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To improve quality and transparency in financial reporting and independent audits and accounting services, to designate an Independent Public Accounting Board, to enhance the standard setting process for accounting practices, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2002

Mr. DODD (for himself, Mr. CORZINE, Ms. STABENOW, Mr. JOHNSON, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To improve quality and transparency in financial reporting and independent audits and accounting services, to designate an Independent Public Accounting Board, to enhance the standard setting process for accounting practices, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Investor Confidence in Public Accounting Act of 2002”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—INDEPENDENT PUBLIC ACCOUNTING BOARD

- Sec. 101. Designation of Independent Public Accounting Board.
- Sec. 102. Administrative rules of the Board.
- Sec. 103. Duties of the Board.
- Sec. 104. Securities and Exchange Commission oversight of the Board.

TITLE II—ACCOUNTING AND AUDIT STANDARDS

- Sec. 201. Auditor independence.
- Sec. 202. Registration of public accounting firms.
- Sec. 203. Investigations and disciplinary proceedings.
- Sec. 204. Accounting standards.
- Sec. 205. Misrepresentations to auditors.
- Sec. 206. Commission rules and enforcement.
- Sec. 207. Enhanced Commission oversight.

TITLE III—OTHER INVESTOR SAFEGUARDS

- Sec. 301. Improved financial disclosures.
- Sec. 302. Commission recommendations on treatment of stock options.
- Sec. 303. Commission recommendations on treatment of special purpose entities.
- Sec. 304. Review of corporate governance practices.
- Sec. 305. Study of mandatory rotation of registered independent public accounting firms.

3 **SEC. 2. PURPOSES.**

4 The purposes of this Act are—

5 (1) to designate an independent regulatory or-
 6 ganization, subject to Commission oversight, with
 7 adequate authority and resources—

8 (A) to register public accounting firms that
 9 prepare or issue audit reports with respect to fi-
 10 nancial statements, reports, or other documents
 11 required to be filed with the Commission under
 12 the securities laws;

1 (B) to promulgate and enforce compliance
2 with quality control and auditing standards de-
3 signed to improve the quality of audits con-
4 ducted by such firms;

5 (C) to administer a continuing program of
6 review of the accounting and auditing practices
7 of registered independent public accounting
8 firms; and

9 (D) to investigate and discipline appro-
10 priately such firms, and persons associated with
11 such firms, who violate this Act, the securities
12 laws, the rules and regulations thereunder, the
13 rules of the Board, or professional standards;

14 (2) to establish an independent funding source
15 for any accounting standard setting body that is rec-
16 ognized by and subject to oversight by the Commis-
17 sion, in accordance with this Act;

18 (3) to ensure greater independence of public au-
19 dits; and

20 (4) to increase funding and staff resources to
21 improve the oversight responsibilities of the Commis-
22 sion in the area of accounting.

23 **SEC. 3. DEFINITIONS.**

24 In this Act, the following definitions shall apply:

1 (1) APPROPRIATE STATE REGULATORY AU-
2 THORITY.—With respect to a registered independent
3 public accounting firm or associated person thereof,
4 the term “appropriate State regulatory authority”
5 means the State agency or other authority respon-
6 sible for the licensure or other regulation of the
7 practice of accounting in the State having jurisdic-
8 tion over the firm or associated person.

9 (2) AUDIT COMMITTEE.—The term “audit com-
10 mittee” means—

11 (A) a committee (or equivalent body) es-
12 tablished by the board of directors of an issuer
13 for the purpose of overseeing the accounting
14 and financial reporting processes of the issuer
15 and audits of the financial statements of the
16 issuer; and

17 (B) if no such committee exists with re-
18 spect to an issuer, the entire board of directors
19 of the issuer.

20 (3) AUDIT REPORT.—The term “audit report”
21 means a document or other record—

22 (A) prepared in connection with auditing
23 services performed for purposes of compliance
24 by an issuer with the requirements of the secu-
25 rities laws; and

1 (B) in which a registered independent pub-
2 lic accounting firm—

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

6 (ii) asserts that no such opinion can
7 be expressed.

8 (4) BOARD.—The term “Board” means the en-
9 tity designated as the Independent Public Account-
10 ing Board pursuant to section 101.

11 (5) COMMISSION.—The term “Commission”
12 means the Securities and Exchange Commission.

13 (6) GAAP.—The term “generally accepted ac-
14 counting principles” means any accounting stand-
15 ards and principles—

16 (A) recognized by the Commission as being
17 established by a standard setting body in ac-
18 cordance with section 204; and

19 (B) established by rule, regulation, or
20 order of the Commission.

21 (7) ISSUER.—The term “issuer” means an
22 issuer (as defined in section 3 of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78c), the securities
24 of which are registered under section 12 of the Secu-
25 rities and Exchange Act of 1934 (15 U.S.C. 78l).

1 (8) NON-AUDIT SERVICES.—The term “non-
2 audit services” means any professional services pro-
3 vided to an issuer by a registered independent public
4 accounting firm, other than those provided to an
5 issuer in connection with the preparation or issuance
6 of an audit report or a review of the financial state-
7 ments of an issuer in accordance with professional
8 standards.

9 (9) PERSON ASSOCIATED WITH A PUBLIC AC-
10 COUNTING FIRM.—The terms “person associated
11 with a public accounting firm” and “associated per-
12 son of a public accounting firm” mean any indi-
13 vidual proprietor, partner, shareholder, principal, or
14 professional employee of that firm, or any other nat-
15 ural person or other entity associated with that firm,
16 that—

17 (A) shares in the profits of that firm; or

18 (B) engages in any conduct or practice by
19 that firm in connection with the preparation or
20 issuance of any audit report.

21 (10) PROFESSIONAL STANDARDS.—The term
22 “professional standards” means generally accepted
23 accounting principles established by a standard set-
24 ting body described in section 204(a), generally ac-
25 cepted auditing standards, generally accepted stand-

1 ards for attestation engagements, generally accepted
2 quality control policies and procedures, and any
3 other standards that the Board or the Commission
4 determines, by rule—

5 (A) relate to the preparation or issuance of
6 financial statements or audit reports, or to
7 auditor ethics and independence; and

8 (B) are promulgated as rules of the Com-
9 mission, the Board, or by a standard setting
10 body generally recognized or endorsed by the
11 Board, subject to the approval of the Commis-
12 sion.

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

15 (A) a sole proprietorship, incorporated as-
16 sociation, partnership, corporation, limited li-
17 ability company, limited liability partnership, or
18 other legal entity that is engaged in the practice
19 of public accounting or preparing or issuing
20 audit reports; and

21 (B) to the extent so designated by the
22 rules of the Board, any associated person of an
23 entity described in subparagraph (A).

24 (12) REGISTERED INDEPENDENT PUBLIC AC-
25 COUNTING FIRM.—The term “registered independent

1 public accounting firm” means a firm registered
2 with the Board in accordance with this Act.

3 (13) RULES OF THE BOARD.—The term “rules
4 of the Board” means the bylaws, rules, stated poli-
5 cies, standards, practices, interpretations, and other
6 instruments of the Board that the Commission, by
7 rule, may determine to be necessary or appropriate
8 in the public interest or for the protection of inves-
9 tors to be deemed to be rules of the Board.

10 (14) SECURITIES.—The term “securities” has
11 the same meaning as in section 3(a) of the Securi-
12 ties Exchange Act of 1934 (15 U.S.C. 78c(a)).

13 (15) SECURITIES LAWS.—The term “securities
14 laws” has the same meaning as in section 3(a) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a)).

17 (16) SELF-REGULATORY ORGANIZATION.—The
18 term “self-regulatory organization” has the same
19 meaning as in section 3(a) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78c(a)).

21 (17) STATE.—The term “State” means any
22 State of the United States, the District of Columbia,
23 Puerto Rico, the Virgin Islands, or any other terri-
24 tory or possession of the United States.

1 **TITLE I—INDEPENDENT PUBLIC**
2 **ACCOUNTING BOARD**

3 **SEC. 101. DESIGNATION OF INDEPENDENT PUBLIC AC-**
4 **COUNTING BOARD.**

5 (a) DESIGNATION OF THE BOARD.—Not later than
6 180 days after the date of enactment of this Act, the Com-
7 mission shall designate an entity that meets the require-
8 ments of this Act and the rules of the Commission issued
9 under this Act as the Independent Public Accounting
10 Board, which shall be a independent regulatory entity,
11 subject to the oversight of the Commission, as provided
12 in this Act and applicable law.

13 (b) PRIVATE STATUS OF THE BOARD.—The Board,
14 as designated under this section, shall not, for any pur-
15 pose, be an agency or instrumentality of the Federal Gov-
16 ernment, and no officer, employee, member of the Board,
17 or other person associated with the Board shall be, for
18 any purpose, an officer or employee of the Federal Govern-
19 ment.

20 (c) DESIGNATION PROCEDURES.—Application by any
21 entity or organization for designation under subsection (a)
22 shall be in such form and subject to such procedures as
23 the Commission may require, as necessary or appropriate
24 in the public interest or for the protection of investors.

