

107TH CONGRESS
2D SESSION

S. 2460

To guarantee persons who invest in publicly held companies accurate information about the financial condition of such companies so they can make fully informed investment decisions, to increase the independence of the Financial Accounting Standards Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6, 2002

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To guarantee persons who invest in publicly held companies accurate information about the financial condition of such companies so they can make fully informed investment decisions, to increase the independence of the Financial Accounting Standards Board, 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 “Shareholder Bill of
5 Rights Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) approximately 1 out of every 2 American
4 households owns stock directly or indirectly in
5 United States publicly traded companies, with sig-
6 nificant savings, educational, retirement, and other
7 investments dependent upon the effective functioning
8 of United States capital markets;

9 (2) the American public has lost confidence in
10 the quality of information they receive about the fi-
11 nancial condition of publicly traded United States
12 companies in which they may invest;

13 (3) publicly traded companies and the busi-
14 nesses that provide services related to the value and
15 exchange of the stock of such companies, including
16 auditors, financial analysts, investment bankers, and
17 stockbrokers, have too often engaged in practices
18 that fail accurately to describe, evaluate, and explain
19 the true financial situation of a company;

20 (4) publicly traded companies and the busi-
21 nesses that provide services related to the value and
22 exchange of the stock of such companies operate
23 routinely with multiple conflicts of interest between
24 and among the persons upon whom the investing
25 public depend to be independent and to protect the
26 interests of the investing public and stockholders;

1 (5) such conflicts are a significant contributing
 2 factor to the problem of misleading financial state-
 3 ments by publicly traded companies, and the disclo-
 4 sure or elimination of these conflicts will improve the
 5 credibility and reliability of the financial reporting of
 6 publicly traded companies; and

7 (6) independently issued standards establishing
 8 generally accepted accounting principles are critically
 9 important to the accuracy of the financial state-
 10 ments of publicly traded companies, and the
 11 issuance of such standards by an independent body
 12 should be respected and safeguarded.

13 **SEC. 3. ENHANCING THE INDEPENDENCE OF ACCOUNTING**
 14 **STANDARDS.**

15 (a) SAFEGUARDING INDEPENDENCE OF PRIVATE
 16 SECTOR ISSUANCE OF ACCOUNTING STANDARDS.—Sec-
 17 tion 19(a) of the Securities Act of 1933 (15 U.S.C.
 18 77s(a)) is amended—

19 (1) by striking “(a) The Commission shall” and
 20 inserting “(a)(1) The Commission shall”; and

21 (2) adding at the end the following new para-
 22 graph:

23 “(2) DELEGATION OF AUTHORITY TO ISSUE AC-
 24 COUNTING AND REPORTING STANDARDS.—

“(A) DELEGATION OF AUTHORITY.—The Commission may delegate the authority to establish, define, and improve standards of financial accounting and reporting under this section and sections 3(b) and 13(b)(1) of the Securities Exchange Act of 1934, to an independent, non-governmental organization (such as the Financial Accounting Standards Board) to benefit the public, issuers of securities, and users of financial information, and may require issuers to comply with the standards issued by such organization.

“(B) INDEPENDENT, STABLE SOURCE OF FUNDING.—

“(i) ESTABLISHMENT OF FUNDING SYSTEM.—To ensure that an organization designated under subparagraph (A) has a stable, independent, and adequate source of funding to carry out its duties under subparagraph (A)—

“(I) such organization shall, after consulting with the Secretary of the Treasury, the Commission, the Commodities Futures Trading Commission, and the national securities ex-

1 changes, establish an appropriate sys-
2 tem for assessing fees and charges
3 against issuers, independent public ac-
4 countants, and other users of financial
5 statements as may be necessary or ap-
6 propriate to defray the expenses of
7 carrying out its duties under subpara-
8 graph (A); and

9 “(II) the Commission shall pro-
10 mulgate such rules and regulations to
11 carry out this section as it deems nec-
12 essary or appropriate in the public in-
13 terest or for the protection of inves-
14 tors.

