

107TH CONGRESS
2D SESSION

S. 2056

To ensure the independence of accounting firms that provide auditing services to publicly traded companies and of executives, audit committees, and financial compensation committees of such companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2002

Mr. NELSON of Florida (for himself and Mrs. CARNAHAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To ensure the independence of accounting firms that provide auditing services to publicly traded companies and of executives, audit committees, and financial compensation committees of such companies, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Integrity in Auditing
5 Act of 2002”.

1 **SEC. 2. PROHIBITION ON CONTEMPORANEOUS PERFORM-**
 2 **ANCE OF AUDIT AND NON-AUDIT SERVICES.**

3 (a) IN GENERAL.—Section 10A of the Securities Ex-
 4 change Act of 1934 (15 U.S.C. 78j–1) is amended by add-
 5 ing at the end the following:

6 “(g) AUDITOR INDEPENDENCE.—

7 “(1) PROHIBITED ACTIVITIES.—An independent
 8 public accountant, and any affiliated person thereof,
 9 may not provide to any covered issuer, during the
 10 same calendar year in which it provides any auditing
 11 or related service required by this title for that
 12 issuer—

13 “(A) any management consulting service;

14 “(B) any other service that is not related
 15 to the audit, except as provided in paragraph
 16 (4); or

17 “(C) any other service that could result in
 18 a potential conflict of interest or otherwise im-
 19 pair the independence of the auditor, as deter-
 20 mined by the Commission.

21 “(2) AUDITOR ROTATION.—No independent
 22 public accountant, or any affiliated person thereof,
 23 may provide auditing or related services required by
 24 this title for any one covered issuer in any year for
 25 more than 7 consecutive years.

1 “(3) CONFLICTS OF INTEREST.—No inde-
 2 pendent public accountant, or affiliated person
 3 thereof, may become employed in a management or
 4 other policymaking position, as determined by the
 5 Commission, by any covered issuer for which that
 6 accountant or affiliated person provided auditing
 7 services required by this title in any capacity during
 8 the one-year period preceding the date of employ-
 9 ment.

10 “(4) TAX CONSULTING EXCEPTION.—Para-
 11 graph (1) does not prohibit the provision of tax con-
 12 sulting services to a covered issuer by an inde-
 13 pendent public accountant or affiliated person there-
 14 of contemporaneously with any auditing or related
 15 service, with the prior written approval of the audit
 16 committee of that issuer, or its equivalent.

17 “(5) COVERED ISSUERS.—In this subsection,
 18 the term ‘covered issuer’ means an issuer, the secu-
 19 rities of which are registered under section 12.”.

20 (b) COMMISSION REGULATIONS.—Not later than 90
 21 days after the date of enactment of this Act, the Securities
 22 and Exchange Commission shall issue final regulations to
 23 carry out subsection (g) of section 10A of the Securities
 24 Exchange Act of 1934, as added by this section, including,
 25 consistent with that subsection—

1 (1) a definition of the term “management con-
 2 sulting service” that includes consulting relating
 3 to—

4 (A) information technology infrastructure
 5 design and implementation;

6 (B) organizational behavior;

7 (C) marketing; and

8 (D) business strategy;

9 (2) the identification of other non-audit services
 10 prohibited by paragraph (1) of that subsection; and

11 (3) a determination of management and other
 12 policymaking positions prohibited by paragraph (3)
 13 of that subsection.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall become effective on the date of final
 16 issuance of regulations under subsection (b).

17 **SEC. 3. DISCLOSURE OF AND LIMITS ON CORPORATE RELA-**
 18 **TIONSHIPS.**

19 (a) REGULATIONS REQUIRED.—Not later than 90
 20 days after the date of enactment of this Act, the Commis-
 21 sion shall issue final regulations to require that—

22 (1) together with each financial statement or
 23 other report required to be filed with the Commis-
 24 sion pursuant to the securities laws, each covered

1 issuer shall disclose the nature, duration, and extent
2 of each relationship described in subsection (b); and

3 (2) the audit committee and compensation com-
4 mittee of each covered issuer shall consist solely of
5 independent directors.

6 (b) RELATIONSHIPS.—For purposes of subsection

7 (a)(1), a relationship described in this subsection is—

8 (1) a relationship—

9 (A) by blood, marriage, or adoption, not
10 more remote than first cousin;

11 (B) of any professional nature; and

12 (C) of any financial nature; and

13 (2) a relationship between—

14 (A) any director, director nominee, an im-
15 mediate family member of such director or di-
16 rector nominee, or any organization in which
17 such director, director nominee, or immediate
18 family member has an interest; and

19 (B) the covered issuer, any other director
20 or director nominee, any executive officer or ex-
21 ecutive officer nominee, an immediate family
22 member of such other director, director nomi-
23 nee, executive officer, or executive officer nomi-
24 nee, or any organization in which such other di-
25 rector, director nominee, executive officer nomi-

1 nee, or immediate family member has an inter-
2 est;

3 (c) DEFINITIONS.—As used in this section—

4 (1) the term “audit committee” means a com-
5 mittee of the board of directors of a covered issuer
6 responsible for reviewing—

7 (A) the financial reports and other finan-
8 cial information provided by that issuer to any
9 governmental body or the public;

10 (B) the systems of that issuer of internal
11 controls regarding finance, accounting, legal
12 compliance, and ethics that management and
13 the board of directors have established; and

14 (C) the auditing, accounting, and financial
15 reporting processes of that issuer generally;

16 (2) the term “Commission” means the Securi-
17 ties and Exchange Commission;

18 (3) the term “compensation committee” means
19 a committee of the board of directors of a covered
20 issuer responsible for reviewing and setting the com-
21 pensation of certain executive officers of the issuer;

22 (4) the term “covered issuer” means an issuer,
23 as defined in section 3 of the Securities Exchange
24 Age of 1934 (15 U.S.C. 78c), the securities of which

1 are registered pursuant to section 12 of that Act (15
2 U.S.C. 78l);

3 (5) the terms “director” and “affiliated person”
4 have the same meanings as in section 3 of the Secu-
5 rities Exchange Act of 1934 (15 U.S.C. 78c); and

6 (6) the term “independent director” means an
7 individual director of a covered issuer who is not, or
8 in the 5 years preceding the date of commencement
9 of service as a director, has not been—

10 (A) employed by that issuer or an affili-
11 ated person thereof in an executive capacity;

12 (B) an employee or owner of a firm or
13 other entity that is a paid adviser or consultant
14 to that issuer or an affiliated person thereof;

15 (C) employed by a significant customer or
16 supplier of that issuer or an affiliated person
17 thereof;

18 (D) a party to a personal services contract
19 with that issuer, its chairman, or other execu-
20 tive, officer, or affiliated person thereof;

21 (E) an employee, officer, or director of a
22 foundation, university, or other nonprofit orga-
23 nization that receives significant grants or en-
24 dowments from that issuer or any affiliated per-
25 son thereof;

1 (F) a relative of an executive of that issuer
 2 or any affiliated person thereof; and

3 (G) part of an interlocking directorate in
 4 which any executive officer of that issuer serves
 5 on the board of another corporation that em-
 6 ploys the director.

7 **SEC. 4. SENSE OF THE SENATE REGARDING ENFORCE-**
 8 **MENT.**

9 It is the sense of the Senate that—

10 (1) tough enforcement, including criminal pros-
 11 ecution whenever possible, is the most effective de-
 12 terrent to fraudulent activity; and

13 (2) the Commission should take a firm, swift
 14 approach to wrongdoers.

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