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HOUSE OF REPRESENTATIVES
REPORT
107–414

CORPORATE AND AUDITING ACCOUNTABILITY, RESPONSIBILITY, AND TRANSPARENCY ACT OF 2002

APRIL 22, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

[To accompany H.R. 3763]

The Committee on Financial Services, to whom was referred the bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

99–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002".

(b) TABLE OF CONTENTS.—

SEC. 2. AUDITOR OVERSIGHT.

(a) CERTIFIED FINANCIAL STATEMENT REQUIREMENTS.—If a financial statement is required by the securities laws or any rule or regulation thereunder to be certified by an independent public or certified accountant, an accountant shall not be considered to be qualified to certify such financial statement, and the Securities and Exchange Commission shall not accept a financial statement certified by an accountant, unless such accountant—

(1) is subject to a system of review by a public regulatory organization that complies with the requirements of this section and the rules prescribed by the Commission under this section; and

(2) has not been determined in the most recent review completed under such system to be not qualified to certify such a statement.

(b) ESTABLISHMENT OF PRO.—The Commission shall by rule establish the criteria by which a public regulatory organization may be recognized for purposes of this section. Such criteria shall include the following requirements:

(1)(A) The board of such organization shall be comprised of five members, three of whom shall be public members who are not members of the accounting profession and two of whom shall be persons licensed to practice public accounting and who have recent experience in auditing public companies.

(B) Each member of the board of such organization shall be a person who meets such standards of financial literacy as are determined by the Commission.

(C) For purposes of this paragraph, a person shall not be considered a member of the accounting profession if such person has not worked in such profession for any of the last two years prior to the date of such person's appointment to the board.

(2) Such organization is so organized and has the capacity—

(A) to be able to carry out the purposes of this section and to comply, and to enforce compliance by accountants and persons associated with accountants, with the provisions of this Act, professional ethics and competency standards, and the rules of the organization;

(B) to perform a review of the work product (including the quality thereof) of an accountant or a person associated with an accountant; and

(C) to perform a review of any potential conflicts of interest between an accountant (or a person associated with an accountant) and the issuer, the issuer's board of directors and committees thereof, officers, and affiliates of such issuer, that may result in an impairment of auditor independence.

(3) Such organization shall have the authority to impose sanctions, which, if there is a finding of knowing or intentional misconduct, may include a determination that an accountant is not qualified to certify a financial statement, or any categories of financial statements, required by the securities laws, or that a person associated with an accountant is not qualified to participate in such

certification, if, after conducting a review and providing fair procedures and an opportunity for a hearing, the organization finds that—

(A) such accountant or person associated with an accountant has violated the standards of independence, ethics, or competency in the profession;

(B) such accountant or person associated with an accountant has been found by the Commission or a court of competent jurisdiction to have violated the securities laws or a rule or regulation thereunder (provided in both cases that any applicable time period for appeal has expired);

(C) an audit conducted by such accountant or any person associated with an accountant has been materially affected by an impairment of auditor independence;

(D) such accountant or person associated with an accountant has performed both auditing services and consulting services in violation of the rules prescribed by the Commission pursuant to subsection (c); or

(E) such accountant or any person associated with an accountant has impeded, obstructed, or otherwise not cooperated in such review.

(4) Any such organization shall disclose publicly, and make available for public comment, proposed procedures and methods for conducting such reviews.

(5) Any such organization shall have in place procedures to minimize and deter conflicts of interest involving the public members of such organization, and have in place procedures to resolve such conflicts.

(6) Any such organization shall have in place procedures for notifying the boards of accountancy of the States of the results of reviews and evidence under paragraphs (2) and (3).

(7) Any such organization shall have in place procedures for notifying the Commission of any findings of such reviews, including any findings regarding suspected violations of the securities laws.

(8) Any such organization shall consult with boards of accountancy of the States.

(9) Any such organization shall have in place a mechanism to allow the organization to operate on a self-funded basis. Such funding mechanism shall ensure that such organization is not solely dependent upon members of the accounting profession for such funding and operations.

(10) Any such organization shall have the authority to request, in a manner established by the Commission, that the Commission, by subpoena or otherwise, compel the testimony of witnesses or the production of any books, papers, correspondence, memoranda, or other records relevant to any accountant review proceeding or necessary or appropriate for the organization to carry out its purposes. The Commission shall comply with any such request from such an organization if the Commission determines that compliance with the request would assist the organization in its accountant review proceeding or in carrying out its purposes, unless the Commission determines that compliance would not be in the public interest. The issuance and enforcement of a subpoena requested under this paragraph shall be deemed to be made pursuant to, and shall be made in accordance with, the provisions of subsections (b) and (c) of section 21 of the Securities and Exchange Act of 1934 (15 U.S.C. 78u(b)–(c)). For purposes of taking evidence, the Commission in its discretion may designate the Board, or any member thereof, as officers pursuant to section 21(b) of such Act.

(c) PROHIBITION ON THE OFFER OF BOTH AUDIT AND CONSULTING SERVICES.—

(1) MODIFICATION OF REGULATIONS REQUIRED.—The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered independent with respect to an audit client if the accountant provides to the client the following nonaudit services, as such terms are defined in such regulations as in effect on the date of enactment of this Act, and subject to such conditions and exemptions as the Commission shall prescribe:

(A) financial information system design or implementation; or

(B) internal audit services.

(2) REVIEW OF PROHIBITED NONAUDIT SERVICES.—The Commission is authorized to review the impact on the independence of auditors of the scope of services provided by auditors to issuers in order to determine whether the list of prohibited nonaudit services under paragraph (1) shall be modified. In conducting such review, the Commission shall consider the impact of the provision of a service on an auditor's independence where provision of the service creates a conflict of interest with the audit client.

(3) ADDITIONS BY RULE.—After conducting the review required by paragraph (2) and at any other time, the Commission may, by rule consistent with the protection of investors and the public interest, modify the list of prohibited nonaudit services under paragraph (1).

(4) REPORT.—The Commission shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its conduct of any reviews as required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

(5) CONFORMING REVISION.—The Commission shall revise its regulations pertaining to accountant fee disclosure items, as set forth in paragraphs (e)(1) through (e)(3) of item 9 from Schedule 14A (17 CFR 240.14a–101), in light of paragraph (1) of this subsection and after making a determination as to whether such disclosures are necessary.

(6) DEADLINE FOR RULEMAKING.—The Commission shall—

(A) within 90 days after the date of enactment of this Act, propose, and

(B) within 270 days after such date, prescribe,

the revisions to its regulations required by this subsection.

(d) PRO ACCOUNTANT REVIEW PROCEEDINGS.—

(1) REVIEW PROCEEDING FINDINGS.—Any findings made pursuant to an accountant review conducted under this section that a financial statement audited by such accountant and submitted to the Commission may have been materially affected by an impairment of auditor independence, or by a violation of professional ethics and competency standards, shall be submitted to the Commission. The Commission shall promptly notify an issuer of any such finding that relates to the financial statements of such issuer.

(2) CONFIDENTIAL TREATMENT OF PROCEEDINGS PENDING SEC REVIEW.—

(A) NO DISCLOSURE.—Except as otherwise provided in this section, but notwithstanding any other provision of law, neither the Commission, a recognized public regulatory organization, nor any other person shall disclose any information concerning any accountant review proceeding and the findings therein.

(B) SPECIFIC WITHHOLDING NOT AUTHORIZED.—Nothing in this subsection shall—

(i) authorize a recognized public regulatory organization to withhold information from the Commission;

(ii) authorize such board or the Commission to withhold information concerning an accountant review proceeding from an accountant or person associated with an accountant that is the subject of such proceeding;

(iii) authorize the Commission to withhold information from Congress; or

(iv) prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(C) DURATION OF WITHHOLDING.—Neither the Commission nor the recognized public regulatory organization shall disclose the results of any such finding until the completion of any review by the Commission under subsections (e) and (f), or the conclusion of the 30-day period for seeking review if no motion seeking review is filed within such period.

(D) TREATMENT UNDER FOIA.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) NONPRECLUSIVE EFFECT OF PRO FINDINGS.—A finding by a recognized public regulatory organization that an individual audit of an issuer met or failed to meet any applicable standard with respect to the quality of such audit shall not be construed in any action arising out of the securities laws as indicative of compliance or noncompliance with the securities laws or with any standard of liability arising thereunder.

(e) REVIEW OF SANCTIONS.—

(1) NOTICE.—If any recognized public regulatory organization—

(A) makes a finding with respect to or imposes any final disciplinary sanction on any accountant;

(B) prohibits or limits any person in respect to access to services offered by such organization; or

(C) makes a finding with respect to or imposes any final disciplinary sanction on any person associated with an accountant or bars any person from becoming associated with an accountant,

the recognized public regulatory organization shall promptly submit notice thereof with the Commission. The notice shall be in such form and contain such

information as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(2) REVIEW BY COMMISSION.—Any action with respect to which a recognized public regulatory organization is required by paragraph (1) of this subsection to submit notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within 30 days after the date such notice was filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(f) CONDUCT OF COMMISSION REVIEW.—

(1) BASIS FOR ACTION.—In any proceeding to review a final disciplinary sanction imposed by a recognized public regulatory organization on an accountant or a person associated with such accountant, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the recognized public regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the Commission finds that such accountant or person associated with an accountant has engaged in such acts or practices, or has omitted such acts, as the recognized public regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this section, or of professional ethics and competency standards, and that such provisions are, and were applied in a manner, consistent with the purposes of this section, the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the recognized public regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the recognized public regulatory organization for further proceedings; or

(B) if the Commission does not make any such finding, it shall, by order, set aside the sanction imposed by the recognized public regulatory organization and, if appropriate, remand to the recognized public regulatory organization for further proceedings.

(2) REDUCTION OF SANCTIONS.—If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a recognized public regulatory organization upon an accountant or person associated with an accountant imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this Act or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

(g) REVIEW AND APPROVAL OF RULES.—

(1) SUBMISSION, PUBLICATION, AND COMMENT.—Each recognized public regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such recognized public regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) APPROVAL OR PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the recognized public regulatory organization consents, the Commission shall—

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be con-

cluded within 180 days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the recognized public regulatory organization consents.

(3) BASIS FOR APPROVAL OR DISAPPROVAL.—The Commission shall approve a proposed rule change of a recognized public regulatory organization if it finds that such proposed rule change is consistent with the requirements of this Act and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a recognized public regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(4) RULES EFFECTIVE UPON FILING.—

(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the recognized public regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the recognized public regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the recognized public regulatory organization, or (iii) concerned solely with the administration of the recognized public regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as outside the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, or otherwise in accordance with the purposes of this title. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a recognized public regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this Act, the securities laws, the rules and regulations thereunder, and applicable Federal and State law. At any time within 60 days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the recognized public regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect, shall not be subject to court review, and shall not be deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

(h) COMMISSION ACTION TO CHANGE RULES.—The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a recognized public regulatory organization as the Commission deems necessary or appropriate to insure the fair administration of the recognized public regulatory organization, to conform its rules to requirements of this Act, the securities laws, and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this Act, in the following manner:

(1) The Commission shall notify the recognized public regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the recognized public regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the recognized public regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the recognized public regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under the securities laws.

(C) Any amendment to the rules of a recognized public regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes to be part of the rules of such recognized public regulatory organization and shall not be considered to be a rule of the Commission.

(i) COMMISSION OVERSIGHT OF THE PRO.—

(1) RECORDS AND EXAMINATIONS.—A public regulatory organization shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws.

(2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—A public regulatory organization shall perform such other duties or functions as the Commission, by rule or order, determines are necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this Act and the securities laws, including conducting a special review of a particular public accounting firm's quality control system or a special review of a particular aspect of some or all public accounting firms' quality control systems.

(3) ANNUAL REPORT; PROPOSED BUDGET.—

(A) SUBMISSION OF ANNUAL REPORT AND BUDGET.—A public regulatory organization shall submit an annual report and its proposed budget to the Commission for review and approval, by order, at such times and in such form as the Commission shall prescribe.

(B) CONTENTS OF ANNUAL REPORT.—Each annual report required by subparagraph (A) shall include—

(i) a detailed description of the activities of the public regulatory organization;

(ii) the audited financial statements of the public regulatory organization;

(iii) a detailed explanation of the fees and charges imposed by the public regulatory organization under subsection (b)(9); and

(iv) such other matters as the public regulatory organization or the Commission deems appropriate.

(C) TRANSMITTAL OF ANNUAL REPORT TO CONGRESS.—The Commission shall transmit each approved annual report received under subparagraph (A) to the Committee on Financial Services of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate. At the same time it transmits a public regulatory organization's annual report under this subparagraph, the Commission shall include a written statement of its views of the functioning and operations of the public regulatory organization.

(D) PUBLIC AVAILABILITY.—Following transmittal of each approved annual report under subparagraph (C), the Commission and the public regulatory organization shall make the approved annual report publicly available.

(4) DISAPPROVAL OF ELECTION OF PRO MEMBER.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, to disapprove the election of any member of a public regulatory organization if the Commission determines, after notice and opportunity for hearing, that the person elected is unfit to serve on the public regulatory organization.

(j) CLARIFICATION OF APPLICATION OF PRO AUTHORITY.—The authority granted to any such organization in this section shall only apply to the actions of accountants

related to the certification of financial statements required by securities laws and not other actions or actions for other clients of the accounting firm or any accountant that does not certify financial statements for publicly traded companies.

(k) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

rules to implement this section.

(l) EFFECTIVE DATE; TRANSITION PROVISIONS.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), subsection (a) of this section shall be effective with respect to any certified financial statement for any fiscal year that ends more than one year after the Commission recognizes a public regulatory organization pursuant to this section.

(2) DELAY IN ESTABLISHMENT OF BOARD.—If the Commission has failed to recognize any public regulatory organization pursuant to this section within one year after the date of enactment of this Act, the Commission shall perform the duties of such organization with respect to any certified financial statement for any fiscal year that ends before one year after any such board is recognized by the Commission.

SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors for any officer, director, or affiliated person of an issuer of any security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of such issuer for the purpose of rendering such financial statements materially misleading. In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder.

(b) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation thereunder.

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

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

the rules or regulations required by this section.

SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMATION.

(a) REAL-TIME ISSUER DISCLOSURES REQUIRED.—

(1) OBLIGATIONS.—Every issuer of a security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) shall file with the Commission and disclose to the public, on a rapid and essentially contemporaneous basis, such information concerning the financial condition or operations of such issuer as the Commission determines by rule is necessary in the public interest and for the protection of investors. Such rule shall—

(A) specify the events or circumstances giving rise to the obligation to disclose or update a disclosure;

(B) establish requirements regarding the rapidity and timeliness of such disclosure;

(C) identify the means whereby the disclosure required shall be made, which shall ensure the broad, rapid, and accurate dissemination of the information to the public via electronic or other communications device;

(D) identify the content of the information to be disclosed; and

(E) without limiting the Commission's general exemptive authority, specify any exemptions or exceptions from such requirements.

(2) ENFORCEMENT.—The Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder in civil proceedings.

(b) ELECTRONIC DISCLOSURE OF INSIDER TRANSACTIONS.—

(1) DISCLOSURES OF TRADING.—The Commission shall, by rule, require—

(A) that a disclosure required by section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) of the sale of any securities of an issuer, or any security futures product (as defined in section 3(a)(56) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(56))) or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) that is based in whole or in part on the securities of such issuer, by an officer or director of the issuer of those securities, or by a beneficial owner of such securities, shall be made available electronically to the Commission and to the issuer by such officer, director, or beneficial owner before the end of the next business day after the day on which the transaction occurs;

(B) that the information in such disclosure be made available electronically to the public by the Commission, to the extent permitted under applicable law, upon receipt, but in no case later than the end of the next business day after the day on which the disclosure is received under subparagraph (A); and

(C) that, in any case in which the issuer maintains a corporate website, such information shall be made available by such issuer on that website, before the end of the next business day after the day on which the disclosure is received by the Commission under subparagraph (A).

