

104TH CONGRESS
1ST SESSION

S. 240

To amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

IN THE SENATE OF THE UNITED STATES

JANUARY 18 (legislative day, JANUARY 10), 1995

Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, and Mr. PELL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

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 “Private Securities Litigation Reform Act of 1995”.

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

Sec. 1. Short title; table of contents.

TITLE I—PRIVATE SECURITIES LITIGATION

Sec. 101. Elimination of certain abusive practices.

Sec. 102. Alternative dispute resolution procedure; time limitation on private rights of action.

Sec. 103. Plaintiff steering committees.

Sec. 104. Requirements for securities fraud actions.

Sec. 105. Amendment to Racketeer Influenced and Corrupt Organizations Act.

TITLE II—FINANCIAL DISCLOSURE

Sec. 201. Safe harbor for forward-looking statements.

Sec. 202. Fraud detection and disclosure.

Sec. 203. Proportionate liability and joint and several liability.

Sec. 204. Public Auditing Self-Disciplinary Board.

3 **TITLE I—PRIVATE SECURITIES** 4 **LITIGATION**

5 **SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.**

6 (a) RECEIPT FOR REFERRAL FEES.—Section 15(c)
 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))
 8 is amended by adding at the end the following new para-
 9 graph:

10 “(7) RECEIPT OF REFERRAL FEES.—No broker
 11 or dealer, or person associated with a broker or deal-
 12 er, may solicit or accept remuneration for assisting
 13 an attorney in obtaining the representation of any
 14 customer in any implied private action arising under
 15 this title.”.

16 (b) PROHIBITION ON ATTORNEYS’ FEES PAID FROM
 17 COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of
 18 the Securities Exchange Act of 1934 (15 U.S.C. 78u(d))

1 is amended by adding at the end the following new para-
2 graph:

3 “(4) PROHIBITION ON ATTORNEYS’ FEES PAID
4 FROM COMMISSION DISGORGEMENT FUNDS.—Except
5 as otherwise ordered by the court, funds disgorged
6 as the result of an action brought by the Commis-
7 sion in Federal court, or of any Commission admin-
8 istrative action, shall not be distributed as payment
9 for attorneys’ fees or expenses incurred by private
10 parties seeking distribution of the disgorged funds.”.

11 (c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS
12 ACTIONS.—Section 21 of the Securities Exchange Act of
13 1934 (15 U.S.C. 78u) is amended by adding at the end
14 the following new subsections:

15 “(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS
16 ACTIONS.—In an implied private action arising under this
17 title that is certified as a class action pursuant to the Fed-
18 eral Rules of Civil Procedure, the share of any final judg-
19 ment or of any settlement that is awarded to class plain-
20 tiffs serving as the representative parties shall be cal-
21 culated in the same manner as the shares of the final judg-
22 ment or settlement awarded to all other members of the
23 class. Nothing in this subsection shall be construed to
24 limit the award to any representative parties of reasonable

1 compensation, costs, and expenses (including lost wages)
2 relating to the representation of the class.

3 “(j) CONFLICTS OF INTEREST.—In an implied pri-
4 vate action arising under this title that is certified as a
5 class action pursuant to the Federal Rules of Civil Proce-
6 dure, if a party is represented by an attorney who directly
7 owns or otherwise has a beneficial interest in the securities
8 that are the subject of the litigation, the court shall make
9 a determination of whether such interest constitutes a con-
10 flict of interest sufficient to disqualify the attorney from
11 representing the party.

12 “(k) RESTRICTIONS ON SETTLEMENTS UNDER
13 SEAL.—In an implied private action arising under this
14 title that is certified as a class action pursuant to the Fed-
15 eral Rules of Civil Procedure, the terms and provisions
16 of any settlement agreement between any of the parties
17 shall not be filed under seal, except that on motion of any
18 of the parties to the settlement, the court may order filing
19 under seal for those portions of a settlement agreement
20 as to which good cause is shown for such filing under seal.
21 Good cause shall only exist if publication of a term or pro-
22 vision of a settlement agreement would cause direct and
23 substantial harm to any person.

24 “(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS’
25 FEES FROM SETTLEMENT FUNDS.—In an implied private

1 action arising under this title that is certified as a class
2 action pursuant to the Federal Rules of Civil Procedure,
3 attorneys' fees awarded by the court to counsel for the
4 class shall be determined as a percentage of the amount
5 of damages and prejudgment interest actually paid to the
6 class as a result of the attorneys' efforts. In no event shall
7 the amount awarded to counsel for the class exceed a rea-
8 sonable percentage of the amount recovered by the class
9 plus reasonable expenses.

10 “(m) DISCLOSURE OF SETTLEMENT TERMS TO
11 CLASS MEMBERS.—In an implied private action arising
12 under this title that is certified as a class action pursuant
13 to the Federal Rules of Civil Procedure, a proposed settle-
14 ment agreement that is published or otherwise dissemi-
15 nated to the class shall include the following statements,
16 which shall not be admissible for purposes of any Federal
17 or State judicial or administrative proceeding:

18 “(1) STATEMENT OF POTENTIAL OUTCOME OF
19 CASE.—

20 “(A) AGREEMENT ON AMOUNT OF DAM-
21 AGES AND LIKELIHOOD OF PREVAILING.—If the
22 settling parties agree on the amount of dam-
23 ages per share that would be recoverable if the
24 plaintiff prevailed on each claim alleged under

1 this title and the likelihood that the plaintiff
2 would prevail—

3 “(i) a statement concerning the
4 amount of such potential damages; and

5 “(ii) a statement concerning the prob-
6 ability that the plaintiff would prevail on
7 the claims alleged under this title and a
8 brief explanation of the reasons for that
9 conclusion.

10 “(B) DISAGREEMENT ON AMOUNT OF
11 DAMAGES OR LIKELIHOOD OF PREVAILING.—If
12 the parties do not agree on the amount of dam-
13 ages per share that would be recoverable if the
14 plaintiff prevailed on each claim alleged under
15 this title or on the likelihood that the plaintiff
16 would prevail on those claims, or both, a state-
17 ment from each settling party concerning the
18 issue or issues on which the parties disagree.

19 “(C) INADMISSIBILITY FOR CERTAIN PUR-
20 POSES.—Statements made in accordance with
21 subparagraphs (A) and (B) shall not be admis-
22 sible for purposes of any Federal or State judi-
23 cial or administrative proceeding.

24 “(2) STATEMENT OF ATTORNEYS’ FEES OR
25 COSTS SOUGHT.—If any of the settling parties or

1 their counsel intend to apply to the court for an
2 award of attorneys' fees or costs from any fund es-
3 tablished as part of the settlement, a statement indi-
4 cating which parties or counsel intend to make such
5 an application, the amount of fees and costs that
6 will be sought, and a brief explanation of the basis
7 for the application.

8 “(3) IDENTIFICATION OF REPRESENTATIVES.—
9 The name, telephone number, and address of one or
10 more representatives of counsel for the plaintiff class
11 who will be reasonably available to answer questions
12 from class members concerning any matter con-
13 tained in any notice of settlement published or oth-
14 erwise disseminated to class members.

15 “(4) OTHER INFORMATION.—Such other infor-
16 mation as may be required by the court, or by any
17 guardian ad litem or plaintiff steering committee ap-
18 pointed by the court pursuant to section 38.

19 “(n) SPECIAL VERDICTS.—In an implied private ac-
20 tion arising under this title in which the plaintiff may re-
21 cover money damages only on proof that a defendant acted
22 with a particular state of mind, the court shall, when re-
23 quested by a defendant, submit to the jury a written inter-
24 rogatory on the issue of each such defendant's state of
25 mind at the time the alleged violation occurred.

1 “(o) NAMED PLAINTIFF THRESHOLD.—In an im-
 2 plied private action arising under this title, in order for
 3 a plaintiff or plaintiffs to obtain certification as represent-
 4 atives of a class of investors pursuant to the Federal Rules
 5 of Civil Procedure, the plaintiff or plaintiffs must show
 6 that they owned, in the aggregate, during the time period
 7 in which violations of this title are alleged to have oc-
 8 curred, not less than the lesser of—

9 “(1) 1 percent of the securities which are the
 10 subject of the litigation; or

11 “(2) \$10,000 (in market value) of such securi-
 12 ties.”.

13 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
 14 **DURE; TIME LIMITATION ON PRIVATE**
 15 **RIGHTS OF ACTION.**

16 (a) RECOVERY OF COSTS AND ATTORNEYS’ FEES.—
 17 The Securities Exchange Act of 1934 (15 U.S.C. 78a et
 18 seq.) is amended by adding at the end the following new
 19 section:

20 **“SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
 21 **DURE.**

22 “(a) IN GENERAL.—

23 “(1) OFFER TO PROCEED.—Except as provided
 24 in paragraph (2), in an implied private action aris-
 25 ing under this title, any party may, before the expi-

1 ration of the period permitted for answering the
2 complaint, deliver to all other parties an offer to
3 proceed pursuant to any voluntary, nonbinding alter-
4 native dispute resolution procedure established or
5 recognized under the rules of the court in which the
6 action is maintained.

7 “(2) PLAINTIFF CLASS ACTIONS.—In an im-
8 plied private action under this title which is brought
9 as a plaintiff class action, an offer under paragraph
10 (1) shall be made not later than 30 days after a
11 guardian ad litem or plaintiff steering committee is
12 appointed by the court in accordance with section
13 38.

14 “(3) RESPONSE.—The recipient of an offer
15 under paragraph (1) or (2) shall file a written notice
16 of acceptance or rejection of the offer with the court
17 not later than 10 days after receipt of the offer. The
18 court may, upon motion by any party made prior to
19 the expiration of such period, extend the period for
20 not more than 90 additional days, during which time
21 discovery may be permitted by the court.

22 “(4) SELECTION OF TYPE OF ALTERNATIVE
23 DISPUTE RESOLUTION.—For purposes of paragraphs
24 (1) and (2), if the rules of the court establish or rec-
25 ognize more than 1 type of alternative dispute reso-

1 lution, the parties may stipulate as to the type of al-
2 ternative dispute resolution to be applied. If the par-
3 ties are unable to so stipulate, the court shall issue
4 an order not later than 20 days after the date on
5 which the parties agree to the use of alternative dis-
6 pute resolution, specifying the type of alternative
7 dispute resolution to be applied.