1 **SEC. 102. ADMINISTRATIVE RULES OF THE BOARD.**

2 (a) BOARD MEMBERSHIP.—

3 (1) APPOINTMENTS.—The Board shall be com-
4 prised of 5 members, except during a reasonable
5 time period to fill any vacancies, appointed from
6 among prominent individuals of integrity and rep-
7 utation who have a demonstrated commitment to the
8 interests of investors and the public.

9 (2) LIMITATION.—Not more than 2 members of
10 the Board may be, on or before the date of appoint-
11 ment, or at any time during service on the Board,
12 certified public accountants pursuant to the laws of
13 any State.

14 (3) EXCLUSIONS.—No member of the Board
15 may—

16 (A) concurrent with service on the Board,
17 be engaged in the public practice of accounting;

18 (B) during the 3-year period preceding the
19 date of appointment to the Board, be an associ-
20 ated person of a public accounting firm; or

21 (C) share in any of the profits of, or re-
22 ceive payments from, a public accounting firm.

23 (4) INDEPENDENT SERVICE.—Each member of
24 the Board shall serve on a full-time basis, and may
25 not, concurrent with service on the Board, be em-

1 ployed by any other entity, except as authorized by
2 the Commission.

3 (5) TERM OF SERVICE.—

4 (A) IN GENERAL.—Each term of service of
5 a member of the Board shall be for 5 years,
6 and until a successor is appointed, except
7 that—

8 (i) the terms of office of the initial
9 Board members (other than the Chair-
10 person) shall expire in annual increments,
11 as determined by the Commission at the
12 time of designation of the Board under
13 section 4, resulting in—

14 (I) 1 term expiring 1 year after
15 the initial date of appointment;

16 (II) 1 term expiring 2 years after
17 the initial date of appointment;

18 (III) 1 term expiring 3 years
19 after the initial date of appointment;
20 and

21 (IV) 1 term expiring 4 years
22 after the initial date of appointment;
23 and

24 (ii) any Board member appointed to
25 fill a vacancy occurring before the expira-

1 tion of the term for which the predecessor
2 was appointed shall be appointed only for
3 the remainder of that term.

4 (B) TERM LIMITATION.—No person may
5 serve as a member of the Board for more than
6 2 terms.

7 (6) APPOINTMENT COMMITTEE.—A 4-person
8 appointment committee, composed of the Chair-
9 person of the Board (after selection in accordance
10 with paragraph (9)), the Chairman of the Board of
11 Governors of the Federal Reserve System (or the
12 designee of the Chairman), the Secretary of the
13 Treasury (or the designee of the Secretary), and the
14 Chairman of the Commission (or the designee of the
15 Chairman), shall appoint new members to the Board
16 for each vacancy arising after the initial designation
17 of the Board.

18 (7) REMOVAL FROM OFFICE.—A member of the
19 Board may be removed from office for cause before
20 the expiration of the term of that member—

21 (A) by a majority vote of the other mem-
22 bers of the Board, subject to the rules of the
23 Board and the approval of the Commission; or

24 (B) by the Commission under section
25 104(f)(3).

1 (8) VACANCIES.—A vacancy on the Board shall
2 not affect its powers, but shall be filled in the same
3 manner as provided for appointments under this sec-
4 tion.

5 (9) CHAIRPERSON OF THE BOARD.—The Chair-
6 person of the Board—

7 (A) shall be selected by the Chairman of
8 the Board of Governors of the Federal Reserve
9 System (or the designee of the Chairman), the
10 Secretary of the Treasury (or the designee of
11 the Secretary), and the Chairman of the Com-
12 mission (or the designee of the Chairman), from
13 among the members of the Board who were not,
14 on or before the date of appointment to the
15 Board, or at any time during service on the
16 Board, certified public accountants; and

17 (B) shall serve in such capacity for not
18 longer than a 5-year term.

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

21 (1) provide for the operation and administration
22 of the Board, including the appointment of members
23 and the Chairperson of the Board, as required by
24 subsection (a);

1 (2) provide for the appointment and compensa-
2 tion of such accountants, attorneys, employees, and
3 consultants as may be necessary or appropriate to
4 carry out the functions of the Board in accordance
5 with this Act;

6 (3) establish procedures for the registration of
7 public accounting firms in accordance with this Act;

8 (4) establish procedures for the Board to enter
9 into contracts, incur expenses, and take such other
10 actions as may be necessary or appropriate for the
11 Board to perform its duties under this Act;

12 (5) establish the compensation of members of
13 the Board at a level comparable to similar profes-
14 sional positions in the private sector, subject to an-
15 nual review and approval by the Commission; and

16 (6) provide as otherwise required by this Act.

17 (c) ANNUAL REPORT.—

18 (1) SUBMISSION TO THE COMMISSION.—The
19 Board shall submit an annual report and proposed
20 budget to the Commission for review and approval,
21 at such times and in such form as the Commission
22 may reasonably require.

23 (2) CONTENTS.—Each report required by para-
24 graph (1) shall include a detailed description of the
25 activities of the Board, its audited financial state-

1 ments, and such other matters as the Board, with
2 the concurrence of the Commission, considers appro-
3 priate.

4 (3) TRANSMITTAL TO CONGRESS.—The Com-
5 mission shall transmit each report received under
6 this subsection to Congress.

7 **SEC. 103. DUTIES OF THE BOARD.**

8 (a) ESTABLISHMENT OF QUALITY CONTROL AND AU-
9 DITING STANDARDS.—The rules of the Board shall estab-
10 lish, and provide for the enforcement of, such standards
11 of auditor quality control and auditing standards to be
12 used by each registered independent public accounting
13 firm in the preparation and issuance of any audit report,
14 as required by this Act and the rules of the Commission,
15 and as may be necessary or appropriate in the public inter-
16 est or for the protection of investors.

17 (b) INSPECTIONS.—

18 (1) IN GENERAL.—The rules of the Board shall
19 require the Board to conduct a continuing program
20 of inspections of each registered independent public
21 accounting firm, to assess compliance by that firm,
22 and by associated persons of that firm, with this
23 Act, the rules of the Board and the Commission, and
24 professional standards.

1 (2) INSPECTION FREQUENCY.—Inspections re-
2 quired by this subsection shall be conducted—

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

7 (B) not less frequently than once every 2
8 years with respect to each registered inde-
9 pendent public accounting firm that regularly
10 provides audit reports for not more than 100
11 issuers.

12 (3) PROCEDURE.—The Board shall, with re-
13 spect to each inspection required by this
14 subsection—

15 (A) identify any act or practice, or omis-
16 sion to act, by the registered independent public
17 accounting firm, or by any associated person
18 thereof, that the Board determines may be in
19 violation of this Act, the rules of the Board or
20 the Commission, or professional standards;

21 (B) report any such act, practice, or omis-
22 sion to the Commission, the Attorney General
23 of the United States, and the appropriate State
24 regulatory authority for appropriate referral
25 and investigation; and

1 (C) take any disciplinary action in accord-
2 ance with this Act and the rules of the Board,
3 as the Board determines appropriate.

4 (4) CONDUCT OF INSPECTIONS.—In conducting
5 inspections under this subsection, the Board shall—

6 (A) review selected audit and review en-
7 gagements of the registered independent public
8 accounting firm, performed at various offices
9 and by various associated persons of the firm;

10 (B) evaluate the sufficiency of the quality
11 control system in place at the registered inde-
12 pendent public accounting firm;

13 (C) determine whether the policies and
14 procedures of the registered independent public
15 accounting firm have been adequately docu-
16 mented and communicated to its employees and
17 other associated persons of the firm;

18 (D) assess whether the level of compliance
19 with the policies and procedures of the reg-
20 istered independent public accounting firm is
21 sufficient to reasonably assure conformity with
22 professional standards; and

23 (E) determine compliance by the registered
24 independent public accounting firm with profes-

1 sional accounting, auditing, independence, and
2 ethics standards.

3 (5) RECORD RETENTION.—To facilitate inspec-
4 tions required under this section, the rules of the
5 Board shall address the retention of records by reg-
6 istered independent public accounting firms,
7 including—

8 (A) which records are to be created and re-
9 tained;

10 (B) the required retention period for each
11 record identified under subparagraph (A); and

12 (C) the physical location where such
13 records shall be stored.

14 (6) REPORT.—The Board shall prepare a writ-
15 ten report of its findings for each inspection under
16 this subsection, which report shall be—

17 (A) accompanied by any letter or com-
18 ments by the Board or the inspector, and any
19 letter of response from the registered inde-
20 pendent public accounting firm under review;

21 (B) transmitted to the Commission;

22 (C) transmitted to the appropriate State
23 regulatory authority; and

24 (D) made available to the public.

25 (c) PENALTIES.—The rules of the Board shall—

1 (1) provide for disciplinary actions for reg-
2 istered independent public accounting firms and as-
3 sociated persons thereof, in accordance with rules re-
4 quired by section 203, for violations of this Act, the
5 rules of the Board or the Commission, or profes-
6 sional standards; and

7 (2) establish procedures for notification of any
8 such disciplinary action to the Commission, the At-
9 torney General of the United States, and the appro-
10 priate State regulatory authority for appropriate re-
11 ferral and action.