(2) TRANSACTIONS INCLUDED.—The rule prescribed under paragraph (1) shall require the disclosure of the following transactions:

(A) Direct or indirect sales or other transfers of securities of the issuer (or any interest therein) to the issuer or an affiliate of the issuer.

(B) Loans or other extensions of credit extended to an officer, director, or other person affiliated with the issuer on terms or conditions not otherwise available to the public.

(3) OTHER FORMATS; FORMS.—In the rule prescribed under paragraph (1), the Commission shall provide that electronic filing and disclosure shall be in lieu of any other format required for such disclosures on the day before the date of enactment of this subsection. The Commission shall revise such forms and schedules required to be filed with the Commission pursuant to paragraph (1) as necessary to facilitate such electronic filing and disclosure.

SEC. 5. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) DEFINITION.—For purposes of this section, the term "beneficial owner" has the meaning provided such term in rules or regulations issued by the Securities and Exchange Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DISCLOSURES.

(a) MODIFICATION OF REGULATIONS REQUIRED.—The Commission shall revise its regulations under the securities laws pertaining to the disclosures required in periodic financial reports and registration statements to require such reports to include adequate and appropriate disclosure of—

(1) the issuer's off-balance sheet transactions and relationships with unconsolidated entities or other persons, to the extent they are not disclosed in the financial statements and are reasonably likely to materially affect the liquidity or the availability of, or requirements for, capital resources, or the financial condition or results of operations of the issuer; and

(2) loans extended to officers, directors, or other persons affiliated with the issuer on terms or conditions that are not otherwise available to the public.

(b) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

the revisions to its regulations required by subsection (a).

(c) ANALYSIS REQUIRED.—

(1) TRANSPARENCY, COMPLETENESS, AND USEFULNESS OF FINANCIAL STATEMENTS.—The Commission shall conduct an analysis of the extent to which, consistent with the protection of investors and the public interest, disclosure of additional or reorganized information may be required to improve the transparency, completeness, or usefulness of financial statements and other corporate disclosures filed under the securities laws.

(2) ALTERNATIVES TO BE CONSIDERED.—In conducting the analysis required by paragraph (1), the Commission shall consider—

(A) requiring the identification of the key accounting principles that are most important to the issuer's reported financial condition and results of operation, and that require management's most difficult, subjective, or complex judgments;

(B) requiring an explanation, where material, of how different available accounting principles applied, the judgments made in their application, and the likelihood of materially different reported results if different assumptions or conditions were to prevail;

(C) in the case of any issuer engaged in the business of trading non-exchange traded contracts, requiring an explanation of such trading activities when such activities require the issuer to account for contracts at fair value, but for which a lack of market price quotations necessitates the use of fair value estimation techniques;

(D) establishing requirements relating to the presentation of information in clear and understandable format and language; and

(E) requiring such other disclosures, included in the financial statements or in other disclosure by the issuer, as would in the Commission's view improve the transparency of such issuer's financial statements and other required corporate disclosures.

(3) RULES REQUIRED.—If the Commission, on the basis of the analysis required by this subsection, determines that it is necessary in the public interest or for the protection of investors and would improve the transparency of issuer financial statements, the Commission may prescribe rules reflecting the results of such analysis and the considerations required by paragraph (2). In prescribing such rules, the Commission may seek to minimize the paperwork and cost burden on the issuer consistent with achieving the public interest and investor protection purposes of such rules.

SEC. 7. IMPROVEMENTS IN REPORTING ON INSIDER TRANSACTIONS AND RELATIONSHIPS.

(a) SPECIFIC OBJECTIVES.—The Commission shall initiate a proceeding to propose changes in its rules and regulations with respect to financial reporting to improve the transparency and clarity of the information available to investors and to require increased financial disclosure with respect to the following:

(1) INSIDER RELATIONSHIPS AND TRANSACTIONS.—Relationships and transactions—

(A) between the issuer, affiliates of the issuer, and officers, directors, or employees of the issuer or such affiliates; and

(B) between officers, directors, employees, or affiliates of the issuer and entities that are not otherwise affiliated with the issuer,

to the extent such arrangement or transaction creates a conflict of interest for such persons. Such disclosure shall provide a description of such elements of the transaction as are necessary for an understanding of the business purpose and economic substance of such transaction (including contingencies). The disclosure shall provide sufficient information to determine the effect on the issuer's financial statements and describe compensation arrangements of interested parties to such transactions.

(2) RELATIONSHIPS WITH PHILANTHROPIC ORGANIZATIONS.—Relationships between the registrant or any executive officer of the registrant and any not-for-profit organization on whose board a director or immediate family member serves or of which a director or immediate family member serves as an officer or in a similar capacity. Relationships that shall be disclosed include contributions to the organization in excess of $10,000 made by the registrant or any executive officer in the last five years and any other activity undertaken by the registrant or any executive officer that provides a material benefit to the organization. Material benefit includes lobbying.

(3) INSIDER-CONTROLLED AFFILIATES.—Relationships in which the registrant or any executive officer exercises significant control over an entity in which a director or immediate family member owns an equity interest or to which a director or immediate family member has extended credit. Significant control should be defined with reference to the contractual and governance arrange-

ments between the registrant or executive officer, as the case may be, and the entity.

(4) JOINT OWNERSHIP.—Joint ownership by a registrant or executive officer and a director or immediate family member of any real or personal property.

(5) PROVISION OF SERVICES BY RELATED PERSONS.—The provision of any professional services, including legal, financial advisory or medical services, by a director or immediate family member to any executive officer of the registrant in the last five years.

(b) DEADLINES.—The Commission shall complete the rulemaking required by this section within 180 days after the date of enactment of this Act.

SEC. 8. CODES OF CONDUCT.

(a) RULES REQUIRED.—Within 180 days after the date of enactment of this Act, the New York Stock Exchange, the American Stock Exchange and the Nasdaq Stock Market (or any successor to such entities), shall file with the Commission proposed rule changes that would prohibit the listing of any security issued by an issuer that has not adopted a senior financial officers code of ethics applicable to its principal financial officer, its comptroller or principal accounting officer, or persons performing similar functions that establishes such standards as are reasonably necessary to promote honest and ethical conduct, the avoidance of conflicts of interest, full, fair, accurate, timely and understandable disclosure in the issuer's periodic reports and compliance with applicable governmental rules and regulations. The Commission shall approve such proposed rule changes pursuant to the requirement of section 19(b)(2) of the Securities Act of 1934.

(b) OTHER EXCHANGES.—The Commission, by rule or regulation, may require any other national securities exchange, to propose rule changes necessary to comply with the provisions of subsection (a) of this section if the Commission determines such action is necessary or appropriate in the public interest and consistent with the protection of investors.

(c) FURTHER STANDARDS.—In addition to the requirements of subsections (a) and (b), the Commission may, by rule or regulation, prescribe further standards of conduct for senior financial officers as necessary or appropriate in the public interest and consistent with the protection of investors.

(d) CHANGES IN CODES OF CONDUCT.—Within 180 days after the date of enactment of this Act, the Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8K to require the immediate disclosure, by means of such Form and by the Internet or other electronic means, by any issuer of any change in, or waiver of, the code of ethics of such issuer.

SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Securities and Exchange Commission shall review disclosures made by issuers pursuant to the Securities Exchange Act of 1934 (including reports filed on form 10–K) on a basis that is more regular and systematic than that in practice on the date of enactment on this Act. Such review shall include a review of an issuer's financial statements.

(b) RISK RATING SYSTEM.—For purposes of the reviews required by subsection (a), the Commission shall establish a risk rating system whereby issuers receive a risk rating by the Commission, which shall be used to determine the frequency of such reviews. In designing such a risk rating system the Commission shall consider, among other factors the following:

(1) Emerging companies with disparities in price to earning ratios.

(2) Issuers with the largest market capitalization.

(3) Issuers whose operations significantly impact any material sector of the economy.

(4) Systemic factors such as the effect on niche markets or important subsectors of the economy.

(5) Issuers that experience significant volatility in their stock price as compared to other issuers.

(6) Any other factor the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer be reviewed less than once every three years by the Commission.

(d) PROHIBITION OF DISCLOSURE OF RISK RATING.—Notwithstanding any other provision of law, the Commission shall not disclose the risk rating of any issuer described in subsection (b).

SEC. 10. RETENTION OF RECORDS.

(a) DUTY TO RETAIN RECORDS.—Any independent public or certified accountant who certifies a financial statement as required by the securities laws or any rule or regulation thereunder shall prepare and maintain for a period of no less than 7 years, final audit work papers and other information related to any accountants

report on such financial statements in sufficient detail to support the opinion or assertion reached in such accountants report. The Commission may prescribe rules specifying the application and requirements of this section.

(b) ACCOUNTANT'S REPORT.—For purposes of subsection (a), the term "accountant's report" means a document in which an accountant identifies a financial statement and sets forth his opinion regarding such financial statement or an assertion that an opinion cannot be expressed.

SEC. 11. COMMISSION AUTHORITY TO BAR PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) COMMISSION AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—Notwithstanding any other provision of the securities laws, in any cease-and-desist proceeding under section 8A(a) of the Securities Act of 1933 or section 21C(a) of the Securities and Exchange Act of 1934, the Commission may issue an order to prohibit, conditionally or unconditionally, permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of the Securities Act of 1933 or section 10(b) of the Securities Exchange Act of 1934 (or any rule or regulation thereunder) from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of such Act if the person's conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer.

(b) FINDING OF SUBSTANTIAL UNFITNESS.—In making any determination that a person's conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer, the Commission shall consider—

(1) the severity of the persons conduct giving rise to the violation, and the persons role or position when he engaged in the violation;

(2) the person's degree of scienter;

(3) the person's economic gain as a result of the violation; and

(4) the likelihood that the conduct giving rise to the violation, or similar conduct as defined in subsection (a), may recur if the person is not so prohibited.

(c) AUTOMATIC STAY PENDING APPEAL.—The enforcement of any Commission order pursuant to subsection (a) shall be stayed—

(1) for a period of at least 60 days after the entry of any such order or decision; and

(2) upon the filing of a timely application for judicial review of such order or decision, pending the entry of a final order resolving the application for judicial review.

SEC. 12. DISGORGING INSIDERS PROFITS FROM TRADES PRIOR TO CORRECTION OF ERRONEOUS FINANCIAL STATEMENTS.

(a) ANALYSIS REQUIRED.—The Commission shall conduct an analysis of whether, and under what conditions, any officer or director of an issuer should be required to disgorge profits gained, or losses avoided, in the sale of the securities of such issuer during the six month period immediately preceding the filing of a restated financial statement on the part of such issuer.

(b) DISGORGEMENT RULES AUTHORIZED.—If the Commission determines that imposing the requirement described in subsection (a) is necessary or appropriate in the public interest or for the protection investors, and would not unduly impair the operations of issuers or the orderly operation of the securities markets, the Commission shall prescribe a rule requiring the disgorgement of all profits gained or losses avoided in the sale of the securities of the issuer by any officer or director thereof. Such rule shall—

(1) describe the conditions under which any officer or director shall be required to disgorge profits, including what constitutes a restatement for purposes of operation of the rule;

(2) establish exceptions and exemptions from such rule as necessary to carry out the purposes of this section;

(3) identify the scienter requirement that should be used in order to determine to impose the requirement to disgorge; and

(4) specify that the enforcement of such rule shall lie solely with the Commission, and that any profits so disgorged shall inure to the issuer.

(c) NO PREEMPTION OF OTHER LAW.—Unless otherwise specified by the Commission, in the case of any rule promulgated pursuant to subsection (b), such rule shall be in addition to, and shall not supersede or preempt, the Commission's authority to seek disgorgement under any other provision of law.

SEC. 13. SECURITIES AND EXCHANGE COMMISSION AUTHORITY TO PROVIDE RELIEF.

(a) PROCEEDS OF ENRON AND ANDERSEN ENFORCEMENT ACTIONS.—If in any administrative or judicial proceeding brought by the Securities and Exchange Commission against—

(1) the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate for any violation of the securities laws; or

(2) Arthur Andersen L.L.C., any subsidiary or affiliate of Arthur Andersen L.L.C., or any general or limited partner of Arthur Andersen L.L.C., or such subsidiary or affiliate, for any violation of the securities laws with respect to any services performed for or in relation to the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate;

the Commission obtains an order providing for an accounting and disgorgement of funds, such disgorgement fund (including any addition to such fund required or permitted under this section) shall be allocated in accordance with the requirements of this section.

(b) PRIORITY FOR FORMER ENRON EMPLOYEES.—The Commission shall, by order, establish an allocation system for the disgorgement fund. Such system shall provide that, in allocating the disgorgement fund amount the victims of the securities laws violations described in subsection (a), the first priority shall be given to individuals who were employed by the Enron Corporation, or a subsidiary or affiliate of such Corporation, and who were participants in an individual account plan established by such Corporation, subsidiary, or affiliate. Such allocations among such individuals shall be in proportion to the extent to which the nonforfeitable accrued benefit of each such individual under the plan was invested in the securities of such Corporation, subsidiary, or affiliate.

(c) ADDITION OF CIVIL PENALTIES.—If, in any proceeding described in subsection (a), the Commission assesses and collects any civil penalty, the Commission shall, notwithstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the Securities Exchange Act of 1934, or any other provision of the securities laws, be payable to the disgorgement fund.

(d) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for the disgorgement fund. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (b).

(e) DEFINITIONS.—As used in this section:

(1) DISGORGEMENT FUND.—The term "disgorgement fund" means a disgorgement fund established in any administrative or judicial proceeding described in subsection (a).

(2) SUBSIDIARY OR AFFILIATE.—The term "subsidiary or affiliate" when used in relation to a person means any entity that controls, is controlled by, or is under common control with such person.

(3) OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER.—The term "officer, director, or principal shareholder" when used in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation, means any person that is subject to the requirements of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation.

(4) NONFORFEITABLE; ACCRUED BENEFIT; INDIVIDUAL ACCOUNT PLAN.—The terms "nonforfeitable", "accrued benefit", and "individual account plan" have the meanings provided such terms, respectively, in paragraphs (19), (23), and (34) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(19), (23), (34)).

SEC. 14. STUDY OF RULES RELATING TO ANALYST CONFLICTS OF INTEREST.

(a) STUDY AND REVIEW REQUIRED.—The Commission shall conduct a study and review of any final rules by any self-regulatory organization registered with the Commission related to matters involving equity research analysts conflicts of interest. Such study and report shall include a review of the effectiveness of such final rules in addressing matters relating to the objectivity and integrity of equity research analyst reports and recommendations.

(b) REPORT REQUIRED.—The Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on such study and review no later than 180 days after any such final rules by any self-regulatory organization registered with the Commission are delivered to the Commission. Such report shall in-

clude recommendations to the Congress, including any recommendations for additional self-regulatory organization rulemaking regarding matters involving equity research analysts. The Commission shall annually submit an update on such review.

SEC. 15. REVIEW OF CORPORATE GOVERNANCE PRACTICES.