15 “(ii) LIMITATION ON FUNDS.—

16 “(I) IN GENERAL.—No fees or
17 other funds may be provided to or re-
18 ceived by an organization designated
19 under subparagraph (A) with any un-
20 derstanding or condition that the or-
21 ganization will take a particular posi-
22 tion on any matter before the organi-
23 zation.

24 “(II) USE OF FEES.—An organi-
25 zation designated under subparagraph

1 (A) shall utilize the fees it receives
2 under clause (i) to carry out its duties
3 under subparagraph (A) in a profes-
4 sional and cost-effective manner.

5 “(III) RULE OF CONSTRUC-
6 TION.—Nothing in this subsection
7 shall be construed to render such des-
8 ignated organization subject to proce-
9 dures in Congress to authorize or ap-
10 propriate public funds, or to prevent
11 such organization from utilizing addi-
12 tional sources of revenue for its activi-
13 ties, such as earnings from publica-
14 tion sales, provided that each addi-
15 tional source of revenue shall not
16 jeopardize, in the judgment of the
17 Commission, the actual and perceived
18 independence of the designated orga-
19 nization.

20 “(C) APPOINTMENT AUTHORITY OF DES-
21 IGNATED ORGANIZATION.—The Commission
22 may delegate the authority specified in subpara-
23 graph (A) only to an organization—

24 “(i) all of the appointed members of
25 which—

1 “(I) possess expertise in account-
2 ing matters; and

3 “(II) include 1 individual nomi-
4 nated by the Commission; and

5 “(ii) at least one third of the ap-
6 pointed members of which—

7 “(I) represent investors and the
8 public interest; and

9 “(II) have not recently been em-
10 ployed by or associated with a public
11 accounting firm or issuer.

12 “(D) PROMPT RESOLUTION OF ACCOUNT-
13 ING AND REPORTING MATTERS.—

14 “(i) IN GENERAL.—The organization
15 designated by the Commission under sub-
16 paragraph (A) shall resolve pending ac-
17 counting and reporting matters in a
18 prompt manner with appropriate due proc-
19 ess open to public observation and partici-
20 pation by establishing, amending, or re-
21 affirming relevant financial accounting and
22 reporting standards and related guidance.

23 “(ii) COMMISSION AUTHORITY.—If an
24 accounting or reporting matter on the pub-
25 lic agenda of the designated organization

1 remains unresolved after 2 years, any per-
 2 son may petition the Commission, or the
 3 Commission may determine on its own ini-
 4 tiative, to resolve the matter by—

5 “(I) requiring the designated or-
 6 ganization to resolve the matter by a
 7 specified date; or

8 “(II) issuing relevant accounting
 9 or reporting standards or related
 10 guidance.”.

11 (b) EFFECTIVE DATE.—The amendments made by
 12 this section shall become effective 1 year after the date
 13 of enactment of this Act, except that if the Commission
 14 delegates the authority under subparagraph (A) to the Fi-
 15 nancial Accounting Standards Board, the requirements in
 16 subparagraph (C) shall not apply to a member of the Fi-
 17 nancial Accounting Standards Board in office on the date
 18 of enactment of this Act until the conclusion of the term
 19 of office of such member.

20 (c) REGULATIONS REQUIRED.—Not later than 180
 21 days after the date of enactment of this Act, the Commis-
 22 sion shall promulgate such rules or regulations as it deems
 23 necessary or appropriate in the public interest or for the
 24 protection of investors to carry out section 19(a)(2) of the
 25 Securities Act of 1933, as added by this section.

1 **SEC. 4. ENSURING AUDITOR INDEPENDENCE.**

2 (a) IN GENERAL.—Section 10A of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78j–1) is amended—

4 (1) in subsection (d), by inserting “or sub-
5 section (g)” after “subsection (b)”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(g) AUDITOR INDEPENDENCE.—

9 “(1) BAN ON SELF-AUDIT.—An independent
10 public accountant who performs non-audit services
11 for an issuer of a publicly traded security shall not,
12 during the engagement period and for the 2-year pe-
13 riod after the date on which the engagement period
14 for such services ended, conduct an audit of any sys-
15 tem, control, transaction, or other arrangement de-
16 signed, recommended, or established by the account-
17 ant for such issuer.