12 (d) OTHER DUTIES.—The Board shall perform such
13 other duties or functions as the Commission determines
14 are necessary or appropriate in the public interest or for
15 the protection of investors, and to carry out the purposes
16 of this Act.

17 **SEC. 104. SECURITIES AND EXCHANGE COMMISSION OVER-**
18 **SIGHT OF THE BOARD.**

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

22 (b) RULES OF THE BOARD.—

23 (1) DEFINITION.—In this section, the term
24 “proposed rule” means any proposed rule of the

1 Board, and any change to, modification of, addition
2 to, or deletion from any rule of the Board.

3 (2) PRIOR APPROVAL REQUIRED.—No rule of
4 the Board shall become effective without approval of
5 the Commission in accordance with the requirements
6 of this section, except as specifically authorized in
7 this section.

8 (3) FILING WITH THE COMMISSION.—The
9 Board shall file with the Commission, in accordance
10 with such rules as the Commission may prescribe,
11 and before the effective date of any proposed rule,
12 copies of the proposed rule, accompanied by a con-
13 cise general statement of the basis and purpose of
14 the proposed rule.

15 (4) PUBLICATION OF NOTICE.—The Commis-
16 sion shall publish a public notice of each proposed
17 rule, together with the terms and substance of the
18 proposed rule or a description of the subjects and
19 issues involved, in the Federal Register—

20 (A) not later than 30 days after the date
21 of receipt of a filing of the proposed rule under
22 paragraph (3); or

23 (B) not later than 60 days after the date
24 of such receipt, if the Commission finds such

1 longer period appropriate and publishes its rea-
2 sons therefore, as to which the Board consents.

3 (5) OPPORTUNITY FOR COMMENT.—The Com-
4 mission shall provide to interested persons an oppor-
5 tunity to submit written data, views, and arguments
6 concerning any proposed rule of the Board.

7 (6) COMMISSION CONSIDERATION.—No pro-
8 posed rule may take effect unless approved by the
9 Commission, or otherwise permitted in accordance
10 with the provisions of this section.

11 (7) TIMING.—

12 (A) INITIAL COMMISSION DECISION.—Not
13 later than 30 days after the date of publication
14 of notice of a proposed rule in accordance with
15 paragraph (4), the Commission shall—

16 (i) by order, approve the proposed
17 rule; or

18 (ii) institute proceedings under para-
19 graph (9) to determine whether the pro-
20 posed rule should be disapproved.

21 (B) AUTHORITY TO EXTEND PERIOD.—
22 The 30-day period referred to in subparagraph
23 (A) may be extended by the Commission to not
24 more than 90 days after the date of publication
25 of notice under paragraph (4), upon consent of

1 the Board or upon a finding of the Commission
2 that such longer period is necessary or appro-
3 priate, and publication of its reasons for that
4 finding.

5 (8) CRITERIA FOR COMMISSION DETERMINA-
6 TION.—The Commission shall—

7 (A) approve a proposed rule, if the Com-
8 mission finds that the proposed rule is con-
9 sistent with the requirements of this Act and
10 the securities laws, or is necessary or appro-
11 priate in the public interest or for the protec-
12 tion of investors; and

13 (B) disapprove a proposed rule if it does
14 not make a finding described in subparagraph
15 (A), in accordance with paragraph (9).

16 (9) DISAPPROVAL PROCEDURES.—

17 (A) NOTICE AND HEARING.—If the Com-
18 mission institutes proceedings under paragraph
19 (7)(A)(ii), the Commission shall—

20 (i) notify the Board and other inter-
21 ested parties of the grounds for dis-
22 approval of the proposed rule;

23 (ii) provide to the Board and other in-
24 terested parties an opportunity for hearing;
25 and

1 (iii) not later than 180 days after the
2 date of publication of notice under para-
3 graph (4), conclude the proceedings and,
4 by order published in the Federal Register,
5 approve or disapprove the proposed rule,
6 except that the Commission may extend
7 such time period for up to 60 days if it
8 finds good cause for such extension and
9 publishes its reasons for that finding, or
10 for such longer period as to which the
11 Board consents.

12 (10) EFFECTIVE DATES.—

13 (A) IN GENERAL.—A proposed rule ap-
14 proved by the Commission under this subsection
15 shall take effect not earlier than 30 days after
16 the date of publication of notice under para-
17 graph (4), unless the Commission finds good
18 cause for an earlier effective date and publishes
19 its reasons for that finding.

20 (B) EXPEDITED APPLICABILITY.—

21 (i) RULE EFFECTIVE UPON FILING.—
22 Notwithstanding subparagraph (A), a pro-
23 posed rule may take effect upon the date
24 of receipt of a filing with the Commission

1 under paragraph (3), if the Board des-
2 ignates the proposed rule as—

3 (I) constituting a stated policy,
4 practice, or interpretation with respect
5 to the meaning, administration, or en-
6 forcement of an existing rule of the
7 Board;

8 (II) establishing or changing a
9 fee or other charge imposed by the
10 Board; or

11 (III) concerned solely with the
12 administration of the Board or other
13 matters which the Commission, by
14 rule, consistent with the public inter-
15 est and the purposes of this Act, may
16 exempt from the requirements of sub-
17 paragraph (A).

18 (ii) PROTECTION OF INVESTORS.—
19 Notwithstanding any other provision of
20 this subsection, a proposed rule may be
21 put into effect immediately if the Commis-
22 sion determines, after consultation with the
23 Board, or the Board determines, after con-
24 sultation with the Commission, that such
25 action is necessary for the protection of in-

1 vestors. A proposed rule subject to treat-
2 ment under this subparagraph shall be
3 filed with the Commission promptly in ac-
4 cordance with paragraph (3).

5 (iii) RULE ENFORCEMENT.—Any pro-
6 posed rule that has taken effect under this
7 subparagraph shall be enforced by the
8 Board to the extent that it is not incon-
9 sistent with this Act, the securities laws,
10 the rules of the Commission, and other ap-
11 plicable Federal law.

12 (11) RULE ABROGATION.—

13 (A) GENERAL AUTHORITY.—Notwith-
14 standing any other provision of this section, or
15 any other provision of law, during the 60-day
16 period following the date of receipt of the filing
17 of a proposed rule under paragraph (3), the
18 Commission may abrogate any proposed rule
19 and require that the proposed rule be refiled in
20 accordance with paragraph (3), if the Commis-
21 sion determines that such action is necessary or
22 appropriate in the public interest, for the pro-
23 tection of investors, or otherwise in furtherance
24 of the purposes of this Act or the securities
25 laws.

1 (B) PROCEDURE.—Commission action
2 under this subparagraph—

3 (i) shall not affect the validity or force
4 of the subject rule during any period for
5 which it was in effect;

6 (ii) shall not be reviewable under sec-
7 tion 25 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78a et seq.); and

9 (iii) shall not be a final agency action
10 for purposes of section 704 of title 5,
11 United States Code.

12 (c) POWER OF THE COMMISSION TO AMEND RULES
13 OF THE BOARD.—

14 (1) IN GENERAL.—The Commission, by rule or
15 order, may amend the rules of the Board (including
16 the abrogation, addition to, or deletion from such
17 rules), as the Commission determines necessary or
18 appropriate to—

19 (A) assure the fair administration of the
20 Board;

21 (B) conform the rules promulgated by the
22 Board to the requirements of this Act, and the
23 securities laws; and

24 (C) otherwise further the purposes of this
25 Act or the securities laws.

1 (2) NOTICE.—The Commission shall notify the
2 Board and publish notice of a proposed rulemaking
3 under this subsection in the Federal Register, which
4 notice shall include the text of the proposed amend-
5 ment to the rules of the Board and a statement of
6 the reasons of the Commission, including the perti-
7 nent facts, for commencing such proposed rule-
8 making.

9 (3) HEARING.—The Commission, at its discre-
10 tion, may give interested persons an opportunity for
11 the oral presentation of data, views, and arguments,
12 in addition to an opportunity to make written sub-
13 missions, with respect to an action under this sub-
14 section. A transcript shall be kept of any such oral
15 presentation.

16 (4) STATEMENT OF BASIS AND PURPOSE.—A
17 rule adopted under this subsection shall incorporate
18 the text of the amendment to the rules of the Board
19 and a statement by the Commission on its basis for
20 and purpose in so amending such rules, including an
21 identification of any facts on which the Commission
22 considers its determination to amend the rules of the
23 Board to be based, including the reasons for the
24 conclusions of the Commission as to any facts that
25 were disputed in the rulemaking.

1 (5) CLARIFICATIONS.—

2 (A) NOT ON THE RECORD.—Except as
3 provided in paragraphs (1) through (4), rule-
4 making under this subsection shall be in ac-
5 cordance with the procedures specified in sec-
6 tion 553 of title 5, United States Code, for
7 rulemaking not on the record.

