In the Senate of the United States,
June 28 (legislative day, June 19), 1995.

Resolved, That the bill from the House of Representatives (H.R. 1058) entitled “An Act to reform Federal securities litigation, and for other purposes”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Private Securities Litigation Reform Act of 1995”.

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

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

Sec. 101. Elimination of certain abusive practices.
Sec. 102. Securities class action reform.
Sec. 103. Sanctions for abusive litigation.
Sec. 104. Requirements for securities fraud actions.
Sec. 105. Safe harbor for forward-looking statements.
Sec. 106. Written interrogatories.
Sec. 107. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 108. Authority of Commission to prosecute aiding and abetting.
Sec. 109. Loss causation.
Sec. 110. Study and report on protections for senior citizens and qualified retirement plans.
Sec. 111. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 112. Applicability.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

Sec. 201. Limitation on damages.
Sec. 203. Applicability.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

Sec. 301. Fraud detection and disclosure.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

SECl. 1.01. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) PROHIBITION OF REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

“(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.”.

(b) ATTORNEY CONFLICT OF INTEREST.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:
“(f) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, if a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.”.

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

““(i) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, in which a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.”.

(c) PROHIBITION OF ATTORNEYS’ FEES PAID FROM COMMISSION DISGORGETMENT FUNDS.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:
“(g) Prohibition of Attorneys’ Fees Paid From Commission Disgorgement Funds.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys’ fees or expenses incurred by private parties seeking distribution of the disgorged funds.”.

(2) Securities Exchange Act of 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

““(4) Prohibition of Attorneys’ Fees Paid From Commission Disgorgement Funds.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys’ fees or expenses incurred by private parties seeking distribution of the disgorged funds.”.”
SEC. 102. SECURITIES CLASS ACTION REFORM.

(a) Recovery Rules.—

   (1) Securities Act of 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

   "(h) Recovery Rules for Private Class Actions.—

   "(1) In general.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

   "(2) Certification filed with complaints.—

   "(A) In general.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

   "(i) states that the plaintiff has reviewed the complaint and authorized its filing;

   "(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;"
“(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

“(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

“(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

“(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff’s pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

“(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.
“(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

“(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

“(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS’ FEES AND EXPENSES.—Total attorneys’ fees and expenses awarded by the court to counsel for the plain-
tiff class shall not exceed a reasonable percentage of
the amount of damages and prejudgment interest
awarded to the class.

"(6) Disclosure of settlement terms to
class members.—Any proposed or final settlement
agreement that is published or otherwise disseminated
to the class shall include each of the following state-
ments, along with a cover page summarizing the in-
formation contained in such statements:

"(A) Statement of plaintiff recovery.—The amount of the settlement proposed to
be distributed to the parties to the action, deter-
mined in the aggregate and on an average per
share basis.

"(B) Statement of potential outcome
of case.—

"(i) Agreement on amount of dam-
ages.—If the settling parties agree on the
average amount of damages per share that
would be recoverable if the plaintiff pre-
vailed on each claim alleged under this title,
a statement concerning the average amount
of such potential damages per share.

"(ii) Disagreement on amount of
damages.—If the parties do not agree on
the average amount of damages per share
that would be recoverable if the plaintiff
prevailed on each claim alleged under this
title, a statement from each settling party
concerning the issue or issues on which the
parties disagree.

“(iii) Inadmissibility for certain
purposes.—A statement made in accord-
ance with clause (i) or (ii) concerning the
amount of damages shall not be admissible
in any Federal or State judicial action or
administrative proceeding, other than an
action or proceeding arising out of such
statement.

“(C) Statement of attorneys’ fees or
costs sought.—If any of the settling parties or
their counsel intend to apply to the court for an
award of attorneys’ fees or costs from any fund
established as part of the settlement, a statement
indicating which parties or counsel intend to
make such an application, the amount of fees
and costs that will be sought (including the
amount of such fees and costs determined on an
average per share basis), and a brief explanation
supporting the fees and costs sought.
"(D) Identification of Lawyers' Representatives.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

"(E) Reasons for Settlement.—A brief statement explaining the reasons why the parties are proposing the settlement.

"(F) Other Information.—Such other information as may be required by the court."