(a) STUDY OF CORPORATE PRACTICES.—The Commission shall conduct a study and review of current corporate governance standards and practices to determine whether such standards and practices are serving the best interests of shareholders. Such study and review shall include an analysis of—

(1) whether current standards and practices promote full disclosure of relevant information to shareholders;

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

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

(4) to what extent sufficient legal protections exist or should be adopted to ensure that any manager who attempts to manipulate or unduly influence an audit will be subject to appropriate sanction and liability, including liability to investors or shareholders pursuing a private cause of action for such manipulation or undue influence;

(5) whether rules, standards, and practices relating to determining whether independent directors are in fact independent are adequate;

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

(7) whether the duties and responsibilities of audit committees should be established by the Commission; and

(8) what further or additional practices or standards might best protect investors and promote the interests of shareholders.

(b) PARTICIPATION OF STATE REGULATORS.—In conducting the study required under subsection (a), the Commission shall seek the views of the securities and corporate regulators of the various States.

(c) REPORT REQUIRED.—The Commission shall submit a report on the analysis required under subsection (a) as a part of the Commission's next annual report submitted after the date of enactment of this Act.

SEC. 16. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the last five years to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days of the date of enactment of this Act and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 17. STUDY OF CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market. Such study shall examine—

(1) the role of the credit rating agencies in the evaluation of issuers of securities;

(2) the importance of that role to investors and the functioning of the securities markets;

(3) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(4) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings;

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

(6) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the analysis required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after the date of enactment of this Act. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 18. STUDY OF INVESTMENT BANKS

(a) GAO STUDY.—The Comptroller General shall conduct a study on the role played by investment banks and financial advisors in assisting public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the role of the investment banks—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financing arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiber optic cable capacity, in designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

(b) REPORT.—The General Accounting Office shall report to the Congress within 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 19. STUDY OF MODEL RULES FOR ATTORNEYS OF ISSUERS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the Model Rules of Professional Conduct promulgated by the American Bar Association and rules of professional conduct applicable to attorneys established by the Commission to determine—

(1) whether such rules provide sufficient guidance to attorneys representing corporate clients who are issuers required to file periodic disclosures under section 13 or 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o), as to the ethical responsibilities of such attorneys to—

(A) warn clients of possible fraudulent or illegal activities of such clients and possible consequences of such activities;

(B) disclose such fraudulent or illegal activities to appropriate regulatory or law enforcement authorities; and

(C) manage potential conflicts of interests with clients; and

(2) whether such rules provide sufficient protection to corporate shareholders, especially with regards to conflicts of interest between attorneys and their corporate clients.

(b) REPORT REQUIRED.—The Comptroller General shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of the study required by this section. Such report shall include any recommendations of the General Accounting Office with regards to—

(1) possible changes to the Model Rules and the rules of professional conduct applicable to attorneys established by the Commission to provide increased protection to shareholders;

(2) whether restrictions should be imposed to require that an attorney, having represented a corporation or having been employed by a firm which represented a corporation, may not be employed as general counsel to that corporation until a certain period of time has expired; and

(3) regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 20. ENFORCEMENT AUTHORITY.

For the purposes of enforcing and carrying out this Act, the Commission shall have all of the authorities granted to the Commission under the securities laws. Actions of the Commission under this Act, including actions on rules or regulations, shall be subject to review in the same manner as actions under the securities laws.

SEC. 21. EXCLUSION FOR INVESTMENT COMPANIES.

Sections 4, 6, 9, and 15 of this Act shall not apply to an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 22. DEFINITIONS.

As used in this Act:

(1) BLACKOUT PERIOD.—The term "blackout period" with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

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

(I) incorporated into the individual account plan; and

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

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(2) BOARDS OF ACCOUNTANCY OF THE STATES.—The term "boards of accountancy of the States" means any organization or association chartered or approved under the law of any State with responsibility for the registration, supervision, or regulation of accountants.

(3) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term "individual account plan" has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term "issuer" shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

(6) PERSON ASSOCIATED WITH AN ACCOUNTANT.—The term "person associated with an accountant" means any partner, officer, director, or manager of such accountant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such accountant, or any employee of such accountant who performs a supervisory role in the auditing process.

(7) RECOGNIZED PUBLIC REGULATORY ORGANIZATION.—The term "recognized public regulatory organization" means a public regulatory organization that the Commission has recognized as meeting the criteria established by the Commission under subsection (b) of section 2.

(8) SECURITIES LAWS.—The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), notwithstanding any contrary provision of any such Act.

PURPOSE AND SUMMARY

H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, will protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. The bill achieves this goal through increased supervision of accountants that audit public companies, strengthened corporate responsibility, increased transparency of corporate financial statements, and protections for employee access to retirement accounts.

With regard to increasing the supervision of accountants, the purpose of the legislation is to allow for the creation of a public regulatory organization or organizations, comprised of persons skilled

and knowledgeable in issues related to the audit of public companies, to perform quality or other reviews of the activities of certified public accountants who report on financial statements that are required to be filed with the Securities and Exchange Commission (SEC). The legislation envisions that such an organization will enforce compliance by accountants with professional ethics and competency standards applicable to audits of such financial statements and establish such rules as are deemed necessary to provide for their review and enforcement, and provides for the oversight of such organizations by the Commission.

The legislation also requires that the SEC promulgate rules that would bar the provision by auditors of certain nonaudit services to their audit clients. The Committee heard testimony that two nonaudit services—financial systems design and implementation and internal audit outsourcing—were perceived to raise issues about auditor independence. Because of the importance of public perceptions in this area, the Committee believes these services should be prohibited. The SEC had proposed to prohibit them during a rulemaking in 2000, but ultimately decided to allow them, subject to certain conditions.

Although financial systems and internal audit work are the two nonaudit services that have raised significant investor concerns, the SEC is also authorized to modify its rules if auditing firms begin to offer other services that raise similarly significant independence concerns. Indeed, it is appropriate that these issues be considered carefully by an entity with the Commission's resources and expertise, and that whatever standards are established apply uniformly to public companies throughout the markets. A non-federal approach would lead to uncertainty in our capital markets, particularly if the standards applicable to public companies and audit firms varied by jurisdiction. The Committee believes that it is appropriate to continue dealing with nonaudit services by having the Commission proscribe specific services rather than casting doubt on a broad range of nonaudit services. In this regard, the Committee heard testimony that a broader ban on nonaudit services could undermine rather than improve audit quality, since certain such services can improve the auditor's understanding of the audit client's business activities. Likewise, a broader ban could reduce corporate efficiencies and impair auditing firms' ability to attract and retain tax and other nonaudit personnel who are essential to the audit process.

The legislation will also ensure that the SEC has sufficient authority to bar individuals from serving as officers or directors of public companies if they demonstrate they are substantially unfit to serve and that company officials disgorge any profits they receive from selling their own shares of their company's stock prior to a restatement of the company's financial statements. The bill also prohibits any company official from fraudulently misleading an auditor and requires the SEC to conduct studies of several areas related to corporate responsibility in order to evaluate other areas of corporate conduct and disclosure which may need reform.

The legislation requires the SEC to issue rules increasing the accuracy and transparency of company disclosures and will strengthen the SEC's procedures for reviewing the financial statements of issuers that play a significant role in the economy. Further, the bill

will require that the SEC explore the effectiveness of SRO rules relating to analysts, and report on the role and function of credit rating agencies.

Finally, the legislation will protect employee access to their retirement accounts by preventing company insiders from trading their own shares in a company when their employees cannot do so because of a "blackout" in a company sponsored employee retirement account.

The legislation is also designed to strengthen the SEC's procedures for reviewing the financial statements of issuers that play a significant role in the economy, explore the effectiveness of SRO rules relating to analysts, and report on the role and function of credit rating agencies.

BACKGROUND AND NEED FOR LEGISLATION

The Federal securities laws are designed to ensure that public companies provide investors with full and accurate disclosure of the true financial condition of the company. Following the bankruptcies of Enron Corporation and Global Crossing LLC, and restatements of earnings by several prominent market participants, regulators, investors and others expressed concern about the adequacy of the current disclosure regime for public companies.

Additionally, they expressed concerns about the role of auditors in approving corporate financial statements. Questions regarding the independence of auditors of public companies led to calls for greater supervision of the profession. The SEC raised the need for the creation of a new oversight body to review compliance of public auditors with the profession's standards of ethics and competency; this suggestion received widespread support.

The bankruptcy of Enron Corporation also raised issues relating to the security of employee retirement accounts. When allegations arose that some Enron insiders were able to sell their company stock even as Enron employees were prohibited from doing so because of an administrative lockdown in the company's retirement plan, new calls arose for protecting the access of employees to their accounts to the same degree as insiders.

The securities laws, and in particular the Securities Exchange Act of 1934, provide a host of protections for investors with regard to their access to company information. Reflecting the technology available to public companies and investors at that time, the securities laws largely reflect the paper-based system of reporting information that was prevalent up until the advent of the electronic age. With the creation of the internet and continuous televised coverage of the capital markets, the regulatory regime for speeding the availability of company information has been unable to keep pace with the nearly instantaneous demand for investor access to that information. On-line trading of securities broadly expanded both the number of participants in the securities markets and the volume of trading in those markets. This development also heightened the need for more rapid disclosure of company news.

The increased public participation in the securities markets and the broader coverage of those markets also raised the profile of securities analysts that provide recommendations regarding equity securities. Responding to the concerns of some that analysts for companies that also underwrite and trade in the securities mar-

kets, the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a series of hearings on the role of analysts in reporting on equity securities. Following these hearings, the securities industry developed a statement of best practices guiding analysts and their employers in avoiding conflicts of interest. This statement was later followed by a proposed rule by the self regulatory organizations (SROs) establishing guidelines for analysts and their employers to ensure that analyst recommendations are fair and unbiased. This proposal is currently under review by the SEC.

The Committee's hearings on the Enron matter, the collapse of Global Crossing LLC, and the operations of the Nation's capital markets all indicated that reforms were necessary both for the regulators and the regulated. Further, the President's Plan to Improve Corporate Responsibility and Protect America's Investors, announced on March 7, 2002, outlined a path by which corporations and their investors can continue their partnership in growing the Nation's economy, and do so on fair and equal footing. This legislation responds to the problems of the marketplace through a fair and balanced approach that ensures that the Nation's capital markets continue to be the strongest in the world.

HEARINGS

On March 13 and March 20, 2002, the Committee held legislative hearings on H.R. 3763. The following witnesses testified on March 13: former SEC Chairman Roderick Hills; Mr. Marc Lackritz, President, Securities Industry Association; Mr. Barry Melancon, President and CEO, American Institute of Certified Public Accountants; Mr. James Glassman, American Enterprise Institute; Mr. Ted White, California Public Employees' Retirement System; Mr. Lynn Turner, former Chief Accountant, Securities and Exchange Commission; and Ms. Barbara Roper, Director of Investor Protection for the Consumer Federation of America.

On March 20, the following witnesses testified: SEC Chairman Harvey Pitt; Mr. Franklin Raines, appearing on behalf of the Business Roundtable; Mr. Phillip Livingston, President and CEO, Financial Executives International; Mr. H. Carl McCall, Comptroller, State of New York; Mr. Joseph V. DelRaso, Pepper Hamilton LLP; Mr. Jerry Jasinowski, President, National Association of Manufacturers; and Mr. Peter Chapman, TIAA–CREF. The Committee also received the written testimony of Deputy Undersecretary of the Treasury Mr. Peter Fisher.

Pursuant to clause 2(j)(1) of rule XI of the Rules of the House of Representatives and rule 3(d) of the rules of the Committee on Financial Services, the Committee held another day of hearings at the request of the minority on April 9, 2002. The following witnesses testified: Mr. David Walker, Comptroller General of the United States, General Accounting Office; Mr. Richard Breeden, former Chairman, Securities and Exchange Commission; Mr. Donald Langevoort, Professor of Law, Georgetown University Law Center; and Mr. Damon Silvers, Associate General Counsel, AFL–CIO.

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises was discharged from the further consideration of H.R. 3763 on April 8, 2002.

The Committee on Financial Services met in open session on April 11 and April 16, 2002 and ordered H.R. 3763 reported to the House with a favorable recommendation by a record vote of 49 yeas and 12 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a record vote of 49 yeas and 12 nays (Record vote no. 37), a quorum being present. The names of members voting for and against follow:

YEAS	NAYS
Mr. Oxley	Mr. LaFalce
Mr. Leach	Mr. Frank
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	Ms. Waters
Mr. Baker	Mr. Sanders
Mr. Bachus	Mrs. Maloney of New York
Mr. Castle	Mr. Ackerman
Mr. King	Ms. Lee
Mr. Royce	Mr. Inslee
Mr. Ney	Ms. Schakowsky
Mr. Barr of Georgia	Mr. Capuano
Mrs. Kelly	Mr. Clay
Mr. Gillmor	
Mr. Cox	
Mr. Weldon of Florida	
Mr. Ryun of Kansas	
Mr. LaTourette	
Mr. Manzullo	
Mr. Ose	
Mrs. Biggert	
Mr. Green of Wisconsin	
Mr. Toomey	
Mr. Shays	
Mr. Shadegg	
Mr. Fossella	
Mr. Gary G. Miller of California	
Mr. Cantor	
Mr. Grucci	
Ms. Hart	
Mrs. Capito	
Mr. Ferguson	
Mr. Rogers of Michigan	
Mr. Tiberi	
Mr. Watt of North Carolina	

Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Ms. Carson of Indiana
Mr. Sherman
Mr. Sandlin
Mr. Moore
Mr. Gonzalez
Mr. Ford
Mr. Hinojosa
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Israel
Mr. Ross

Record votes were held on the adoption of the following amendments. The names of members voting for and against follow:

An amendment to the amendment in the nature of a substitute by Mr. LaFalce (as modified by unanimous consent), no. 1a, establishing the Public Accounting Regulatory Board, was not agreed to by a record vote of 26 yeas and 33 nays (Record vote no. 25).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mr. Bereuter
Ms. Waters	Mr. Baker
Mr. Sanders	Mr. Castle
Mrs. Maloney of New York	Mr. King
Mr. Gutierrez	Mr. Royce
Mr. Watt of North Carolina	Mr. Ney
Mr. Ackerman	Mr. Barr of Georgia
Ms. Hooley of Oregon	Mrs. Kelly
Ms. Carson of Indiana	Mr. Weldon of Florida
Mr. Sherman	Mr. Ryun of Kansas
Mr. Sandlin	Mr. Riley
Mr. Meeks of New York	Mr. LaTourette
Ms. Lee	Mr. Manzullo
Mr. Mascara	Mr. Ose
Mr. Inslee	Mrs. Biggert
Ms. Schakowsky	Mr. Green of Wisconsin
Mr. Moore	Mr. Toomey
Mr. Gonzalez	Mr. Shadegg
Mrs. Jones of Ohio	Mr. Fossella
Mr. Capuano	Mr. Gary G. Miller of California
Mr. Hinojosa	Mr. Cantor
Mr. Clay	Mr. Grucci
Mr. Israel	Ms. Hart
Mr. Ross	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Bentsen

Mr. Maloney of Connecticut
Mr. Lucas of Kentucky
Mr. Shows

An amendment to the amendment in the nature of a substitute by Mrs. Biggert, no. 1b, disgorgement of bonuses and other incentives, as amended, part 1 (page 1, line 1 through page 3, line 13) was agreed to by a voice vote and part 2 (page 3, line 14 through page 5, line 2), was agreed to by a record vote 36 yeas and 25 nays (Record vote no. 28).