8 (B) NO IMPACT ON COMMISSION RULE-
9 MAKING AUTHORITY.—Nothing in this sub-
10 section shall be construed to impair or limit the
11 authority of the Commission to make, modify,
12 or alter the procedures that the Commission
13 may follow in making rules and regulations
14 under any other authority under this Act or the
15 securities laws.

16 (C) EFFECT OF COMMISSION AMEND-
17 MENTS TO BOARD RULES.—Any amendment to
18 the rules of the Board made by the Commission
19 under this subsection shall be considered for all
20 purposes of this Act and the securities laws to
21 be part of the rules of the Board, and shall not
22 be considered to be a rule of the Commission.

23 (d) COMMISSION REVIEW OF DISCIPLINARY ACTION
24 TAKEN BY THE BOARD.—

1 (1) NOTICE OF SANCTION.—If the Board im-
2 poses any final disciplinary or remedial sanction on
3 any registered independent public accounting firm or
4 on any associated person of a registered independent
5 public accounting firm, the Board shall promptly file
6 notice thereof with the Commission, in such form
7 and containing such information as the Commission,
8 by rule, may prescribe as necessary or appropriate
9 in furtherance of the purposes of this Act and the
10 securities laws.

11 (2) REVIEW OF SANCTION.—

12 (A) IN GENERAL.—Any sanction described
13 in paragraph (1) shall be subject to review by
14 the Commission, on its own motion, or upon ap-
15 plication by any person aggrieved thereby.

16 (B) APPLICATION FOR REVIEW.—An appli-
17 cation for review of a sanction described in
18 paragraph (1) shall be filed not later than 30
19 days after the date on which the aggrieved per-
20 son was notified of the sanction by the Board,
21 or within such longer period as the Commission
22 may determine appropriate.

23 (C) REVIEW DOES NOT SUSPEND SANC-
24 TION.—An application to the Commission for
25 review of a sanction described in paragraph (1),

1 or the institution of review by the Commission
2 on its own motion, shall not operate as a stay
3 of the sanction, unless the Commission other-
4 wise orders, summarily or after notice and op-
5 portunity for hearing on the question of a stay.
6 Such hearing may consist solely of the submis-
7 sion of affidavits or presentation of oral argu-
8 ments. The Commission shall establish an expe-
9 dited procedure, in appropriate cases, for con-
10 sideration and determination of the question of
11 a stay.

12 (e) DISPOSITION OF REVIEW; NOTICE AND HEARING;
13 AFFIRMATION; MODIFICATION OR CANCELLATION OF
14 SANCTION.—

15 (1) NOTICE AND HEARING.—In any proceeding
16 to review a final disciplinary or remedial sanction
17 imposed by the Board on a registered independent
18 public accounting firm or an associated person
19 thereof, the firm or person shall be provided with
20 notice and an opportunity for hearing. The hearing
21 may consist solely of consideration of the record be-
22 fore the Board and an opportunity to present sup-
23 porting reasons to affirm, modify, or set aside the
24 sanction.

1 (2) AFFIRMATION.—The Commission shall, by
2 order, affirm a sanction imposed by the Board, if
3 the Commission finds that—

4 (A) the sanctioned registered independent
5 public accounting firm or associated person has
6 engaged in such acts or practices, or has omit-
7 ted to act, as the Board has found that person
8 to have engaged in or omitted;

9 (B) such acts or practices, or omissions to
10 act, are in violation of any provision of this Act,
11 the securities laws, the rules of the Board, or
12 professional standards, as have been specified
13 in the determination of the Board; and

14 (C) such provisions, laws, rules, or stand-
15 ards were applied with respect to the registered
16 independent public accounting firm or associ-
17 ated person in a manner consistent with the
18 purposes of this Act and the securities laws.

19 (3) COMMISSION MODIFICATION AUTHORITY.—
20 The Commission may enhance, modify, cancel, re-
21 duce, or require the remission of a sanction imposed
22 by the Board upon a registered independent public
23 accounting firm or associated person thereof, if the
24 Commission, having due regard for the public inter-
25 est and the protection of investors, finds, after a

1 proceeding in accordance with this subsection, that
2 the sanction—

3 (A) is not necessary or appropriate in fur-
4 therance of the purposes of this Act or the se-
5 curities laws; or

6 (B) is excessive or oppressive.

7 (4) CANCELLATION.—If the Commission does
8 not take any action under paragraph (2) or (3), it
9 shall, by order, set aside the sanction imposed by the
10 Board and, if appropriate, remand to the Board for
11 further proceedings.

12 (f) BOARD COMPLIANCE AND ENFORCEMENT.—

13 (1) COMPLIANCE.—The Board shall comply
14 with this Act, the securities laws, the rules of the
15 Commission, and the rules of the Board.

16 (2) ENFORCEMENT.—Absent reasonable jus-
17 tification or excuse, the Board shall enforce compli-
18 ance with this Act, the rules of the Board or the
19 Commission, and professional standards by reg-
20 istered independent public accounting firms and as-
21 sociated persons thereof.

22 (g) CENSURE OF THE BOARD; OTHER SANCTIONS.—

23 (1) RESCISSION OF BOARD AUTHORITY.—The
24 Commission, by rule, consistent with the public in-
25 terest, the protection of investors, and the purposes

1 of this Act and the securities laws, may relieve the
2 Board of any responsibility under this Act to enforce
3 compliance with any provision of this Act, the secu-
4 rities laws, the rules of the Board or the Commis-
5 sion, or professional standards by any registered
6 independent public accounting firm or associated
7 person thereof, or any class of such firms or persons
8 associated with such firms.

9 (2) CENSURE OF THE BOARD; LIMITATIONS.—

10 The Commission may, by order, as it determines
11 necessary or appropriate in the public interest, for
12 the protection of investors, or otherwise in further-
13 ance of the purposes of this Act or the securities
14 laws, censure or impose limitations upon the activi-
15 ties, functions, and operations of the Board, if the
16 Commission finds, on the record, after notice and
17 opportunity for a hearing, that the Board—

18 (A) has violated or is unable to comply
19 with any provision of this Act, the securities
20 laws, or the rules of the Board; or

21 (B) without reasonable justification or ex-
22 cuse, has failed to enforce compliance with any
23 such provision or rule, or any professional
24 standard by a registered independent public ac-
25 counting firm or an associated person thereof.

1 (3) CENSURE OF BOARD MEMBERS; REMOVAL
2 FROM OFFICE.—If the Commission determines that
3 an activity is necessary or appropriate in the public
4 interest, for the protection of investors, or otherwise
5 in furtherance of the purposes of this Act or the se-
6 curities laws, the Commission may remove from of-
7 fice or censure any member of the Board, if the
8 Commission finds, on the record after notice and op-
9 portunity for a hearing, that such member—

10 (A) has willfully violated any provision of
11 this Act, the securities laws, or the rules of the
12 Board;

13 (B) has willfully abused the authority of
14 that member; or

15 (C) without reasonable justification or ex-
16 cuse, has failed to enforce compliance with any
17 such provision or rule, or any professional
18 standard by any registered independent public
19 accounting firm or any associated person there-
20 of.

21 **TITLE II—ACCOUNTING AND** 22 **AUDIT STANDARDS**

23 **SEC. 201. AUDITOR INDEPENDENCE.**

24 (a) PROHIBITION ON SERVICES OUTSIDE THE AUDI-
25 TOR SCOPE OF PRACTICE.—

1 (1) IN GENERAL.—Section 10A of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78j-1) is
3 amended by adding at the end the following:

4 “(g) PROHIBITED ACTIVITIES.—It shall be unlawful
5 for a registered independent public accounting firm that
6 performs for any issuer any auditing service required by
7 this title, or the rules of the Commission under this title
8 (and any associated person of that accountant, to the ex-
9 tent determined appropriate by the Commission), or re-
10 ceives any general revenues from such issuer, to provide
11 to that issuer, contemporaneously with the auditing serv-
12 ice, any non-audit service, including—

13 “(1) bookkeeping or other services related to
14 the accounting records or financial statements of the
15 issuer;

16 “(2) financial information systems design and
17 implementation consulting services (referred to as
18 ‘information technology’ or ‘IT’ consulting services);

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

21 “(4) actuarial services;

22 “(5) internal audit out sourcing services;

23 “(6) any management or human resources func-
24 tion;

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

3 “(8) legal services;

4 “(9) expert services unrelated to the auditing
5 service;

6 “(10) any other service that the Commission
7 determines, by regulation, is outside the scope of the
8 duties of an auditor; and

9 “(11) any non-audit service, including tax serv-
10 ices, that is not described in any of paragraphs (1)
11 through (10), except as approved in advance by the
12 audit committee of the issuer, based on a determina-
13 tion that the performance of such service would be
14 in the best interest of investors and would have no
15 adverse effect on the independence of the accounting
16 firm.”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) DEFINITIONS.—Section 3(a) of the Se-
19 curities Exchange Act of 1934 (15 U.S.C.
20 78c(a)) is amended by adding at the end the
21 following:

22 “(58) AUDIT COMMITTEE.—The term ‘audit
23 committee’ means—

24 “(A) a committee (or equivalent body) es-
25 tablished by the board of directors of an issuer

1 for the purpose of overseeing the accounting
2 and financial reporting processes of the issuer
3 and audits of the financial statements of the
4 issuer; and

5 “(B) if no such committee exists with re-
6 spect to an issuer, the entire board of directors
7 of the issuer.