(2) Securities Exchange Act of 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

"(j) Recovery Rules for Private Class Actions.—

"(1) In General.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

"(2) Certification Filed with Complaints.—
“(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

“(i) states that the plaintiff has reviewed the complaint and authorized its filing;

“(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff’s counsel or in order to participate in any private action arising under this title;

“(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

“(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

“(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plain-
tiff has sought to serve as a representative party on behalf of a class; and

“(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff’s pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

“(B) Nonwaiver of attorney-client privilege.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

“(3) Recovery by plaintiffs.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award to any representative party serving on behalf of a class of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

“(4) Restrictions on settlements under seal.—The terms and provisions of any settlement
agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

“(5) Restrictions on Payment of Attorneys’ Fees and Expenses.—Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

“(6) Disclosure of Settlement Terms to Class Members.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

“(A) Statement of Plaintiff Recovery.—The amount of the settlement proposed to be distributed to the parties to the action, deter-
mined in the aggregate and on an average per share basis.

"(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

"(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

"(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

"(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an
action or proceeding arising out of such statement.

“(C) STATEMENT OF ATTORNEYS’ FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys’ fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

“(D) IDENTIFICATION OF LAWYERS’ REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

“(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.
“(F) OTHER INFORMATION.—Such other information as may be required by the court.”.

(b) APPOINTMENT OF LEAD PLAINTIFF.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

“(i) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

“(1) EARLY NOTICE TO CLASS MEMBERS.—

“(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

“(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

“(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.
“(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

“(2) APPOINTMENT OF LEAD PLAINTIFF.—

“(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the ‘most adequate plaintiff’) in accordance with this paragraph.

“(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consoli-
date is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

“(C) Rebuttable presumption.—

“(i) In general.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

“(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

“(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

“(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

“(ii) Rebuttal evidence.—The presumption described in clause (i) may be rebutted only upon proof by a member of the
purported plaintiff class that the presumptively most adequate plaintiff—

“(I) will not fairly and adequately protect the interests of the class; or

“(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

“(iii) Discovery.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

“(I) may not be conducted by any defendant; and

“(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

“(D) Selection of Lead Counsel.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.”.
(2) Securities Exchange Act of 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new subsection:

“(k) Procedures Governing Appointment of Lead Plaintiff in Class Actions.—

“(1) Early notice to class members.—

““(A) In general.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

““(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

““(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

“(B) Additional notices may be required under Federal Rules.—Notice re-
quired under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

“(2) APPOINTMENT OF LEAD PLAINTIFF.—

“(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the ‘most adequate plaintiff’) in accordance with this paragraph.

“(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint
the most adequate plaintiff as lead plaintiff for
the consolidated actions in accordance with this
paragraph.

"(C) Rebuttable presumption.—

"(i) In general.—Subject to clause
(ii), for purposes of subparagraph (A), the
court shall adopt a presumption that the
most adequate plaintiff in any private ac-
tion arising under this title is the person or
group of persons that—

“(I) has either filed the complaint
or made a motion in response to a no-
tice under paragraph (1)(A);

“(II) in the determination of the
court, has the largest financial interest
in the relief sought by the class; and

“(III) otherwise satisfies the re-
quirements of Rule 23 of the Federal
Rules of Civil Procedure.

“(ii) Rebuttal evidence.—The pre-
sumption described in clause (i) may be re-
butted only upon proof by a member of the
purported plaintiff class that the presump-
tively most adequate plaintiff—
“(I) will not fairly and adequately protect the interests of the class; or

“(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

“(iii) Discovery.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

“(I) may not be conducted by any defendant; and

“(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

“(D) Selection of Lead Counsel.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.”.
SEC. 103. SANCTIONS FOR ABUSIVE LITIGATION.

(a) Securities Act of 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

"(j) Sanctions for Abusive Litigation.—

"(1) Mandatory review by court.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

"(2) Mandatory sanctions.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure.

"(3) Presumption in favor of attorneys’ fees and costs.—

"(A) In general.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply
with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys’ fees and other expenses incurred as a direct result of the violation.

"(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

"(i) the award of attorneys’ fees and other expenses will impose an undue burden on that party or attorney; or

"(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

"(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:
‘‘(I) Sanctions for Abusive Litigation.—

‘‘(1) Mandatory review by court.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

‘‘(2) Mandatory sanctions.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions in accordance with Rule 11 of the Federal Rules of Civil Procedure on such party or attorney.

‘‘(3) Presumption in favor of attorneys’ fees and costs.—

‘‘(A) In general.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys’
fees and other expenses incurred as a direct result of the violation.

"(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

"(i) the award of attorneys’ fees and other expenses will impose an undue burden on that party or attorney; or

"(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

"(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.”.