8 “(5) SANCTIONS FOR DILATORY OR OBSTRUC-
9 TIVE CONDUCT.—If the court finds that a party has
10 engaged in dilatory or obstructive conduct in taking
11 or opposing any discovery allowed during the re-
12 sponse period described in paragraph (3), the court
13 may—

14 “(A) extend the period to permit further
15 discovery from that party for a suitable period;
16 and

17 “(B) deny that party the opportunity to
18 conduct further discovery prior to the expiration
19 of the period.

20 “(b) PENALTY FOR UNREASONABLE LITIGATION PO-
21 SITION.—

22 “(1) AWARD OF COSTS.—In an implied private
23 action arising under this title, upon motion of the
24 prevailing party made prior to final judgment, the
25 court shall award costs, including reasonable attor-

1 neys' fees, against a party or parties or their attor-
2 neys, if—

3 “(A) the party unreasonably refuses to
4 proceed pursuant to an alternative dispute reso-
5 lution procedure, or refuses to accept the result
6 of an alternative dispute resolution procedure;

7 “(B) final judgment is entered against the
8 party; and

9 “(C) the party asserted a claim or defense
10 in the action which was not substantially justi-
11 fied.

12 “(2) DETERMINATION OF JUSTIFICATION.—For
13 purposes of paragraph (1)(C), whether a position is
14 ‘substantially justified’ shall be determined in the
15 same manner as under section 2412(d)(1)(B) of title
16 28, United States Code.

17 “(3) LIMITED USE.—Fees and costs awarded
18 under this paragraph shall not be applied to any
19 named plaintiff in any action certified as a class ac-
20 tion under the Federal Rules of Civil Procedure if
21 such plaintiff has never owned more than
22 \$1,000,000 of the securities which are the subject of
23 the litigation.”.

24 (b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE
25 RIGHTS OF ACTION.—The Securities Exchange Act of

1 1934 (15 U.S.C. 78a et seq.) is amended by adding at
2 the end the following new section:

3 **“SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
4 **RIGHTS OF ACTION.**

5 “(a) IN GENERAL.—Except as otherwise provided in
6 this title, an implied private right of action arising under
7 this title shall be brought not later than the earlier of—

8 “(1) 5 years after the date on which the alleged
9 violation occurred; or

10 “(2) 2 years after the date on which the alleged
11 violation was discovered or should have been discov-
12 ered through the exercise of reasonable diligence.

13 “(b) EFFECTIVE DATE.—The limitations period pro-
14 vided by this section shall apply to all proceedings pending
15 on or commenced after the date of enactment of this sec-
16 tion.”.

17 **SEC. 103. PLAINTIFF STEERING COMMITTEES.**

18 The Securities Exchange Act of 1934 (15 U.S.C. 78a
19 et seq.) is amended by adding at the end the following
20 new section:

21 **“SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEER-**
22 **ING COMMITTEES.**

23 “(a) GUARDIAN AD LITEM.—Except as provided in
24 subsection (b), not later than 10 days after certifying a
25 plaintiff class in an implied private action brought under

1 this title, the court shall appoint a guardian ad litem for
2 the plaintiff class from a list or lists provided by the par-
3 ties or their counsel. The guardian ad litem shall direct
4 counsel for the class and perform such other functions as
5 the court may specify. The court shall apportion the rea-
6 sonable fees and expenses of the guardian ad litem among
7 the parties. Court appointment of a guardian ad litem
8 shall not be subject to interlocutory review.

9 “(b) CLASS ACTION STEERING COMMITTEE.—Sub-
10 section (a) shall not apply if, not later than 10 days after
11 certifying a plaintiff class, on its own motion or on motion
12 of a member of the class, the court appoints a committee
13 of class members to direct counsel for the class (hereafter
14 in this section referred to as the ‘plaintiff steering commit-
15 tee’) and to perform such other functions as the court may
16 specify. Court appointment of a plaintiff steering commit-
17 tee shall not be subject to interlocutory review.

18 “(c) MEMBERSHIP OF PLAINTIFF STEERING COM-
19 MITTEE.—

20 “(1) QUALIFICATIONS.—

21 “(A) NUMBER.—A plaintiff steering com-
22 mittee shall consist of not less than 5 class
23 members, willing to serve, who the court be-
24 lieves will fairly represent the class.

1 “(B) OWNERSHIP INTERESTS.—Members
2 of the plaintiff steering committee shall have
3 cumulatively held during the class period not
4 less than—

5 “(i) the lesser of 5 percent of the se-
6 curities which are the subject matter of the
7 litigation or securities which are the sub-
8 ject matter of the litigation with a market
9 value of \$10,000,000; or

10 “(ii) such smaller percentage or dollar
11 amount as the court finds appropriate
12 under the circumstances.

13 “(2) NAMED PLAINTIFFS.—Class members who
14 are named plaintiffs in the litigation may serve on
15 the plaintiff steering committee, but shall not com-
16 prise a majority of the committee.

17 “(3) NONCOMPENSATION OF MEMBERS.—Mem-
18 bers of the plaintiff steering committee shall serve
19 without compensation, except that any member may
20 apply to the court for reimbursement of reasonable
21 out-of-pocket expenses from any common fund es-
22 tablished for the class.

23 “(4) MEETINGS.—The plaintiff steering com-
24 mittee shall conduct its business at one or more pre-
25 viously scheduled meetings of the committee at

1 which a majority of its members are present in per-
2 son or by electronic communication. The plaintiff
3 steering committee shall decide all matters within its
4 authority by a majority vote of all members, except
5 that the committee may determine that decisions
6 other than to accept or reject a settlement offer or
7 to employ or dismiss counsel for the class may be
8 delegated to one or more members of the committee,
9 or may be voted upon by committee members seria-
10 tim, without a meeting.

11 “(5) RIGHT OF NONMEMBERS TO BE HEARD.—
12 A class member who is not a member of the plaintiff
13 steering committee may appear and be heard by the
14 court on any issue in the action, to the same extent
15 as any other party.

16 “(d) FUNCTIONS OF GUARDIAN AD LITEM AND
17 PLAINTIFF STEERING COMMITTEE.—

18 “(1) DIRECT COUNSEL.—The authority of the
19 guardian ad litem or the plaintiff steering committee
20 to direct counsel for the class shall include all pow-
21 ers normally permitted to an attorney’s client in liti-
22 gation, including the authority to retain or dismiss
23 counsel and to reject offers of settlement, and the
24 preliminary authority to accept an offer of settle-
25 ment, subject to the restrictions specified in para-

1 graph (2). Dismissal of counsel other than for cause
2 shall not limit the ability of counsel to enforce any
3 contractual fee agreement or to apply to the court
4 for a fee award from any common fund established
5 for the class.

6 “(2) SETTLEMENT OFFERS.—If a guardian ad
7 litem or a plaintiff steering committee gives prelimi-
8 nary approval to an offer of settlement, the guardian
9 ad litem or the plaintiff steering committee may seek
10 approval of the offer by a majority of class members
11 if the committee determines that the benefit of seek-
12 ing such approval outweighs the cost of soliciting the
13 approval of class members.

14 “(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any
15 person serving as a guardian ad litem or as a member
16 of a plaintiff steering committee shall be immune from any
17 liability arising from such service. The court may remove
18 a guardian ad litem or a member of a plaintiff steering
19 committee for good cause shown.

20 “(f) EFFECT ON OTHER LAW.—This section does not
21 affect any other provision of law concerning class actions
22 or the authority of the court to give final approval to any
23 offer of settlement.”.

1 **SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD AC-**
2 **TIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by adding at the end the following
5 new section:

6 **“SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD AC-**
7 **TIONS.**

8 “(a) **INTENT.**—In an implied private action arising
9 under this title in which the plaintiff may recover money
10 damages from a defendant only on proof that the defend-
11 ant acted with some level of intent, the plaintiff’s com-
12 plaint shall allege specific facts demonstrating the state
13 of mind of each defendant at the time the alleged violation
14 occurred.

15 “(b) **MISLEADING STATEMENTS AND OMISSIONS.**—
16 In an implied action arising under this title in which the
17 plaintiff alleges that the defendant—

18 “(1) made an untrue statement of a material
19 fact; or

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

24 the plaintiff shall specify each statement alleged to have
25 been misleading, the reason or reasons why the statement
26 is misleading, and, if an allegation regarding the state-

1 ment or omission is made on information and belief, the
2 plaintiff shall set forth all information on which that belief
3 is formed.

4 “(c) BURDEN OF PROOF.—In an implied private ac-
5 tion arising under this title based on a material
6 misstatement or omission concerning a security, and in
7 which the plaintiff claims to have bought or sold the secu-
8 rity based on a reasonable belief that the market value
9 of the security reflected all publicly available information,
10 the plaintiff shall have the burden of proving that the
11 misstatement or omission caused any loss incurred by the
12 plaintiff.

13 “(d) DAMAGES.—In an implied private action arising
14 under this title based on a material misstatement or omis-
15 sion concerning a security, and in which the plaintiff
16 claims to have bought or sold the security based on a rea-
17 sonable belief that the market value of the security re-
18 flected all publicly available information, the plaintiff’s
19 damages shall not exceed the lesser of—

20 “(1) the difference between the price paid by
21 the plaintiff for the security and the market value of
22 the security immediately after dissemination to the
23 market of information which corrects the
24 misstatement or omission; and

1 “(2) the difference between the price paid by
2 the plaintiff for the security and the price at which
3 the plaintiff sold the security after dissemination of
4 information correcting the misstatement or omis-
5 sion.”.

6 **SEC. 105. AMENDMENT TO RACKETEER INFLUENCED AND**
7 **CORRUPT ORGANIZATIONS ACT.**

8 Section 1964(c) of title 18, United States Code, is
9 amended by inserting “, except that no person may bring
10 an action under this provision if the racketeering activity,
11 as defined in section 1961(1)(D), involves fraud in the sale
12 of securities” before the period.

