

108TH CONGRESS
2D SESSION

H. R. 4208

To discourage the abuse of stock options by executives of public companies by preventing unjust enrichment through the recapture of profits when shareholders suffer losses.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2004

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To discourage the abuse of stock options by executives of public companies by preventing unjust enrichment through the recapture of profits when shareholders suffer losses.

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 “Executive Stock Op-
5 tion Profit Recapture Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to reduce the perverse incentive created by
2 executive stock options for executives to take actions
3 to inflate the value of their shares prior to exercising
4 options; and

5 (2) to prevent the resulting losses to share-
6 holders by limiting the ability of executive officers
7 and directors to profit from the exercise of stock op-
8 tions when shareholders have suffered substantial
9 losses.

10 **SEC. 3. RETURN OF STOCK OPTION PROFITS.**

11 Section 304 of the Sarbanes-Oxley Act of 2002 (15
12 U.S.C. 7243) is amended

13 (1) by redesignating subsection (b) as sub-
14 section (c);

15 (2) by inserting after subsection (a) the fol-
16 lowing new subsection:

17 “(b) STOCK OPTION EXERCISE PRIOR TO STOCK
18 PRICE DECLINES.—The Commission shall prescribe rules
19 requiring that, if, at the end of a period ending one year
20 after one or more of the five most highly compensated ex-
21 ecutive officers or the directors of an issuer have exercised
22 options on securities of an issuer granted to the executive
23 officer or director as compensation, the stock of the issuer
24 has declined by a material amount, as determined by the
25 Commission by rule, then such executive officer or director

1 shall be required to reimburse the issuer for all gains real-
2 ized on the sale of securities obtained as a result of the
3 option exercise that are in excess of any gains that would
4 have been realized had the securities been sold at the stock
5 price at the end of such one-year period. Such rules shall
6 be effective one year after the date of enactment of the
7 Executive Compensation and Corporate Governance Act of
8 2004.”; and

9 (3) in subsection (c) (as redesignated by para-
10 graph (1) of this section), by striking “subsection
11 (a)” and inserting “subsections (a) and (b)”.

12 **SEC. 4. DEADLINE FOR RULEMAKING.**

13 The Securities and Exchange Commission shall pre-
14 scribe the rules and regulations required by the amend-
15 ments made by this Act within 270 days after the date
16 of enactment of this Act.

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