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

(a) SECURITIES ACT OF 1933.—

(1) STAY OF DISCOVERY.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:
(k) **Stay of Discovery.**—In any private action arising under this title, during the pendency of any motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.”.

(2) **Preservation of Evidence.**—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

“(l) **Preservation of Evidence.**—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.”.

(b) **Securities Exchange Act of 1934.**—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:
"SEC. 36. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

"(a) Misleading Statements and Omissions.—In any private action arising under this title in which the plaintiff alleges that the defendant—

"(1) made an untrue statement of a material fact; or

"(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

"(b) Required State of Mind.—

"(1) In General.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this title, specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind."
"(2) Strong inference of fraudulent intent.—For purposes of paragraph (1), a strong inference that the defendant acted with the required state of mind may be established either—

"(A) by alleging facts to show that the defendant had both motive and opportunity to commit fraud; or

"(B) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.

"(c) Motion to dismiss; stay of discovery.—

"(1) Dismissal for failure to meet pleading requirements.—In any private action arising under this title, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsections (a) and (b) are not met.

"(2) Stay of discovery.—In any private action arising under this title, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

"(3) Preservation of evidence.—It shall be unlawful for any person, upon receiving actual notice
that a complaint has been filed in a private action
arising under this title naming that person as a de-
fendant and that describes the allegations contained
in the complaint, to willfully destroy or otherwise
alter any document, data compilation (including any
electronically recorded or stored data), or tangible ob-
ject that is in the custody or control of that person
and that is relevant to the allegations.

“(d) Loss Causation.—In any private action arising
under this title, the plaintiff shall have the burden of prov-
ing that the act or omission alleged to violate this title
caused any loss incurred by the plaintiff. Damages arising
from such loss may be mitigated upon a showing by the
defendant that factors unrelated to such act or omission
contributed to the loss.”.

SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATE-
MENTS.

(a) Securities Act of 1933.—Title I of the Securi-
ties Act of 1933 (15 U.S.C. 77a et seq.) is amended by in-
serting after section 13 the following new section:

“SEC. 13A. APPLICATION OF SAFE HARBOR FOR FORWARD-
LOOKING STATEMENTS.

“(a) Safe Harbor.—

“(1) In General.—In any private action aris-
ing under this title that is based on a fraudulent
statement, an issuer that is subject to the reporting
requirements of section 13(a) or section 15(d) of the
Securities Exchange Act of 1934, a person acting on
behalf of such issuer, or an outside reviewer retained
by such issuer, shall not be liable with respect to any
forward-looking statement, whether written or oral, if
and to the extent that the statement—

“(A) projects, estimates, or describes future
events; and

“(B) refers clearly (and, except as otherwise
provided by rule or regulation, proximately)
to—

“(i) such projections, estimates, or de-
scriptions as forward-looking statements;
and

“(ii) the risk that actual results may
differ materially from such projections, esti-
mates, or descriptions.

“(2) E FFECT ON OTHER SAFE HARBORS.—The
exemption from liability provided for in paragraph
(1) shall be in addition to any exemption that the
Commission may establish by rule or regulation
under subsection (e).
"(b) Definition of Forward-Looking Statement.—For purposes of this section, the term 'forward-looking statement' means—

"(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

"(2) a statement of the plans and objectives of management for future operations;

"(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

"(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

"(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

"(c) Exclusions.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

"(1) knowingly made with the purpose and actual intent of misleading investors;
“(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

“(A) during the 3-year period preceding the date on which the statement was first made—

“(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

“(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

“(I) prohibits future violations of the anti-fraud provisions of the securities laws, as that term is defined in section 3 of the Securities Exchange Act of 1934;

“(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

“(III) determines that the issuer violated the anti-fraud provisions of the securities laws;
“(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

“(C) issues penny stock, as that term is defined in section 3(a)(51) of the Securities Exchange Act of 1934, and the rules, regulations, or orders issued pursuant to that section;

“(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

“(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934; or

“(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

“(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

“(B) contained in a registration statement of, or otherwise issued by, an investment com-
pany, as that term is defined in section 3(a) of the Investment Company Act of 1940;

“(C) made in connection with a tender offer;

“(D) made in connection with an initial public offering;

“(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

“(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d) of the Securities Exchange Act of 1934.

“(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

“(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and
“(2) the exemption provided for in this section precludes a claim for relief.