13 **TITLE II—FINANCIAL**
14 **DISCLOSURE**

15 **SEC. 201. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
16 **MENTS.**

17 (a) CONSIDERATION OF REGULATORY OR LEGISLA-
18 TIVE CHANGES.—In consultation with investors and issu-
19 ers of securities, the Securities and Exchange Commission
20 shall consider adopting or amending its rules and regula-
21 tions, or making legislative recommendations, concern-
22 ing—

23 (1) criteria that the Commission finds appro-
24 priate for the protection of investors by which for-
25 ward-looking statements concerning the future eco-

1 nomic performance of an issuer of securities reg-
2 istered under section 12 of the Securities Exchange
3 Act of 1934 will be deemed not to be in violation of
4 section 10(b) of that Act; and

5 (2) procedures by which courts shall timely dis-
6 miss claims against such issuers of securities based
7 on such forward-looking statements if such state-
8 ments are in accordance with any criteria under
9 paragraph (1).

10 (b) COMMISSION CONSIDERATIONS.—In developing
11 rules or legislative recommendations in accordance with
12 subsection (a), the Commission shall consider—

13 (1) appropriate limits to liability for forward-
14 looking statements;

15 (2) procedures for making a summary deter-
16 mination of the applicability of any Commission rule
17 for forward-looking statements early in a judicial
18 proceeding to limit protracted litigation and expan-
19 sive discovery;

20 (3) incorporating and reflecting the scienter re-
21 quirements applicable to implied private actions
22 under section 10(b); and

23 (4) providing clear guidance to issuers of secu-
24 rities and the judiciary.

1 (c) SECURITIES ACT AMENDMENT.—The Securities
2 and Exchange Act of 1934 (15 U.S.C. 78a et seq.), is
3 amended by adding at the end the following new section:

4 **“SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-**
5 **LOOKING STATEMENTS.**

6 “(a) IN GENERAL.—In any implied private action
7 arising under this title that alleges that a forward-looking
8 statement concerning the future economic performance of
9 an issuer registered under section 12 was materially false
10 or misleading, if a party making a motion in accordance
11 with subsection (b) requests a stay of discovery concerning
12 the claims or defenses of that party, the court shall grant
13 such a stay until it has ruled on any such motion.

14 “(b) SUMMARY JUDGMENT MOTIONS.—Subsection
15 (a) shall apply to any motion for summary judgment made
16 by a defendant asserting that the forward-looking state-
17 ment was within the coverage of any rule which the Com-
18 mission may have adopted concerning such predictive
19 statements, if such motion is made not less than 60 days
20 after the plaintiff commences discovery in the action.

21 “(c) DILATORY CONDUCT; DUPLICATIVE DISCOV-
22 ERY.—Notwithstanding subsection (a) or (b), the time
23 permitted for a plaintiff to conduct discovery under sub-
24 section (b) may be extended, or a stay of the proceedings
25 may be denied, if the court finds that—

1 “(1) the defendant making a motion described
2 in subsection (b) engaged in dilatory or obstructive
3 conduct in taking or opposing any discovery; or

4 “(2) a stay of discovery pending a ruling on a
5 motion under subsection (b) would be substantially
6 unfair to the plaintiff or other parties to the ac-
7 tion.”.

8 **SEC. 202. FRAUD DETECTION AND DISCLOSURE.**

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

12 **“SEC. 10A. AUDIT REQUIREMENTS.**

13 “(a) IN GENERAL.—Each audit required pursuant to
14 this title of an issuer’s financial statements by an inde-
15 pendent public accountant shall include, in accordance
16 with generally accepted auditing standards, as may be
17 modified or supplemented from time to time by the Com-
18 mission—

19 “(1) procedures designed to provide reasonable
20 assurance of detecting illegal acts that would have a
21 direct and material effect on the determination of fi-
22 nancial statement amounts;

23 “(2) procedures designed to identify related
24 party transactions which are material to the finan-

1 cial statements or otherwise require disclosure there-
2 in; and

3 “(3) an evaluation of whether there is substan-
4 tial doubt about the issuer’s ability to continue as a
5 going concern during the ensuing fiscal year.

6 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
7 ERIES.—

8 “(1) INVESTIGATION AND REPORT TO MANAGE-
9 MENT.—If, in the course of conducting an audit pur-
10 suant to this title to which subsection (a) applies,
11 the independent public accountant detects or other-
12 wise becomes aware of information indicating that
13 an illegal act (whether or not perceived to have a
14 material effect on the issuer’s financial statements)
15 has or may have occurred, the accountant shall, in
16 accordance with generally accepted auditing stand-
17 ards, as may be modified or supplemented from time
18 to time by the Commission—

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

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

1 “(B) as soon as practicable, inform the ap-
2 propriate level of the issuer’s management and
3 assure that the issuer’s audit committee, or the
4 issuer’s board of directors in the absence of
5 such a committee, is adequately informed with
6 respect to illegal acts that have been detected or
7 have otherwise come to the attention of such
8 accountant in the course of the audit, unless
9 the illegal act is clearly inconsequential.

10 “(2) RESPONSE TO FAILURE TO TAKE REME-
11 DIAL ACTION.—If, having first assured itself that
12 the audit committee of the board of directors of the
13 issuer or the board (in the absence of an audit com-
14 mittee) is adequately informed with respect to illegal
15 acts that have been detected or have otherwise come
16 to the accountant’s attention in the course of such
17 accountant’s audit, the independent public account-
18 ant concludes that—

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

21 “(B) the senior management has not
22 taken, and the board of directors has not
23 caused senior management to take, timely and
24 appropriate remedial actions with respect to the
25 illegal act; and

1 “(C) the failure to take remedial action is
2 reasonably expected to warrant departure from
3 a standard auditor’s report, when made, or
4 warrant resignation from the audit engagement;
5 the independent public accountant shall, as soon as
6 practicable, directly report its conclusions to the
7 board of directors.

8 “(3) NOTICE TO COMMISSION; RESPONSE TO
9 FAILURE TO NOTIFY.—An issuer whose board of di-
10 rectors receives a report under paragraph (2) shall
11 inform the Commission by notice not later than 1
12 business day after the receipt of such report and
13 shall furnish the independent public accountant
14 making such report with a copy of the notice fur-
15 nished to the Commission. If the independent public
16 accountant fails to receive a copy of the notice be-
17 fore the expiration of the required 1-business-day pe-
18 riod, the independent public accountant shall—

19 “(A) resign from the engagement; or

20 “(B) furnish to the Commission a copy of
21 its report (or the documentation of any oral re-
22 port given) not later than 1 business day follow-
23 ing such failure to receive notice.

24 “(4) REPORT AFTER RESIGNATION.—If an
25 independent public accountant resigns from an en-

1 gagement under paragraph (3)(A), the accountant
2 shall, not later than 1 business day following the
3 failure by the issuer to notify the Commission under
4 paragraph (3), furnish to the Commission a copy of
5 the accountant's report (or the documentation of
6 any oral report given).

7 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
8 pendent public accountant shall be liable in a private ac-
9 tion for any finding, conclusion, or statement expressed
10 in a report made pursuant to paragraph (3) or (4) of sub-
11 section (b), including any rules promulgated pursuant
12 thereto.

13 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
14 CEEDINGS.—If the Commission finds, after notice and op-
15 portunity for hearing in a proceeding instituted pursuant
16 to section 21C, that an independent public accountant has
17 willfully violated paragraph (3) or (4) of subsection (b),
18 the Commission may, in addition to entering an order
19 under section 21C, impose a civil penalty against the inde-
20 pendent public accountant and any other person that the
21 Commission finds was a cause of such violation. The deter-
22 mination to impose a civil penalty and the amount of the
23 penalty shall be governed by the standards set forth in
24 section 21B.

1 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
2 cept as provided in subsection (d), nothing in this section
3 shall be held to limit or otherwise affect the authority of
4 the Commission under this title.

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

8 (b) EFFECTIVE DATES.—With respect to any reg-
9 istrant that is required to file selected quarterly financial
10 data pursuant to item 302(a) of Regulation S-K of the
11 Securities and Exchange Commission (17 CFR
12 229.302(a)), the amendments made by subsection (a) shall
13 apply to any annual report for any period beginning on
14 or after January 1, 1994. With respect to any other reg-
15 istrant, the amendment shall apply for any period begin-
16 ning on or after January 1, 1995.

17 **SEC. 203. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
18 **ERAL LIABILITY.**

19 (a) SECURITIES ACT AMENDMENT.—The Securities
20 and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
21 amended by adding at the end the following new section:

22 **“SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
23 **ERAL LIABILITY IN IMPLIED ACTIONS.**

24 “(a) APPLICABILITY.—This section shall apply only
25 to the allocation of damages among persons who are, or

1 who may become, liable for damages in an implied private
2 action arising under this title. Nothing in this section shall
3 affect the standards for liability associated with an implied
4 private action arising under this title.

5 “(b) APPLICATION OF JOINT AND SEVERAL LIABIL-
6 ITY.—

7 “(1) IN GENERAL.—A person against whom a
8 judgment is entered in an implied private action
9 arising under this title shall be liable jointly and sev-
10 erally for any recoverable damages on such judg-
11 ment if the person is found to have—

12 “(A) been a primary wrongdoer;

13 “(B) committed knowing securities fraud;

14 or

15 “(C) controlled any primary wrongdoer or
16 person who committed knowing securities fraud.

17 “(2) PRIMARY WRONGDOER.—As used in this
18 subsection—

19 “(A) the term ‘primary wrongdoer’
20 means—

21 “(i) any—

22 “(I) issuer, registrant, purchaser,
23 seller, or underwriter of securities;

24 “(II) marketmaker or specialist
25 in securities; or

1 “(III) clearing agency, securities
2 information processor, or government
3 securities dealer;

4 if such person breached a direct statutory
5 or regulatory obligation or if such person
6 otherwise had a principal role in the con-
7 duct that is the basis for the implied right
8 of action; or

9 “(ii) any person who intentionally ren-
10 dered substantial assistance to the fraudu-
11 lent conduct of any person described in
12 clause (i), with actual knowledge of such
13 person’s fraudulent conduct or fraudulent
14 purpose, and with knowledge that such
15 conduct was wrongful; and

16 “(B) a defendant engages in ‘knowing se-
17 curities fraud’ if such defendant—

18 “(i) makes a material representation
19 with actual knowledge that the representa-
20 tion is false, or omits to make a statement
21 with actual knowledge that, as a result of
22 the omission, one of the defendant’s mate-
23 rial representations is false and knows that
24 other persons are likely to rely on that
25 misrepresentation or omission, except that

1 reckless conduct by the defendant shall not
2 be construed to constitute ‘knowing securi-
3 ties fraud’; or

4 “(ii) intentionally rendered substantial
5 assistance to the fraudulent conduct of any
6 person described in clause (i), with actual
7 knowledge of such person’s fraudulent con-
8 duct or fraudulent purpose, and with
9 knowledge that such conduct was wrongful.

