should have had the opportunity to discuss the modest and reasonable package of amendments I put before the Rules Committee to strengthen this woefully inadequate bill.

This House should have the opportunity to consider and debate thoughtfully proposals to strengthen H.R. 3763, the so-called Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002. This bill claims to address many of the financial disclosure and accounting issues raised by the collapse of Enron. Unfortunately, the kinds of financial abuses that led to this unprecedented debacle will not be stopped—or even very much impeded—by this Republican bill. It is cosmetic and simply pretends to bring about reform. ''Don't look for a major overhaul of the accounting industry soon,'' says the Wall Street Journal in a recent article criticizing the Oxley bill because it ''punts'' overhaul ''to just where the industry would like it—the Securities and Exchange Commission.''

This bill does virtually nothing to correct the systemic flaws in our financial reporting system. It fails to strengthen oversight of auditors and accountants, and fails to hold corporate executives fully accountable for their misdeeds. Unless major improvements are made, H.R. 3763 will do nothing to restore integrity to our financial markets and will not protect the savings and pensions plans of millions of Americans that remain threatened by future Enrons.

The House should have had the opportunity today to work its will on several key areas.

First, I offered an amendment in the Rules Committee to create a powerful new regulatory board to ensure that auditors will be truly independent and objective. My amendment provided for a regulator that (1) sets audit and quality standards for auditors of public companies; (2) possesses sweeping investigative and disciplinary powers over audit firms; and (3) is controlled by a board comprised of public members—not the accounting industry. My amendment took a decidedly different approach than H.R. 3763, which punts almost all of the functions and powers of the regulator to the SEC. Only a regulator with explicit powers and duties, and a defined composition, such as the one I proposed, will ensure that the abuses we witnessed in the Enron debacle will not be repeated.

In addition, the Republican bill purports to prohibit auditors from providing their audit clients with two consulting services: financial reporting systems design and internal auditing. In fact, the bill prohibits nothing. Instead, it simply codifies existing SEC rules that provide only very limited restrictions on these services. In contrast, my amendment clarifies the definitions of these two services in a way that will actually ban them. In the case of any non-audit consultant services that are not prohibited, my amendment requires approval by the audit committee of the firm's board of directors.

Second, in a spirit of bipartisanship and comity with our Republican friends. Mr. KANJORSKI and I have taken President Bush's proposals on corporate responsibility and executive accountability and prepared an amendment to give them legislative substance and real teeth. Rather than implement the President's proposals, the GOP bill either regresses from current law or does nothing to hold CEOs accountable. It amazes me that the Republican bill summarily rejected the President's own plan to promote corporate responsibility.

So our amendment, also rejected by the Rules Committee, did three things to implement the Bush plan. First, it requires CEOs and CFOs to certify the accuracy of their firms' financial statements. Violation of this provision would carry with it criminal (in the event that the violation is willful), civil, and other penalties provided for under the securities laws. H.R. 3763 contains no similar provision. It is essential that Congress require officers of public companies to stand behind their public disclosures. That is the absolute minimum we should require.

Second, this amendment required corporate officers who falsify their financial statements to surrender their compensation, including stock bonuses and other incentive pay. it empowered the Securities and Exchange Commission (SEC), in an administrative proceeding, or in court, to seek such a disgorgement. H.R. 3763 requires only a study of the question: should guilty CEOs forfeit their stock bonuses.

Third, this amendment empowered the SEC to bar officers and directors from serving in that capacity for a public company if they are found guilty of wrongdoing and determined to be unfit. It would also remove judicial hurdles to seeking such a bar in court. Incredibly, the Republican bill actually makes ti harder to obtain officer and director bars. It codifies restrictive judicial standards that would make it substantially more difficult for the SEC to obtain officer and director bars—a change which the head of the SEC's Enforcement Division has stated publicly is highly problematic. In this regard, H.R. 3763 is a serious step backward.

The Rules Committee even refused to allow debate on my amendment that gave shareholders a voice in executive compensation decisions by requiring that a majority of shareholders approve any stock options plan for an officer or director. H.R. 3763 does not include a similar provision. Would anyone argue on this floor that shareholders should not have a voice in the lucrative stock option plans of officers and directors. After all, it is the shareholders who own public companies, not management.

Finally, the Rules Committee refused to give this body an opportunity to debate and vote on an amendment to ensure that stock analysts are truly independent and objective. My amendment achieved this by (1) barring analysts from holding stock in the companies they cover; (2) prohibiting analysts' pay from being based on their firms' investment banking revenue; and (3) barring their firm's investment banking department from having any input into analysts' pay or promotion. As with other important issues in this legislation, H.R. 3763 only requires a study.

Today we are on the verge of squandering an opportunity for real reform. I urge my colleagues to consider our substitute and do something real to prevent the next Enron.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON FINANCIAL SERVICES TO FILE SUPPLEMENTAL REPORT ON H.R. 3764, SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION ACT OF 2002

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that the Committee on Financial Services be permitted to file a supplemental report on H.R. 3764.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

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

The SPEAKER pro tempore. Pursuant to House Resolution 395 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3763.

□ 1105

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of 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, with Mr. SWEENEY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Pennsylvania (Mr. KANJORSKI) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Today, the House turns to H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act. To my colleagues on both sides of the aisle, today we must act. We must act for our Nation's investors, retirees, and employees of publicly traded companies; and that covers a large majority of Americans.

In recent months our struggling economy has absorbed a number of shocks. We have endured two large bankruptcies, Enron and Global Crossing. Thousands of jobs have been lost for hardworking employees. Billions of dollars are gone from investment portfolios and retirement plans. Investor confidence has understandably wavered.