8 “(59) REGISTERED INDEPENDENT PUBLIC AC-
9 COUNTING FIRM.—The term ‘registered independent
10 public accounting firm’ has the same meaning as in
11 section 3 of the Investor Confidence in Public Ac-
12 counting Act of 2002.”.

13 (B) AUDITOR REQUIREMENTS.—Section
14 10A of the Securities Exchange Act of 1934
15 (15 U.S.C. 78j–1) is amended—

16 (i) by striking “an independent public
17 accountant” each place that term appears
18 and inserting “a registered independent
19 public accounting firm”;

20 (ii) by striking “the independent pub-
21 lic accountant” each place that term ap-
22 pears and inserting “the registered inde-
23 pendent public accounting firm”;

24 (iii) in subsection (c), by striking “No
25 independent public accountant” and insert-

1 ing “No registered independent public ac-
2 counting firm”; and

3 (iv) in subsection (b)—

4 (I) by striking “the accountant”
5 each place that term appears and in-
6 serting “the firm”;

7 (II) by striking “such account-
8 ant” each place that term appears
9 and inserting “such firm”; and

10 (III) in paragraph (4), by strik-
11 ing “the accountant’s report” and in-
12 serting “the report of the firm”.

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

16 (i) in section 12(b)(1) (15 U.S.C.
17 78l(b)(1)), by striking “independent
18 public accountants” each place that
19 term appears and inserting “a reg-
20 istered independent public accounting
21 firm”; and

22 (ii) in subsections (e) and (i) of
23 section 17 (15 U.S.C. 78q), by strik-
24 ing “an independent public account-
25 ant” each place that term appears

1 and inserting “a registered inde-
2 pendent public accounting firm”.

3 (3) COMMISSION REGULATIONS.—

4 (A) IN GENERAL.—Not later than 180
5 days after the date of enactment of this Act,
6 the Commission shall issue final regulations to
7 carry out section 10A(g) of the Securities Ex-
8 change Act of 1934, as added by this section.

9 (B) CONTENTS OF REGULATIONS.—The
10 regulations issued under subparagraph (A),
11 shall be substantially similar to the scope of
12 practice provisions of the proposed rules issued
13 by the Commission on July 13, 2000, consistent
14 with the provisions of this Act, regarding revi-
15 sion of the auditor independence requirements
16 contained in Parts 210 and 240 of title 17, of
17 the Code of Federal Regulations (RIN 3235-
18 AH91).

19 (b) AUDITOR CONFLICTS OF INTEREST.—Section
20 10A of the Securities Exchange Act of 1934 (15 U.S.C.
21 78j-1), as amended by this Act, is amended by adding
22 at the end the following:

23 “(h) CONFLICTS OF INTEREST.—It shall be unlawful
24 for a registered independent public accounting firm to per-
25 form for any issuer any auditing service required by this

1 title, if the comptroller, principal accounting officer, or
 2 principal financial officer of the issuer, or any other indi-
 3 vidual serving in a management capacity for the issuer
 4 at any time during the period of such service, was em-
 5 ployed by that registered independent public accounting
 6 firm during the 2-year period preceding the initiation of
 7 the auditing services.”.

8 (c) AUDITOR INDEPENDENCE.—It shall be unlawful
 9 for any registered independent public accounting firm (or
 10 an associated person thereof, as applicable) to prepare or
 11 issue any audit report with respect to any issuer, if the
 12 firm or associated person—

13 (1) engages in any activity with respect to that
 14 issuer prohibited by section 10A(g) of the Securities
 15 Exchange Act of 1934, as added by this section, or
 16 any rule or regulation of the Commission issued
 17 thereunder; or

18 (2) violates section 10A(h) of the Securities Ex-
 19 change Act of 1934, as added by this section, or any
 20 rule or regulation of the Commission issued there-
 21 under with respect to that issuer.

22 **SEC. 202. REGISTRATION OF PUBLIC ACCOUNTING FIRMS.**

23 (a) MANDATORY REGISTRATION WITH THE
 24 BOARD.—Beginning 1 year after the date of the designa-
 25 tion of the Board under section 101, it shall be unlawful

1 for any person to prepare or issue any audit report with
2 respect to any issuer, unless that person—

3 (1) is a registered independent public account-
4 ing firm;

5 (2) is in compliance with this Act and all appli-
6 cable rules of the Board and the Commission; and

7 (3) has paid all applicable registration and an-
8 nual fees under this title.

9 (b) APPLICATION FOR REGISTRATION.—A public ac-
10 counting firm may become registered under this title upon
11 application to the Board, in such form and containing
12 such information as the Board, by rule, may prescribe.

13 (c) CONTENTS OF APPLICATIONS.—Each application
14 by a public accounting firm for registration under this title
15 shall include—

16 (1) the names of all of the issuers for which the
17 firm prepares or issues audit reports; and

18 (2) for each such issuer, the annual fees re-
19 ceived by the firm from that issuer relating to—

20 (A) performance of any annual audit or
21 quarterly interim review of the financial state-
22 ments of the issuer to be filed in an audit re-
23 port with the Commission under the securities
24 laws;

25 (B) other accounting and auditing services;

1 (C) tax services;

2 (D) information technology consulting
3 services; and

4 (E) all other consulting or advisory serv-
5 ices, in such detail as the rules of the Board
6 shall specify;

7 (3) financial information of the firm for the
8 most recent fiscal year, including the total annual
9 revenues, assets, liabilities, and net equity of the
10 firm, and the aggregate revenues from each of the
11 accounting, auditing, tax, and other professional
12 services provided to any issuer;

13 (4) the names of any liability insurance carrier
14 of the firm;

15 (5) a copy of the policies and procedures of the
16 firm with respect to quality control of its accounting
17 and auditing practices;

18 (6) a list of all persons associated with the firm,
19 the license or certification number of each such per-
20 son issued by the appropriate State regulatory au-
21 thority, and a brief statement of the education and
22 experience of each such person;

23 (7) information relating to criminal, civil, or ad-
24 ministrative actions or disciplinary proceedings
25 pending against the firm or any associated person of

1 the firm in connection with any audit report pre-
2 pared or issued by the firm;

3 (8) a list of issuers for which the firm has been
4 appointed as a successor auditor in the most re-
5 cently completed fiscal year, and where unresolved
6 disagreements exist between the successor and pred-
7 ecessor auditor on the application of generally ac-
8 cepted accounting principles, including a detailed de-
9 scription of the nature of any such disagreement;
10 and

11 (9) such other information as the rules of the
12 Board or the Commission shall specify as necessary
13 or appropriate in the public interest or for the pro-
14 tection of investors.

15 (d) REGISTRATION AND ANNUAL FEES.—

16 (1) IN GENERAL.—The Board shall assess and
17 collect a registration fee and annual dues from each
18 registered independent public accounting firm, sub-
19 ject to annual review and approval by the Commis-
20 sion.

21 (2) AMOUNTS.—

22 (A) IN GENERAL.—Fees and dues under
23 paragraph (1) shall be assessed at a level suffi-
24 cient to recover the costs and expenses of the

1 Board and to permit the Board to operate on
2 a self-funding basis.

3 (B) BASIS OF FEES.—The amount of fees
4 and dues for each registered independent public
5 accounting firm shall be based upon—

6 (i) the annual revenues of that firm
7 from accounting, auditing, and other pro-
8 fessional services provided to issuers for
9 the purpose of preparing or issuing any
10 audit report;

11 (ii) the number of persons associated
12 with the firm that prepare or issue, or as-
13 sist or otherwise participate in the prepa-
14 ration or issuance of audit reports;

15 (iii) the number of issuers for which
16 the firm prepares or issues any audit re-
17 port; and

18 (iv) such other criteria as the rules of
19 the Board may establish.

20 (e) SPECIAL FEES.—The Board may prescribe and
21 collect fees that fairly reflect the costs to the Board of
22 conducting inspections and disciplinary actions in accord-
23 ance with this Act, in addition to other fees authorized
24 by this section.

25 (f) PERIODIC REPORTS.—

1 (1) ANNUAL REPORTS.—Each registered inde-
2 pendent public accounting firm shall submit an an-
3 nual report to the Board to update the information
4 contained in its application for registration under
5 this section, and to provide to the Board any addi-
6 tional information that the Board may require, in
7 accordance with the rules of the Board.

8 (2) UPDATES.—Not later than 15 days after an
9 event that affects any information referred to in
10 paragraph (7) or (8) of subsection (c), or more fre-
11 quently as the Board may require, each registered
12 independent public accounting firm shall provide to
13 the Board any relevant information with respect to
14 such matters.