10 “(c) DETERMINATION OF RESPONSIBILITY.—In an
11 implied private action in which more than 1 person con-
12 tributed to a violation of this title, the court shall instruct
13 the jury to answer special interrogatories, or if there is
14 no jury, shall make findings, concerning the degree of re-
15 sponsibility of each person alleged to have caused or con-
16 tributed to the violation of this title, including persons who
17 have entered into settlements with the plaintiff. The inter-
18 rogatories or findings shall specify the amount of damages
19 the plaintiff is entitled to recover and the degree of respon-
20 sibility, measured as a percentage of the total fault of all
21 persons involved in the violation, of each person found to
22 have caused or contributed to the damages incurred by
23 the plaintiff or plaintiffs. In determining the degree of re-
24 sponsibility, the trier of fact shall consider—

1 “(1) the nature of the conduct of each person;
2 and

3 “(2) the nature and extent of the causal rela-
4 tionship between that conduct and the damage
5 claimed by the plaintiff.

6 “(d) APPLICATION OF PROPORTIONATE LIABILITY.—
7 Except as provided in subsection (b), the amount of liabil-
8 ity of a person who is, or may through right of contribu-
9 tion become, liable for damages based on an implied pri-
10 vate action arising under this title shall be determined as
11 follows:

12 “(1) DEGREE OF RESPONSIBILITY.—Except as
13 provided in paragraph (2), each liable party shall
14 only be liable for the portion of the judgment that
15 corresponds to that party’s degree of responsibility,
16 as determined under subsection (c).

17 “(2) UNCOLLECTIBLE SHARES.—If, upon mo-
18 tion made not later than 6 months after a final
19 judgment is entered, the court determines that all or
20 part of a defendant’s share of the obligation is
21 uncollectible—

22 “(A) the remaining defendants shall be
23 jointly and severally liable for the uncollectible
24 share if the plaintiff establishes that—

1 “(i) the plaintiff is an individual
2 whose recoverable damages under a final
3 judgment are equal to more than 10 per-
4 cent of the plaintiff’s net financial worth;
5 and

6 “(ii) the plaintiff’s net financial worth
7 is less than \$200,000; and

8 “(B) the amount paid by each of the re-
9 maining defendants to all other plaintiffs shall
10 be, in total, not more than the greater of—

11 “(i) that remaining defendant’s per-
12 centage of fault for the uncollectible share;
13 or

14 “(ii) 5 times—

15 “(I) the amount which the de-
16 fendant gained from the conduct that
17 gave rise to its liability; or

18 “(II) if a defendant did not ob-
19 tain a direct financial gain from the
20 conduct that gave rise to the liability
21 and the conduct consisted of the pro-
22 vision of deficient services to an entity
23 involved in the violation, the defend-
24 ant’s gross revenues received for the
25 provision of all services to the other

1 entity involved in the violation during
2 the calendar years in which deficient
3 services were provided.

4 “(3) OVERALL LIMIT.—In no event shall the
5 total payments required pursuant to paragraph (2)
6 exceed the amount of the uncollectible share.

7 “(4) DEFENDANTS SUBJECT TO CONTRIBU-
8 TION.—A defendant whose liability is reallocated
9 pursuant to paragraph (2) shall be subject to con-
10 tribution and to any continuing liability to the plain-
11 tiff on the judgment.

12 “(5) RIGHT OF CONTRIBUTION.—To the extent
13 that a defendant is required to make an additional
14 payment pursuant to paragraph (2), that defendant
15 may recover contribution—

16 “(A) from the defendant originally liable to
17 make the payment;

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

20 “(C) from any defendant held proportion-
21 ately liable pursuant to this subsection who is
22 liable to make the same payment and has paid
23 less than his or her proportionate share of that
24 payment; or

1 “(D) from any other person responsible for
2 the conduct giving rise to the payment who
3 would have been liable to make the same pay-
4 ment.

5 “(e) NONDISCLOSURE TO JURY.—The standard for
6 allocation of damages under subsections (b)(1) and (c)
7 and the procedure for reallocation of uncollectible shares
8 under subsection (d)(2) shall not be disclosed to members
9 of the jury.

10 “(f) SETTLEMENT DISCHARGE.—

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

21 “(A) by nonsettling persons against the
22 settling defendant; and

23 “(B) by the settling defendant against any
24 nonsettling defendants.

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

5 “(A) an amount that corresponds to the
6 degree of responsibility of that person; or

7 “(B) the amount paid to the plaintiff by
8 that person.

9 “(g) CONTRIBUTION.—A person who becomes liable
10 for damages in an implied private action arising under this
11 title may recover contribution from any other person who,
12 if joined in the original suit, would have been liable for
13 the same damages. A claim for contribution shall be deter-
14 mined based on the degree of responsibility of the claimant
15 and of each person against whom a claim for contribution
16 is made.

17 “(h) STATUTE OF LIMITATIONS FOR CONTRIBU-
18 TION.—Once judgment has been entered in an implied pri-
19 vate action arising under this title determining liability,
20 an action for contribution must be brought not later than
21 6 months after the entry of a final, nonappealable judg-
22 ment in the action, except that an action for contribution
23 brought by a defendant who was required to make an ad-
24 ditional payment pursuant to subsection (d)(2) may be

1 brought not later than 6 months after the date on which
2 such payment was made.”.

3 (b) EFFECTIVE DATE.—Section 41 of the Securities
4 Exchange Act of 1934, as added by subsection (a), shall
5 only apply to implied private actions commenced after the
6 date of enactment of this Act.

7 **SEC. 204. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

8 The Securities Exchange Act of 1934 (15 U.S.C. 78a
9 et seq.) is amended by inserting immediately after section
10 13 the following new section:

11 **“SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

12 “(a) DEFINITIONS.—For purposes of this section, the
13 following definitions shall apply:

14 “(1) PUBLIC ACCOUNTING FIRM.—The term
15 ‘public accounting firm’ means a sole proprietorship,
16 unincorporated association, partnership, corporation,
17 or other legal entity that is engaged in the practice
18 of public accounting.

19 “(2) BOARD.—The term ‘Board’ means the
20 Public Auditing Self-Disciplinary Board designated
21 by the Commission pursuant to subsection (b).

22 “(3) ACCOUNTANT’S REPORT.—The term ‘ac-
23 countant’s report’ means a document in which a
24 public accounting firm identifies a financial state-
25 ment, report, or other document and sets forth the

1 firm's opinion regarding such financial statement,
2 report, or other document, or an assertion that an
3 opinion cannot be expressed.

4 “(4) PERSON ASSOCIATED WITH A PUBLIC AC-
5 COUNTING FIRM.—The term ‘person associated with
6 a public accounting firm’ means a natural person
7 who—

8 “(A) is a partner, shareholder, employee,
9 or individual proprietor of a public accounting
10 firm, or who shares in the profits of a public
11 accounting firm; and

12 “(B) engages in any conduct or practice in
13 connection with the preparation of an account-
14 ant's report on any financial statement, report,
15 or other document required to be filed with the
16 Commission under any securities law.

17 “(5) PROFESSIONAL STANDARDS.—The term
18 ‘professional standards’ means generally accepted
19 auditing standards, generally accepted accounting
20 principles, generally accepted standards for attesta-
21 tion engagements, and any other standards related
22 to the preparation of financial statements or ac-
23 countant's reports promulgated by the Commission
24 or a standard-setting body recognized by the Board.

25 “(b) ESTABLISHMENT OF BOARD.—

1 “(1) IN GENERAL.—Not later than 90 days
2 after the date of enactment of this section, the Com-
3 mission shall establish a Public Auditing Self-Dis-
4 ciplinary Board to perform the duties set forth in
5 this section. The Commission shall designate an en-
6 tity to serve as the Board if the Commission finds
7 that—

8 “(A) such entity is sponsored by an exist-
9 ing national organization of certified public ac-
10 countants that—

11 “(i) is most representative of certified
12 public accountants covered by this title;
13 and

14 “(ii) has demonstrated its commit-
15 ment to improving the quality of practice
16 before the Commission; and

17 “(B) control over such entity is vested in
18 the members of the Board selected pursuant to
19 subsection (c).

20 “(2) ALTERNATIVE ELECTION OF MEMBERS.—
21 If the Commission designates an entity to serve as
22 the Board pursuant to paragraph (1), the entity
23 shall conduct the election of initial Board members
24 in accordance with subsection (c)(1)(B)(i).

25 “(c) MEMBERSHIP OF BOARD.—

1 “(1) IN GENERAL.—The Board shall be com-
2 posed of 3 appointed members and 4 elected mem-
3 bers, as follows:

4 “(A) APPOINTED MEMBERS.—Three mem-
5 bers of the Board shall be appointed in accord-
6 ance with the following:

7 “(i) INITIAL APPOINTMENTS.—The
8 Chairman of the Commission shall make
9 the initial appointments, in consultation
10 with the other members of the Commis-
11 sion, not later than 90 days after the date
12 of enactment of this section.

13 “(ii) SUBSEQUENT APPOINTMENTS.—
14 After the initial appointments under clause
15 (i), members of the Board appointed to fill
16 vacancies of appointed members of the
17 Board shall be appointed in accordance
18 with the rules adopted pursuant to para-
19 graph (5). Such rules shall provide that
20 such members shall be appointed by the
21 Board, subject to the approval of the Com-
22 mission.