YEAS	NAYS
Mr. Oxley	Mr. LaFalce
Mr. Leach	Mr. Frank
Mr. Bereuter	Mr. Kanjorski
Mr. Baker	Ms. Waters
Mr. Bachus	Mr. Sanders
Mr. Castle	Mrs. Maloney of New York
Mr. King	Mr. Watt of North Carolina
Mr. Royce	Mr. Ackerman
Mr. Lucas of Oklahoma	Mr. Bentsen
Mr. Ney	Mr. Maloney of Connecticut
Mr. Barr of Georgia	Ms. Hooley of Oregon
Mrs. Kelly	Ms. Carson of Indiana
Mr. Paul	Mr. Sherman
Mr. Gillmor	Mr. Meeks of New York
Mr. Cox	Ms. Lee
Mr. Weldon of Florida	Mr. Mascara
Mr. Ryun of Kansas	Mr. Inslee
Mr. LaTourette	Ms. Schakowsky
Mr. Manzullo	Mr. Moore
Mr. Jones of North Carolina	Mr. Gonzalez
Mr. Ose	Mrs. Jones of Ohio
Mrs. Biggert	Mr. Capuano
Mr. Green of Wisconsin	Mr. Shows
Mr. Toomey	Mr. Crowley
Mr. Shays	Mr. Ross
Mr. Shadegg	
Mr. Fossella	
Mr. Gary G. Miller of California	
Mr. Cantor	
Mr. Grucci	
Ms. Hart	
Mrs. Capito	
Mr. Ferguson	
Mr. Rogers of Michigan	
Mr. Tiberi	
Mr. Lucas of Kentucky	

An amendment by Mr. LaFalce to the amendment by Mrs. Biggert, no. 1b(2), addressing the disgorgement of bonuses and other incentives, was not agreed to by a record vote of 25 yeas and 30 nays (Record vote no. 26).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Bereuter
Mr. Kanjorski	Mr. Baker
Ms. Waters	Mr. Bachus
Mrs. Maloney of New York	Mr. Castle
Mr. Watt of North Carolina	Mr. King
Mr. Bentsen	Mr. Royce
Mr. Maloney of Connecticut	Mr. Ney
Ms. Hooley of Oregon	Mrs. Kelly
Ms. Carson of Indiana	Mr. Paul
Mr. Sherman	Mr. Weldon of Florida
Mr. Sandlin	Mr. Ryun of Kansas
Mr. Meeks of New York	Mr. Riley
Ms. Lee	Mr. LaTourette
Mr. Mascara	Mr. Manzullo
Mr. Inslee	Mr. Ose
Mr. Moore	Mrs. Biggert
Mr. Gonzalez	Mr. Green of Wisconsin
Mrs. Jones of Ohio	Mr. Toomey
Mr. Capuano	Mr. Shadegg
Mr. Hinojosa	Mr. Fossella
Mr. Shows	Mr. Gary G. Miller of California
Mr. Crowley	Mr. Cantor
Mr. Clay	Mr. Grucci
Mr. Israel	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Lucas of Kentucky

An amendment by Mr. LaFalce to the amendment by Mrs. Biggert, no. 1b(4), allowing for the removal of unfit corporate officers or directors and prohibiting unfit persons from serving as an officer or director, was not agreed to by a record vote for 24 yeas and 25 nays (Record vote no. 27).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mr. Bereuter
Ms. Waters	Mr. Baker
Mr. Sanders	Mr. Castle
Mrs. Maloney of New York	Mr. King
Mr. Gutierrez	Mr. Ney
Mr. Watt of North Carolina	Mr. Barr of Georgia
Mr. Ackerman	Mrs. Kelly
Mr. Bentsen	Mr. Weldon of Florida
Mr. Maloney of Connecticut	Mr. Ryun of Kansas
Ms. Hooley of Oregon	Mr. LaTourette
Ms. Carson of Indiana	Mr. Jones of North Carolina
Mr. Sherman	Mrs. Biggert
Mr. Mascara	Mr. Green of Wisconsin
Mr. Inslee	Mr. Toomey

Ms. Schakowsky
Mr. Gonzalez
Mr. Capuano
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Israel
Mr. Ross
Mr. Shays
Mr. Fossella
Mr. Gary G. Miller of California
Mr. Cantor
Mr. Grucci
Ms. Hart
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi

An amendment to the amendment in the nature of a substitute by Mr. Sherman, no. 1k, providing for auditor capital requirements, was not agreed to by a record vote of 9 yeas and 49 nays (Record vote no. 29).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Sanders	Mr. Leach
Mr. Gutierrez	Mr. Bereuter
Mr. Sherman	Mr. Baker
Mr. Sandlin	Mr. Bachus
Mr. Meeks of New York	Mr. Castle
Ms. Lee	Mr. King
Ms. Schakowsky	Mr. Royce
Mr. Clay	Mr. Ney
	Mr. Barr of Georgia
	Mrs. Kelly
	Mr. Paul
	Mr. Gillmor
	Mr. Weldon of Florida
	Mr. Ryun of Kansas
	Mr. LaTourette
	Mr. Manzullo
	Mrs. Biggert
	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Shadegg
	Mr. Fossella
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Tiberi
	Mr. Frank
	Mr. Kanjorski
	Ms. Waters
	Mrs. Maloney of New York
	Mr. Watt of North Carolina
	Mr. Bentsen
	Mr. Maloney of Connecticut
	Ms. Hooley of Oregon

Ms. Carson of Indiana
Mr. Mascara
Mr. Inslee
Mr. Moore
Mrs. Jones of Ohio
Mr. Capuano
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Israel
Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1l, requiring that the CEO or CFO must certify financial statements, was not agreed to by a record vote of 29 yeas and 30 nays (Record vote no. 30).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mr. Bereuter
Ms. Waters	Mr. Baker
Mr. Sanders	Mr. Castle
Mrs. Maloney of New York	Mr. King
Mr. Gutierrez	Mr. Royce
Mr. Watt of North Carolina	Mr. Ney
Mr. Bentsen	Mr. Barr of Georgia
Mr. Maloney of Connecticut	Mrs. Kelly
Ms. Hooley of Oregon	Mr. Paul
Ms. Carson of Indiana	Mr. Gillmor
Mr. Sherman	Mr. Weldon of Florida
Mr. Sandlin	Mr. Ryun of Kansas
Mr. Meeks of New York	Mr. LaTourette
Ms. Lee	Mr. Manzullo
Mr. Mascara	Mrs. Biggert
Mr. Inslee	Mr. Green of Wisconsin
Ms. Schakowsky	Mr. Toomey
Mr. Moore	Mr. Shays
Mr. Gonzalez	Mr. Shadegg
Mrs. Jones of Ohio	Mr. Fossella
Mr. Capuano	Mr. Cantor
Mr. Hinojosa	Mr. Grucci
Mr. Shows	Ms. Hart
Mr. Crowley	Mrs. Capito
Mr. Clay	Mr. Ferguson
Mr. Israel	Mr. Rogers of Michigan
Mr. Ross	Mr. Tiberi
	Mr. Lucas of Kentucky

An amendment to the amendment in the nature of a substitute by Mr. LaFalce (as modified by unanimous consent), no. 1m, addressing analysts conflicts of interest, was not agreed to by a record vote of 25 yeas and 37 nays (Record vote no. 31).

YEAS	NAYS
Mr. Leach	Mr. Oxley
Mr. Bachus	Mr. Bereuter
Mr. Castle	Mr. Baker
Mr. LaFalce	Mr. King
Mr. Frank	Mr. Royce
Mr. Kanjorski	Mr. Ney
Ms. Waters	Mr. Barr of Georgia
Mr. Sanders	Mrs. Kelly
Mrs. Maloney of New York	Mr. Paul
Mr. Gutierrez	Mr. Gillmor
Mr. Watt of North Carolina	Mr. Cox
Ms. Carson of Indiana	Mr. Weldon of Florida
Mr. Sherman	Mr. Ryun of Kansas
Mr. Sandlin	Mr. LaTourette
Mr. Meeks of New York	Mr. Manzullo
Ms. Lee	Mr. Ose
Mr. Mascara	Mrs. Biggert
Mr. Inslee	Mr. Toomey
Ms. Schakowsky	Mr. Shays
Mr. Gonzalez	Mr. Shadegg
Mrs. Jones of Ohio	Mr. Fossella
Mr. Capuano	Mr. Gary G. Miller of California
Mr. Hinojosa	Mr. Cantor
Mr. Clay	Mr. Grucci
Mr. Israel	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Bentsen
	Mr. Maloney of Connecticut
	Ms. Hooley of Oregon
	Mr. Moore
	Mr. Lucas of Kentucky
	Mr. Shows
	Mr. Crowley
	Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. Sherman, no. 1n, addressing attestation authority, was not agreed to by a record vote of 16 yeas and 46 nays (Record vote no. 32).

YEAS	NAYS
Mr. Bereuter	Mr. Oxley
Mr. LaFalce	Mr. Leach
Mr. Frank	Mr. Baker
Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. Castle
Mr. Gutierrez	Mr. King
Mr. Sherman	Mr. Royce
Mr. Sandlin	Mr. Lucas of Oklahoma
Mr. Meeks of New York	Mr. Ney
Ms. Lee	Mr. Barr of Georgia

Mr. Mascara
Ms. Schakowsky
Mr. Gonzalez
Mrs. Jones of Ohio
Mr. Hinojosa
Mr. Clay

Mrs. Kelly
Mr. Paul
Mr. Gillmor
Mr. Weldon of Florida
Mr. Ryun of Kansas
Mr. Riley
Mr. LaTourette
Mr. Manzullo
Mr. Ose
Mrs. Biggert
Mr. Shays
Mr. Shadegg
Mr. Fossella
Mr. Gary G. Miller of California
Mr. Cantor
Mr. Grucci
Ms. Hart
Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi
Mr. Kanjorski
Mrs. Maloney of New York
Mr. Watt of North Carolina
Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Ms. Carson of Indiana
Mr. Inslee
Mr. Moore
Mr. Capuano
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Israel
Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1v, requiring audit committee approval of nonaudit services, was not agreed to by a record vote of 19 yeas and 31 nays (Record vote no. 33).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Bereuter
Mr. Kanjorski	Mr. Baker
Mr. Sanders	Mr. Bachus
Mrs. Maloney of New York	Mr. Castle
Mr. Watt of North Carolina	Mr. King
Mr. Ackerman	Mr. Royce
Mr. Bentsen	Mr. Lucas of Oklahoma
Ms. Hooley of Oregon	Mr. Ney
Ms. Carson of Indiana	Mrs. Kelly
Mr. Sherman	Mr. Gillmor
Mr. Inslee	Mr. Weldon of Florida

Ms. Schakowsky
Mr. Gonzalez
Mr. Capuano
Mr. Ford
Mr. Hinojosa
Mr. Crowley
Mr. Israel

Mr. Ryun of Kansas
Mr. LaTourette
Mr. Manzullo
Mr. Jones of North Carolina
Mr. Ose
Mrs. Biggert
Mr. Green of Wisconsin
Mr. Shays
Mr. Fossella
Mr. Cantor
Mr. Grucci
Ms. Hart
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi
Mr. Maloney of Connecticut
Mr. Moore
Mr. Lucas of Kentucky
Mr. Shows

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, 1cc, prohibiting independent directors from serving as consultants, was not agreed to by a record vote of 20 yeas and 38 nays (Record vote no. 34).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. Baker
Mrs. Maloney of New York	Mr. Bachus
Mr. Ackerman	Mr. Castle
Mr. Maloney of Connecticut	Mr. King
Ms. Hooley of Oregon	Mr. Ney
Ms. Carson of Indiana	Mr. Barr of Georgia
Mr. Sherman	Mrs. Kelly
Mr. Inslee	Mr. Gillmor
Ms. Schakowsky	Mr. Cox
Mr. Moore	Mr. Weldon of Florida
Mr. Gonzalez	Mr. Ryun of Kansas
Mr. Capuano	Mr. LaTourette
Mr. Hinojosa	Mr. Manzullo
Mr. Clay	Mr. Jones of North Carolina
Mr. Israel	Mr. Ose
Mr. Ross	Mrs. Biggert
	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Shadegg
	Mr. Fossella
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart

Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi
Mr. Watt of North Carolina
Mr. Bentsen
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1dd, providing for shareholder approval executive stock option plans, was not agreed to by a record vote of 22 yeas and 34 nays (Record vote no. 35).

YEAS	NAYS
Mr. Leach	Mr. Oxley
Mrs. Roukema	Mr. Baker
Mr. Bereuter	Mr. Bachus
Mr. Castle	Mr. King
Mr. Gillmor	Mr. Royce
Mr. LaFalce	Mr. Ney
Mr. Kanjorski	Mr. Barr of Georgia
Ms. Waters	Mrs. Kelly
Mr. Sanders	Mr. Cox
Mrs. Maloney of New York	Mr. Weldon of Florida
Mr. Watt of North Carolina	Mr. Ryun of Kansas
Mr. Ackerman	Mr. LaTourette
Mr. Bentsen	Mr. Manzullo
Ms. Hooley of Oregon	Mr. Jones of North Carolina
Ms. Carson of Indiana	Mr. Ose
Mr. Sherman	Mrs. Biggert
Mr. Moore	Mr. Green of Wisconsin
Mr. Gonzalez	Mr. Toomey
Mr. Capuano	Mr. Shays
Mr. Ford	Mr. Shadegg
Mr. Hinojosa	Mr. Fossella
Mr. Shows	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Maloney of Connecticut
	Mr. Inslee
	Mr. Lucas of Kentucky
	Mr. Crowley
	Mr. Israel
	Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. Ackerman, no. 1hh, auditor independence, was not agreed to by a record vote of 18 yeas and 40 nays (record vote no. 36).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. Baker
Mrs. Maloney of New York	Mr. Bachus
Mr. Watt of North Carolina	Mr. Castle
Mr. Ackerman	Mr. King
Ms. Carson of Indiana	Mr. Royce
Mr. Sherman	Mr. Barr of Georgia
Ms. Lee	Mrs. Kelly
Mr. Inslee	Mr. Gillmor
Mr. Capuano	Mr. Cox
Mr. Ford	Mr. Weldon of Florida
Mr. Hinojosa	Mr. Ryun of Kansas
Mr. Crowley	Mr. LaTourette
Mr. Clay	Mr. Manzullo
Mr. Israel	Mr. Ose
	Mrs. Biggert
	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Shadegg
	Mr. Fossella
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Bentsen
	Mr. Maloney of Connecticut
	Ms. Hooley of Oregon
	Mr. Moore
	Mr. Gonzalez
	Mr. Lucas of Kentucky
	Mr. Shows
	Mr. Ross

The following other amendments were also considered by the Committee:

An amendment in the nature of a substitute by Mr. Oxley, no. 1, making various technical and substantive changes to the bill, was agreed to by a voice vote.

An amendment by Mr. Lucas of Kentucky to the amendment by Mrs. Biggert, no. 1b(1), addressing the composition of the PRO, was agreed to by a voice vote.

An amendment by Mr. Watt to the amendment by Mrs. Biggert, no. 1b(3), striking the scienter requirement, was NOT AGREED TO by a voice vote.

An amendment by Ms. Hooley of Indiana and Mr. Maloney of Connecticut to the amendment by Mrs. Biggert, no. 1b(5), requiring that any independent public or certified accountant who certifies a financial statement to maintain the audit work papers and other related information for a minimum of 7 years, was agreed to by a voice vote.

An amendment by Mr. Watt to the amendment by Mrs. Biggert, no. 1b(6), striking certain language from the amendment, was not agreed to by a voice vote.