15 (3) PUBLIC AVAILABILITY.—Annual reports re-
16 quired by this subsection, or parts thereof, as des-
17 ignated by the rules of the Board or the Commis-
18 sion, shall be made available for public inspection,
19 subject to applicable laws relating to the confiden-
20 tiality of information contained in such reports.

21 (g) COMMISSION EXEMPTION AUTHORITY.—The
22 Commission, by rule or order, upon its own motion or
23 upon application, may conditionally or unconditionally ex-
24 empt any public accounting firm or any audit report, or
25 any class of public accounting firms or any class of audit

1 reports, from any provision of this Act, if the Commission
2 finds that such exemption is consistent with the public in-
3 terest, the protection of investors, and the purposes of this
4 Act.

5 **SEC. 203. INVESTIGATIONS AND DISCIPLINARY PRO-**
6 **CEEDINGS.**

7 (a) INVESTIGATIONS AND DISCIPLINARY PRO-
8 CEEDINGS.—The rules of the Board shall establish fair
9 procedures for investigating and disciplining registered
10 independent public accounting firms and associated per-
11 sons thereof for violations of this Act, the securities laws,
12 the rules of the Board or the Commission, or professional
13 standards.

14 (b) INVESTIGATION PROCEDURES.—

15 (1) AUTHORITY.—In accordance with the rules
16 of the Board, the Board may conduct an investiga-
17 tion of any act or practice, or omission to act, by a
18 registered independent public accounting firm, or by
19 any associated person of a registered independent
20 public accounting firm, that may violate any provi-
21 sion of this Act, the securities laws, the rules of the
22 Board or the Commission, or professional standards,
23 regardless of how the act, practice, or omission is
24 brought to the attention of the Board. At the discre-
25 tion of the Board, such an investigation, in light of

1 the circumstances, may relate to the entire reg-
2 istered independent public accounting firm, to 1 or
3 more persons associated with the firm, or to 1 or
4 more offices, engagements, or transactions of the
5 firm.

6 (2) COMPULSION OF TESTIMONY AND DOCU-
7 MENT PRODUCTION.—For purposes of an investiga-
8 tion under this section, and in addition to such other
9 actions as the Board determines to be necessary or
10 appropriate, the rules of the Board may—

11 (A) require the testimony of any person as-
12 sociated with a registered independent public
13 accounting firm, with respect to any matter
14 that the Board considers relevant or material to
15 the investigation;

16 (B) require the production of audit work
17 papers and of any other document or informa-
18 tion in the possession of a registered inde-
19 pendent public accounting firm or any associ-
20 ated person thereof, wherever domiciled, that
21 the Board considers relevant or material to the
22 investigation, and may inspect the books and
23 records of such firm or associated person to
24 verify the accuracy of any documents or infor-
25 mation supplied; and

1 (C) require the testimony of, and produc-
2 tion of any document in the possession of, any
3 person, including any issuer client of a reg-
4 istered independent public accounting firm, that
5 the Board considers relevant or material to an
6 investigation under this section.

7 (3) PENALTIES FOR NONCOMPLIANCE WITH IN-
8 VESTIGATION.—

9 (A) IN GENERAL.—Any person who fails to
10 comply with the requirements of this section
11 shall be subject to the same sanctions as are
12 applicable for any failure to produce informa-
13 tion or testimony to the Commission in the
14 course of a formal investigation.

15 (B) REFUSAL TO COOPERATE.—If a reg-
16 istered independent public accounting firm or
17 any associated person thereof refuses to testify,
18 produce documents, or otherwise cooperate with
19 the Board in connection with an investigation
20 under this section, the Board may—

- 21 (i) suspend or bar such person from
22 being associated with an issuer or a reg-
23 istered independent public accounting firm;
24 (ii) suspend or revoke the registration
25 of the public accounting firm; and

1 (iii) invoke such other sanctions as
2 the Board considers appropriate.

3 (4) REFERRAL.—The Board may refer any in-
4 vestigation to the Commission, the Attorney General
5 of the United States, and the appropriate State reg-
6 ulatory authority, as it determines appropriate, and
7 each such entity shall evaluate any such referral and
8 take such action with respect to the matter referred
9 as it determines necessary or appropriate.

10 (5) USE OF DOCUMENTS.—

11 (A) CONFIDENTIALITY.—Except as pro-
12 vided in subparagraph (B), all reports, memo-
13 randa, and other information prepared or re-
14 ceived by, and deliberations of the Board and
15 its employees and agents in connection with an
16 investigation under this section, shall be con-
17 fidential and privileged, unless and until pre-
18 sented in connection with a public proceeding or
19 the public release by the Board of its report of
20 sanctions under subsection (d).

21 (B) AVAILABILITY TO GOVERNMENT AGEN-
22 CIES.—All information referred to in subpara-
23 graph (A) shall be—

24 (i) made available to the Commission,
25 the Attorney General of the United States,

1 to any other Federal department or agen-
2 cy, to any appropriate State regulatory au-
3 thority, and to Federal and State authori-
4 ties in connection with any criminal inves-
5 tigation or proceeding; and

6 (ii) admissible in any action brought
7 by the Commission, the Attorney General
8 of the United States, or any other Federal
9 department or agency, or by any appro-
10 priate State regulatory authority, and in
11 any criminal action.

12 (6) GOVERNMENT IMMUNITY.—Any employee of
13 the Board engaged in carrying out an investigation
14 under this Act shall be immune from any civil liabil-
15 ity arising out of such investigation in the same
16 manner and to the same extent as an employee of
17 the Federal Government in similar circumstances.

18 (c) DISCIPLINARY PROCEDURES.—

19 (1) NOTIFICATION; RECORDKEEPING.—The
20 rules of the Board shall provide that in any pro-
21 ceeding by the Board to determine whether a reg-
22 istered independent public accounting firm or an as-
23 sociated person thereof, should be disciplined, the
24 Board shall—

1 (A) bring specific charges with respect to
2 the firm or associated person;

3 (B) notify such firm or associated person
4 of, and provide to the firm or associated person
5 an opportunity to defend against, such charges;
6 and

7 (C) keep a record of the proceedings.

8 (2) PUBLIC HEARINGS.—All hearings under
9 this section shall be public, unless otherwise ordered
10 by the Board on its own motion or after considering
11 the motion of a party.

12 (3) SANCTIONS.—If the Board finds that a reg-
13 istered independent public accounting firm, or a per-
14 son associated with a registered independent public
15 accounting firm, has engaged in any act or practice,
16 or omitted to act, in violation of this Act, the securi-
17 ties laws, the rules of the Board or the Commission,
18 or professional standards, the Board may impose
19 such disciplinary or remedial sanctions as it deter-
20 mines appropriate, including—

21 (A) temporary or permanent revocation or
22 suspension of registration under this title with
23 the Board;

24 (B) temporary or permanent limitation of
25 activities, functions, or operations;

1 (C) civil money penalties;

2 (D) censure;

3 (E) in the case of an associated person of
4 a registered independent public accounting
5 firm, temporary or permanent suspension or
6 bar from being associated with any registered
7 independent public accounting firm; or

8 (F) any other appropriate sanction, subject
9 to the approval of the Commission.

10 (4) CIVIL MONEY PENALTIES.—

11 (A) BOARD DETERMINATION.—Subject to
12 the approval of the Commission, civil money
13 penalties for a violation of this Act, the securi-
14 ties laws, the rules of the Board or the Com-
15 mission, or professional standards, if any, shall
16 be determined by the Board, based on the facts
17 and circumstances.

18 (B) PENALTY LIMITS.—For each violation
19 of this Act, the securities laws, the rules of the
20 Board or the Commission, or professional
21 standards, the amount of a penalty imposed
22 under subparagraph (A) may not exceed the
23 greater of—

24 (i) \$100,000 for a natural person; or

1 (ii) \$2,000,000 for any person other
2 than a natural person.

3 (C) FRAUD.—Notwithstanding subpara-
4 graph (B), the amount of a penalty for each
5 violation described in subparagraph (B) that in-
6 volves fraud, deceit, manipulation, or deliberate
7 or reckless disregard of the regulatory stand-
8 ard, may not exceed the greater of—

9 (i) \$750,000 for a natural person; or

10 (ii) \$15,000,000 for any person other
11 than a natural person.

12 (D) USE OF AMOUNTS.—Civil money pen-
13 alties assessed under this paragraph shall be
14 deposited in the General Fund of the United
15 States Treasury.

16 (5) SUPPORTING STATEMENT.—A determina-
17 tion by the Board to impose a disciplinary or reme-
18 dial sanction or penalty under this section shall be
19 supported by a statement setting forth—

20 (A) any prohibited act or practice in which
21 the registered independent public accounting
22 firm, or associated person of such firm, has en-
23 gaged, or any required act or practice which
24 such firm or person has omitted;

1 (B) the specific provision of this Act, the
2 securities laws, the rules of the Board or the
3 Commission, or professional standards which
4 the Board determines has been violated; and

5 (C) the sanction imposed, including a jus-
6 tification for that sanction.