Congress has examined these issues for 4 months. The Committee on Financial Services alone held seven hearings, took testimony from 33 witnesses; and we are but one of many panels. We know now what happened, and we know what needs to be done. Now it is our responsibility to do something about it.

We owe action to the American investor who faithfully puts away money every month in his IRA or his 401(k) plan. We owe action to the employees who lost their jobs, and we owe action to all of the American companies who are operating in good faith and working to grow.

I would like to say a word of thanks to the President and his staff for all of the support and encouragement we have received throughout the process of drafting and moving this bill. His 10-point plan was very much on the same track as our bill, and the White House has helped us improve the bill every step of the way.

I also want to say a word of thanks to the 16 Democrats who voted for the bill on final passage in the Committee on Financial Services. We appreciate their support for our sound legislative bipartisan product.

President Bush has asked us to move on his plan; and clearly, this is a national priority. We need to encourage greater corporate responsibility. We need to strengthen and modernize our accounting oversight, and we need to make sure that investors have timely and clear information. There is a real urgency. We cannot undo the past, but we can help to prevent future Enrons and Global Crossings; and we ought to do just that today.

In our zeal to act, we can easily do more harm than good. It is easy to do something extreme. We can easily smother American businesses with red tape. We can punish those who have done nothing wrong. We can damage the capital markets and the economy in the process.

I say let us do the difficult thing. Let us accomplish something that is worthy, as the President has charged us, and CARTA strikes that balance. CARTA recognizes the need for corporate leaders to act responsibly and holds them accountable if they fail to do so.

CARTA ensures the highest standards of auditor independence, ethics and confidence and establishes a public regulatory organization for accountants of publicly traded companies, something that has never been done before.

CARTA improves corporate disclosures by requiring companies to provide the public with more information about their financial condition.

CARTA makes important improvements in the area of corporate transparency, requiring that companies disclose to investors important company news on a real-time basis.

CARTA also directs the SEC to require greater disclosure for off-balance sheet transactions.

I am confident that we are striking the right balance, particularly when it comes to the role of the Securities and Exchange Commission. CARTA gives the SEC the flexibility to deal with problems without legislating every time. Congress created the SEC precisely to deal with situations like this. We need to empower the SEC to act without tying its hands and within flexible statutory changes.

Let us remember that a strong regulator is not one that is completely dictated to by Congress. A strong regulator has some say over his jurisdiction, some power and discretion to shape the capital markets; and I trust the SEC with this authority and so does our bill.

CARTA makes it a crime for anybody to interfere with a corporate audit. It requires CEOs and other corporate insiders to disclose within 48 hours when they sell company stock so that investors and employees and retirees know if a corporate officer is getting out. It prohibits insider sales of company stock while the employee retirement plan is locked down.

Strengthening these areas of corporate responsibility, accounting oversight, and investor information is an important priority as our economy recovers. Let us show the American people that we can respond in a meaningful way to their very real economic concerns. Pass CARTA today.

Mr. Chairman, I reserve the balance of my time.

Mr. KANJORSKI. Mr. Chairman, I yield myself such time as I may need.

Mr. Chairman, I rise to oppose H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act. The dramatic collapse of Enron exposed many systemic problems to the intricate public-private network that monitors excess in our Nation's capital markets, including deficits and corporate governance and insufficiencies in audit independence and oversight.

H.R. 3763 responds to these problems in a largely illusory and superficial way. It will not sufficiently restore public confidence in the integrity of our capital markets; and it will not significantly improve the protections for investments, pensions and savings of millions of hardworking Americans and retirees. For example, in the words of the Wall Street Journal, the bill ''punts'' an overhaul of the accounting industry to the Securities and Exchange Commission.

Although H.R. 3763 creates a new organization to oversee accountants that audit public companies, much of the bill's language is simply too vague to ensure that essential standards for effective oversight will be met, giving the SEC near-total flexibility in establishing guidelines for the new oversight body.

Given the importance of this oversight role, Congress should not delegate this task. We should create a strong auditor regulatory board with sufficient investigation and disciplinary powers.

The legislation also preserves auditors' cozy relationships with their clients by not prohibiting consultant services that create conflicts of interest. Audits are supposed to be independent assessments on a company's finances conducted for the benefit of the investing public. When an auditor also receives a million dollars from the company for nonaudit services, common sense dictates that those nonaudit fees may influence the auditors' judgment in favor of the client.

While H.R. 3763 partially bans two nonaudit services, it does not go far enough to eliminate the serious potential for undermining the independence of auditors. Additionally, H.R. 3763 protects corporate wrongdoers by actually making it more difficult to ban guilty officers and directors from serving in other public companies. In particular, the bill codifies high standards that the SEC complains significantly impedes its abilities to obtain officer and director bars in court. We must fix this problem.

Finally, the bill prescribes studies, not legislative action, on some major issues raised by Enron, whether CEOs who misled investors about the financial health of their companies should surrender their bonuses and fat stock option and whether stock analysts are pitching stocks they do not believe in.

In sum, Mr. Chairman, the Congress should not shirk its responsibility by delegating these urgent problems to the SEC or shunting them off to the oblivion of bureaucratic studies. We have an opportunity and a responsibility to restore integrity to capital markets. Quick fixes will not do the job.

Ultimately, Mr. Chairman, we must work together on a bipartisan basis to develop an appropriate response to the collapse of Enron and the overabundance of earning restatements by our Nation's publicly traded companies. Although we have made improvements in the bill since its introduction, it will represent only superficial reform at best. Meaningful reform will require lengthy deliberation and a substantial strengthening of the bill before us today.