18 “(2) BAN ON CONTEMPORANEOUS NON-AUDIT-
19 ING SERVICES.—Any independent public accountant
20 that conducts an audit and certifies a financial
21 statement or report under this section or section 12,
22 13, or 17 of this Act, section 7 of the Securities Act
23 of 1933 (including Schedule A of that Act), section
24 5(b), 10, or 14 of the Public Utility Holding Com-
25 pany Act of 1935, section 8 or 30 of the Investment
26 Company Act of 1940, or section 203(c)(1) of the

1 Investment Advisers Act of 1940, with respect to an
2 issuer of a publicly traded security shall not, during
3 the pendency of such audit and professional engage-
4 ment period and for the 2-year period following the
5 date upon which the relevant financial statement or
6 report is certified, provide to such issuer any non-
7 audit services, including any management con-
8 sulting, tax planning, or internal auditing services.

9 “(3) TWO-YEAR BAN ON AUDITOR EMPLOY-
10 MENT.—Any individual who, in his or her capacity
11 with an independent public accountant, participates
12 personally and substantially in an audit leading to
13 the certification of a financial statement or report
14 under this section or section 12, 13, or 17 of this
15 Act, section 7 of the Securities Act of 1933 (includ-
16 ing Schedule A of that Act), section 5(b), 10, or 14
17 of the Public Utility Holding Company Act of 1935,
18 section 8 or 30 of the Investment Company Act of
19 1940, or section 203(c)(1) of the Investment Advis-
20 ers Act of 1940, with respect to an issuer of a pub-
21 licly traded security shall not, during the pendency
22 of such audit and professional engagement period
23 and for 2 years after the date upon which the rel-
24 evant financial statement or report is certified, ac-

cept any directorship, employment, or contract for services from such issuer.

“(4) ISSUER INFORMATION REQUIRED FOR AUDIT.—

“(A) AUDITOR ACCESS TO MATERIAL INFORMATION.—With respect to any issuer that employs an independent public accountant to conduct an audit of a financial statement or report under this section or section 12, 13, or 17 of this Act, section 7 of the Securities Act of 1933 (including Schedule A of that Act), section 5(b), 10, or 14 of the Public Utility Holding Company Act of 1935, section 8 or 30 of the Investment Company Act of 1940, or section 203(c)(1) of the Investment Advisers Act of 1940, the Commission shall promulgate rules and regulations that require such issuer to provide all material information to such accountant during the course of such audit and not to withhold any material information from such accountant on the basis of privilege or for any other reason.

“(B) IMPROPER INFLUENCE ON CONDUCT OF AUDIT.—It shall be unlawful for any director, officer, or affiliated person of an issuer to

1 take any action to improperly influence, coerce,
2 manipulate, or mislead any independent public
3 accountant engaged in an audit of a financial
4 statement or report of such issuer.

5 “(5) ACCOUNTING OVERSIGHT.—To help ensure
6 effective audits and financial statements and reports
7 that fairly represent the financial condition of the
8 issuer, the audit committee of the issuer (or the
9 board of directors of the issuer if no such committee
10 exist) shall take reasonable steps to exercise over-
11 sight over the accounting practices and policies of
12 the issuer, including—

13 “(A) evaluating the relationship between
14 the issuer and the independent public account-
15 ant conducting an audit of the issuer to ensure
16 the independence and objectivity of the account-
17 ant;

18 “(B) obtaining information from such ac-
19 countant about the accounting practices and
20 policies and the financial statements and re-
21 ports of the issuer, and providing the account-
22 ant with periodic opportunities outside the pres-
23 ence of management to express any concerns
24 about such practices, policies, statements, or re-
25 ports;

