional compensation, including salaries and ben-
3 efits, as authorized in the Investor and Capital Mar-
4 kets Fee Relief Act (Public Law 107–123; 115 Stat.
5 2390 et seq.);

6 “(2) \$108,400,000 shall be available for infor-
7 mation technology, security enhancements, and re-
8 covery and mitigation activities in light of the ter-
9 rorist attacks of September 11, 2001; and

10 “(3) \$98,000,000 shall be available to add not
11 fewer than an additional 200 qualified professionals
12 to provide enhanced oversight of auditors and audit
13 services required by the Federal securities laws, and
14 to improve Commission investigative and disciplinary
15 efforts with respect to such auditors and services, as
16 well as for additional professional support staff nec-
17 essary to strengthen the programs of the Commis-
18 sion involving Full Disclosure and Prevention and
19 Suppression of Fraud, risk management, industry
20 technology review, compliance, inspections, examina-
21 tions, market regulation, and investment manage-
22 ment.”.

1 **SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COM-**
2 **MISSION.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 4B the fol-
5 lowing:

6 **“SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COM-**
7 **MISSION.**

8 “(a) **AUTHORITY TO CENSURE.**—The Commission
9 may censure any person, or deny, temporarily or perma-
10 nently, to any person the privilege of appearing or prac-
11 ticing before the Commission in any way, if that person
12 is found by the Commission, after notice and opportunity
13 for hearing in the matter—

14 “(1) not to possess the requisite qualifications
15 to represent others;

16 “(2) to be lacking in character or integrity, or
17 to have engaged in unethical or improper profes-
18 sional conduct; or

19 “(3) to have willfully violated, or willfully aided
20 and abetted the violation of, any provision of the se-
21 curities laws or the rules and regulations issued
22 thereunder.

23 “(b) **DEFINITION.**—With respect to any registered
24 public accounting firm, for purposes of this section, the
25 term ‘improper professional conduct’ means—

1 “(1) intentional or knowing conduct, including
2 reckless conduct, that results in a violation of appli-
3 cable professional standards; and

4 “(2) negligent conduct in the form of—

5 “(A) a single instance of highly unreason-
6 able conduct that results in a violation of appli-
7 cable professional standards in circumstances in
8 which the registered public accounting firm
9 knows, or should know, that heightened scru-
10 tiny is warranted; or

11 “(B) repeated instances of unreasonable
12 conduct, each resulting in a violation of applica-
13 ble professional standards, that indicate a lack
14 of competence to practice before the Commis-
15 sion.”.

16 **SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY**
17 **STOCK BARS.**

18 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
19 21(d) of the Securities Exchange Act of 1934 (15 U.S.C.
20 78u(d)), as amended by this Act, is amended by adding
21 at the end the following:

22 “(7) AUTHORITY OF A COURT TO PROHIBIT PERSONS
23 FROM PARTICIPATING IN AN OFFERING OF PENNY
24 STOCK.—

1 “(A) IN GENERAL.—In any proceeding under
2 paragraph (1) against any person participating in,
3 or, at the time of the alleged misconduct who was
4 participating in, an offering of penny stock, the
5 court may prohibit that person from participating in
6 an offering of penny stock, conditionally or uncondi-
7 tionally, and permanently or for such period of time
8 as the court shall determine.

9 “(B) DEFINITION.—For purposes of this para-
10 graph, the term ‘person participating in an offering
11 of penny stock’ includes any person engaging in ac-
12 tivities with a broker, dealer, or issuer for purposes
13 of issuing, trading, or inducing or attempting to in-
14 duce the purchase or sale of, any penny stock. The
15 Commission may, by rule or regulation, define such
16 term to include other activities, and may, by rule,
17 regulation, or order, exempt any person or class of
18 persons, in whole or in part, conditionally or uncon-
19 ditionally, from inclusion in such term.