Mr. Chairman, there is an old idea of lost opportunities. As the Congress addresses this serious problem today, we are missing an opportunity for Congress not to delegate its responsibility to the SEC or not to dodge its responsibility to the American public, but to take time and effort and deliberation necessary to make a bill that will protect the investing public, will arm the regulatory agencies with the authority they need to ensure the protection of the investing public, and to significantly improve the confidence in the American market.

□ 1115

Just last night I had the occasion to speak with some members of the investing community, and they called to my attention that never in their experience in the last 25–30 years have they seen a loss of confidence in the capital markets of the United States as has recently been exposed in the last several months since the Enron collapse. The capital markets of the United States are the greatest in the world, but they are that way because the Congress at times of need and at times of overabundance of activities and recklessness in the markets have stood tall to enact legislation to straighten the markets out and to send a signal to the investing public that the Congress will oversee and protect their interests as best can be had in a capitalist system.

Today's legislation does not meet that mark. As the Wall Street Journal said, ''This bill punts.'' As The Washington Post said this morning, ''The chairman punts.'' I urge us to oppose this legislation at this time, and I encourage my colleagues to do the same.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Michigan (Mr. ROGERS), a valuable member of the committee.

Mr. ROGERS of Michigan. Mr. Chairman, I rise today in support of the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, and I want to congratulate the chairman on this bill that was reported out of the Committee on Financial Services last week on a strong bipartisan vote under his leadership.

This bill brings needed reforms and oversight to the accounting industry. It ensures that those with the greatest interest in ensuring that the information provided to the marketplace regarding public companies is accurate and complete and facilitates the fair and efficient functioning of the markets.

Mr. Chairman, this is an important piece of legislation that does not create a new Federal bureaucracy funded by taxpayers; rather, it requires a new private sector oversight body to review the accounting firms that audit financial statements. This new body, called the Public Regulatory Organization, would have broad powers to discipline accountants that violate the most basic codes of ethics, standards of independence, and standards of competency.

Mr. Chairman, this bill is necessary to restore the faith in our markets. This bill brings credibility and integrity to the process by protecting against conflicts of interest in the accounting industry. This piece of legislation is important because we need to act now. We need to pass this bill today. We need to give the SEC and this new PRO the tools to be up and running quickly to protect the future of investments in this country.

Mr. Chairman, at this time I would like to have a colloquy with my good friend, the gentleman from Ohio (Mr. OXLEY), the distinguished chairman of the Committee on Financial Services.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Michigan. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Chairman, I thank the gentleman from Michigan and I want to commend him for his efforts on this bill, for his fight for the integrity of America's financial markets.

The gentleman is right; we need to act quickly on this important issue. We are calling on our colleagues to take this opportunity to restore transparency and accountability to the audited financial statements of America's companies.

Mr. ROGERS of Michigan. Reclaiming my time, Mr. Chairman, it is my understanding that this bill does not create a new Federal bureaucracy to oversee the accounting profession but, rather, creates a private sector regulator to do that job.

Mr. OXLEY. Mr. Chairman, if the gentleman will continue to yield, that is correct. We are giving the SEC the tools to oversee this new PRO, but it is going to be funded by the private sector.

Mr. ROGERS of Michigan. Mr. Chairman, I want to see that this PRO is up and running in an expeditious fashion. Does the PRO have the authority to contract for services with other private sector companies or regulators to make this happen as quickly as possible?

Mr. OXLEY. That is correct. Under the legislation, the SEC or the PRO could consult or contract with private sector regulators and companies to get the necessary insight as well as the systems and processes to get this organization on its feet in a timely manner. I am confident the SEC and the PRO will take such measures as necessary to move with all deliberate speed.

Mr. ROGERS of Michigan. Reclaiming my time once again, Mr. Chairman, I thank the distinguished chairman for clarifying this point and I thank him for his leadership on this very important bill.

The CHAIRMAN. Without objection, the gentleman from New York (Mr. LAFALCE) will control the time of the gentleman from Pennsylvania (Mr. KANJORSKI).

There was no objection.

Mr. LAFALCE. Mr. Chairman, I yield myself 5 minutes.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Chairman, today we consider legislation to address the serious problems in our capital markets raised by the collapse of Enron, problems of corporate abuse, problems of accounting fraud, problems of earnings manipulation, and problems of analyst hype. All of these have destroyed public confidence in our markets and jeopardized the investments and retirement savings of millions of working Americans. Millions of working Americans have been robbed.

Now, Enron provided a catalyst for our consideration of these issues, but it is not the first or even the most recent example of what has become a common phenomenon: earnings manipulation, deceptive accounting, and hyped analyst reports by some of our largest companies. Company after company has been found to have manipulated their accounting to present a picture to investors that did not match the reality.

The tremendous growth in investigations opened by the SEC this year indicates the problem is getting worse and worse. The question we will debate today essentially is whether we are ready to recognize and make real changes to address the systemic weaknesses undermining our capital markets or not. The bill before us is cosmetic. The bill before us is a press release. Look at this morning's editorial in The Washington Post. It says, basically, that the bill takes a punt at the problem. Look at the editorial in yesterday's Wall Street Journal. It says, basically, the same thing. It chastised the accounting profession for its resistance to all efforts at reform. The Journal opined that ''The accountants may think that they have outsmarted everyone by sinking reforms along with Andersen. And they may be right. On the other hand, if there's another Enron out there, they may wish they'd taken Mr. Volcker's advice.''

I think it is safe to say it is only a matter of time before the next Enron or Global Crossing appears, and today's bill will do nothing to prevent it.

There are many areas in which the bill before us fails to provide true reform. First, it fails to establish a strong regulator to oversee the accounting profession, largely delegating decisions as to both its powers and duties and makeup to the SEC. You do not need a law to do that; the SEC could do that today. The bill provides virtually nothing.