23 “(B) ELECTED MEMBERS.—Four mem-
24 bers, including the member who shall serve as

1 the chairperson of the Board, shall be elected in
2 accordance with the following:

3 “(i) INITIAL ELECTION.—Not later
4 than 120 days after the date on which the
5 Chairman of the Commission makes ap-
6 pointments under subparagraph (A)(i), an
7 entity designated by the Commission pur-
8 suant to subsection (b) shall conduct an
9 election of 4 initial elected members pursu-
10 ant to interim election rules proposed by
11 the entity and approved by the 3 interim
12 members of the Board and the Commis-
13 sion. If the Commission is unable to des-
14 ignate an entity meeting the criteria set
15 forth in subsection (b)(1), the members of
16 the Board appointed under subparagraph
17 (A)(i) shall adopt interim rules, subject to
18 approval by the Commission, providing for
19 the election of the 4 initial elected mem-
20 bers. Such rules shall provide that such
21 members of the Board shall be elected—

22 “(I) not later than 120 days
23 after the date on which members are
24 initially appointed under subpara-
25 graph (A)(i);

1 “(II) by persons who are associ-
2 ated with public accounting firms and
3 who are certified public accountants
4 under the laws of any State; and

5 “(III) subject to the approval of
6 the Commission.

7 “(ii) SUBSEQUENT ELECTIONS.—
8 After the initial elections under clause (i),
9 members of the Board elected to fill vacan-
10 cies of elected members of the Board shall
11 be elected in accordance with the rules
12 adopted pursuant to paragraph (5). Such
13 rules shall provide that such members of
14 the Board shall be elected—

15 “(I) by persons who are associ-
16 ated with public accounting firms and
17 who are certified public accountants
18 under the laws of any State; and

19 “(II) subject to the approval of
20 the Commission.

21 “(2) QUALIFICATION.—Four members of the
22 Board, including the chairperson of the Board, shall
23 be persons who have not been associated with a pub-
24 lic accounting firm during the 10-year period preced-
25 ing appointment or election to the Board under

1 paragraph (1). Three members of the Board who are
2 elected shall be persons associated with a public ac-
3 counting firm registered with the Board.

4 “(3) FULL-TIME BASIS.—The chairperson of
5 the Board shall serve on a full-time basis, severing
6 all business ties with his or her former firms or em-
7 ployers prior to beginning service on the Board.

8 “(4) TERMS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), each member of the Board
11 shall hold office for a term of 4 years or until
12 a successor is appointed, whichever is later, ex-
13 cept that any member appointed to fill a va-
14 cancy occurring prior to the expiration of the
15 term for which such member’s predecessor was
16 appointed shall be appointed for the remainder
17 of such term.

18 “(B) INITIAL BOARD MEMBERS.—Begin-
19 ning on the date on which all members of the
20 Board have been selected in accordance with
21 this subsection, the terms of office of the initial
22 Board members shall expire, as determined by
23 the Board, by lottery—

24 “(i) for 1 member, 1 year after such
25 date;

1 “(ii) for 2 members, 2 years after
2 such date;

3 “(iii) for 2 members, 3 years after
4 such date; and

5 “(iv) for 2 members, 4 years after
6 such date.

7 “(5) RULES.—Following selection of the 7 ini-
8 tial members of the Board in accordance with sub-
9 paragraphs (A)(i) and (B)(i) of paragraph (1), the
10 Board shall propose and adopt rules, which shall
11 provide for—

12 “(A) the operation and administration of
13 the Board, including—

14 “(i) the appointment of members in
15 accordance with paragraph (1)(A)(ii);

16 “(ii) the election of members in ac-
17 cordance with paragraph (1)(B)(ii); and

18 “(iii) the compensation of the mem-
19 bers of the Board;

20 “(B) the appointment and compensation of
21 such employees, attorneys, and consultants as
22 may be necessary or appropriate to carry out
23 the Board’s functions under this title;

1 “(C) the registration of public accounting
2 firms with the Board pursuant to subsections
3 (d) and (e); and

4 “(D) the matters described in subsections
5 (f) and (g).

6 “(d) REGISTRATION AND ANNUAL FEES.—After the
7 date on which all initial members of the Board have been
8 selected in accordance with subsection (c), the Board shall
9 assess and collect a registration fee and annual dues from
10 each public accounting firm registered with the Board.
11 Such fees and dues shall be assessed at a level sufficient
12 to recover the costs and expenses of the Board and to per-
13 mit the Board to operate on a self-financing basis. The
14 amount of fees and dues for each public accounting firm
15 shall be based upon—

16 “(1) the annual revenues of such firm from ac-
17 counting and auditing services;

18 “(2) the number of persons associated with the
19 public accounting firm;

20 “(3) the number of clients for which such firm
21 furnishes accountant’s reports on financial state-
22 ments, reports, or other documents filed with the
23 Commission; and

24 “(4) such other criteria as the Board may es-
25 tablish.

1 “(e) REGISTRATION WITH BOARD.—

2 “(1) REGISTRATION REQUIRED.—Beginning 1
3 year after the date on which all initial members of
4 the Board have been selected in accordance with
5 subsection (c), it shall be unlawful for a public ac-
6 counting firm to furnish an accountant’s report on
7 any financial statement, report, or other document
8 required to be filed with the Commission under any
9 Federal securities law, unless such firm is registered
10 with the Board.

11 “(2) APPLICATION FOR REGISTRATION.—A
12 public accounting firm may be registered under this
13 subsection by filing with the Board an application
14 for registration in such form and containing such in-
15 formation as the Board, by rule, may prescribe.
16 Each application shall include—

17 “(A) the names of all clients of the public
18 accounting firm for which the firm furnishes ac-
19 countant’s reports on financial statements, re-
20 ports, or other documents filed with the Com-
21 mission;

22 “(B) financial information of the public ac-
23 counting firm for its most recent fiscal year, in-
24 cluding its annual revenues from accounting

1 and auditing services, its assets and its liabilities;
2

3 “(C) a statement of the public accounting
4 firm’s policies and procedures with respect to
5 quality control of its accounting and auditing
6 practice;

7 “(D) information relating to criminal, civil,
8 or administrative actions or formal disciplinary
9 proceedings pending against such firm, or any
10 person associated with such firm, in connection
11 with an accountant’s report furnished by such
12 firm;

13 “(E) a list of persons associated with the
14 public accounting firm who are certified public
15 accountants, including any State professional li-
16 cense or certification number for each such per-
17 son; and

18 “(F) such other information that is reason-
19 ably related to the Board’s responsibilities as
20 the Board considers necessary or appropriate.

21 “(3) PERIODIC REPORTS.—Once in each year,
22 or more frequently as the Board, by rule, may pre-
23 scribe, each public accounting firm registered with
24 the Board shall submit reports to the Board updat-
25 ing the information contained in its application for

1 registration and containing such additional informa-
2 tion that is reasonably related to the Board's re-
3 sponsibilities as the Board, by rule, may prescribe.

4 “(4) EXEMPTIONS.—The Commission, by rule
5 or order, upon its own motion or upon application,
6 may conditionally or unconditionally exempt any
7 public accounting firm or any accountant's report,
8 or any class of public accounting firms or any class
9 of accountant's reports, from any provisions of this
10 section or the rules or regulations issued hereunder,
11 if the Commission finds that such exemption is con-
12 sistent with the public interest, the protection of in-
13 vestors, and the purposes of this section.

14 “(5) CONFIDENTIALITY.—The Board may, by
15 rule, designate portions of the filings required pursu-
16 ant to paragraphs (2) and (3) as privileged and con-
17 fidential.

18 “(f) DUTIES OF BOARD.—After the date on which all
19 initial members of the Board have been selected in accord-
20 ance with subsection (c), the Board shall have the follow-
21 ing duties and powers:

22 “(1) INVESTIGATIONS AND DISCIPLINARY PRO-
23 CEEDINGS.—The Board shall establish fair proce-
24 dures for investigating and disciplining public ac-
25 counting firms registered with the Board, and per-

1 sons associated with such firms, for violations of the
2 Federal securities laws, the rules or regulations is-
3 sued thereunder, the rules adopted by the Board, or
4 professional standards in connection with the prepa-
5 ration of an accountant's report on a financial state-
6 ment, report, or other document filed with the Com-
7 mission.

8 “(2) INVESTIGATION PROCEDURES.—

9 “(A) IN GENERAL.—The Board may con-
10 duct an investigation of any act, practice, or
11 omission by a public accounting firm registered
12 with the Board, or by any person associated
13 with such firm, in connection with the prepara-
14 tion of an accountant's report on a financial
15 statement, report, or other document filed with
16 the Commission that may violate any applicable
17 provision of the Federal securities laws, the
18 rules and regulations issued thereunder, the
19 rules adopted by the Board, or professional
20 standards, whether such act, practice, or omis-
21 sion is the subject of a criminal, civil, or admin-
22 istrative action, or a disciplinary proceeding, or
23 otherwise is brought to the attention of the
24 Board.

1 “(B) POWERS OF BOARD.—For purposes
2 of an investigation under this paragraph, the
3 Board may, in addition to such other actions as
4 the Board determines to be necessary or appro-
5 priate—

6 “(i) require the testimony of any per-
7 son associated with a public accounting
8 firm registered with the Board, with re-
9 spect to any matter which the Board con-
10 sidered relevant or material to the investiga-
11 tion;

12 “(ii) require the production of audit
13 workpapers and any other document or in-
14 formation in the possession of a public ac-
15 counting firm registered with the Board, or
16 any person associated with such firm,
17 wherever domiciled, that the Board consid-
18 ers relevant or material to the investiga-
19 tion, and may examine the books and
20 records of such firm to verify the accuracy
21 of any documents or information so sup-
22 plied; and

23 “(iii) request the testimony of any
24 person and the production of any docu-
25 ment in the possession of any person, in-

1 cluding a client of a public accounting firm
2 registered with the Board, that the Board
3 considers relevant or material to the inves-
4 tigation.

5 “(C) SUSPENSION OR REVOCATION OF
6 REGISTRATION FOR NONCOMPLIANCE.—The re-
7 fusals of any person associated with a public ac-
8 counting firm registered with the Board to tes-
9 tify, or the refusal of any such person to
10 produce documents or otherwise cooperate with
11 the Board, in connection with an investigation
12 under this section, shall be cause for suspend-
13 ing or barring such person from associating
14 with a public accounting firm registered with
15 the Board, or such other appropriate sanction
16 as the Board shall determine. The refusal of
17 any public accounting firm registered with the
18 Board to produce documents or otherwise co-
19 operate with the Board, in connection with an
20 investigation under this section, shall be cause
21 for the suspension or revocation of the registra-
22 tion of such firm, or such other appropriate
23 sanction as the Board shall determine.