An amendment by Mr. Capuano to the amendment by Mrs. Biggert, no. 1b(7), addressing the qualification time of public members of the PRO, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mrs. Maloney of New York, no. 1c, making changes in the code of ethics, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1d, striking a requirement to consult with State regulators, an amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1e, addressing the filing of disclosures in other formats, an amendment to the amendment in the nature of a substitute by Mr. Bentsen, no. 1f, addressing transactions involving real time disclosure, an amendment to the amendment in the nature of a substitute by Mr. Bentsen, no. 1g, calling for improved transparency of loans to officers and directors, an amendment to the amendment in the nature of a substitute by Ms. Waters, no. 1h, providing that disgorgement funds be distributed to pension fund victims, an amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1i, addressing enhanced oversight of periodic disclosures by issuers, and an amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1j, addressing disclosure of insider and director relationships, were agreed to en bloc by unanimous consent.

An amendment to the amendment in the nature of a substitute, by Mr. Gonzalez, (as amended by unanimous consent), no. 1o, requiring a GAO study of certain standards of professional conduct for attorneys and their protection of investors, was agreed to by a voice vote.

An amendment by Mr. Watt to the amendment by Mr. Gonzales, no. 1o(1), requiring the report to identify pertinent regulatory or legislative steps, was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1p, addressing real time disclosure of financial information, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1q, requiring recommendations for regulatory and statutory changes to studies, and an amendment to the amendment in the nature of a sub-

stitute by Mr. Watt, no. 1r, addressing regulations for penalties for manipulation of auditors, were offered en bloc and were agreed to by a voice vote

An amendment to the amendment in the nature of a substitute by Mr. Watt, (as modified by unanimous consent), no. 1s, minimizing burdensome rules on issuers for disclosures required under the bill, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mrs. Maloney, no. 1t, restoring oversight of energy derivatives to the Commodity Futures Trading Commission, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1u, addressing auditor independence, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Sherman, no. 1w, addressing the scope of non-audit practice, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce (as modified by unanimous consent), no. 1x, addressing auditor/issuer employment restrictions (cooling-off period), was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1y, addressing the role of audit committee, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Bentsen and Mr. Watt (as modified by unanimous consent), no. 1z, providing authority to bar additional nonaudit services, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Kanjorski (as modified by unanimous consent), no. 1aa, lengthening the statute of limitations for certain private rights of action, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1bb, addressing the removal of unfit corporate officers, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce (as modified by unanimous consent), no. 1ee, requesting a GAO study of investment banks, was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1ff, requiring the mandatory rotation of auditors every 8 years, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Kanjorski, no. 1gg, restoring aiding and abetting liability, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Capuano and Mr. Lucas of Kentucky, no. 1ii, clarifying PRO activity, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Inslee, no. 1jj, addressing energy pricing disclosure, was withdrawn.

Substitute amendment to the amendment in the nature of a substitute offered by Mr. LaFalce, no. 1kk, was not agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3763 authorizes the Commission to take steps designed to increase the oversight of accountants that certify financial statements required under the securities laws, increase transparency of financial statements filed with the Commission, and increase the accountability of officers and directors of public companies. The legislation promotes these goals and objectives by directing the Commission to undertake rule makings and studies in areas related to the above goals.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

A cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available in time for the filing of this report. The Committee estimates that budget authority will be made available to the SEC at approximately the levels authorized in the legislation.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

Designates this title as the "Corporate and Auditing Accountability, Responsibility and Transparency Act of 2002."

Section 2. Auditor Oversight

Subsection 2(a). The Federal securities laws, and the rules and regulations thereunder, require that certain financial statements of public companies be audited by an independent public or certified public accountant and filed with the Securities and Exchange Commission. The legislation requires the establishment of a public regulatory organization (PRO) to perform certain review and disciplinary functions with respect to accountants who audit those financial statements. Subsection 2(a) provides that the Commission may not accept any financial statement unless the certifying accountant (1) is subject to a system of review by a PRO established in accordance with the section and (2) has not been determined in the most recent such review to be not qualified to audit the statements.

Subsection 2(b). Subsection 2(b) requires the Commission to adopt rules establishing criteria by which an organization may become a "recognized PRO." Subsection 2(b) specifies certain criteria that must be included. The board of any PRO must include members of the accounting profession and "public members" who are not members of the accounting profession. The board must be composed of five members, at least three of whom are "public members" and two of whom are members of the accounting profession with recent experience in auditing public companies. The Board will often be faced with complex and specialized issues related to financial reporting and the application of professional and other competency standards in real-world settings. Board members who are licensed, practicing accountants and who understand the issues involved in audits of public companies will bring a valuable perspective and needed expertise to the Board's deliberations.

Paragraph 2(b)(1) further provides that each member of the Board shall meet such standards of financial literacy as determined

by the Commission. This requirement is intended to ensure that only individuals whose background demonstrates a solid understanding of the purposes and methods of financial reporting, and the auditing of financial statements, shall serve on the Board.

The details of the Board's specific operations, such as the frequency of Board meetings, staffing levels, and the full- or part-time nature of service on the Board, are left to the discretion of the Commission.

Subsection 2(b) also makes clear that a PRO must have the capacity to enforce compliance by accountants, and persons associated with accountants, with the provisions of the bill, professional ethics and competency standards, and the PRO's own rules. A PRO must have the authority to impose sanctions, including the power to bar accountants temporarily or permanently from reviewing financial statements of public companies if the PRO finds that the accountant acted knowingly or intentionally. A PRO must also be organized, and have the capacity, to review accountants' work product and to review potential conflicts of interest involving accountants. As subsection 2(j) further clarifies, such reviews are not intended to include work performed for non-public companies or any nonaudit work.

A PRO must also have in place procedures to minimize, deter, and resolve conflicts of interest involving its board members. A PRO must also publicly disclose, and make available for public comment, its proposed review procedures and methods. A PRO must consult with State boards of accountancy and must have in place procedures for notifying those boards and the Commission of the results and findings of the PRO's reviews. Paragraph 2(b)(9) provides that the PRO have a mechanism to allow the organization to operate on a self-funded basis and to ensure that the organization is not solely dependent upon members of the accounting profession for funding. The phrase "not solely dependent" is intended to require that the PRO have a mechanism to obtain funding from other users of audited financial statements who will benefit from the PRO's oversight of accountants and persons associated with accountants.

An organization that satisfies the criteria to be a recognized PRO is granted the authority to impose sanctions against the accountants it reviews. Sanctions may be imposed only after the PRO has conducted a review and provided an opportunity for a fair hearing and has made any of the following findings: that the accountant or associated person (1) violated professional standards of independence, ethics, or competency; (2) has been found by the Commission or a court of competent jurisdiction to have violated the Federal securities laws or a rule or regulation thereunder; (3) conducted an audit under circumstances in which independence standards were violated, (including new independence standards which section 2 requires the Commission to adopt, as discussed below) or (4) impeded, obstructed, or failed to cooperate with the PRO's review. By referring to the profession's standards of independence, ethics, or competency, subparagraph 2(b)(3)(A) authorizes the PRO to sanction violations of the Code of Professional Conduct, U.S. Auditing Standards, and the profession's Statements on Quality Control Standards as they exist today or may be modified in the future. The PRO will have the authority to enforce these standards, but

standard-setting powers will remain with the SEC and/or the profession as is the case today.

Subparagraph 2(b)(3)(C) empowers the PRO to impose sanctions on an accountant when the PRO finds that the accountant (or an associated person) has conducted an audit that was materially affected by an impairment of auditor independence. Subparagraph 2(b)(3)(C), which requires a determination of material impact on the audit, should govern most instances of alleged violations of independence, although there may be certain serious violations that could result in sanctions under subparagraph 2(b)(3)(A) even though a material impact is lacking.

The PRO's sanctions may include a determination that an accountant is not qualified to certify a financial statement, or certain categories of financial statements, or that a particular person associated with an accountant is not qualified to participate in the certification of a financial statement or certain categories of financial statements. Paragraph 2(b)(3) is not intended to require the PRO to conclude, in all cases of knowing or intentional misconduct, that a particular person or audit firm is not qualified to participate in the certification of financial statements. Moreover, as subsection 2(j) states expressly, because the PRO's jurisdiction runs to the qualification of accountants to perform audit services for public companies, disqualification by the PRO does not preclude an accountant or a person associated with an accountant from performing audit services for non-public companies or from performing any nonaudit services.

The PRO is given the authority to request the SEC subpoena or otherwise compel the testimony of witnesses or the production of documents for purposes of conducting auditor reviews. This subpoena power should be exercised in order to ensure that relevant information is obtained from persons or entities not otherwise within the PRO's sanctioning authority. The taking of evidence referred to in the last sentence of this subsection includes both the taking of testimony and the production of documentary evidence.

Subsection 2(c). Paragraph 2(c)(1) requires the Commission to revise its regulations to provide that, for financial statements required to be certified by an independent public or certified public accountant, an accountant will not be considered independent of its audit client if it provides that client with financial information system design or implementation services or internal audit services. Paragraph 2(c)(2) authorizes the Commission to review the impact of nonaudit services on auditor independence in the event services that have not previously been the subject of Commission or congressional scrutiny are offered by accounting firms, in order to determine whether the list of prohibited nonaudit services should be modified. Subsection 2(c) does not mandate that the Commission prescribe new rules relating to nonaudit services and is intended only to clarify that the Commission must report the results of any such review to the Committee. Paragraph 2(c)(5) requires that the Commission revise its regulations regarding disclosures of audit and other services if such disclosures are still deemed necessary in light of the new prohibitions on financial systems design and implementation and internal audit outsourcing, and to ensure that audit services, services provided in connection with an audit, and all other services are appropriately categorized. Under Paragraph

2(c)(6), the Commission is required to propose and make final such revisions within 90 and 270 days, respectively, of the enactment of the bill.

Subsection 2(d). Subsection 2(d) sets out certain procedures to govern the PRO review and hearing process. Paragraph 2(d)(1) provides that any finding made pursuant to an accountant review that a financial statement audited by an accountant and submitted to the Commission may have been materially affected by an impairment of auditor independence, or by a violation of professional ethics and competency standards, must be submitted to the Commission, and that the Commission must promptly notify an issuer of any such finding that relates to the issuer's financial statements. The Board should act in all instances with regard for fairness and due process. For this reason, the notifications required by this subsection should be made only after the accountant or audit firm is formally notified of the Board's finding and provided a meaningful opportunity to contest it, pursuant to procedures to be established by the Board.

Neither the Commission, the PRO, nor any other person shall disclose any information concerning an accountant review proceeding or the findings therein except as is authorized by the Act, and are exempt from disclosure under the Freedom of Information Act. Paragraph 2(d)(2) provides for protection against disclosure, whether voluntarily or through discovery, compulsory process, or any other rule, statute, or law, of information developed by or submitted to the PRO during its review and investigatory activity and its review proceedings, subject to the provisions of subparagraphs (2)(B) and (2)(C). These confidentiality provisions govern with regard to other provisions of this legislation, including any provisions relating to any notifications required by this section. Neither the Commission nor the PRO may disclose the results of any finding until the completion of Commission review, or the conclusion of the 30–day period for seeking review, if no motion for review is filed within the period. This provision does not authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request from another Federal agency, or a Federal court order in an action brought by the United States, or the Commission. If the PRO provides information to a Federal department or agency other than the SEC, such information remains subject to the protections against disclosure otherwise provided for by this subsection. Paragraph (d)(3) provides that the findings of the PRO are made inadmissible in any civil proceeding as evidence of any alleged violation of the securities laws, and are not to be accorded collateral estoppel effect as to compliance or noncompliance with the law or any standard of liability, in any judicial or administrative proceeding.

Subsection 2(e). Subsection 2(e) sets out certain procedures for Commission review of PRO proceedings. The Commission is authorized to review PRO findings and sanctions and is authorized to affirm, modify, or set aside the sanctions. The reference to the submission of affidavits and the presentation of oral arguments in paragraph 2(e)(2) is not meant to preclude the submission of legal briefs or memoranda on the issues before the Commission.

Subsection 2(f). Commission review must include an opportunity for a hearing, though the Commission may limit the hearing solely

to consideration of the record before the PRO and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction. While the hearing before the Commission must consist of the record before the PRO and arguments for or against affirmation, modification, or rejection of the PRO's findings and conclusions, this limitation is not meant to preclude the Commission from considering newly discovered evidence for which there is a reasonable explanation as to why it was not available or presented in the PRO's proceeding, nor is it meant to preclude the Commission from taking into account evidence that the Commission concludes that the PRO improperly failed to consider.

Subsection 2(g). A recognized PRO is required to file with the Commission any proposed rule or rule change. The Commission shall publish notice of the proposed rule and give interested persons an opportunity to comment. The Commission must approve any such proposed rule if the Commission finds that the proposal is consistent with the requirements of this bill and the relevant rules and regulations thereunder. Certain categories of rules may be given effect immediately upon being filed with the Commission, though the Commission has authority summarily to abrogate any such rule and require that it be filed as a proposed rule for notice and comment.

Subsection 2(h). Subsection 2(h) authorizes the Commission to abrogate, add to, or delete from the rules of a PRO on the Commission's own initiative after publishing notice and giving interested persons an opportunity to submit data, views, and arguments on the proposal.

Subsection 2(i). Subsection 2(i) provides that a PRO shall make and keep for prescribed periods such records and reports as the Commission by rule requires. Paragraph 2(i)(2) authorizes the Commission, by rule or order, to enable a PRO to perform duties and functions that the Commission determines are necessary and appropriate for the public interest or the protection of investors, and to carry out the purposes of this bill and the securities laws.

Consistent with other provisions throughout this section, a PRO cannot be authorized under this subsection to enforce the securities laws or to promulgate accounting, audit or other professional standards. A PRO has power to make rules for its internal processes and for its enforcement activities. The Commission may not delegate any substantive rulemaking power that it has to a PRO.

Subsection 2(j). Subsection 2(j) confirms that the authority of any PRO reaches only the actions of accountants related to the review or audit of public companies.

Subsection 2(k). Subsection 2(k) provides that the Commission must propose rules to implement section 2 within 90 days and shall implement such rules within 270 days of prescribing them.

Subsection 2(l). Subsection 2(l) establishes effective dates and transition periods. Paragraph 2(l)(2) provides that if the Commission has failed to recognize any PRO within one year after the date of enactment of the Act, the Commission must perform the duties of the PRO with respect to any certified financial statement for any fiscal year that ends before one year after any PRO is recognized by the Commission. This subsection is not intended to expand the powers of the Commission or the size of the federal bureaucracy but rather to have the specified functions performed by a PRO. The

Commission should devote the resources necessary to ensure that a qualified PRO is recognized within one year after the date of enactment of the bill and should recognize any qualified PRO on a timely basis. In the event that it is not possible to recognize a PRO within one year, the Commission should ensure that a PRO is approved as soon as possible after that one-year deadline, and in the interim the Commission should not act to assume or to exercise the functions of the PRO beyond the degree necessary for investor protection.

Section 3. Improper Influence on Conduct of Audits

Section 3 makes it unlawful for any officer, director, or affiliated person of an issuer to take any action, in contravention of a rule adopted by the Commission, to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in auditing that issuer's financial statements, for the purpose of rendering such financial statements materially misleading. The Commission has exclusive civil authority to enforce section 3 and any rule or regulation thereunder. The authority conferred by this section is in addition to, and does not preempt, any other authority of the Commission with respect to this area, such as the Commission's current authority under Exchange Act Rule 13b2–2, which prohibits making materially false or misleading statements to auditors, and the Commission's cease-and-desist authority under Section 21C of the Exchange Act or its injunctive powers under Section 21 of the Act with respect to third parties who cause others to violate, or aid and abet violations of, the securities laws and rules and regulations thereunder.