Secondly, the bill fails to limit in any way the nonaudit services that auditors can provide to their audit clients, not even going as far as the accounting industry has said it would go voluntarily to limit their conflicts of interest. The accounting industry has said they should and will go further than the bill goes, and they will not go far enough on their own voluntarily.

As the Wall Street Journal said yesterday, the credibility of their audits matter more than their ability to offer other services that let them live like investment bankers.

And, third, the bill fails to effectively implement any of the measures proposed by President Bush himself to improve executive responsibility and improve the ability of the SEC to bar or seek disgorgement from executives. In some areas, it actually represents a step backwards, making it more difficult for the SEC to do its job, making it harder, rather than easier, for the SEC to bar officers or directors who have committed securities fraud from serving in other public companies.

Fourth, the bill fails to make any improvements in the area of corporate governance of public companies by giving the audit committees of their boards of directors the authority they need over auditors to truly protect shareholder interest.

And, fifth, and very importantly, it fails to include any measures to limit the incentives for securities analysts to serve as salesmen for their firms' investment banking business rather than being objective analysts. It fails to address the problem of research analysts being compensated based upon the business they are able to generate for the investment banking arm of their firms. It allows the continuance of research analysts being hucksters for the investment banking arms rather than owing a responsibility to give honest investment advice to the public at large.

Now, I would like to have had a debate on these important issues on the floor individually, but the rule does not permit the offering of individual amendments. And, therefore, I will offer my substitute to accomplish that.

Mr. Chairman, today we consider legislation to address the serious problems in our capital markets raised by the collapse of Enron—problems of corporate abuse and accounting fraud that have destroyed public confidence in our markets and jeopardized the investments and retirement savings of millions of working Americans. While Enron has provided the catalyst for our consideration of these issues, it is not the first or even the most recent example of what has become a common phenomenon—earnings manipulation and deceptive accounting by our largest companies. Company after company has been found to have manipulated their accounting to present a picture to investors that did not match reality. The tremendous growth in investigations opened by the SEC this year indicates the problem is only getting worse.

The question we will debate today essentially is whether we are ready to recognize and make real changes to address the systemic weaknesses undermining our capital markets. The bill before us does not represent real reform, as even the Wall Street Journal recognized in an editorial yesterday in which it chastised the accounting profession for its resistance to all efforts at reform. The Journal opined that ''[t]he accountants may think that they've outsmarted everyone by sinking reforms along with Andersen. And they may be right. On the other hand, if there's another Enron out there, they may wish they'd taken Mr. Volcker's advice.'' I think it's safe to say that it's only a matter of time before the next Enron or Global Crossing appears, and this bill will do nothing to prevent it.

There are many areas in which the bill before us fails to provide true reform:

First, it fails to establish a strong regulator to oversee the accounting profession, largely delegating decisions as to its powers and duties to the SEC. Without an explicit statutory mandate, the regulator will be subject to the intensive efforts of the accounting industry to avoid reform of any kind. Congress should give the new regulator effective disciplinary and investigative powers and clear authority to set standards for auditors of public companies, rather than just enforcing the standards set by the accounting industry bodies.

Second, the bill fails to limit in any way the non-audit services that auditors can provide to their audit clients, not even going as far as the accounting industry has said it would go voluntarily to limit their conflicts of interest. As the Journal said yesterday, ''[t]he credibility of their audits matter more than their ability to offer other services that let them live like investment bankers.''

Third, the bill fails to effectively implement any of the measures proposed by the President to improve executive responsibility and improve the ability of the SEC to bar or seek disgorgement from executives. In some areas, it represents a step backwards, making it more difficult for the SEC to do its job, making it harder, rather than easier, for the SEC to bar officers or directors who have committed securities fraud from serving in other public companies. Moreover, it fails to empower the SEC to require corporate wrong-doers to disgorge their bonuses and other compensation after committing securities fraud.

Fourth, the bill fails to make any improvements to the corporate governance of public companies by giving the audit committees of their boards of directors the authority they need over auditors to truly protect shareholder interests.

Fifth, it fails to include any measures to limit the incentives for securities analysts to serve as salesmen for their firms' investment banking business rather than objective analysts.

I would like to have had a debate on these important issues on the floor today, but the rule does not permit me to offer amendments on these individual issues. I will offer a substitute, however, that cures many of the defects of the Republican bill. My substitute will: Establish a tough and credible overseer for the accounting industry; include effective limits on the two non-audit services included in the existing bill; provide corporate audit committees with authority over the full scope of a company's relationship with its auditor; hold executives responsible for the accuracy of their companies' financial statements; enable the SEC to seek disgorgement of bonuses and profits on options or to bar officers and directors who have committed wrongdoing from serving in other public companies; and finally, eliminate the conflicts that result in Wall Street analysts hyping the stocks of their investment banking clients.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY), the chair of the Subcommittee on Oversight and Investigations.

Mrs. KELLY. Mr. Chairman, I rise today in strong support for the Corporate Auditor Accountability, Responsibility, and Transparency Act, known as the CARTA Act. I thank my good friend, the gentleman from Ohio, for yielding me this time.

This legislation represents the first positive step forward to restore public confidence to our Nation's accounting industry. Since the dramatic failures in both Global Crossing and Enron, we have heard from countless former employees and investors who have been harmed because of the lack of transparency, the lack of auditor independence, and the lack of timely and clear disclosures. CARTA takes substantive steps to address all of these issues, with a focused approach that will restore confidence in the industry.

Let me be clear. The legislation is not the complete solution. There are many investigations which continue with the Securities and Exchange Commission, the Department of Justice, and the Department of Labor. As the appropriate agencies uncover new issues, we are going to continue our work to ensure that we act prudently, appropriately, and responsibly. As with the medical profession, though, our overriding goal has to be, first, do no harm. We must be focused in our work and make sure our response is effective, restores public confidence, and has a positive impact on the market.