1 “(C) evaluating the quality and accept-
2 ability of the accounting principles of the issuer,
3 as applied in its financial reporting, including
4 the clarity of the financial statements and re-
5 ports of the issuer and the degree of aggressive-
6 ness of the accounting principles, underlying es-
7 timates, and other significant decisions made by
8 the management of the issuer in preparing its
9 financial statements and reports; and

10 “(D) ensuring adequate public disclosure
11 of the accounting practices and policies of the
12 issuer, and of any material business activities,
13 assets, or liabilities not included in the balance
14 sheet or income statement of the issuer.”.

15 (b) EFFECTIVE DATE.—Not later than 180 days
16 after the date of enactment of this Act, the Commission
17 shall promulgate such rules or regulations as may be nec-
18 essary or appropriate to carry out section 10A(g) of the
19 Securities Exchange Act of 1934, as added by this section,
20 but whether or not such rules or regulations are promul-
21 gated by such date, the prohibitions and requirements es-
22 tablished under that subsection (g) shall take effect at the
23 end of the 240-day period beginning on the date of enact-
24 ment of this Act.

1 **SEC. 5. EMPOWERING SHAREHOLDERS.**

2 (a) TREATMENT OF SHAREHOLDER PROPOSALS.—

3 Section 14 of the Securities Exchange Act of 1934 (15
4 U.S.C. 78n) is amended by adding at the end the following
5 new subsections:

6 “(i) SHAREHOLDER PROPOSALS.—

7 “(1) IN GENERAL.—Subject to paragraph (2),
8 and notwithstanding any other provision of law, if a
9 shareholder proposal is not prohibited under the
10 laws of a State, the Commission shall not prohibit
11 a person or group of persons that is located in that
12 State from having included in the proxy statement
13 and any proxy, consent, or authorization provided to
14 the security holders of an issuer, a proposal—

15 “(A) to remove a director or to nominate
16 a person to serve as a director of the issuer;

17 “(B) to retain or remove an auditor of the
18 issuer;

19 “(C) to assess and ensure the independ-
20 ence, expertise, and active participation of the
21 members of the board of directors of the issuer;

22 “(D) to require the auditor of the issuer
23 and the chair of the audit committee of the
24 board of directors (or, if no audit committee ex-
25 ists, another member of the board of directors),
26 separately or in tandem—

1 “(i) to attend an annual meeting, ei-
2 ther on a specified date or on a routine
3 basis; and

4 “(ii) to provide responses to written
5 questions posed by security holders of the
6 issuer regarding the financial condition of
7 the issuer or a financial statement or re-
8 port of the issuer; or

9 “(E) to obtain complete disclosure regard-
10 ing, or to establish policies affecting or restrict-
11 ing, the compensation of a director, chief execu-
12 tive officer, or senior officer of the issuer, in-
13 cluding with respect to compensation provided
14 in the form of stock, stock options, phantom
15 stock units, incentive pay, deferred compensa-
16 tion, available credit, credit forgiveness, tax
17 benefits, insurance benefits, retirement benefits,
18 severance pay, consulting fees, or arrangements
19 granting preferential treatment of such persons
20 compared to other employees or creditors of
21 such issuer.

22 “(2) APPLICABILITY.—Paragraph (1) shall
23 apply only to proposals described in that paragraph
24 by a person or group of persons that is the beneficial
25 owner of voting equity securities representing a total

1 of not less than \$1,000,000 in market value, or not
2 less than 3 percent of a class of outstanding securi-
3 ties of the issuer.

4 “(j) SHAREHOLDER APPROVAL OF STOCK OPTION
5 COMPENSATION.—The Commission shall issue rules and
6 regulations which shall require prior shareholder approval
7 of any compensation plan which provides stock options to
8 a director, officer, or employee of an issuer, and which
9 does not require such stock options to be treated as an
10 expense for the purpose of ascertaining income, profit, or
11 loss in the financial statements and reports of the issuer.”.