Section 4. Real-Time Disclosure of Financial Information

Section 4 amends section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), to require the Commission to adopt rules requiring issuers of securities registered under section 12 of that Act to make public disclosure, on a rapid and essentially contemporaneous basis, of information concerning the issuer's financial condition and operations. The Commission has exclusive civil authority to enforce this provision and any rule or regulation thereunder.

Section 4 also provides that the Commission must adopt rules providing that any disclosure required by the Federal securities laws, or rules or regulations thereunder, concerning any sale of securities by an officer, director, or other affiliated person of the issuer of the securities must be made electronically to the Commission before the end of the business day following the day of the transaction, and must be made available electronically by the Commission before the end of the business day following the day received by the Commission. Any issuer that maintains a corporate web site is also required to publish the disclosure, by any of its officers, directors, or affiliated persons, on its web site by the end of the day following the day the disclosure is received by the Commission. The Commission must also revise its forms and schedules as necessary to facilitate compliance with these requirements.

Section 5. Insider Trades During Pension Fund Blackout Periods Prohibited

Section 5 makes it unlawful for any person who holds, directly or indirectly, beneficial ownership of more than 10 percent of any class of equity securities (other than exempted securities) registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is a director or officer of the issuer of those securities, to purchase or sell, directly or indirectly, any equity securities of the issuer (other than exempted securities) during a blackout period. A "blackout period" is defined in section 22 of this bill.

Section 5 also provides for recovery, by the issuer, of any profit resulting from a trade made in violation of this provision. If the issuer fails to bring a suit within 60 days of a request to do so, or fails to prosecute the suit diligently, an owner of any security of the issuer may bring a suit in the issuer's name. No suit may be brought after 2 years from the date the profit was realized. Section 5 does not govern transactions where the beneficial owner was not such at both the time of the purchase and sale, or any transaction exempted by the Commission as not within the purposes of section 5. Section 5 permits the Commission to issue rules clarifying the application of this provision, to ensure adequate notice to all persons affected, and to prevent evasion of this provision.

Section 6. Improved Transparency of Corporate Disclosures

Section 6 requires the Commission to revise its regulations under the securities laws to expand the disclosure requirements for the financial reports and registration statements of public companies, so that they provide adequate and appropriate disclosure of certain of an issuer's off-balance sheet transactions and relationships. Section 6 requires these new disclosures to the extent that the transactions or relationships are not otherwise reported in the issuer's financial statements at fair value, and are reasonably likely to materially affect the issuer's liquidity or availability of, or requirements for, capital resources, or the financial condition or results of operations of the issuer. The Committee intends that these disclosures would be made on a fair value basis. Issuers must also disclose loans extended to officers, directors or other persons affiliated with the issuer on terms or conditions that are not otherwise available to the public.

Section 6 also requires the Commission to conduct an analysis of the extent to which disclosure of additional or reorganized information may be required to improve the transparency, completeness or usefulness of financial statements and other disclosures. In its analysis, the Commission must consider requiring the identification of the key accounting principles that are most important to the issuer's reported financial condition or results of operation, and that require the most difficult, complex or subjective judgments by management. The Commission must also consider requiring an explanation, where material, of how different available accounting principles applied, along with the judgments made in their application and the likelihood of materially different reported results if different assumptions were to prevail. In addition, the Commission must consider requiring an explanation of trading activities where an issuer engages in the business of trading non-exchange traded

contracts, accounted for at fair value, but where a lack of market price quotations necessitates the use of fair value estimation techniques. Finally, the Commission must consider establishing requirements relating to the presentation of information in plain language, and requiring any other disclosures in financial statements or other disclosure documents that would improve transparency.

Section 7. Improvements in Reporting on Insider Transactions and Relationships

Section 7 requires the Commission to initiate a proceeding to propose changes in its rules and regulations with respect to financial reporting to require increased disclosure of relationships between the issuer and affiliates of the issuer and officers, directors or employees of the issuer; and officers, directors or employees of the affiliate and unrelated other entities to the extent such relationships create a conflict of interest for those individuals. The proceeding must examine relationships with philanthropic organizations, insider controlled affiliates, joint ownership interests in real property, and the provision of services by related persons. If a rulemaking is initiated pursuant to this section, the Commission is directed to do so within 180 days of the enactment of the bill.

Section 8. Codes of Conduct

Section 8 directs the New York Stock Exchange, the American Stock Exchange and the Nasdaq stock market to file with the Commission proposed rules that would prohibit their listing any security for a company that has not adopted a code of ethics for the company's senior officials. The Commission is given the authority to impose this requirement on any other national securities exchange.

Section 8 requires that the Commission revise its regulations pertaining to disclosures on form 8K to require the immediate disclosure of any change or waiver of such code of ethics of an issuer.

Section 9. Enhanced Oversight of Periodic Disclosures by Issuers

Section 9 directs the Commission to review disclosures of issuers required to file statements under the securities laws on a more regular and systematic basis. The Commission is directed to create a risk rating system to determine the frequency of such reviews. The Commission is directed to ensure that no issuer shall be reviewed less than once every three years. The section provides that the Commission may not disclose the risk rating of any issuer.

Section 10. Retention of Records

Subsection 10(a) requires CPAs who certify financial statements under the securities laws to prepare and maintain final audit work papers and other information that are necessary to support an accountants report on such financial statements for a period of no less than 7 years. The term "work papers" was used as a term of art, to be defined with reference to the professional standards governing the subject.

Subsection 10(b) defines the term "accountants report" to mean a document in which an accountant identifies a financial statement and sets forth his opinion regarding that financial statement or an assertion that an opinion cannot be expressed.

The purpose of this section is to ensure that necessary auditing documents are retained in the event that a CPA's conclusions are subsequently reviewed. At the same time, the legislation is not intended to impose unnecessary or excessively costly burdens on accountants, or to require that every document, or every iteration of a document, be preserved. The requirements of this section may be satisfied through the use of electronic records.

Section 11. Commission Authority to Bar Persons from Serving as Officers or Directors

Section 11 gives the Commission authority to issue an order in connection with a cease-and-desist proceeding to bar a person who has violated section 17(a)(1) of the Securities Act of 1933 (Securities Act) or section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) from acting as an officer or director of a company that is registered with or required to file reports with the Commission (public company), if that person's conduct demonstrates substantial unfitness to serve as an officer or director of a public company. Under current law, section 20(e) of the Securities Act and section 21(d)(2) of the Exchange Act, the Commission can only obtain such a bar in a Federal court proceeding.

The administrative bar authority granted in section 11 is an extraordinary remedy, allowing the Commission effectively to deprive a person of his or her livelihood. In other circumstances where the Commission or other Federal agencies have similar authority, the agency generally has plenary regulatory authority over the industry in which the individual is employed and the bar extends only to that industry. For example, under section 15(b)(6) of the Exchange Act, the Commission has the authority to bar an individual from being associated with a broker or dealer, and section 203(f) of the Investment Advisers Act of 1940 gives the Commission authority to bar an individual from being associated with an investment adviser. Brokers, dealers and investment advisers are all subject to comprehensive regulatory schemes overseen by the Commission. *See also* 12 U.S.C. 1818(e)(1) (2002) (permitting debarment of banking officials); 15 U.S.C. 80a–35 (2002) (permitting debarment of officers, directors or members of investment company advisory boards). On the other hand, while the securities laws require disclosure by public companies, there has been no legislative mandate to the Commission to create a comprehensive regulatory scheme applicable to public companies or their employees and directors. Such a mandate would be antithetical to the disclosure philosophy of our securities laws, which has been the basis for the development of our strong securities markets. Moreover, while an individual barred from the securities industry may seek employment in many other industries, an individual barred from serving as an officer or director of a public company is prohibited from employment in such capacity by over 17,000 companies.

The Committee has therefore included several protections in section 11 to make clear that the standard for the Commission to apply in issuing a bar order is high, and to ensure that the Commission exercises this authority with care and only in circumstances where it is justified by the magnitude of the individual's offense and the need to protect investors from potential recidivism by the individual.

The first protection is the requirement in paragraph (a) that the Commission must find that a person's conduct demonstrates "substantial unfitness" to serve as an officer or director of a public company before he or she can be barred. This is the same standard that is applicable to Federal court proceedings in which the Commission seeks to bar an individual from serving as an officer or director of a public company.

The Committee also believes it is appropriate to set forth factors for the Commission to consider in making a determination whether an individual's conduct demonstrates substantial unfitness. These factors are derived from case law interpreting this standard under section 20(e) of the Securities Act and section 21(d)(2) of the Exchange Act. *See, e.g., SEC* v. *McCaskey,* 2001 U.S. Dist. LEXIS 13571 (S.D.N.Y. 2001); *SEC* v. *Farrell,* 1996 U.S. Dist. LEXIS 22681 (W.D.N.Y. 1996); *SEC* v. *Patel,* 61 F.3d 137 (2d Cir. 1995); *SEC* v. *Shah,* 1993 U.S. Dist. LEXIS 10347 (S.D.N.Y. 1993); *see also* Jayne W. Barnard, *When is a Corporate Executive "Substantially Unfit to Serve,"* 70 N.C.L. Rev. 1489 (1992). They are: (1) the severity of the person's conduct giving rise to the violation, and the person's role or position when engaged in the violation; (2) the person's degree of scienter; (3) the person's economic gain as a result of the violation; and (4) the likelihood that the conduct giving rise to the violation, or similar conduct as defined in subsection (a), may recur if the person is not so prohibited. Paragraph (b) omits one of the factors considered by the courts, whether the person is a "repeat offender." The Committee believes that repeat offender status is an implicit consideration in the fourth factor, the likelihood that similar conduct will recur.

An additional protection is provided in paragraph (c), which stays the enforcement of a Commission bar order during the period in which application may be made for judicial review of the bar order and, if a timely application for judicial review is made, pending the entry of a final order resolving the application. This will prevent an individual from losing his or her position while exercising the right of appeal to a Federal court. Without this stay provision, the Committee is concerned that an administrative bar would have its intended effect even if ultimately deemed by a court to have been inappropriate, in that the individual would have been deprived of his or her livelihood in the intervening period and might have a difficult time attaining a comparable position to that lost due to the improper bar.

Finally, the Committee notes that section 11 provides, as does section 20(e) of the Securities Act and section 21(d)(2) of the Exchange Act, that the Commission may issue an order to bar an individual *conditionally or unconditionally,* and *permanently or for such period of time as it shall determine* (emphasis added). Accordingly, the Committee expects that the Commission will, as the courts have done, issue orders tailored to the individuals and facts before it. *See SEC* v. *McCaskey,* 2001 U.S. Dist. LEXIS 13571 (S.D.N.Y. 2001) (rejecting permanent bar order in favor of six-year bar); *SEC* v. *Farrell,* 1996 U.S. Dist. LEXIS 22681 (W.D.N.Y 1996) (rejecting comprehensive bar order in favor of industry specific bar).

Section 12. Disgorging Insiders Profits From Trades Prior to Correction of Erroneous Financial Statements

Section 12 directs the Commission to conduct an analysis of whether any officer or director of an issuer should be required to disgorge profits gained or losses avoided from the sale of the securities of such issuer during the six month period preceding the filing of a restated financial statement. The Commission is authorized to issue rules requiring disgorgement under those circumstances. The Committee intends that, if the Commission chooses to issue rules pursuant to this section, it do so only after providing safeguards and exemptions to ensure that such disgorgement is required only in cases where the Commission can prove extreme misconduct on the part of that officer or director. The Committee intends that the Commission would, in establishing any such rules, ensure fair and impartial procedures, with a right to appeal, for the adjudication of any action to require disgorgement.

Section 13. Securities and Exchange Commission Authority To Provide Relief

Section 13 provides that, if the Commission obtains funds pursuant to a disgorgement proceeding from Enron Corporation, Arthur Andersen LLC, or any affiliate, subsidiary, officer, director or principal shareholder thereof, the Commission will establish an allocation system for those funds that will give priority to former employees of Enron Corporation who were participants in its employee retirement plan. The section directs that any monies in payment of a civil penalty against Enron or Arthur Andersen must be paid into the disgorgement fund. The section also authorizes the Commission to accept donations for the disgorgement fund.

Section 14. Study of Rules Relating to Analyst Conflicts of Interest

Section 14 requires the Commission to conduct a study and review of any final rules by any self-regulatory organization registered with the Commission, related to matters involving equity research analyst conflicts of interest. The study must include a review of the effectiveness of the final rules in addressing matters of objectivity and integrity of equity research analyst reports and recommendations. Section 14 also requires the Commission to submit a report on its study and review to Congress within 180 days of the delivery of the final rules to the Commission, with annual updates thereafter. The report to Congress must include recommendations, including any recommendations for additional self-regulatory organization rulemakings regarding equity research analysts.

Section 15. Review of Corporate Governance Practices

Section 15 requires the Commission to conduct a study and review of corporate governance standards and practices, to determine whether they serve the best interests of shareholders. In conducting the study, the Commission must seek the views of State securities and corporate regulators, and must report on its analysis in its next annual report to Congress.

The study must include an analysis of whether current standards and practices promote full disclosure to shareholders of relevant information; whether corporate codes of ethics are adequate for shareholder protection; the extent to which conflicts of interest are

aggressively reviewed; the extent to which sufficient legal protection exists to ensure that any manager who attempts to manipulate or unduly influence an audit is subject to appropriate sanctions and liability; whether the rules, standards and practices relating to determining whether independent directors are in fact independent are adequate; whether rules relating to the independence of directors serving on audit committees are adequate to protect investors and are uniformly applied; whether the duties and responsibilities of audit committees should be established by the Commission; and what further or additional practices or standards might best protect investors and promote the interests of shareholders.

Section 16. Study of Enforcement Actions

Section 16 requires the Commission to review and analyze all of its enforcement actions involving violations of securities law reporting requirements and all restatements of financial statements over the past five years. The purpose of the review is to identify the areas of reporting most susceptible to fraud, inappropriate manipulation or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities. The Commission must report its findings to Congress within 180 days of enactment, and use its findings to revise rules and regulations as necessary.

Section 17. Study of Credit Rating Agencies

Section 17 requires the Commission to conduct a study of the role and function of credit rating agencies in the operation of the securities markets, and report on the analysis to the President and Congress within 180 days of enactment. In conducting the study, the Commission must examine the role of credit rating agencies in the evaluation of securities issuers, and the importance of that role to investors and the functioning of the securities markets; any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers; any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; any barriers to entry into the business of acting as a credit rating agency and measures needed to remove such barriers; and any conflicts of interests in the operation of credit rating agencies and measures to prevent those conflicts or ameliorate their consequences.

Section 18. Study of Investment Banks

Section 18 directs the General Accounting Office (GAO) to conduct a study on the role of investment banks and financial advisors in assisting public companies in manipulating their earnings and obfuscating their true financial condition. The section directs the GAO to address the role of investment banks in the bankruptcy of Enron Corporation, the failure of Global Crossing, and in the creation and marketing of transactions designed to obfuscate a company's financial picture. The GAO is directed to report to Congress within 180 days of enactment of the bill.

Section 19. Study of Model Rules for Attorneys of Issuers

Section 19 directs the Comptroller General to conduct a study of the Model Rules of Professional Conduct promulgated by the American Bar Association and rules of professional conduct applicable to attorneys established by the Commission to determine whether such rules provide adequate guidance to attorneys with respect to their ethical obligations. The Comptroller General is ordered to report to the House Financial Services Committee and the Senate Banking Committee.