CARTA is reasonable and responsible. CARTA creates a new Public Regulatory Organization with real power to discipline accountants who violate the standards of ethics, competency, and independence. CARTA makes it a crime for any corporate official to mislead or coerce an accountant in the course of conducting an audit. CARTA requires real-time disclosures of significant financial information to ensure that employees and investors know about important events as they happen, instead of when the quarterly report comes out.

These are just a few of the significant reforms made in this legislation. CARTA is a strong reform. It gives greater authority to the Securities and Exchange Commission to act, and it is stronger authority than in the Democratic substitute. It takes significant steps to ensure accountants are truly independent and corporations are clear and honest in their statements.

It is a bipartisan bill. It was supported in committee by both Democrats and Republicans. The committee vote on final passage of 49 to 12 demonstrates that there is real agreement in the House that the provisions contained in this legislation will move us forward to our goal of restoring public confidence in our accounting system and corporate disclosures.

Mr. Chairman, I urge colleagues on both sides of the aisle to join us with the strong support of CARTA so we can prevent mistakes, misstatements, and obfuscations we witnessed in the failures of Global Crossing, Enron, and Arthur Andersen from being repeated and harming others.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Chairman, to my colleague, the gentleman from the great State of Ohio (Mr. OXLEY), and to the ranking member, the gentleman from the great State of New York (Mr. LAFALCE), I am pleased to have had an opportunity to serve on the Committee on Financial Services as we have debated this legislation. But what is clear to me is the American public expects us to do more than pass strong legislation that does not go far enough. I just want to put in the RECORD a copy of The Washington Post editorial that fully addresses many of the issues.

Let me tell my colleagues a few things I am concerned about.

□ 1130

Mr. Chairman, I do not believe that this current legislation that is before the House of Representatives addresses the issue wherein the CEOs, like the CEO at Enron and Global Crossing, were able to take their 401(k) dollars out of the pot, and leave workers like Mrs. Linton, who I read about in the newspaper, stuck with not receiving any other dollars.

Now, what we have not addressed, and I am not an SEC attorney, but I do know there is a piece or a rule that allows a CEO to put in place a plan to dispose of his assets in a particular company, as long as they have in place a plan to do so. We need to put in place a plan that would also allow workers to be able to access their dollars in the same fashion that CEOs do. Or if they are not able to do so, that the CEOs would be held accountable.

Let me go to another point that I raised at the Enron hearings, which is with regard to the SEC. I have a lot of respect for the SEC and their chairman, Mr. Harvey Pitt; but the reality of the matter is that we should not leave our job to the SEC. We should give the SEC clear direction on what we want done, when we want it done, and how we want it done. For example, the records of Enron were not reviewed by the SEC. That presents a real problem for me and other Members as we review this process.

Finally, I am worried about a private organization giving advice and counsel on many of these issues to the Congress. Let me just say that the Arthur Andersen relationship with Global Crossing, the CEO said that he thought that relationship was okay. If he thought it was okay, what does that say about other private industry people.

The material previously referred to is as follows:

[From the Washington Post, Apr. 24, 2002]

MR. OXLEY PUNTS

The HOUSE is due to vote today on a package of post-Enron reforms prepared by Rep. Michael Oxley (R–Ohio), chairman of the Financial Services Committee. The bill is a troubling sign of how easily the momentum for reform can be dissipated. Though it purports to deal with many of the audit reforms discussed during dozens of congressional hearings since January, it actually pulls its punches. Democrats will get a chance to offer some better provisions in the House today, but nobody expects them to pass. It will be up to the Senate, if it can ever terminate its interminable debates on energy, to produce a stronger bill.

The Oxley bill purports to set up a new regulatory board to oversee and discipline auditors, which everybody agrees is needed. But it would not give this body powers of subpoena, which would undermine its authority; and it would allow auditors to fill some of the board's positions, which could undermine its independence. The details of the new board would be left to the Securities and Exchange Commission, which would have to decide among other things how the new body would be funded. Given the SEC's vulnerability to industry lobbying, there is a danger that the result will fall short of what's needed.

The Oxley bill takes other half-steps and side-steps. It directs the SEC to prohibit auditors from performing certain types of consulting services for their clients, but it stops short of requiring an outright halt to consulting and the conflicts of interest that ensue. The bill says nothing about the revolving door between auditors and their clients—Enron, for example, hired several Arthur Andersen auditors—even though auditors who are angling for jobs from their customers are unlikely to show much independence from them. The bill is also silent on the rotation of audit firms. If an auditor knew that, after a few years, a different outside auditor would scrutinize its efforts, this would create a strong incentive to keep the numbers honest.

The Oxley bill does at least boost the SEC's budget substantially, and it has the right mood music. But given the outrage that Congress has expressed about the Enron scandal, this is a weak effort. Just this week, Enron announced that it had discovered a further $14 billion worth of assets in its balance sheet that don't really exist after all, and it confessed that a ''material portion'' of this overstatement was due to accounting irregularities. This kind of confession further undermines investors' trust in financial disclosures. Congress needs to restore that trust with tough legislation. Perhaps the Senate can deliver if the House won't.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Chairman, I commend the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER) for this legislation. This legislation has numerous provisions which provide and strengthen oversight of the accounting industry, what we have really learned from Enron and Global Crossing failures. But the specifics of these provisions have been properly outlined by the chairman, and I will not go into those again. However, I will stress one in particular, and that is it includes important safeguards for individuals who invest in the 401(k) plans. That is an excellent provision in this legislation.