7 (6) EFFECT OF SUSPENSION—

8 (A) ASSOCIATION WITH A PUBLIC AC-
9 COUNTING FIRM.—

10 (i) SUSPENDED OR BARRED PER-
11 SONS.—It shall be unlawful for any person
12 that is suspended or barred from being as-
13 sociated with a registered independent
14 public accounting firm in accordance with
15 this section willfully to become or remain
16 associated with a registered independent
17 public accounting firm without the consent
18 of the Board or the Commission.

19 (ii) REGISTERED INDEPENDENT PUB-
20 LIC ACCOUNTING FIRMS.—It shall be un-
21 lawful for any registered independent pub-
22 lic accounting firm to permit a person that
23 is suspended or barred from being associ-
24 ated with any such firm in accordance with
25 this section to become or remain associated

1 with that firm without the consent of the
2 Board or the Commission, if the firm
3 knew, or, in the exercise of reasonable care
4 should have known, of the suspension or
5 bar.

6 (B) ASSOCIATION WITH AN ISSUER.—

7 (i) SUSPENDED OR BARRED PER-
8 SONS.—It shall be unlawful for any person
9 that is suspended or barred from being as-
10 sociated with an issuer in accordance with
11 this section willfully to become or remain
12 associated with such an issuer without the
13 consent of the Board or the Commission.

14 (ii) ISSUERS.—It shall be unlawful for
15 any issuer to permit any person that is
16 suspended or barred from being associated
17 with an issuer in accordance with this sec-
18 tion to become or remain an associated
19 person of that issuer without the consent
20 of the Board or the Commission, if the
21 issuer knew, or, in the exercise of reason-
22 able care should have known, of the sus-
23 pension or bar.

24 (d) REPORTING OF SANCTIONS.—

1 (1) RECIPIENTS.—Whenever the Board imposes
2 a disciplinary sanction or penalty against a reg-
3 istered independent public accounting firm, an asso-
4 ciated person of a registered independent public ac-
5 counting firm, or any other person, in accordance
6 with this section, the Board shall report the sanction
7 to—

8 (A) the Commission;

9 (B) any appropriate State regulatory au-
10 thority with which such firm or person is li-
11 censed or certified to practice public accounting;

12 (C) the Attorney General of the United
13 States; and

14 (D) the public.

15 (2) CONTENTS.—The information required to
16 be reported under paragraph (1) shall include—

17 (A) the name of the registered independent
18 public accounting firm or other person against
19 whom the sanction or penalty is imposed;

20 (B) a description of the acts or practices,
21 or omissions to act, upon which the sanction or
22 penalty is based;

23 (C) the nature of the sanction; and

1 (D) such other information respecting the
2 circumstances of the disciplinary sanction or
3 penalty as the Board determines appropriate.

4 **SEC. 204. ACCOUNTING STANDARDS.**

5 (a) RECOGNITION OF GENERALLY ACCEPTED AC-
6 COUNTING PRINCIPLES.—For purposes of this Act and
7 the securities laws, the Commission shall recognize gen-
8 erally accepted accounting principles established by a
9 United States standard setting body that the Commission
10 determines is so organized and has such capacity to be
11 capable of meeting the purposes and requirements of this
12 section.

13 (b) QUALIFICATIONS.—A standard setting body de-
14 scribed in subsection (a) shall—

15 (1) be a private entity;

16 (2) have, for administrative and operational
17 purposes, a board of trustees (or equivalent body),
18 the majority of whom are not, concurrent with such
19 service, and have not been during the 2 years prior
20 to such service, associated with any registered inde-
21 pendent public accounting firm;

22 (3) propose and adopt rules establishing and
23 improving standards of financial accounting and re-
24 porting for purposes of compliance with the securi-

1 ties laws, which rules shall, at a minimum, be
2 designed—

3 (A) to improve the usefulness of financial
4 reporting for such purposes by focusing on the
5 primary characteristics of relevance and reli-
6 ability and on the qualities of comparability and
7 consistency;

8 (B) to keep standards current to reflect
9 changes in methods of doing business and
10 changes in the economic environment;

11 (C) to ensure the prompt consideration of
12 any significant areas of deficiency in financial
13 reporting that might be improved through the
14 standard setting process;

15 (D) to promote convergence on high qual-
16 ity accounting standards and improvements in
17 financial reporting; and

18 (E) to improve the common understanding
19 of the nature and purpose of information con-
20 tained in financial reports; and

21 (4) be funded solely—

22 (A) by fees and charges assessed against
23 each issuer, as may be necessary or appropriate
24 to defray the costs and expenses of operations
25 in carrying out this section, subject to review by

1 the Commission in accordance with this section,
2 which fees may differentiate between different
3 classes of issuers, as necessary or appropriate;
4 and

5 (B) by revenues collected from the sale of
6 materials and publications produced by that
7 body.

8 (c) ANNUAL REPORT.—

9 (1) IN GENERAL.—A standard setting body rec-
10 ognized under subsection (a) shall submit an annual
11 report to the Board, the Commission, and the Con-
12 gress.

13 (2) CONTENTS.—Each report required by para-
14 graph (1) shall contain audited financial statements
15 of the standard setting body recognized under sub-
16 section (a) and a detailed explanation of the fees
17 and charges assessed under subsection (b).

18 (d) COMMISSION AUTHORITY.—The Commission
19 shall promulgate such rules and regulations to carry out
20 this section as it deems necessary or appropriate in the
21 public interest or for the protection of investors.

22 (e) NO EFFECT ON COMMISSION POWERS.—Nothing
23 in this section shall be construed to impair or limit the
24 authority of the Commission to regulate the accounting
25 profession, accounting firms, or persons associated with

1 such firms, or otherwise to establish accounting principles
 2 or standards, for purposes of enforcement of the securities
 3 laws.

4 (f) CONFORMING AMENDMENTS TO SECURITIES
 5 ACTS.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
 7 tion 3(a) of the Securities Exchange Act of 1934
 8 (15 U.S.C. 78c(a)), as amended by this Act, is
 9 amended by adding at the end the following:

10 “(60) GENERALLY ACCEPTED ACCOUNTING
 11 PRINCIPLES.—The term ‘generally accepted account-
 12 ing principles’ means any accounting standards and
 13 principles—

14 “(A) recognized by the Commission as
 15 being established by a standard setting body in
 16 accordance with section 204 of the Investor
 17 Confidence in Public Accounting Act of 2002;
 18 and

19 “(B) established by rule, regulation, or
 20 order of the Commission.”.

21 (2) SECURITIES ACT OF 1933.—Section 2(a) of
 22 the Securities Act of 1933 (15 U.S.C. 77b(a)) is
 23 amended by adding at the end the following:

24 “(17) GENERALLY ACCEPTED ACCOUNTING
 25 PRINCIPLES.—The term ‘generally accepted account-

1 ing principles’ means any accounting standards and
2 principles—

3 “(A) recognized by the Commission as
4 being established by a standard setting body in
5 accordance with section 204 of the Investor
6 Confidence in Public Accounting Act of 2002;
7 and

8 “(B) established by rule, regulation, or
9 order of the Commission.”.

10 **SEC. 205. MISREPRESENTATIONS TO AUDITORS.**

11 (a) IN GENERAL.—It shall be unlawful, in contraven-
12 tion of such rules and regulations as the Commission shall
13 prescribe as necessary or appropriate in the public interest
14 or for the protection of investors, for any officer, director,
15 or affiliated person of an issuer of any security registered
16 under section 12 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78l) to take any action to willfully and improv-
18 erly influence, coerce, manipulate, or mislead any reg-
19 istered independent public accounting firm engaged in the
20 preparation or issuance of an audit report for the purpose
21 of rendering any such audit report materially misleading.

22 (b) ENFORCEMENT AUTHORITY.—In any civil pro-
23 ceeding, the Commission shall have exclusive authority to
24 enforce this section and any rule or regulation hereunder.

1 **SEC. 206. 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, consistent with this Act.

6 (b) ENFORCEMENT.—A violation by any person of
7 this title, any rule or regulation of the Commission issued
8 under this title, or any rule of the Board shall be treated
9 for all purposes in the same manner as a violation of the
10 Securities Exchange Act of 1934 or the rules and regula-
11 tions issued thereunder, consistent with the provisions of
12 this Act, and any such person shall be subject to the same
13 penalties, and to the same extent as for a violation of that
14 Act or such rules or regulations.

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

18 (1) the authority of the Commission to regulate
19 the accounting profession, accounting firms, or per-
20 sons associated with such firms for purposes of en-
21 forcement of the securities laws;

22 (2) the authority of the Commission to set
23 standards for accounting or auditing practices or
24 auditor independence, derived from other provisions
25 of the securities laws or the rules or regulations
26 thereunder, for purposes of the preparation and

1 issuance of any auditor report, or otherwise under
2 applicable law; or

3 (3) the ability of the Commission to take, on
4 the initiative of the Commission, legal, administra-
5 tive, or disciplinary action against any registered
6 independent public accounting firm or any associ-
7 ated person thereof.