20 (b) SECURITIES ACT OF 1933.—Section 20 of the Se-
21 curities Act of 1933 (15 U.S.C. 77t) is amended by adding
22 at the end the following:

23 “(g) AUTHORITY OF A COURT TO PROHIBIT PER-
24 SONS FROM PARTICIPATING IN AN OFFERING OF PENNY
25 STOCK.—

1 “(1) IN GENERAL.—In any proceeding under
2 subsection (a) against any person participating in,
3 or, at the time of the alleged misconduct, who was
4 participating in, an offering of penny stock, the
5 court may prohibit that person from participating in
6 an offering of penny stock, conditionally or uncondi-
7 tionally, and permanently or for such period of time
8 as the court shall determine.

9 “(2) DEFINITION.—For purposes of this sub-
10 section, the term ‘person participating in an offering
11 of penny stock’ includes any person engaging in ac-
12 tivities with a broker, dealer, or issuer for purposes
13 of issuing, trading, or inducing or attempting to in-
14 duce the purchase or sale of, any penny stock. The
15 Commission may, by rule or regulation, define such
16 term to include other activities, and may, by rule,
17 regulation, or order, exempt any person or class of
18 persons, in whole or in part, conditionally or uncon-
19 ditionally, from inclusion in such term.”.

20 **SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF**
21 **BROKERS AND DEALERS.**

22 (a) BROKERS AND DEALERS.—Section 15(b)(4) of
23 the Securities Exchange Act of 1934 (15 U.S.C. 78o) is
24 amended—

1 (1) by striking subparagraph (F) and inserting
2 the following:

3 “(F) is subject to any order of the Commission
4 barring or suspending the right of the person to be
5 associated with a broker or dealer;” and

6 (2) in subparagraph (G), by striking the period
7 at the end and inserting the following: “; or

8 “(H) is subject to any final order of a State se-
9 curities commission (or any agency or officer per-
10 forming like functions), State authority that super-
11 vises or examines banks, savings associations, or
12 credit unions, State insurance commission (or any
13 agency or office performing like functions), an ap-
14 propriate Federal banking agency (as defined in sec-
15 tion 3 of the Federal Deposit Insurance Act (12
16 U.S.C. 1813(q))), or the National Credit Union Ad-
17 ministration, that—

18 “(i) bars such person from association with
19 an entity regulated by such commission, author-
20 ity, agency, or officer, or from engaging in the
21 business of securities, insurance, banking, sav-
22 ings association activities, or credit union activi-
23 ties; or

24 “(ii) constitutes a final order based on vio-
25 lations of any laws or regulations that prohibit

1 fraudulent, manipulative, or deceptive con-
2 duct.”.

3 (b) INVESTMENT ADVISERS.—Section 203(e) of the
4 Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is
5 amended by striking paragraphs (7) and (8) and inserting
6 the following:

7 “(7) is subject to any order of the Commission
8 barring or suspending the right of the person to be
9 associated with an investment adviser; or

10 “(8) is subject to any final order of a State se-
11 curities commission (or any agency or officer per-
12 forming like functions), State authority that super-
13 vises or examines banks, savings associations, or
14 credit unions, State insurance commission (or any
15 agency or office performing like functions), an ap-
16 propriate Federal banking agency (as defined in sec-
17 tion 3 of the Federal Deposit Insurance Act (12
18 U.S.C. 1813(q))), or the National Credit Union Ad-
19 ministration, that—

20 “(A) bars such person from association
21 with an entity regulated by such commission,
22 authority, agency, or officer, or from engaging
23 in the business of securities, insurance, bank-
24 ing, savings association activities, or credit
25 union activities; or

1 “(B) constitutes a final order based on vio-
2 lations of any laws or regulations that prohibit
3 fraudulent, manipulative, or deceptive con-
4 duct.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—The
7 Securities Exchange Act of 1934 (15 U.S.C. 78a et
8 seq.) is amended—

9 (A) in section 3(a)(39)(F) (15 U.S.C.
10 78c(a)(39)(F)), by inserting “, or is subject to
11 an order or finding,” before “enumerated”;

12 (B) in each of sections 15(b)(6)(A)(i) (15
13 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4)
14 of section 15B(c) (15 U.S.C. 78o–4(c)), and
15 subparagraphs (A) and (C) of section 15C(c)(1)
16 (15 U.S.C. 78o–5(c)(1)) by striking “or omis-
17 sion” each place that term appears, and insert-
18 ing “, or is subject to an order or finding,”; and

19 (C) in each of paragraphs (3)(A) and
20 (4)(C) of section 17A(c) (15 U.S.C. 78q–1(c)),
21 by inserting “, or is subject to an order or find-
22 ing,” before “enumerated” each place that term
23 appears.