Mr. Chairman, I want to say to Members that there are some who argue that this bill does not go far enough. I will say to those critics that we must take care not to overreact to this situation and create greater problems than we have here. This bill represents a giant step in the right direction to reforming the system. We need to enact this legislation and let the regulatory process go forward. Clearly we should revisit this issue in the months ahead, but this bill does include sound, strong, unprecedented measures that I believe will go a long way in reforming the situation.

A Member mentioned earlier Chairman Paul Volcker's oversight and activity in terms of the Andersen question. Clearly, Mr. Volcker's analysis will be helpful to us and significant in laying the groundwork for extended consideration in the future for whatever additional reforms we may need. Clearly, we must not overreact and create today further problems and create more loopholes.

I want to commend Chairmen OXLEY and BAKER for their leadershiop on this legislation and urge my colleagues' support for the Corporate and Auditing Accountability, Responsibility and Transparency Act.

We must return confidence back to the markets and to the accounting profession. Individual investors have to be certain that the information they are receiving is accurate and complete. Certainly the media and many in this Congress have been focused on the Enron bankruptcy—the largest in U.S. history—but Enron is merely a symptom of a larger problem.

The current structure for regulation and oversight of the accounting industry consists of Federal and State regulators and a complex system of self-regulation by the industry itself. Although the SEC has broad authority to regulate all aspects of corporate accounting and the auditing of publicly-traded companies, the SEC historically has not directly regulated the industry because of a lack of resources. Instead, they have investigated and taken enforcement action in only the most egregious cases. Consequently, the most comprehensive supervision of accountants and auditors has been exercised by the industry's trade association, the American Institute of Certified Public Accountants, a voluntary organization funded entirely by the industry.

H.R. 3763 includes numerous provisions to strengthen supervision and oversight of the accounting industry, increase standards of corporate responsibility, and improve the quality of corporate disclosure and the auditing of publicly-traded companies. The specifics of these provisions have been properly outlined by the Chairman.

First, this legislation establishes a public regulatory organization (PRO) to oversee and review accounts that certify financial statements required under the securities law. This new board would be subject to direct SEC authority and supervision. In addition it makes it illegal—subject to SEC civil penalties—for any corporate official to interfere, mislead, or coerce an accountant performing an audit of the company.

Second, this legislation requires increased and meaningful disclosures, such as information about special purpose entities and other off-balance sheet transactions. It requires real-time disclosure of financial information and immediate disclosures by corporate insiders when they sell securities they own in their company.

This legislation also includes important safeguards and protections for individuals who invest in 401(k) plans. The bill prohibits corporate executives from buying and selling company stock during ''blackout'' periods when rank-and-file company employees are barred from doing so in their pension 401(k) plans and allows companies, and other shareholders to go to court to recover any profits made from such illegal transactions. The measure also establishes procedures under which the SEC may recover any profits gained, or losses avoided, by executives through stock trades in the six months prior to a company's restatement of earnings, if the executive had knowledge that the company's accounting was misleading.

Finally, H.R. 3763 authorizes new resources and responsibilities for the SEC, requires the SEC to review the audited corporate financial reports of all publicly-traded companies at least every three years, and allows the SEC to ban corporate officers and directors whom the

SEC finds guilty of violating securities law from serving in similar positions in other publicly-traded companies.

There are some that may argue today that this bill does not go far enough—I would say to those critics that we must take care not to overreact to this situation—this bill represents a significant and proper first step. We need to enact this legislation—and let the regulatory process go forth. Clearly, we may have to revisit this issue in the months and years ahead, but this bill includes sound, strong and unprecedented measures that I believe will go a long way in addressing this current crisis.

Clearly, Chairman Paul Volker's oversight and analysis will be significant in laying the way for extended consideration for additional reforms.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I thank the ranking member, the gentleman from New York (Mr. LAFALCE), for yielding me this time and for his leadership on these tough issues.

Mr. Chairman, I rise today in strong opposition to H.R. 3763. This is another sham bill that purports to fix the very serious problems that have arisen from the Enron debacle, but instead it takes us backwards in protecting the American public. H.R. 3763 is supposed to impose tougher standards on auditors to prevent future Enrons where workers lost their pensions and investors lost money because Enron cooked its books. However, H.R. 3763 does nothing to protect employees and investors. It allows corporate auditors to continue to perform both auditing and consulting functions, which got Enron into this mess in the first place.

The GOP bill puts investors and workers at greater risk than they are now. It does not hold corporate wrongdoers criminally accountable if they knowingly release misleading financial statements, and it does not increase oversight of the accounting industry.

We need true reform. That is why I am supporting the LaFalce substitute which takes important steps to protect workers and investors. It would set up a seven-person board with members representing investors and pension funds. Some of them can be accountants; but others with important interests can also be included, unlike the Republican legislation which will only permit auditors and former auditors on the board. Workers and investors also deserve a seat at the table.

The LaFalce substitute also bans auditors from consulting services that create conflicts of interest, requires CEOs to surrender their stock bonuses when they commit fraud, and makes it easier for SEC to remove corporate wrong-doers.

Ken Lay and the other Enron executives do not deserve millions of dollars in payoffs when their workers have lost their future. We must hold companies accountable when they engage in fraud that jeopardizes the retirement security of our Nation's workers and our economy.

The Republican legislation before us today does none of these things. The LaFalce substitute does. I urge my colleagues to vote ''yes'' on LaFalce and ''no'' on H.R. 3763.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a valuable member of the Committee on Financial Services.

Mrs. BIGGERT. Mr. Chairman, I rise today in strong support of H.R. 3763. This is a good bill because it strikes the right balance between doing enough to prevent another Enron and Andersen debacle, but not so much as to overreact to it causing more harm. The last thing we want is to federalize the accounting industry and create a seat for the government on every corporate board from New York to San Francisco and back again.