24 “(D) REFERRAL TO COMMISSION.—

1 “(i) IN GENERAL.—If the Board is
2 unable to conduct or complete an inves-
3 tigation under this section because of the
4 refusal of any client of a public accounting
5 firm registered with the Board, or any
6 other person, to testify, produce docu-
7 ments, or otherwise cooperate with the
8 Board in connection with such investiga-
9 tion, the Board shall report such refusal to
10 the Commission.

11 “(ii) INVESTIGATION.—The Commis-
12 sion may designate the Board or one or
13 more officers of the Board who shall be
14 empowered, in accordance with such proce-
15 dures as the Commission may adopt, to
16 subpoena witnesses, compel their attend-
17 ance, and require the production of any
18 books, papers, correspondence, memo-
19 randa, or other records relevant to any in-
20 vestigation by the Board. Attendance of
21 witnesses and the production of any
22 records may be required from any place in
23 the United States or any State at any des-
24 ignated place of hearing. Enforcement of a
25 subpoena issued by the Board, or an offi-

1 cer of the Board, pursuant to this subpara-
2 graph shall occur in the manner provided
3 for in section 21(c). Examination of wit-
4 nesses subpoenaed pursuant to this sub-
5 paragraph shall be conducted before an of-
6 ficer authorized to administer oaths by the
7 laws of the United States or of the place
8 where the examination is held.

9 “(iii) REFERRALS TO COMMISSION.—

10 The Board may refer any investigation to
11 the Commission, as the Board deems ap-
12 propriate.

13 “(E) IMMUNITY FROM CIVIL LIABILITY.—

14 An employee of the Board engaged in carrying
15 out an investigation or disciplinary proceeding
16 under this section shall be immune from any
17 civil liability arising out of such investigation or
18 disciplinary proceeding in the same manner and
19 to the same extent as an employee of the Fed-
20 eral Government in similar circumstances.

21 “(3) DISCIPLINARY PROCEDURES.—

22 “(A) DECISION TO DISCIPLINE.—In a pro-
23 ceeding by the Board to determine whether a
24 public accounting firm, or a person associated
25 with such firm, should be disciplined, the Board

1 shall bring specific charges, notify such firm or
2 person of the charges, give such firm or person
3 an opportunity to defend against such charges,
4 and keep a record of such actions.

5 “(B) SANCTIONS.—If the Board finds that
6 a public accounting firm, or a person associated
7 with such firm, has engaged in any act, prac-
8 tice, or omission in violation of the Federal se-
9 curities laws, the rules or regulations issued
10 thereunder, the rules adopted by the Board, or
11 professional standards, the Board may impose
12 such disciplinary sanctions as it deems appro-
13 priate, including—

14 “(i) revocation or suspension of reg-
15 istration under this section;

16 “(ii) limitation of activities, functions,
17 and operations;

18 “(iii) fine;

19 “(iv) censure;

20 “(v) in the case of a person associated
21 with a public accounting firm, suspension
22 or bar from being associated with a public
23 accounting firm registered with the Board;
24 and

1 “(vi) any other disciplinary sanction
2 that the Board determines to be appro-
3 priate.

4 “(C) STATEMENT REQUIRED.—A deter-
5 mination by the Board to impose a disciplinary
6 sanction shall be supported by a written state-
7 ment by the Board setting forth—

8 “(i) any act or practice in which the
9 public accounting firm or person associated
10 with such firm has been found to have en-
11 gaged, or which such firm or person has
12 been found to have omitted;

13 “(ii) the specific provision of the Fed-
14 eral securities laws, the rules or regula-
15 tions issued thereunder, the rules adopted
16 by the Board, or professional standards
17 which any such act, practice, or omission is
18 deemed to violate; and

19 “(iii) the sanction imposed and the
20 reasons therefor.

21 “(D) PROHIBITION ON ASSOCIATION.—It
22 shall be unlawful—

23 “(i) for any person as to whom a sus-
24 pension or bar is in effect willfully to be or
25 to become associated with a public ac-

1 counting firm registered with the Board, in
2 connection with the preparation of an ac-
3 countant’s report on any financial state-
4 ment, report, or other document filed with
5 the Commission, without the consent of the
6 Board or the Commission; and

7 “(ii) for any public accounting firm
8 registered with the Board to permit such a
9 person to become, or remain, associated
10 with such firm without the consent of the
11 Board or the Commission, if such firm
12 knew or, in the exercise of reasonable care
13 should have known, of such suspension or
14 bar.

15 “(4) REPORTING OF SANCTIONS.—If the Board
16 imposes a disciplinary sanction against a public ac-
17 counting firm, or a person associated with such firm,
18 the Board shall report such sanction to the Commis-
19 sion, to the appropriate State or foreign licensing
20 board or boards with which such firm or such person
21 is licensed or certified to practice public accounting,
22 and to the public. The information reported shall in-
23 clude—

1 “(A) the name of the public accounting
2 firm, or person associated with such firm,
3 against whom the sanction is imposed;

4 “(B) a description of the acts, practices, or
5 omissions upon which the sanction is based;

6 “(C) the nature of the sanction; and

7 “(D) such other information respecting the
8 circumstances of the disciplinary action (includ-
9 ing the name of any client of such firm affected
10 by such acts, practices, or omissions) as the
11 Board deems appropriate.

12 “(5) DISCOVERY AND ADMISSIBILITY OF BOARD
13 MATERIAL.—

14 “(A) DISCOVERABILITY.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in subparagraph (C), all reports,
17 memoranda, and other information pre-
18 pared, collected, or received by the Board,
19 and the deliberations and other proceed-
20 ings of the Board and its employees and
21 agents in connection with an investigation
22 or disciplinary proceeding under this sec-
23 tion shall not be subject to any form of
24 civil discovery, including demands for pro-
25 duction of documents and for testimony of

1 individuals, in connection with any pro-
2 ceeding in any State or Federal court, or
3 before any State or Federal administrative
4 agency. This subparagraph shall not apply
5 to any information provided to the Board
6 that would have been subject to discovery
7 from the person or entity that provided it
8 to the Board, but is no longer available
9 from that person or entity.

10 “(ii) EXEMPTION.—Submissions to
11 the Board by or on behalf of a public ac-
12 counting firm or person associated with
13 such a firm or on behalf of any other par-
14 ticipant in a Board proceeding, including
15 documents generated by the Board itself,
16 shall be exempt from discovery to the same
17 extent as the material described in clause
18 (i), whether in the possession of the Board
19 or any other person, if such submission—

20 “(I) is prepared specifically for
21 the purpose of the Board proceeding;
22 and

23 “(II) addresses the merits of the
24 issues under investigation by the
25 Board.

1 “(iii) CONSTRUCTION.—Nothing in
2 this subparagraph shall limit the authority
3 of the Board to provide appropriate public
4 access to disciplinary hearings of the
5 Board, or to reports or memoranda re-
6 ceived by the Board in connection with
7 such proceedings.

8 “(B) ADMISSIBILITY.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in subparagraph (C), all reports,
11 memoranda, and other information pre-
12 pared, collected, or received by the Board,
13 the deliberations and other proceedings of
14 the Board and its employees and agents in
15 connection with an investigation or discipli-
16 nary proceeding under this section, the
17 fact that an investigation or disciplinary
18 proceeding has been commenced, and the
19 Board’s determination with respect to any
20 investigation or disciplinary proceeding
21 shall be inadmissible in any proceeding in
22 any State or Federal court or before any
23 State or Federal administrative agency.

24 “(ii) TREATMENT OF CERTAIN DOCU-
25 MENTS.—Submissions to the Board by or

1 on behalf of a public accounting firm or
2 person associated with such a firm or on
3 behalf of any other participant in a Board
4 proceeding, including documents generated
5 by the Board itself, shall be inadmissible to
6 the same extent as the material described
7 in clause (i), if such submission—

8 “(I) is prepared specifically for
9 the purpose of the Board proceedings;
10 and

11 “(II) addresses the merits of the
12 issues under investigation by the
13 Board.

14 “(C) AVAILABILITY AND ADMISSIBILITY OF
15 INFORMATION.—

16 “(i) IN GENERAL.—All information
17 referred to in subparagraphs (A) and (B)
18 shall be—

19 “(I) available to the Commission
20 and to any other Federal department
21 or agency in connection with the exer-
22 cise of its regulatory authority to the
23 extent that such information would be
24 available to such agency from the

1 Commission as a result of a Commis-
2 sion enforcement investigation;

3 “(II) available to Federal and
4 State authorities in connection with
5 any criminal investigation or proceed-
6 ing;

7 “(III) admissible in any action
8 brought by the Commission or any
9 other Federal department or agency
10 pursuant to its regulatory authority,
11 to the extent that such information
12 would be available to such agency
13 from the Commission as a result of a
14 Commission enforcement investigation
15 and in any criminal action; and

16 “(IV) available to State licensing
17 boards to the extent authorized in
18 paragraph (6).

19 “(ii) OTHER LIMITATIONS.—Any doc-
20 uments or other information provided to
21 the Commission or other authorities pursu-
22 ant to clause (i) shall be subject to the lim-
23 itations on discovery and admissibility set
24 forth in subparagraphs (A) and (B).

1 “(D) TITLE 5 TREATMENT.—This sub-
2 section shall be considered to be a statute de-
3 scribed in section 552(b)(3)(B) of title 5,
4 United States Code, for purposes of that sec-
5 tion 552.

6 “(6) PARTICIPATION BY STATE LICENSING
7 BOARDS.—

8 “(A) NOTICE.—When the Board institutes
9 an investigation pursuant to paragraph (2)(A),
10 it shall notify the State licensing boards in the
11 States in which the public accounting firm or
12 person associated with such firm engaged in the
13 act or failure to act alleged to have violated
14 professional standards, of the pendency of the
15 investigation, and shall invite the State licens-
16 ing boards to participate in the investigation.

17 “(B) ACCEPTANCE BY STATE BOARD.—

18 “(i) PARTICIPATION.—If a State li-
19 censing board elects to join in the inves-
20 tigation, its representatives shall partici-
21 pate, pursuant to rules established by the
22 Board, in investigating the matter and in
23 presenting the evidence justifying the
24 charges in any hearing pursuant to para-
25 graph (3)(A).

1 “(ii) REVIEW.—In the event that the
2 State licensing board disagrees with the
3 Board’s determination with respect to the
4 matter under investigation, it may seek re-
5 view of that determination by the Commis-
6 sion pursuant to procedures that the Com-
7 mission shall specify by regulation.