24 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
25 tion 203(f) of the Investment Advisers Act of 1940

1 (15 U.S.C. 80b–3(f)) is amended, by inserting “or
2 (3)” after “paragraph (2)”.

3 **TITLE VII—STUDIES AND** 4 **REPORTS**

5 **SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLI-** 6 **DATION OF PUBLIC ACCOUNTING FIRMS.**

7 (a) STUDY REQUIRED.—The Comptroller General of
8 the United States shall conduct a study—

9 (1) to identify—

10 (A) the factors that have led to the consoli-
11 dation of public accounting firms since 1989
12 and the consequent reduction in the number of
13 firms capable of providing audit services to
14 large national and multi-national business orga-
15 nizations that are subject to the securities laws;

16 (B) the present and future impact of the
17 condition described in subparagraph (A) on
18 capital formation and securities markets, both
19 domestic and international; and

20 (C) solutions to any problems identified
21 under subparagraph (B), including ways to in-
22 crease competition and the number of firms ca-
23 pable of providing audit services to large na-
24 tional and multinational business organizations
25 that are subject to the securities laws;

1 (2) of the problems, if any, faced by business
2 organizations that have resulted from limited com-
3 petition among public accounting firms, including—

4 (A) higher costs;

5 (B) lower quality of services;

6 (C) impairment of auditor independence;

7 or

8 (D) lack of choice; and

9 (3) whether and to what extent Federal or
10 State regulations impede competition among public
11 accounting firms.

12 (b) CONSULTATION.—In planning and conducting the
13 study under this section, the Comptroller General shall
14 consult with—

15 (1) the Commission;

16 (2) the regulatory agencies that perform func-
17 tions similar to the Commission within the other
18 member countries of the Group of Seven Industri-
19 alized Nations;

20 (3) the Department of Justice; and

21 (4) any other public or private sector organiza-
22 tion that the Comptroller General considers appro-
23 priate.

24 (c) REPORT REQUIRED.—Not later than 1 year after
25 the date of enactment of this Act, the Comptroller General

1 shall submit a report on the results of the study required
2 by this section to the Committee on Banking, Housing,
3 and Urban Affairs of the Senate and the Committee on
4 Financial Services of the House of Representatives.

5 **SEC. 702. COMMISSION STUDY AND REPORT REGARDING**
6 **CREDIT RATING AGENCIES.**

7 (a) STUDY REQUIRED.—

8 (1) IN GENERAL.—The Commission shall con-
9 duct a study of the role and function of credit rating
10 agencies in the operation of the securities market.

11 (2) AREAS OF CONSIDERATION.—The study re-
12 quired by this subsection shall examine—

13 (A) the role of credit rating agencies in the
14 evaluation of issuers of securities;

15 (B) the importance of that role to investors
16 and the functioning of the securities markets;

17 (C) any impediments to the accurate ap-
18 praisal by credit rating agencies of the financial
19 resources and risks of issuers of securities;

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

23 (E) any measures which may be required
24 to improve the dissemination of information

1 concerning such resources and risks when credit
2 rating agencies announce credit ratings; and

3 (F) any conflicts of interest in the oper-
4 ation of credit rating agencies and measures to
5 prevent such conflicts or ameliorate the con-
6 sequences of such conflicts.

7 (b) REPORT REQUIRED.—The Commission shall sub-
8 mit a report on the study required by subsection (a) to
9 the President, the Committee on Financial Services of the
10 House of Representatives, and the Committee on Banking,
11 Housing, and Urban Affairs of the Senate not later than
12 180 days after the date of enactment of this Act.

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