This is a good bill because it helps rebuild the confidence of the American people by restoring the integrity of the accounting industry. It increases corporate responsibility, reforms the accounting industry, and forces businesses to disclose much more financial information in real-time. Holding corporate officers responsible for their actions is a big part of the foundation of this bill. As President Bush said not long ago, our goal is better rules so that conflicts, suspicion, and broken faith can be avoided in the first place. That is what this bill does in several ways. For example, an amendment that I offered last week provides the SEC the administrative authority to bar persons accused of malfeasance from serving as officers or directors of public companies pending judicial appeal.

Mr. Chairman, it is unfortunate that no one understands the concept of executive accountability or lack thereof better than the 500 Andersen employees from my district. They ask, How on earth can the alleged sins of a handful of partners uproot the lives of so many innocent employees? One of them went further, asking me in a recent letter if one out of our 535 Congressmen and Senators gets in trouble, should you all be fired? I think we all get the point.

And the point is that change is needed in the accounting industry, and H.R. 3763 is an important step in the right direction. With this legislation, we will avoid any more blanket charges to groups of accountants, and instead bring justice to the particular accountants at fault. Some have argued that the standard may prove to be unreasonably high or it goes too far. I respectfully disagree. H.R. 3763 empowers the SEC to take a bite out of corporate crime.

Mr. Chairman, I encourage all of my colleagues to support this bill.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. SHERMAN).

(Mr. SHERMAN asked and was given permission to revise and extend his remarks.)

Mr. SHERMAN. Mr. Chairman, Enron not only cost its own shareholders tens of billions of dollars, but our markets would be selling at trillions of dollars more in net capitalization if investors around the world did not have to wonder whether the next Enron was right around the corner.

All three of our institutions failed our investors. The SEC failed to even read the Enron financial statements, let alone demand clarification of their incomprehensible footnotes. And when the SEC reauthorization bill comes to this floor, it should come in regular order so that we can propose amendments to improve the SEC.

The stock analysts and the auditors both failed as well; and they failed in part because the current system clouds their judgment with excessive conflicts of interest. The stock analysts are affected by the huge investment banking fees so that they now not only recommended Enron as an investment, but they recommend a hold or a buy on virtually every stock on the board.

The auditors received not only their audit fee from their clients, but huge and unlimited fees for other services, sometimes five or 10 times the fees they received for auditing; and this bill, while providing a list of services that they are not to provide, does nothing to cap the total fee that they receive.

We need to restore confidence in our markets. If Congress does its job, our capital markets will once again be the envy of the world. But we cannot do it just by passing this bill. The LaFalce substitute at least takes us further down the road toward reform; and then we need to do even more to deal with the SEC, the stock analysts, and the total amount of fees received by auditors for nonaudit services.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Pennsylvania (Ms. HART), an outstanding member of our Committee on Financial Services.

Ms. HART. Mr. Chairman, I rise in support of the CARTA bill as it stands. The Committee on Financial Services did an extensive amount of research on these issues, especially in light of the concerns raised by the Enron debacle. Several disturbing aspects about corporate disclosures in financial statements were made very clear during this process, but one of the most alarming was the unequal treatment of employees and what they were and were not allowed to do with company stock that they received in their retirement plans.

I have here what will happen as a result of the CARTA bill. Pre-Enron there was little disclosure. Financial information was all in legal jargon. People could not really understand it. There was insider auditing, as we saw in the Enron case, deals made among the auditors with the company which were really not fair or right or a true representation of the actual financial situation of the company. Also, insider trading during blackouts, those executives were allowed to sell their stock; those regular people, the employees, unfortunately were not, and ended up losing a lot of money because of the deceit involved with the financial statements.

Post-Enron, under the CARTA bill we have full disclosure. We also have something very important, and that is the financial information that all investors get in plain English. No more games. Under CARTA, plain English so that everybody understands exactly what is going on with the company.

Also something extremely important, the independent audit versus the insider audit. We need to make sure that Americans have confidence in financial statements and invest wisely.

It will also close the loophole on insider trading during blackouts. This is one of the most important things that was revealed to us during Enron, and one thing that this bill handles very well.

America's investors have changed significantly. It is important for us to protect them and provide them with the information that they need. More than half of American families, that is 90 million people, invest in the stock market, including mutual funds, pensions, and 401(k)s. This represents a growing trend. These people are investing in American companies that produce American jobs. In fact, a majority of these investors, 67 percent of them, are our average Americans with household income of $75,000 or less.

Mr. Chairman, these are American families that we are talking about. We need to protect them with CARTA. According to the National Center for Employee Ownership, 10 million employees in the United States received stock options as part of their benefits in 2001. This is a 10-fold increase over 1992. This bill protects those employees and those Americans. It protects those American jobs.

□ 1145

Finally, the benefits of the bipartisan corporate responsibility bill is greater confidence. Americans will continue to invest. We want them to invest. It is better for our future. There is more confidence for them to invest, there will be more corporate stability and the end result, which is what we all want, is more jobs and a stronger economy.

Mr. LAFALCE. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Chairman, Enron, Global Crossing, the restatements at Xerox, Sunbeam and others are part of the corporate excesses that have occurred as a result of the exuberant nineties. The bill before us today, I believe, is a good start but, as I said earlier, is by no means a panacea and will not solve all the problems that existed or came about, but at least begins putting us in the right direction to hopefully restore some confidence to the markets. It does establish an oversight function of auditors of public companies. It amends the law to crack down on insider self-dealing, where you had corporate managers really treating public companies as private banks, and I am glad the committee adopted a few amendments I offered to deal with that. It continues the process of eliminating the conflict between independent auditors and the companies they audit.