“(e) Authority.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

“(f) Commission Disgorgement Actions.—

“(1) In general.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

“(2) Judgment for losses suffered.—In any action by the Commission alleging a violation of
this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement that are not compensated through final adjudication or settlement of a private action brought under this title arising from the same violation.

"(g) Effect on Other Authority of Commission.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority."

(b) Securities Exchange Act of 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

"(a) Safe Harbor.—
"(1) In general.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

"(A) projects, estimates, or describes future events; and

"(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

"(i) such projections, estimates, or descriptions as forward-looking statements; and

"(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

"(2) Effect on other safe harbors.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).
"(b) Definition of Forward-Looking Statement.—For purposes of this section, the term 'forward-looking statement' means—

"(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

"(2) a statement of the plans and objectives of management for future operations;

"(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

"(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

"(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

"(c) Exclusions.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

"(1) knowingly made with the purpose and actual intent of misleading investors;
“(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

“(A) during the 3-year period preceding the date on which the statement was first made—

“(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

“(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

“(I) prohibits future violations of the anti-fraud provisions of the securities laws;

“(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws;

or

“(III) determines that the issuer violated the anti-fraud provisions of the securities laws;

“(B) makes the forward-looking statement in connection with an offering of securities by a
blank check company, as that term is defined under the rules or regulations of the Commission;  
“(C) issues penny stock;  
“(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or  
“(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e); or  
“(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—  
“(A) included in financial statements prepared in accordance with generally accepted accounting principles;  
“(B) contained in a registration statement of, or otherwise issued by, an investment company;  
“(C) made in connection with a tender offer;  
“(D) made in connection with an initial public offering;
“(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

“(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d).

“(d) Stay Pending Decision on Motion.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

“(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

“(2) the exemption provided for in this section precludes a claim for relief.

“(e) Authority.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking in-
formation, if and to the extent that any such exemption
is, as determined by the Commission, consistent with the
public interest and the protection of investors.

“(f) COMMISSION DISGORGEMENT ACTIONS.—

“(1) IN GENERAL.—If the Commission, in any
proceeding, orders or obtains (by settlement, court
order, or otherwise) a payment of funds from a per-
son who has violated this title through means that in-
cluded the utilization of a forward-looking statement,
and if any portion of such funds is set aside or other-
wise held for or available to persons who suffered
losses in connection with such violation, no person
shall be precluded from participating in the distribu-
tion of, or otherwise receiving, a portion of such funds
by reason of the application of this section.

“(2) JUDGMENT FOR LOSSES SUFFERED.—In
any action by the Commission alleging a violation of
this title in which the defendant or respondent is al-
leged to have utilized a forward-looking statement in
furtherance of such violation, the Commission may,
upon a sufficient showing, in addition to all other
remedies available to the Commission, obtain a judg-
ment for the payment of an amount equal to all losses
suffered by reason of the utilization of the forward-
looking statement that are not compensated through
final adjudication or settlement of a private action brought under this title arising from the same violation.

"(g) Effect on Other Authority of Commission.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority."

(c) Investment Company Act of 1940.—Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a-24) is amended by adding at the end the following new subsection:

"(g) Regulatory Authority for Forward-Looking Statements.—

"(1) In general.—The Commission shall review and, if necessary to carry out the purposes of this title, promulgate such rules and regulations as may be necessary to describe conduct with respect to the making of forward-looking statements that the Commission deems does not provide a basis for liability in any private action arising under this title.

"(2) Requirements.—A rule or regulation promulgated under paragraph (1) shall—
“(A) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

“(B) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

“(C) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 shall be deemed not to be in violation of this title.

“(3) Effect on other authority of Commission.—Nothing in this subsection limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.”.

SEC. 106. WRITTEN INTERROGATORIES.

(a) Securities Act of 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:
"(m) Defendant's Right to Written Interrogatories.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.”.

(b) Securities Exchange Act of 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

"(m) Defendant's Right to Written Interrogatories.—In any private action arising under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.”.

SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period "", except that no person may rely upon conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962"".

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SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AID-ING AND ABETTING.


(1) by striking the section heading and inserting the following:

"LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS"; and

(2) by adding at the end the following new subsection:

"(e) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under paragraph (1) or (3) of section 21(d), any person that knowingly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation issued under this title, shall be—

"(1) deemed to be in violation of such provision; and

"(2) liable to the same extent as the person to whom such assistance is provided.".

SEC. 109. LOSS CAUSATION.

Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) by inserting ""(a) IN GENERAL.—"" before ""Any person"";
(2) by inserting "subject to subsection (b),"
after "shall be liable"; and
(3) by adding at the end the following:

"(b) LOSS CAUSATION.—In an action described in sub-
section (a)(2), if the person who offered or sold such security
proves that any portion or all of the amount recoverable
under subsection (a)(2) represents other than the deprecia-
tion in value of the subject security resulting from such part
of the prospectus or oral communication, with respect to
which the liability of that person is asserted, not being true
or omitting to state a material fact required to be stated
therein or necessary to make the statement not misleading,
then such portion or amount, as the case may be, shall not
be recoverable.".

SEC. 110. STUDY AND REPORT ON PROTECTIONS FOR SEN-
IOR CITIZENS AND QUALIFIED RETIREMENT
PLANS.

(a) FINDINGS.—The Congress finds that—
(1) senior citizens and qualified retirement plans
are too often the target of securities fraud of the kind
evidenced in the Charles Keating, Lincoln Savings &
Loan Association, and American Continental Cor-
poration situations;
(2) this Act, in an effort to curb unfounded lawsuits, changes the standards and procedures for securities fraud actions; and

(3) the Securities and Exchange Commission has indicated concern with some provisions of this Act.

(b) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall—

(1) determine whether investors that are senior citizens or qualified retirement plans require greater protection against securities fraud than is provided in this Act and the amendments made by this Act; and

(2) if so, submit to the Congress a report containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

(c) DEFINITIONS.—For purposes of this section—

(1) The term “qualified retirement plan” has the same meaning as in section 4974(c) of the Internal Revenue Code of 1986; and

(2) the term “senior citizen” means an individual who is 62 years of age or older as of the date of the securities transaction at issue.
SEC. 111. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period "", except that no person may rely upon conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962": Provided however, That this exception shall not apply if any participant in the fraud is criminally convicted in connection therewith, in which case the statute of limitations shall start to run on the date that the conviction becomes final.

SEC. 112. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 or title I of the Securities Act of 1933 commenced before the date of enactment of this Act.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

SEC. 201. LIMITATION ON DAMAGES.

Section 36 of the Securities Exchange Act of 1934, as added by section 104 of this Act, is amended by adding at the end the following new subsection:

"(e) LIMITATION ON DAMAGES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in any private action arising under this
title, the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the value of that security, as measured by the median trading price of that security, during the 90-day period beginning on the date on which the information correcting the misstatement or omission is disseminated to the market.

"(2) EXCEPTION.—In any private action arising under this title in which damages are sought, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the median market value of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security."

SEC. 202. PROPORTIONATE LIABILITY.

Title I of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:
SEC. 38. PROPORTIONATE LIABILITY.

"(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in any private action arising under this title. Nothing in this section shall affect the standards for liability associated with any private action arising under this title.

"(b) LIABILITY FOR DAMAGES.—

"(1) JOINT AND SEVERAL LIABILITY.—A person against whom a judgment is entered in any private action arising under this title shall be liable for damages jointly and severally only if the trier of fact specifically determines that such person committed knowing securities fraud.

"(2) PROPORTIONATE LIABILITY.—Except as provided in paragraph (1), a person against whom a judgment is entered in any private action arising under this title shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that person, as determined under subsection (c).

"(3) KNOWING SECURITIES FRAUD.—For purposes of this section—

"(A) a defendant engages in ‘knowing securities fraud’ if that defendant—
“(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the material representations of the defendant is false; and

“(ii) actually knows that persons are likely to rely on that misrepresentation or omission; and

“(B) reckless conduct by the defendant shall not be construed to constitute knowing securities fraud.

“(c) Determination of Responsibility.—

“(1) In general.—In any private action arising under this title in which more than 1 person is alleged to have violated a provision of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning—

“(A) the percentage of responsibility of each of the defendants and of each of the other persons alleged by any of the parties to have caused or contributed to the violation, including persons who have entered into settlements with the plaintiff or plaintiffs, measured as a percentage of the
total fault of all persons who caused or contributed to the violation; and

“(B) whether such defendant committed knowing securities fraud.

“(2) Contents of special interrogatories or findings.—The responses to interrogatories, or findings, as appropriate, under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each person found to have caused or contributed to the damages sustained by the plaintiff or plaintiffs.

“(3) Factors for consideration.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

“(A) the nature of the conduct of each person; and

“(B) the nature and extent of the causal relationship between that conduct and the damages incurred by the plaintiff or plaintiffs.