Section 20. Enforcement Authority

Section 20 grants the Commission all of the authorities granted to it under the securities laws in order to enforce the bill. Commission actions under the legislation, including actions on rules and regulations, are subject to review in the same manner as actions under the securities laws.

Section 21. Exclusion for Investment Companies

Section 21 clarifies that certain provisions of the bill are not meant to apply to investment companies registered with the Commission under the Investment Company Act of 1940. Because those companies are already subject to a thorough regulatory regime, the application of these provisions would be inappropriate.

Section 22. Definitions

Section 22 defines terms used in the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill does not amend existing law.

MINORITY VIEWS

The collapse of the Enron Corporation provided irrefutable evidence of serious, systemic problems in our financial reporting system and our capital markets. Far from being an isolated instance, Enron was only the most spectacular example of what has become a common phenomenon—earnings manipulation and deceptive accounting by our largest companies. Before Enron, company after company—Waste Management, Sunbeam, Cendant, W.R. Grace, and many others—were found to have manipulated their accounting to present a picture to investors that did not match reality. As evidenced by the record number of investigations opened by the SEC thus far this year, the problem has only become more acute.

The safeguards that should protect investors from such practices have failed at every level in company after company, overwhelmed by the temptation for companies to cheat, overstate, or obscure their financial disclosure to improve short-term results and meet analyst or investor expectations. The stock prices of many companies have been whipsawed by any suggestion of possible accounting problems, indicating a clear decline in confidence in our financial reporting system. While this system has long been viewed as the best in the world, its reputation has suffered from a string of record financial restatements and prosecutions of some of our largest companies.

Virtually all of the witnesses heard by the Committee spoke of the need for auditors to be willing to stand up to management and for audit committees to take real responsibility for audits and auditors. To do this, we must significantly alter the relationship of the auditor to its client, strengthen the functioning of audit committees, and provide meaningful ongoing oversight of the auditing profession. We should use this opportunity to restore the vitality of critical investor safeguards by ensuring that auditors and audit committees can once again act as the first line of defense in protecting investors. The market alone cannot provide an effective or lasting solution to these problems.

To restore confidence in the integrity of our markets, this Congress should enact tough and credible legislation to address the serious and growing problem of earnings management and accounting fraud. There are a number of important areas in which the bill reported out of the Financial Services Committee should be improved:

Oversight of the accounting industry. In spite of the critical role that auditors play in the financial reporting system for publicly traded companies under our securities laws, oversight of the industry has been left entirely to the industry itself, with little input from either the SEC or the public. While a broad consensus has formed on the need for a new public oversight body for the accounting profession, there are major differences on the attributes such

a regulator must have to be credible and effective. The bill reported out of committee leaves these matters to SEC rulemaking, effectively allowing these issues to remain open to debate even after Congress has acted.

Given the importance of these decisions to the effectiveness of the new regulator, Congress should not delegate this task. Without a clear mandate from Congress, the structure and role of the new regulator will be the subject of continued debate and will be more limited than needed to effectively oversee the auditing industry. Delegating decisions on its duties and powers to the SEC provide an opportunity for the authority of the new regulator to be weakened.

The new regulator should have authority to set audit quality and independence standards, rather than just enforcing the standards set by industry bodies. While the regulator could chose to rely on existing industry standards if it determines they are adequate to ensure high-quality audits, the regulator should be able to use the results of the experience gained from reviewing auditors and audits to determine where new or more explicit standards are needed in problematic areas. Congress should strengthen the bill reported by Committee to provide this authority.

The new regulator also should have clear disciplinary and investigative powers. Unlike the tangled jumble of existing industry organizations, the new regulator must be given the tools to provide meaningful quality control and to conduct timely investigations and disciplinary actions. It must have the ability to draw on its experiences to strengthen the industry standards as necessary to provide the high level of quality and independence that we expect of auditors of public companies. Clarifying the authority of the regulator will enable it to better coordinate with the SEC, rather than waiting years until after SEC actions are completed. The provisions of the bill reported out by the committee should be significantly improved in this regard.

Auditor independence. While an auditor's first duty should be to the public, auditors currently are beholden to their audit clients for fees for non-audit services that may far exceed the audit fees they receive. Data now available under the Security and Exchange Commission's disclosure rule on non-audit fees makes clear that, for the auditors of many large public companies, audit fees are a minute percentage of the fees they receive. The non-audit services that auditors provide to the public companies they audit must be limited and must be made subject to real oversight by the audit committees.

The bill reported out of committee includes no real limits on the non-audit services that auditors provide to their audit clients. While H.R. 3763 includes a provision that purports to prohibit auditors from providing audit clients with two non-audit services, financial information design and implementation and internal audit outsourcing. The language of the provision references the existing SEC rules in a way that includes only the limited restrictions that the SEC currently places on these services. By codifying existing regulatory carve-outs, the provision effectively makes no change in existing law, not even going as far as the accounting industry has announced it is willing to go voluntarily.

The bill reported out of committee should have included real limits on the non-audit services that auditors provide to their audit clients where those services create conflicts for auditors, such as services that result in the auditor auditing its own work. Additionally, while some non-audit services do not create conflicts for auditors or are difficult to separate from audit work, the provision of such services by an auditor to its audit client should be carefully examined to ensure that the full scope of services provided are in the best interests of shareholders, rather than auditors or management.

Congress should strengthen the bill reported by the committee to include provisions to ensure that the full scope of the relationship between an auditor and its audit client are subject to the control of the audit committee in order to enable the audit committee to effectively oversee the auditor. A requirement for audit committee approval of non-audit services would promote the independence of the audit by ensuring that it is responsible to the audit committee and shareholders, rather than to management. Such a provision would enable an audit committee to determine what makes sense for the individual company and its auditor in light of the full range of services and activities of its auditor.

The role of the audit committee. The bill reported out of committee calls for a study of corporate governance, but does not in any meaningful way address to whom the outsider auditors report. In our view, the bill should have included a provision that would have required an issuer's auditor to be appointed by and report to the audit committee of the board of directors. In addition, it is vital that the audit committee has an ongoing dialogue with the outside auditor as a critical check on the veracity of the financial statements and internal controls of the company.

The record before this Committee demonstrates that the audit committee has the responsibility to shareholders to make sure that their auditors are doing their job, raise the tough questions, and ensure that the financial picture of the company is accurate and portrays the true nature of the financial condition of the company. It is clear from the Enron case, as the special committee of the board of directors of Enron concluded, that at every level corporate oversight failed, including and perhaps most acutely at the audit committee level. It is important to vest the audit committee with the clear authority to closely oversee the work of the auditors and take seriously their oversight responsibilities.

Mr. Harvey Pitt, Chairman of the Securities and Exchange Commission, said in a recent speech, "while shareholder approval of outside auditors is now a well established aspect of corporate governance, I believe we should also explore whether the audit committee should be vested with the initial decision about which firm is recommended to the shareholders. I also believe that audit committees should have the authority to fire outside auditors (or prevent management from firing them)."

Independent directors serving as consultants. The bill reported out of the Committee does not include provisions to ensure that independent directors are truly independent. The bill should have included a provision that would prevent the practice of paying independent directors as "consultants" while they serve on the board.

Lynn Turner, former Chief Accountant of the SEC, among others, have argued that paying directors as consultants is back door compensation that fundamentally undermines their independence. The critical question is whether "independent" directors who are receiving significant consulting compensation would challenge the same management that is paying them to serve as consultants. Such a provision is a simple step in ensuring that directors act in the best interests of shareholders.

Analysts conflicts. The role of many securities analysts in continuing to push Enron's stock even as the company was collapsing is well recognized. In spite of the evidence before us, the committee failed to address the core issues that undermine securities analysts' independence. That is, compensation arrangements of analysts at investment banks provide incentives to win and retain business, rather than provide investors with high-quality unbiased research.

To ensure securities analyst independence Congress should have adopted a provision that would require:

- That the self regulatory organizations adopt rules to ban equity research analysts from holding equity interests in the companies that they cover;
- That analyst compensation not be based on investment banking revenue, but permit compensation to be based on the overall success of the firm;
- That the investment banking department have no input into the compensation, hiring, firing and promotion of securities analysts.
- That SROs establish criteria for evaluating analyst research quality and require that analyst compensation be principally based on the quality of an analyst's research.

Disgorgement of bonuses and other incentives. In an attempt to restore accountability among corporate officers, the President unveiled a 10 point plan. One of the meritorious items in that plan was a call to require disgorgement of incentive-based compensation from officers and directors in cases of false or misleading statements made by such officers that required an accounting restatement. Instead of attempting to implement this straightforward and common sense proposal, the Committee simply tasked the SEC to study the question of disgorgement. Additionally, the report language attempts to raise the bar to use of this remedy by stating that it should be used only where the Commission can prove "extreme misconduct". Establishing such a high standard will make it very difficult, if not impossible, for the Commission to obtain disgorgement of millions of dollars that executives have earned from stock sales at the same time they were committing securities fraud.

We, however, believe that Congress should act quickly to provide the SEC with the power to require disgorgement of compensation in an administrative proceeding. Congress should have adopted a provision that requires the SEC to prescribe regulations to require disgorgement in certain proceedings to seek disgorgement of salaries, commissions, fees, bonuses and other incentive-based compensation obtained by an officer or director of an issuer who made or caused to be made the filing of financial statements that were at the time false or misleading.

In addition, the bill should have included a provision that provides in any action or proceeding brought or instituted by the Commission under the securities laws against any person who made or caused to be made the filing of financial statements that were at the time false or misleading or for causing, or aiding and abetting any other violation of the securities laws may be required to disgorge salaries, commissions, fees, bonuses and other incentive-based compensation.

CEO and CFO certification of financial statements. Another important policy initiative advanced by the President was a recommendation that the principal executive officer or officers and the principal financial officer or officers (CEO and CFO), or persons performing similar functions, certify to the accuracy of the financial statements included in each annual or quarterly report filed or submitted to the SEC. It reasonable to expect that corporate officers stand behind the company's public disclosure and be subject to sanction should they violate that certification. Regrettably, the bill reported out of the Committee did not include this worthwhile policy initiative. Congress should implement this initiative by including provisions to require the CEO and the CFO to certify that:

1. Such officer has reviewed the report.

2. To the officer's knowledge, the report does not contain any untrue statement of material fact or omit to state a material fact to make the statements made, not misleading.

3. Based on the officer's knowledge, the financial statements, and other financial information fairly present the financial condition and results of the company as of, and for, the periods presented in the report.

4. Such officers have created and maintained internal procedures to ensure that material information relating to the company is made known to them by others within the company.

5. The company has evaluated its internal controls including the fact that the singing officers have disclosed to the auditors and the audit committee that: (a) all significant deficiencies in such controls and (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal controls. In addition, the signing officers have indicated in the report to shareholders whether or not there were significant changes in internal controls subsequent to the date of the evaluation of internal controls and whether any corrective actions have been taken.

If such provisions are adopted, the SEC would have available to it civil money penalties and injunctive power to enforce these provisions as provided in the Securities Exchange Act of 1934. Morever, a willful violation of these certifications would carry criminal sanctions under Section 32 of the Securities Exchange Act of 1934.

Officer and director bars. An amendment sponsored by the majority that was ultimately adopted has made it more difficult rather than less for the SEC in an administrative proceeding to seek an officer and director bar against individuals who are guilty of misconduct. The bill purports to authorize the SEC to bar officers and directors from serving as an officer or director in proceedings brought by the Commission under Section 21(c) of the Securities and Exchange Act of 1934. Such a bar would be permitted if the

"person's conduct demonstrates substantial unfitness to serve as an officer or director of any issuer." In determining unfitness the Commission *shall consider* several factors including "the likelihood that the conduct giving rise to the violation, or similar conduct * * * may recur if the person is not so prohibited."

Congress provided the SEC with explicit authority to seek officer and director bars in 1990. Current statutory authority provides the Commission the power to seek an officer and director bar against any individual who violates Section 10(b) of the Securities Exchange Act or Section 17(a)(1) of the Securities Act, and whose "conduct demonstrates substantial unfitness to serve as an officer or director" of a public company. Unfortunately, the Commission's ability to obtain officer and director bars, however, has been limited by judicial interpretations of the phrase "substantial unfitness" that have created a very high standard for obtaining a bar. Several courts apply a six-part test which require, among other factors, a showing that the misconduct is likely to recur. This is precisely the same test that the bill reported out by this Committee codified. The Director of Enforcement of the SEC has said in a recent speech, "the result has been, unbelievably, that in some cases courts have refused to impose permanent officer and director bars on individuals who have engaged in egregious—even criminal—misconduct." The argument that this bill facilitates officer and director bars for those guilty of serious misconduct is an illusion. It codifies exactly the barriers that the SEC says are the problem.

The bill should have included legislative modifications to existing law that facilitate officer and director removal in either a court proceeding or in an administrative action. For example, the Committee should have adopted a sensible and real approach to the problem by deleting the word "substantial" before unfitness in Section 21(d)(2) of the Exchange Act. The effect would have been to lessen the unreasonable barriers imposed by some courts on the SEC to obtain such bars. In addition, the Committee should have been empowered as a remedy in its own administrative proceeding to seek an officer and director bar without going to district court to seek such a bar, without imposing unreasonable factors that serve only to frustrate their efforts.

These provisions, had they been adopted, would have given effect to the President's plan to make it easier for the SEC to bar officers and directors who have been determined to have committed serious misconduct. The majority amendment approved by the Committee on a party-line vote has only succeeded in making much more difficult, while claiming that they have enacted real reform.

Shareholder approval of stock option plans. SEC Chairman Pitt has expressed his concern that stock options no longer serve to align the interests of management with those of shareholders and described specific measures that he felt were needed to make option plans work as intended. He stated that all stock option plans that allow a director or officer to acquire stock should be approved by shareholders, that decisions on granting options to senior management should be entrusted to a committee of independent directors, and that corporate boards should consider whether officers demonstrate sustained, long-term growth before options can be exercised.

The growing evidence that many executives have reaped significant rewards from stock option plans even as their companies' earnings and stock prices have plummented calls for measures to realign shareholder and executive interests. The bill reported out of committee failed to include such provisions. Institutional investors, pension plans, and others have urged that shareholders be permitted to vote on stock option plans that are used to provide executive compensation. The manner in which stock options and other compensation is provided to executives is an important factor in aligning the interests of shareholders and executives, and should be subject to shareholder approval.

Private litigants' rights. The Committee bill fails to address very serious problems that confront pension funds and other investors who seek compensation for securities fraud. In the 1991 *Lampf* case, in a 5–to–4 decision, the Supreme Court significantly shortened the period of time in which investors may bring securities fraud action. The decision requires the victims of fraud to bring suit by the earlier of 1 year from the discovery of the fraud or 3 years from the fraudulent act.

Securities fraud is very difficult to detect because the guilty parties often hide or destroy incriminating evidence. The shorter period provide by *Lampf* does not allow individual investors adequate time to discover and pursue violations of securities laws. Moreover as the dissenting Justices in *Lampf* argued, the case's strict statute of limitations runs counter to the almost uniform rule in the United States rejecting short statutes of limitations for fraud-based causes of action.

The unreasonably brief statue of limitations has already had an adverse impact in the Enron debacle. In February of this year, in testimony before the Senate Judiciary Committee, Christine O. Gregorie, the Attorney General for the State of Washington, testified that Washington State Pension fund suffered over $100 million in losses because of the misleading financial statements issued by Enron and audited by Andersen, but, was only able to make a claim for approximately $50 million because of the restricted statute of limitations that applies to securities fraud cases.