8 “(C) PROHIBITION ON CONCURRENT IN-
9 VESTIGATIONS.—A State licensing board shall
10 not institute its own proceeding with respect to
11 a matter referred to in subparagraph (A) until
12 after the Board’s determination has become
13 final, including completion of all review by the
14 Commission and the courts.

15 “(D) STATE SANCTIONS PERMITTED.—If
16 the Board or the Commission imposes a sanc-
17 tion upon a public accounting firm or person
18 associated with such a firm, and that deter-
19 mination either is not subjected to judicial re-
20 view or is upheld on judicial review, a State li-
21 censing board may impose a sanction on the
22 basis of the Board’s report pursuant to para-
23 graph (4). Any sanction imposed by the State
24 licensing board under this clause shall be inad-
25 missible in any proceeding in any State or Fed-

1 eral court or before any State or Federal ad-
2 ministrative agency, except to the extent pro-
3 vided in paragraph (5)(D).

4 “(E) SANCTIONS NOT PERMITTED.—If a
5 sanction is not imposed on a public accounting
6 firm or person associated with such a firm,
7 and—

8 “(i) a State licensing board elected to
9 participate in an investigation referred to
10 in subparagraph (A), the State licensing
11 board may not impose a sanction with re-
12 spect to the matter; and

13 “(ii) a State licensing board elected
14 not to participate in an investigation re-
15 ferred to in subparagraph (A), subpara-
16 graphs (A) and (B) of paragraph (5) shall
17 apply with respect to any investigation or
18 proceeding subsequently instituted by the
19 State licensing board and, in particular,
20 the State licensing board shall not have ac-
21 cess to the record of the proceeding before
22 the Board and that record shall be inad-
23 missible in any proceeding before the State
24 licensing board.

1 “(g) ADDITIONAL DUTIES REGARDING QUALITY
2 CONTROL.—After the date on which all initial members
3 of the Board have been selected in accordance with sub-
4 section (c), the Board shall have the following duties and
5 powers in addition to those set forth in subsection (f):

6 “(1) IN GENERAL.—The Board shall seek to
7 promote a high level of professional conduct among
8 public accounting firms registered with the Board,
9 to improve the quality of audit services provided by
10 such firms, and, in general, to protect investors and
11 promote the public interest.

12 “(2) PROFESSIONAL PEER REVIEW ORGANIZA-
13 TIONS.—

14 “(A) MEMBERSHIP REQUIREMENT.—The
15 Board shall require each public accounting firm
16 subject to the disciplinary authority of the
17 Board to be a member of a professional peer re-
18 view organization certified by the Board pursu-
19 ant to subparagraph (B).

20 “(B) CRITERIA FOR CERTIFICATION.—The
21 Board shall, by rule, establish general criteria
22 for the certification of peer review organizations
23 and shall certify organizations that satisfy those
24 criteria, or such amended criteria as the Board

1 may adopt. To be certified, a peer review orga-
2 nization shall, at a minimum—

3 “(i) require a member public account-
4 ing firm to undergo peer review not less
5 than once every 3 years and publish the re-
6 sults of the peer review; and

7 “(ii) adopt standards that are accept-
8 able to the Board relating to audit service
9 quality control.

10 “(C) PENALTIES.—Violation by a public
11 accounting firm or a person associated with
12 such a firm of a rule of the peer review organi-
13 zation to which the firm belongs shall constitute
14 grounds for—

15 “(i) the imposition of disciplinary
16 sanctions by the Board pursuant to sub-
17 section (f); and

18 “(ii) denial to the public accounting
19 firm or person associated with such firm of
20 the privilege of appearing or practicing be-
21 fore the Commission.

22 “(3) CONFIDENTIALITY.—Except as otherwise
23 provided by this section, all reports, memoranda,
24 and other information provided to the Board solely
25 for purposes of paragraph (2), or to a peer review

1 organization certified by the Board, shall be con-
2 fidential and privileged, unless such confidentiality
3 and privilege are expressly waived by the person or
4 entity that created or provided the information.

5 “(h) COMMISSION OVERSIGHT OF THE BOARD.—

6 “(1) PROPOSED RULE CHANGES.—

7 “(A) IN GENERAL.—The Board shall file
8 with the Commission, in accordance with such
9 rules as the Commission may prescribe, copies
10 of any proposed rule or any proposed change in,
11 addition to, or deletion from the rules of the
12 Board (hereafter in this subsection collectively
13 referred to as a ‘proposed rule change’) accom-
14 panied by a concise general statement of the
15 basis and purpose of such proposed rule
16 change. The Commission shall, upon the filing
17 of any proposed rule change, publish notice
18 thereof together with the terms of substance of
19 the proposed rule change or a description of the
20 subjects and issues involved. The Commission
21 shall give interested persons an opportunity to
22 submit written data, views, and arguments con-
23 cerning the proposed rule change. No proposed
24 rule change shall take effect unless approved by

1 the Commission or otherwise permitted in ac-
2 cordance with this subsection.

3 “(B) APPROVAL OR DISAPPROVAL.—

4 “(i) IN GENERAL.—Not later than 35
5 days after the date on which notice of the
6 filing of a proposed rule change is pub-
7 lished in accordance with subparagraph
8 (A), or such longer period as the Commis-
9 sion may designate (not to exceed 90 days
10 after such date, if it finds such longer pe-
11 riod to be appropriate and publishes its
12 reasons for such finding or as to which the
13 Board consents) the Commission shall—

14 “(I) by order approve such pro-
15 posed rule change; or

16 “(II) institute proceedings to de-
17 termine whether the proposed rule
18 change should be disapproved.

19 “(ii) DISAPPROVAL PROCEEDINGS.—
20 Proceedings for disapproval shall include
21 notice of the grounds for disapproval under
22 consideration and opportunity for hearing
23 and shall be concluded not later than 180
24 days after the date of publication of notice
25 of the filing of the proposed rule change.

1 At the conclusion of the proceedings for
2 disapproval, the Commission, by order,
3 shall approve or disapprove such proposed
4 rule change. The Commission may extend
5 the time for conclusion of such proceedings
6 for—

7 “(I) not more than 60 days, if
8 the Commission finds good cause for
9 such extension and publishes its rea-
10 sons for such finding; or

11 “(II) such longer period to which
12 the Board consents.

13 “(iii) APPROVAL.—The Commission
14 shall approve a proposed rule change if it
15 finds that such proposed rule change is
16 consistent with the requirements of the
17 Federal securities laws, and the rules and
18 regulations issued thereunder, applicable to
19 the Board. The Commission shall dis-
20 approve a proposed rule change if it does
21 not make such finding. The Commission
22 shall not approve any proposed rule change
23 prior to the expiration of the 30-day period
24 beginning on the date on which notice of
25 the filing of a proposed rule change is pub-

1 lished in accordance with this subpara-
2 graph, unless the Commission finds good
3 cause to do so and publishes its reasons
4 for such finding.

5 “(C) EFFECT OF PROPOSED RULE
6 CHANGE.—

7 “(i) EFFECTIVE DATE.—Notwith-
8 standing subparagraph (B), a proposed
9 rule change may take effect upon filing
10 with the Commission if designated by the
11 Board as—

12 “(I) constituting a stated policy,
13 practice, or interpretation with respect
14 to the meaning, administration, or en-
15 forcement of an existing rule of the
16 Board;

17 “(II) establishing or changing a
18 due, fee, or other charge imposed by
19 the Board; or

20 “(III) concerned solely with the
21 administration of the Board or other
22 matters which the Commission, by
23 rule, consistent with the public inter-
24 est and the purposes of this sub-
25 section, may specify.

1 “(ii) SUMMARY EFFECT.—Notwith-
2 standing any other provision of this sub-
3 section, a proposed rule change may be put
4 into effect summarily if it appears to the
5 Commission that such action is necessary
6 for the protection of investors. Any pro-
7 posed rule change put into effect sum-
8 marily shall be filed promptly thereafter in
9 accordance with this paragraph.

10 “(iii) ENFORCEMENT.—Any proposed
11 rule change which has taken effect pursu-
12 ant to clause (i) or (ii) may be enforced by
13 the Board to the extent that it is not in-
14 consistent with the Federal securities laws,
15 the rules and regulations issued there-
16 under, and applicable Federal and State
17 law. During the 60-day period beginning
18 on the date on which notice of the filing of
19 a proposed rule change is filed in accord-
20 ance with this paragraph, the Commission
21 may summarily abrogate the change in the
22 rules of the Board made thereby and re-
23 quire that the proposed rule change be
24 refiled in accordance with subparagraph
25 (A) and reviewed in accordance with sub-

1 paragraph (B), if it appears to the Com-
2 mission that such action is necessary or
3 appropriate in the public interest, for the
4 protection of investors, or otherwise in fur-
5 therance of the purposes of the Federal se-
6 curities laws. Commission action pursuant
7 to the preceding sentence shall not affect
8 the validity or force of the rule change dur-
9 ing the period it was in effect and shall not
10 be reviewable under section 25 of this Act
11 nor deemed to be ‘final agency action’ for
12 purposes of section 704 of title 5, United
13 States Code.

14 “(2) AMENDMENT BY COMMISSION OF RULES
15 OF THE BOARD.—The Commission, by rule, may ab-
16rogate, add to, and delete from (hereafter in this
17 subsection collectively referred to as ‘amend’) the
18 rules of the Board as the Commission deems nec-
19essary or appropriate to ensure the fair administra-
20tion of the Board, to conform its rules to require-
21ments of the Federal securities laws, and the rules
22and regulations issued thereunder applicable to the
23Board, or otherwise in furtherance of the purposes
24of the Federal securities laws, in the following
25manner:

1 “(A) PUBLICATION OF NOTICE.—The
2 Commission shall notify the Board and publish
3 notice of the proposed rulemaking in the Fed-
4 eral Register. The notice shall include the text
5 of the proposed amendment to the rules of the
6 Board and a statement of the Commission’s
7 reasons, including any pertinent facts, for com-
8 mencing such proposed rulemaking.

9 “(B) COMMENTS.—The Commission shall
10 give interested persons an opportunity for the
11 oral presentation of data, views, and arguments,
12 in addition to an opportunity to make written
13 submissions. A transcript shall be kept of any
14 oral presentation.