8 **SEC. 207. ENHANCED COMMISSION OVERSIGHT.**

9 (a) INCREASE IN PROFESSIONALS.—

10 (1) STAFF INCREASES.—Not later than 180
11 days after the date of enactment of this Act, the
12 Commission shall employ not fewer than an addi-
13 tional 150 qualified accounting professionals to pro-
14 vide enhanced oversight of auditors and auditing
15 services required by the Federal securities laws, and
16 to improve Commission investigative and disciplinary
17 efforts with respect to such auditors and services.

18 (2) STATUS.—Accounting professionals de-
19 scribed in paragraph (1) shall be appointed and
20 compensated in the manner authorized for the ap-
21 pointment and compensation of officers and employ-
22 ees of the Commission under section 4(b) of the Se-
23 curities Exchange Act of 1934.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Commission such

1 amounts as may be necessary to carry out this section,
2 which amounts shall be in addition to amounts otherwise
3 appropriated to the Commission for any purpose, and
4 which shall remain available until expended.

5 **TITLE III—OTHER INVESTOR**
6 **SAFEGUARDS**

7 **SEC. 301. IMPROVED FINANCIAL DISCLOSURES.**

8 (a) IMPROVED TRANSPARENCY OF FINANCIAL DIS-
9 CLOSURES.—

10 (1) MODIFICATION OF REGULATIONS RE-
11 QUIRED.—Notwithstanding any rule, regulation, or
12 order of the Commission that provides otherwise, the
13 Commission shall issue regulations to require peri-
14 odic financial reports and registration statements of
15 issuers required under the securities laws to include
16 adequate and appropriate disclosure of—

17 (A) each transaction and relationship of
18 the issuer with any unconsolidated entity or
19 other person, that the Commission determines
20 is reasonably likely to—

21 (i) materially affect liquidity or the
22 availability of, or requirements for, capital
23 resources, or otherwise expose the issuer to
24 material current or future possible liability,

1 obligations, expenses, or cash flow changes;

2 or

3 (ii) affect the recognition of revenue,
4 carrying value, or potential impairment of
5 assets, credit ratings, earnings, cash flows,
6 or stock price; and

7 (B) each relationship and material trans-
8 action with any associated person of the issuer
9 or other persons or entities that may involve
10 terms that differ materially from any such rela-
11 tionship or transaction that would likely be ne-
12 gotiated with a third party, including—

13 (i) a description of the elements of the
14 relationship or transaction that are nec-
15 essary for an understanding of its business
16 purpose and economic substance;

17 (ii) the effects of the relationship or
18 transaction on the financial statements of
19 the issuer; and

20 (iii) the special risks or contingencies
21 arising from the relationship transaction.

22 (b) ELECTRONIC DISCLOSURES OF AFFILIATE
23 TRANSACTIONS.—Section 16 of the Securities Exchange
24 Act of 1934 (15 U.S.C. 78p) is amended by adding at
25 the end the following:

1 “(h) ENHANCED DISCLOSURE.—

2 “(1) IN GENERAL.—Except as otherwise specifi-
3 cally provided in this title or the securities laws, and
4 notwithstanding any other provision of law, any dis-
5 closure of the sale of any security required to be
6 made by any person described in subsection (a) shall
7 be made available in electronic form—

8 “(A) to the Commission, before the end of
9 the calendar day following the calendar day on
10 which the transaction occurs;

11 “(B) to the public by the Commission, to
12 the extent permitted under applicable law, upon
13 receipt, but in no case later than the end of the
14 business day on which the disclosure is received
15 under subparagraph (A); and

16 “(C) in any case in which the issuer main-
17 tains a corporate website that is accessible only
18 internally, on that internal website, before the
19 end of the calendar day on which the trans-
20 action occurs.

21 “(2) OTHER FORMATS.—The requirement of
22 disclosures in electronic form under paragraph (1)
23 shall, at the discretion of the Commission, be in lieu
24 of any other format required for such disclosures on

1 the day before the date of enactment of this sub-
2 section.”.

3 **SEC. 302. COMMISSION RECOMMENDATIONS ON TREAT-**
4 **MENT OF STOCK OPTIONS.**

5 (a) COMMISSION RECOMMENDATIONS.—The Com-
6 mission shall submit to the accounting standard setting
7 body described in section 204(a), its recommendations re-
8 garding the treatment under such accounting standards
9 of—

10 (1) options granted under an employee stock
11 purchase plan, as defined in section 423(b) of the
12 Internal Revenue Code of 1996;

13 (2) incentive stock options, as defined under
14 section 422(b) of the Internal Revenue Code of
15 1986; and

16 (3) any other type of stock option regularly of-
17 fered by issuers.

18 (b) TIMING.—The Commission shall submit its rec-
19 ommendations in accordance with subsection (a) not later
20 than 60 days after the date on which the Commission first
21 recognizes a standard setting body under section 204.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to property transferred and wages
24 provided on or after the date of enactment of this Act.

1 **SEC. 303. COMMISSION RECOMMENDATIONS ON TREAT-**
2 **MENT OF SPECIAL PURPOSE ENTITIES.**

3 (a) **COMMISSION RECOMMENDATIONS.**—The Com-
4 mission shall submit to the accounting standard setting
5 body described in section 204(a), its recommendations re-
6 garding the appropriateness of the consolidation and dis-
7 closure of special purpose entities and similar types of af-
8 filiates or related parties under such accounting stand-
9 ards.

10 (b) **TIMING.**—The Commission shall submit its rec-
11 ommendations in accordance with subsection (a) not later
12 than 60 days after the date on which the Commission first
13 recognizes a standard setting body under section 204.

14 **SEC. 304. REVIEW OF CORPORATE GOVERNANCE PRAC-**
15 **TICES.**

16 (a) **STUDY AND REPORT ON CORPORATE GOVERN-**
17 **ANCE PRACTICES.**—

18 (1) **STUDY.**—Each self-regulatory organization
19 shall conduct a study and review of current cor-
20 porate governance standards and practices to deter-
21 mine whether such standards and practices are serv-
22 ing the best interests of shareholders.

23 (2) **ANALYSIS REQUIRED.**—The study and re-
24 view required by paragraph (1) shall include an
25 analysis of—

1 (A) whether current standards and prac-
2 tices promote full disclosure of relevant infor-
3 mation to shareholders;

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

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

10 (D) to what extent sufficient legal protec-
11 tions exist to ensure that any manager who at-
12 tempts to manipulate or unduly influence an
13 audit is subject to appropriate sanction and li-
14 ability;

15 (E) whether rules, standards, and practices
16 relating to determining whether independent di-
17 rectors are in fact independent are adequate;

18 (F) whether rules, standards, and practices
19 relating to the independence of directors serving
20 on audit committees are uniformly applied and
21 adequate to protect investor interests;

22 (G) whether the duties and responsibilities
23 of audit committees should be established by
24 the Commission; and

1 (H) what further or additional rules,
2 standards, or practices might best protect inves-
3 tors and promote the interests of shareholders.

4 (3) REPORT.—Each self-regulatory organization
5 shall submit a report of its findings under paragraph
6 (1) to the Commission and to the Congress, not
7 later than 90 days after the date of enactment of
8 this Act.

9 **SEC. 305. STUDY OF MANDATORY ROTATION OF REG-**
10 **ISTERED INDEPENDENT PUBLIC ACCOUNT-**
11 **ING FIRMS.**

12 (a) STUDY AND REVIEW REQUIRED.—The Commis-
13 sion shall conduct a study and review of the potential ef-
14 fects of requiring the mandatory rotation of registered
15 independent public accounting firms.

16 (b) FACTORS TO BE CONSIDERED.—In conducting
17 the study under subsection (a), the Commission shall
18 consider—

19 (1) the degree, if any, to which mandatory rota-
20 tion of registered independent public accounting
21 firms would lessen the economic dependence of those
22 firms on their larger audit clients;

23 (2) the competitive impact, if any, on registered
24 independent public accounting firms that would re-
25 sult from mandatory rotation;

1 (3) whether the goals of mandatory rotation of
2 registered independent public accounting firms
3 would be better accomplished through the rotation of
4 individual accountants within such firms on a par-
5 ticular audit; and

6 (4) the appropriate length of a mandatory rota-
7 tion period, if the Commission determines that man-
8 datory rotation of registered independent public ac-
9 counting firms is advisable.

10 (c) REPORT REQUIRED.—Not later than 270 days
11 after the date of enactment of this Act, the Commission
12 shall submit a report to the Committee on Banking, Hous-
13 ing, and Urban Affairs of the Senate and the Committee
14 on Financial Services of the House of Representatives on
15 the results of the study and review required by this sec-
16 tion.

17 (d) DEFINITION.—For purposes of this section,
18 “mandatory rotation” refers to the imposition of a limit
19 on the period of years in which a particular registered
20 independent public accounting firm may be the auditor of
21 record for a particular issuer.

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