Both Democratic and Republican past-SEC Chairman have stressed the integral role of private lawsuits in maintaining investor confidence. However, since the Supreme Court's 1994 decision in the *Central Bank of Denver* case, the victims of fraud have not been able to bring claims against the accountants, lawyers, investment banks and others who aid and abet issuers in misleading the public about the real state of company balance sheets.

Our market regulatory system depends on the independent professionals who verify and analyze the disclosures of publicly held companies. The reduced threat of legal liability for these "gatekeepers" that has existed since 1994 has helped to create an environment of laxity, where gatekeepers do not do all that they reasonably can to protect the investing public.

Although the Private Securities Litigation Reform Act partially overturned the *Central Bank of Denver* decision by restoring some of the SEC's authority to pursue aiders and abettors of securities fraud, that legislation failed to give the victims of fraud the right to sue those who aid issuers in misleading and defrauding the pub-

lic. Moreover, the 1995 legislation made it harder for the SEC to prove the complicity of aiders and abettors. The 1995 law requires the SEC to prove that a defendant had actual knowledge of the fraud. The 1995 law does not permit the SEC to prosecute aiders and abettors who acted recklessly with regard to their client's fraud, which was the standard prior to the 1994 Supreme Court case.

In 1995, both Federal and State securities regulators, academics and others (including a principal sponsor of the 1995 legislation), urged Congress to overturn the *Lampf* and the *Central Bank of Denver* decisions. We should now heed these recommendations and provide investors a fairer system of redress in the courts.

First, Congress should now enact a statute of limitations that provides that a private securities fraud case may be brought not later than the earlier of five years after the date on which the alleged violation occurred or three years after the date in which the alleged violation was discovered. Such a provision would provide a reasonable period of time in which to uncover and investigate fraud and, then, bring meritorious claims.

Second, Congress should reverse the trend toward laxity by restoring a private right of action against those gatekeepers who are guilty of aiding securities fraud and by restoring the pre-1994 liability standards for the professionals who are supposed to protect the public.

JOHN J. LAFALCE.
PAUL E. KANJORSKI.
BERNARD SANDERS.
LUIS V. GUTIERREZ.
JANICE D. SCHAKOWSKY.

ADDITIONAL VIEWS OF MR. LAFALCE

Auditor Rotation. The bill reported out by the Committee does not contain a provision relating to auditor rotation. Moreover, the bill does not provide for rotation of the audit partner as suggested by Chairman Pitt in his testimony before the Committee. Enron's failure heightened concerns about the sufficiency of the current rules and independence standards for auditors, particularly concerning the scope of non-audit services that auditors perform for their audit clients. Enron's auditor, for instance, received a very significant portion of its fees from Enron for services that were not related to its audit responsibilities. It also raised the real concern that auditors' were more interested in the client than their duty to the public.

The bill should have included a provision to mandate rotation. Auditor rotation would provide a number of important benefits including:

1. A new audit firm would bring to bear a skepticism and fresh perspective that a long-term auditor may lack;
2. Second, auditors tend to rely excessively on prior years' working papers, including prior tests of client's internal control structure, particularly if fees are concerned;
3. Long-time auditors may come to believe that they understand the totality of the client's issues, and may look for those issues in the next audit rather than staying open to the other possibilities; and
4. An auditor may place less emphasis on retaining a client relationship even at the cost of a compromised audit if it knows the engagement will end after several years.

Auditor/Issuer Employment Restrictions. The bill reported out by the Committee does not provide for any restrictions on hiring of audit firm partners and other employees of an audit client. It therefore fails to address a critical issue that compromises the independence of an audit. As we saw dramatically in Enron and Global Crossing, members of the audit team often move to work for their audit clients. The bill should have included provisions that limit the practice of hiring members of an audit team who will then become the client of their former audit team colleagues. This dynamic creates a revolving door system that compromises the ability for auditors to challenge management regarding their accounting practices and public disclosure.

JOHN J. LAFALCE.

ADDITIONAL VIEWS OF MR. SHERMAN

Mr. Chairman, I voted for H.R. 3763 with the hope that, on the House floor, we will improve this legislation. I do not know if I will support this legislation on the floor, if we are unable to improve it. As approved by the Committee, the bill is a modest but inadequate step forward.

BRAD SHERMAN.

ADDITIONAL VIEWS OF MESSRS. BENTSEN AND WATT

The Bentsen/Watt amendment adopted by the Committee to H.R. 3763, the Corporate and Auditing Accountability, Responsibility and Transparency Act of 2002, is designed to enhance the Securities and Exchange Commission's (the "SEC") authority with respect to scope of services provided by auditors deemed to be independent under the bill. Specifically, the Bentsen/Watt amendment authorizes the SEC to review services provided by auditors of public companies to audit clients to determine whether the provision of such services would impact the auditor's independence. Additionally, the amendment provides authority for the SEC to adopt rules to modify the list of prohibited services in order to cure any such conflict. Finally, the amendment directs the SEC to report to Congress periodically on such reviews and rules.

We offered this amendment because we believed that the underlying bill insufficiently addressed the need for ongoing oversight by the SEC of potential conflicts between auditors and their clients to the detriment of investors. Failure to adequately ensure auditor independence potentially puts investors at risk and undermines confidence in markets. Additionally, we believed efforts to expand the list of prohibited services by statute, while well intentioned, to be inflexible and would be better handled by regulators. While some have argued, not incorrectly, that the SEC has existing authority to address conflicts of auditors of public issuers, we also believe the Congress should be on record endorsing and encouraging such authority when necessary to protect investors and ensure confidence in the markets.

KEN BENTSEN.
MELVIN L. WATT.

DISSENTING VIEWS OF MR. PAUL

Seldom in history have supporters of increased state power failed to take advantage of a real or perceived crisis to increase government interference in our economic and/or personal lives. Therefore we should not be surprised that the events surrounding the Enron bankruptcy are being used to justify the expansion of federal regulatory power contained in H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002 (CARTA).

So ingrained is the idea that new federal regulations will prevent future Enrons, that the debate on H.R. 3763 has largely been between CARTA's supporters and those who believe this bill does not provide enough federal regulation and control. I would like to suggest that before Congress imposes new regulations on the accounting profession, perhaps we should consider whether the problems the regulations are designed to address were at least in part caused by prior government interventions into the market. Perhaps Congress could even consider the almost heretical idea that reducing federal control of the markets is in the public's best interest. Congress should also consider whether the new regulations will have costs which might outweigh any (marginal) gains. Finally, Congress should contemplate whether we actually have any constitutional authorization to impose these new regulations, instead of simply stretching the Commerce Clause to justify the program de jour.

CARTA establishes a new bureaucracy with enhanced oversight authority of accounting firms, as well as the authority to impose new mandates on these firms. CARTA also imposes new regulations regarding investing in stocks and enhances the power of the Securities and Exchange Commission (SEC). However, companies are already required by federal law to comply with numerous mandates, including obtaining audited financial statements from certified accountants. These mandates have enriched accounting firms and may have given them market power beyond what they could obtain in a free market. These laws also give corrupt firms an opportunity to attempt to use political power to gain special treatment for federal lawmakers and regulators at the expense of their competitors and even, as alleged in the Enron case, their employees and investors.

When Congress establishes a regulatory state it creates an opportunity for corruption. Unless CARTA eliminates original sin, it will not eliminate fraud. In fact, by creating a new bureaucracy and further politicizing the accounting profession, CARTA may create new opportunities for the unscrupulous to manipulate the system to their advantage.

Even if CARTA transformed all (or at least all accountants) into angels, it could still harm individual investors. First, new regula-

tions inevitably raise the overhead costs of investing. This will affect the entire economy as it lessens the capital available to businesses, thus leading to lower rates of economic growth and job creation. Meanwhile, individual investors will have less money for their retirement, their children's education, or to make a down payment on a new home.

Government regulations also harm investors by inducing a sense of complacency. Investors are much less likely to invest prudently and ask tough questions of the companies they are investing in when they believe government regulations are protecting their investments. However, as mentioned above, government regulations are unable to prevent all fraudulent activity, much less prevent all instances of imprudent actions. In fact, as also pointed out above, complex regulations create opportunities for illicit actions by both the regulator and the regulated. Publicly held corporations already comply with massive amounts of SEC regulations, including the filing of quarterly reports that disclose minute details of assets and liabilities. If these disclosure rules failed to protect Enron investors, will more red tape really solve anything?

In truth, investing carries risk, and it is not the role of the federal government to bail out every investor who loses money. In a true free market, investors are responsible for their own decisions, good or bad. This responsibility leads them to vigorously analyze companies before they invest, using independent financial analysts. In our heavily regulated environment, however, investors and analysts equate SEC compliance with reputability. The more we look to the government to protect us from investment mistakes, the less competition there is for truly independent evaluations of investment risk.

Increased federal interference in the market could also harm consumers by crippling innovative market mechanism to hold corporate managers accountable to their shareholders. As former Treasury official Bruce Bartlett pointed out in a recent Washington Times column, during the 1980s, so-called corporate raiders helped keep corporate management accountable to shareholders through devices such as the "junk" bond, which made corporate takeovers easier. Thanks to the corporate raiders, managers knew they had to be responsive to shareholder needs or they would become a potential target for a takeover.

Unfortunately, the backlash against corporate raiders, led by demographic politicians and power-hungry bureaucrats eager to expand the financial police state, put an end to hostile takeovers. Bruce Bartlett, in the Washington Times column sited above, described the effects of this action on shareholders, "Without the threat of a takeover, managers have been able to go back to ignoring shareholders, treating them like a nuisance, and giving themselves bloated salaries and perks, with little oversight from corporate boards. Now insulated from shareholders once again, managers could engage in unsound practices with little fear of punishment for failure." Ironically, the federal power grab which killed the corporate raider may have set the stage for the Enron debacle, which is now being used as an excuse for yet another federal power grab!

The free market, if left alone by Congress, is perfectly capable of disciplining businesses who engage in unsound practices. After all, before the government intervened, Arthur Anderson and Enron had already begun to pay a stiff penalty, a penalty delivered by individual investors acting through the market. This shows that not only can the market deliver punishment, but it can also deliver this punishment swifter and more efficiently than the government. We cannot know what efficient means of disciplining companies would emerge from a market process but we can know they would be better at meeting the needs of investors than a top-down regulatory approach.

Of course, while the supporters of increased regulation claim Enron as a failure of "ravenous capitalism," the truth is Enron was a phenomenon of the mixed economy, rather than the operations of the free market. Enron provides a perfect example of the dangers of corporate subsidies. The company was (and is) one of the biggest beneficiaries of Export-Import (Ex-Im) Bank and Overseas Private Investment Corporation (OPIC) subsidies. These programs make risky loans to foreign governments and businesses for projects involving American companies. While they purport to help developing nations, Ex-Im and OPIC are in truth nothing more than naked subsidies for certain politically-favored American corporations, particularly corporations like Enron that lobby hard and give huge amounts of cash to both political parties. Rather than finding ways to exploit the Enron mess to expand federal power, perhaps Congress should stop aiding corporations like Enron pick the taxpayer's pockets through Ex-Im and OPIC.

If nothing else, Enron's success at obtaining state favors is another reason to think twice abut expanding political control over the economy. After all, allegations have been raised that Enron used the same clout by which it received corporate welfare to obtain other "favors" from regulators and politicians, such as exemptions from regulations that applied to their competitors. This is not an uncommon phenomenon when one has a regulatory state, the result of which is that winners and losers are picked according to who has the most political clout.

Congress should also examine the role the Federal Reserve played in the Enron situation. Few in Congress seem to understand how the Federal Reserve system artificially inflates stock prices and causes financial bubbles. Yet, what other explanation can there be when a company goes from a market value of more than $75 billion to virtually nothing in just a few months? The obvious truth is that Enron was never really worth anything near $75 billion, but the media focuses only on the possibility of deceptive practices by management, ignoring the primary cause of stock overvaluations: Fed expansion of money and credit.

The Fed consistently increased the money supply (by printing dollars) throughout the 1990s, while simultaneously lowering interest rates. When dollars are plentiful, and interest rates are artificially low, the cost of borrowing becomes cheap. This is why so many Americans are more deeply in debt than ever before. This easy credit environment made it possible for Enron to secure hundreds of millions in uncollateralized loans, loans that now cannot be repaid. The cost of borrowing money, like the cost of everything

else, should be established by the free market—not by government edict. Unfortunately, however, the trend toward overvaluation will continue until the Fed stops creating money out of thin air and stops keeping interest rates artificially low.

Finally, I would remind my colleagues that Congress has no constitutional authority to regulate the financial markets or the accounting profession. Instead, responsibility for enforcing laws against fraud are under the jurisdiction of the state and local governments. This decentralized approach actually reduces the opportunity for the type of corruption referred to above—after all, it is easier to corrupt one federal official than 50 state officials!

In conclusion, H.R. 3763 expands federal power over the accounting profession and the financial markets. By creating new opportunities for unscrupulous actors to maneuver through the regulatory labyrinth, increasing the costs of investing, and preempting the market's ability to come up with creative ways to hold corporate officials accountable, this legislation harms the interests of individual workers and investors. Furthermore, this legislation exceeds the constitutional limits on federal power, interfering in matters the 10th amendment reserves to state and local law enforcement. I therefore urge my colleagues to reject this bill. Instead, Congress should focus on ending corporate welfare programs which provide taxpayer dollars to large politically-connected companies, and ending the misguided regulatory and monetary policies that helped create the Enron debacle.

RON PAUL.

DISSENTING VIEWS OF MR. CAPUANO

The Enron and Global Crossing bankruptcies and the increase in corporate earnings restatements have shaken the public's confidence in our financial system. Congress has a responsibility to help restore this confidence by enacting legislation that strengthens oversight of our accounting system, improves corporate governance, and modernizes financial reporting standards. While this legislation makes a number of significant reforms, I oppose H.R. 3763 because I have serious concerns with two provisions in the legislation reported by the Financial Services Committee.

The first provision addresses the composition of the Public Regulatory Organization (PRO) created by the legislation. Under an amendment that was adopted, the board will consist of five members, with at least two of these being persons licensed to practice public accounting and with significant experience auditing public companies. The three other board members must be members of the public.

Unfortunately, the definition of the public members of the board in the amendment is troubling. It specifically allows members of the accounting profession to serve as public members of the board as long as they have not practiced in at least two years. In addition, the legislation fails to adequately define "members of the accounting profession." This would potentially allow the entire board to be comprised of practicing and non-practicing members of the accounting profession.

While I strongly believe that members of the accounting profession should serve on the PRO, and that all members should meet a standard of financial literacy, I also believe that at least one public member of the board should come from the accounting profession. Individuals working in other professions, including those managing pension funds, trading in the financial markets, those involved with corporate governance issues, or governmental experts on budgeting and finance could bring important knowledge, experience and perspective to the board. In addition, appointing members from outside the accounting profession will give the PRO greater credibility as a protector of investor interests.

The second provision directs the Securities and Exchange Commission (SEC) to analyze whether officers and directors of issuers should be required to disgorge profits gained or losses avoided by the sale of securities related to the filing of a restatement of earnings on the part of the issuer. However, the bill only directs the SEC to investigate requiring disgorgement for transactions undertaken in the six months prior to the restatement. Since many SEC investigations uncover earnings manipulation over a span of several years, requiring disgorgements of inappropriate gains over a limited time period will not give an accurate picture of the profits

gained by the manipulation of financial statements by insiders. This arbitrary six-month limit should be lifted.

Without significant changes to these provisions to address these concerns, I cannot support this legislation.

MICHAEL E. CAPUANO.

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