“(d) Uncollectible Share.—

“(1) In general.—Notwithstanding subsection (b)(2), in any private action arising under this title, if, upon motion made not later than 6 months after a final judgment is entered, the court determines that
all or part of a defendant’s share of the judgment is not collectible against that defendant or against a defendant described in subsection (b)(1), each defendant described in subsection (b)(2) shall be liable for the uncollectible share as follows:

“(A) PERCENTAGE OF NET WORTH.— Each defendant shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

“(i) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net financial worth of the plaintiff; and

“(ii) the net financial worth of the plaintiff is equal to less than $200,000.

“(B) OTHER PLAINTIFFS.— With respect to any plaintiff not described in subparagraph (A), each defendant shall be liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability under this subparagraph may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (c)(2).
“(2) Overall Limit.—In no case shall the total payments required pursuant to paragraph (1) exceed the amount of the uncollectible share.

“(3) Defendants Subject to Contribution.—A defendant against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

“(e) Right of Contribution.—To the extent that a defendant is required to make an additional payment pursuant to subsection (d), that defendant may recover contribution—

“(1) from the defendant originally liable to make the payment;

“(2) from any defendant liable jointly and severally pursuant to subsection (b)(1);

“(3) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

“(4) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

“(f) Nondisclosure to Jury.—The standard for allocation of damages under subsections (b) and (c) and the
procedure for reallocation of uncollectible shares under subsection (d) shall not be disclosed to members of the jury.

“(g) SETTLEMENT DISCHARGE.—

“(1) IN GENERAL.—A defendant who settles any private action arising under this title at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

“(A) by any person against the settling defendant; and

“(B) by the settling defendant against any person, other than a person whose liability has been extinguished by the settlement of the settling defendant.

“(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

“(A) an amount that corresponds to the percentage of responsibility of that person; or
“(B) the amount paid to the plaintiff by that person.

“(h) CONTRIBUTION.— A person who becomes liable for damages in any private action arising under this title may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

“(i) STATUTE OF LIMITATIONS FOR CONTRIBUTION.— Once judgment has been entered in any private action arising under this title determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d) may be brought not later than 6 months after the date on which such payment was made.”

SEC. 203. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 commenced before the date of enactment of this Act.
TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

SEC. 301. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

"SEC. 10A. AUDIT REQUIREMENTS.

"(a) IN GENERAL.—Each audit required pursuant to this title of the financial statements of an issuer by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

"(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pur-
suant to this title to which subsection (a) applies, the
independent public accountant detects or otherwise be-
comes aware of information indicating that an illegal
act (whether or not perceived to have a material effect
on the financial statements of the issuer) has or may
have occurred, the accountant shall, in accordance
with generally accepted auditing standards, as may
be modified or supplemented from time to time by the
Commission—

“(A)(i) determine whether it is likely that
an illegal act has occurred; and

“(ii) if so, determine and consider the pos-
sible effect of the illegal act on the financial
statements of the issuer, including any contin-
gent monetary effects, such as fines, penalties,
and damages; and

“(B) as soon as practicable, inform the ap-
propriate level of the management of the issuer
and assure that the audit committee of the is-
suer, or the board of directors of the issuer in the
absence of such a committee, is adequately in-
formed with respect to illegal acts that have been
detected or have otherwise come to the attention
of such accountant in the course of the audit, un-
less the illegal act is clearly inconsequential.
"(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the accountant in the course of the audit of such accountant, the independent public accountant concludes that—

"(A) the illegal act has a material effect on the financial statements of the issuer;

"(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

"(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement; the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

"(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of direc-
tors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

"(A) resign from the engagement; or

"(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

"(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant’s report (or the documentation of any oral report given).

"(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a re-
port made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.

“(d) Civil Penalties in Cease-and-Desist Proceedings.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

“(e) Preservation of Existing Authority.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

“(f) Definition.—As used in this section, the term ‘illegal act’ means an act or omission that violates any law, or any rule or regulation having the force of law.”.

(b) Effective Dates.—The amendment made by subsection (a) shall apply to each annual report—

(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursu-
am to the rules or regulations of the Securities and
Exchange Commission; and
(2) for any period beginning on or after January 1, 1997, with respect to any other registrant.

Amend the title so as to read: "An Act to amend the Federal securities laws to curb certain abusive practices in private securities litigation, and for other purposes."

Attest:

Secretary.