12 (b) EFFECTIVE DATE.—Not later than 180 days
13 after the date of enactment of this Act, the Commission
14 shall promulgate such rules or regulations as may be nec-
15 essary or appropriate to carry out subsections (i) and (j)
16 of section 14 of the Securities Exchange Act of 1934, as
17 added by this section, but whether or not such rules or
18 regulations are promulgated by such date, the Commission
19 shall cease prohibiting the shareholder proposals identified
20 in that subsection (i), and shall begin requiring share-
21 holder approval of the stock option plans identified in that
22 subsection (j), at the end of the 240-day period beginning
23 on the date of enactment of this Act.

1 **SEC. 6. INCREASED DISCLOSURE OF DIRECTOR AND OFFI-**
2 **CER COMPENSATION.**

3 (a) IN GENERAL.—Section 14 of the Securities Ex-
4 change Act of 1934, as amended by this Act, is amended
5 by adding at the end the following new subsection:

6 “(k) DIRECTOR AND OFFICER COMPENSATION.—

7 “(1) BAN ON PREFERENTIAL TREATMENT OF
8 DIRECTORS OR OFFICERS.—The Commission shall
9 issue rules and regulations to prohibit an issuer
10 from providing or conveying, or agreeing to provide
11 or convey, to any director or officer of such issuer
12 any preferential treatment or preferred status com-
13 pared to any other employee or creditor of such
14 issuer regarding the satisfaction of any compensa-
15 tion or employment benefit after or in anticipation
16 of a declaration of bankruptcy by such issuer, in-
17 cluding any arrangement to ensure that a deferred
18 compensation, tax, health, insurance, or retirement
19 benefit will continue to be provided to 1 or more di-
20 rectors or officers but not other employees.

21 “(2) DIRECTOR DISCLOSURE OF ITEMS OF
22 VALUE.—Each member of a board of directors of an
23 issuer shall disclose to the Commission on a quar-
24 terly basis all contributions or items of value pro-
25 vided by such issuer, another board member, or any
26 officer of the issuer to the disclosing board member

1 or to any person, including any immediate family
2 member or business entity, affiliated with the dis-
3 closing board member.

4 “(3) DIRECTOR AND OFFICER LOANS.—The
5 Commission shall promulgate rules and regulations
6 to require an issuer to disclose, within 48 hours, in
7 a filing that shall be made available to the public—

8 “(A) the establishment of a credit facility
9 by the issuer for use by or on behalf of a direc-
10 tor or officer of the issuer, and the material
11 terms of such credit facility including the inter-
12 est rate assessed by the issuer for the issuance
13 of credit and whether the director or officer
14 may satisfy a credit extension by tendering se-
15 curities;

16 “(B) any use of such credit facility;

17 “(C) any payment made on the credit facil-
18 ity, including by tendering securities to the
19 issuer;

20 “(D) any forgiveness by the issuer of
21 amounts owed on the credit facility; and

22 “(E) in the annual submission filed by the
23 issuer, with respect to each such credit facility
24 established for a director or officer, a summary
25 of the information provided to the Commission

1 during the period covered by such filing regard-
2 ing each such credit facility.”.

3 (b) **EFFECTIVE DATE.**—Not later than 180 days
4 after the date of enactment of this Act, the Commission
5 shall promulgate such rules or regulations as may be nec-
6 essary or appropriate to carry out section 14(k) of the Se-
7 curities Exchange Act of 1934, as added by this section,
8 but whether or not such rules or regulations are promul-
9 gated by such date, the prohibitions and requirements es-
10 tablished under that section 14(k) shall take effect at the
11 end of the 240-day period beginning on the date of enact-
12 ment of this Act.

13 **SEC. 7. EFFECTIVE DATE.**

14 Except as otherwise specifically provided in this Act,
15 this Act and the amendments made by this Act shall be-
16 come effective 180 days after the date of enactment of
17 this Act.

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