15 “(C) INCORPORATION.—A rule adopted
16 pursuant to this subsection shall incorporate
17 the text of the amendment to the rules of the
18 Board and a statement of the Commission’s
19 basis for and purpose in so amending such
20 rules. Such statement shall include an identi-
21 fication of any facts on which the Commission
22 considers its determination to so amend the
23 rules of the Board to be based, including the
24 reasons for the Commission’s conclusions as to

1 any of the facts that were disputed in the rule-
2 making.

3 “(D) REGULATIONS.—

4 “(i) TITLE 5 APPLICABILITY.—Except
5 as otherwise provided in this paragraph,
6 rulemaking under this paragraph shall be
7 in accordance with the procedures specified
8 in section 553 of title 5, United States
9 Code, for rulemaking not on the record.

10 “(ii) CONSTRUCTION.—Nothing in
11 this subsection shall be construed to impair
12 or limit the Commission’s power to make,
13 modify, or alter the procedures the Com-
14 mission may follow in making rules and
15 regulations pursuant to any other author-
16 ity under the Federal securities laws.

17 “(iii) INCORPORATION OF AMEND-
18 MENTS.—Any amendment to the rules of
19 the Board made by the Commission pursu-
20 ant to this subsection shall be considered
21 for purposes of the Federal securities laws
22 to be part of the rules of the Board and
23 shall not be considered to be a rule of the
24 Commission.

1 “(3) NOTICE OF DISCIPLINARY ACTION TAKEN
2 BY THE BOARD; REVIEW OF ACTION BY THE COM-
3 MISSION.—

4 “(A) NOTICE REQUIRED.—If the Board
5 imposes a final disciplinary sanction on a public
6 accounting firm registered with the Board or on
7 any person associated with such a firm, the
8 Board shall promptly file notice thereof with
9 the Commission. The notice shall be in such
10 form and contain such information as the Com-
11 mission, by rule, may prescribe as necessary or
12 appropriate in furtherance of the purposes of
13 the Federal securities laws.

14 “(B) REVIEW.—An action with respect to
15 which the Board is required by subparagraph
16 (A) to file notice shall be subject to review by
17 the Commission, on its own motion, or upon ap-
18 plication by any person aggrieved thereby, filed
19 not later than 30 days after the date on which
20 such notice is filed with the Commission and re-
21 ceived by such aggrieved person, or within such
22 longer period as the Commission may deter-
23 mine. Application to the Commission for review,
24 or the institution of review by the Commission
25 on its own motion, shall not operate as a stay

1 of such action unless the Commission otherwise
2 orders, summarily or after notice and oppor-
3 tunity for hearing on the question of a stay
4 (which hearing may consist solely of the sub-
5 mission of affidavits or presentation of oral ar-
6 guments). The Commission shall establish for
7 appropriate cases an expedited procedure for
8 consideration and determination of the question
9 of a stay.

10 “(4) DISPOSITION OF REVIEW; CANCELLATION,
11 REDUCTION, OR REMISSION OF SANCTION.—

12 “(A) IN GENERAL.—In any proceeding to
13 review a final disciplinary sanction imposed by
14 the Board on a public accounting firm reg-
15 istered with the Board or a person associated
16 with such a firm, after notice and opportunity
17 for hearing (which hearing may consist solely of
18 consideration of the record before the Board
19 and opportunity for the presentation of sup-
20 porting reasons to affirm, modify, or set aside
21 the sanction)—

22 “(i) if the Commission finds that—

23 “(I) such firm or person associ-
24 ated with such a firm has engaged in
25 such acts or practices, or has omitted

1 such acts, as the Board has found
2 them to have engaged in or omitted;

3 “(II) such acts, practices, or
4 omissions, are in violation of such
5 provisions of the Federal securities
6 laws, the rules or regulations issued
7 thereunder, the rules adopted by the
8 Board, or professional standards as
9 have been specified in the determina-
10 tion of the Board; and

11 “(III) such provisions were ap-
12 plied in a manner consistent with the
13 purposes of the Federal securities
14 laws;

15 the Commission, by order, shall so declare
16 and, as appropriate, affirm the sanction
17 imposed by the Board, modify the sanction
18 in accordance with paragraph (2), or re-
19 mand to the Board for further proceed-
20 ings; or

21 “(ii) if the Commission does not make
22 the findings under clause (i), it shall, by
23 order, set aside the sanction imposed by
24 the Board and, if appropriate, remand to
25 the Board for further proceedings.

1 “(B) CANCELLATION, REDUCTION, OR RE-
2 MISSION OF SANCTION.—If the Commission,
3 having due regard for the public interest and
4 the protection of investors, finds after a pro-
5 ceeding in accordance with subparagraph (A)
6 that a sanction imposed by the Board upon a
7 firm or person associated with a firm imposes
8 any burden on competition not necessary or ap-
9 propriate in furtherance of the purposes of the
10 Federal securities laws or is excessive or op-
11 pressive, the Commission may cancel, reduce, or
12 require the remission of such sanction.

13 “(5) COMPLIANCE WITH RULES AND REGULA-
14 TIONS.—

15 “(A) DUTIES OF BOARD.—The Board
16 shall—

17 “(i) comply with the Federal securi-
18 ties laws, the rules and regulations issued
19 thereunder, and its own rules; and

20 “(ii) subject to subparagraph (B) and
21 the rules thereunder, absent reasonable
22 justification or excuse, enforce compliance
23 with such provisions and with professional
24 standards by public accounting firms reg-

1 istered with the Board and persons associ-
2 ated with such firms.

3 “(B) RELIEF BY COMMISSION.—The Com-
4 mission, by rule, consistent with the public in-
5 terest, the protection of investors, and the other
6 purposes of the Federal securities laws, may re-
7 lieve the Board of any responsibility under this
8 section to enforce compliance with any specified
9 provision of the Federal securities laws, the
10 rules or regulations issued thereunder, or pro-
11 fessional standards by any public accounting
12 firm registered with the Board or person associ-
13 ated with such a firm, or any class of such
14 firms or persons associated with such a firm.

15 “(6) CENSURE; OTHER SANCTIONS.—

16 “(A) IN GENERAL.—The Commission is
17 authorized, by order, if in its opinion such ac-
18 tion is necessary or appropriate in the public in-
19 terest, for the protection of investors, or other-
20 wise in furtherance of the purposes of the Fed-
21 eral securities laws, to censure or impose limita-
22 tions upon the activities, functions, and oper-
23 ations of the Board, if the Commission finds,
24 on the record after notice and opportunity for
25 hearing, that the Board has—

1 “(i) violated or is unable to comply
2 with any provision of the Federal securities
3 laws, the rules or regulations issued there-
4 under, or its own rules; or

5 “(ii) without reasonable justification
6 or excuse, has failed to enforce compliance
7 with any such provision or any professional
8 standard by a public accounting firm reg-
9 istered with the Board or a person associ-
10 ated with such a firm.

11 “(B) REMOVAL FROM OFFICE.—The Com-
12 mission is authorized, by order, if in its opinion
13 such action is necessary or appropriate, in the
14 public interest for the protection of investors, or
15 otherwise in furtherance of the purposes of the
16 Federal securities laws, to remove from office or
17 censure any member of the Board, if the Com-
18 mission finds, on the record after notice and op-
19 portunity for hearing, that such member has—

20 “(i) willfully violated any provision of
21 the Federal securities laws, the rules or
22 regulations issued thereunder, or the rules
23 of the Board;

24 “(ii) willfully abused such member’s
25 authority; or

1 “(iii) without reasonable justification
2 or excuse, failed to enforce compliance with
3 any such provision or any professional
4 standard by any public accounting firm
5 registered with the Board or any person
6 associated with such a firm.

7 “(i) FOREIGN ACCOUNTING FIRMS.—A foreign public
8 accounting firm that furnishes accountant’s reports on
9 any financial statement, report, or other document re-
10 quired to be filed with the Commission under any Federal
11 securities law shall, with respect to those reports, be sub-
12 ject to the provisions of this section in the same manner
13 and to the same extent as a domestic public accounting
14 firm. The Commission may, by rule, regulation, or order
15 and as it deems consistent with the public interest and
16 the protection of investors, either unconditionally or upon
17 specified terms and conditions, exempt from one or more
18 provisions of this section any foreign public accounting
19 firm. Registration pursuant to this subsection shall not,
20 by itself, provide a basis for subjecting foreign accounting
21 firms to the jurisdiction of the Federal or State courts.

22 “(j) RELATIONSHIP WITH ANTITRUST LAWS.—

23 “(1) TREATMENT UNDER ANTITRUST LAWS.—

24 In no case shall the Board, any member thereof, any
25 public accounting firm registered with the Board, or

1 any person associated with such a firm be subject to
2 liability under any antitrust law for any act of the
3 Board or any failure to act by the Board.

4 “(2) DEFINITION.—For purposes of this sub-
5 section, the term ‘antitrust law’ means the Federal
6 Trade Commission Act and each statute defined by
7 section 4 thereof as ‘Antitrust Acts’ and all amend-
8 ments to such Act and such statutes and any other
9 Federal Acts or State laws in pari materia.

10 “(k) APPLICABILITY OF AUDITING PRINCIPLES.—
11 Each audit required pursuant to this title of an issuer’s
12 financial statements by an independent public accountant
13 shall be conducted in accordance with generally accepted
14 auditing standards, as may be modified or supplemented
15 from time-to-time by the Commission. The Commission
16 may defer to professional standards promulgated by pri-
17 vate organizations that are generally accepted by the ac-
18 counting or auditing profession.

19 “(l) COMMISSION AUTHORITY NOT IMPAIRED.—
20 Nothing in this section shall be construed to impair or
21 limit the Commission’s authority—

22 “(1) over the accounting profession, accounting
23 firms, or any persons associated with such firms;

24 “(2) to set standards for accounting practices,
25 derived from other provisions of the Federal securi-

1 ties laws or the rules or regulations issued there-
2 under; or

3 “(3) to take, on its own initiative, legal, admin-
4 istrative, or disciplinary action against any public
5 accounting firm registered with the Board or any
6 person associated with such a firm.”.

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S 240 IS—3

S 240 IS—4

S 240 IS—5

S 240 IS—6

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