Some will say it does not go far enough, but at least it begins that process. It was strengthened by an amendment that the gentleman from North Carolina (Mr. WATT) and I offered and, quite frankly, the gentleman from New York's substitute strengthens that even further. It puts the Securities and Exchange Commission on notice and provides them with the resources, and it puts the Congress on notice that there needs to be stronger oversight of the players in the public markets. And it is quite a change from where the SEC was under the prior chairman, Mr. Levitt, who really did take a strong stance in trying to root out conflict of interest and, quite frankly, ran into some of his toughest opponents in the Congress as much as out on Wall Street.

The committee should adopt the Capuano amendment, which I think strengthens the oversight board in ensuring that the makeup of that board is one that is truly independent. And while there are things in the substitute I like and things I do not like, the committee should adopt it. But what I think this bill does that is so terribly important is that it puts the Congress on record in saying that we will not tolerate abuses in the public market.

Maybe we need to go further. Maybe we do not go far enough in the bill, and I do not think a lot of bills we pass here necessarily go far enough. I do not know that we know all the answers. But it also puts the regulators on notice and provides them with the resources to do the job they are entrusted to do. And if they do not, then the Congress should be willing to act again. Because if we do not restore confidence in the markets and ensure confidence in the markets, then we will raise the cost of capital to great expense to the general economy, and while we are concerned about the Enron employees, many of whom are my constituents, we as a Nation will suffer as well. I appreciate the start we are making today. I hope we can continue the process.

Mr. OXLEY. Mr. Chairman, let me commend my friend, the able gentleman from Texas, for his good work on the committee and on the floor. The committee will certainly miss his excellent leadership and insights next year. I wanted to pass those remarks along.

Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. BAKER), the lead cosponsor of the CARTA legislation and the chairman of the Subcommittee on Capital Markets.

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding me this time and wish to express my deep appreciation for his leadership in helping the committee construct what I think is one of the most significant reform pieces of legislation in financial markets in this Congress.

In listening to the debate, many would assume that we have done nothing. In listening to the debate, many would assume there are those in the Congress who would like to sit on the board of every board of directors of every corporation in America, because that is the only way we could possibly have protection for individuals and consumers. In listening to the debate, one would believe that some think it is inappropriate for a corporation to make a profit. In the free enterprise system, it is clear, people invest, they work hard; if they convince consumers and they are successful and beat their competition, at the end of the day we hope people make a profit. Some think profit is gained only by ill-conceived, manipulative, backdoor deals at the expense of working people. Where are we? This is America. We are taught if you work hard, invest, that it is okay to make a profit, and one day if you work hard you might be able to keep some of it. That was the basis of our tax relief program: You work hard, you pay your taxes to the Federal Government.

Some say, ''Let's not give them their money back. They might spend it. We ought to keep it here in Washington and regulate them.'' Some people watch business and they say, ''If it's making a profit, let's first regulate it. If it's still making a profit, let's tax it. And if that doesn't stop it, let's sue it.'' I think we have had enough of that. This bill is about common sense. It is not lawful for a corporate executive to withhold material facts about the financial condition of his corporation. And we go further and say, if you do, there is a penalty to pay.

We provide for auditing independence by saying the audit committee works for the shareholder and has an obligation to report the true and accurate financial condition of the corporation, or there are consequences.

Some have suggested we are doing nothing with the analysts. Let me point out that last fall before the Enron matter became public knowledge, this committee, the Committee on Financial Services, was working on these sets of rules to provide new standards for analysts' conduct that go far beyond anything I have heard suggested in the debate in the committee today. We have taken action. We have taken action to preserve our free enterprise system, the ability to govern a corporation and make a profit, employ individuals and provide opportunities for millions of investors to participate in the dynamic growth of this economy.

In 1995, no one could invest online. Today, there are over 800,000 trades a day where working men and women take $100, $200, and invest it for their child's education, to purchase their first home, and maybe their retirement. That is the American way. Are these the large institutional investors who are making backroom deals with analysts and Wall Street CEOs? No, they are people who are working as we debate this bill this morning to try to make a few extra dollars to enhance the quality of their children's future.

This bill makes sure that the financial statement they read, that the analyst recommendations they research on the Internet, that the corporate executives' representations about the future of corporate profitability are true and accurate. We cannot guarantee success. Of all the companies listed on the New York Exchange in the early 1900s, there is only one that is still listed there today. The dynamic free enterprise system is going to cause changes in our market that no one can predict and we cannot guarantee success or failure, but what this Congress can guarantee is that no one is misled or mistreated and all have equal opportunity.

What shall we do? Some would say this bill is insufficient. At the end of this process, after all the amendments are considered and the gentleman from New York's motion to recommit is finally disposed of and defeated, as I hope it will be, you will have a decision to make. Do you vote for this bill on final passage or do you say ''no'' and turn your back on the most meaningful reform effort you will ever have?

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Oregon (Ms. HOOLEY).

(Ms. HOOLEY of Oregon asked and was given permission to revise and extend her remarks.)

Ms. HOOLEY of Oregon. Mr. Chairman, I thank the ranking member for all of his hard work on this piece of legislation. I guess I am a little different from some of the speakers so far because I think that this legislation before us is an improvement over the current system. Is it perfect? No. Does it go far enough? Probably not. Will it prevent another Enron? Who knows? I do not think it is within the realm of possibility that we will ever be able to prevent people from being greedy and deceiving shareholders. Every single one of us knows that if this bill was introduced before the Enron scandal, it probably would have had a handful of cosponsors and probably never seen the light of day. But now we are being told that it is completely inadequate and does not do anything to address the problems that led to the collapse of Enron. I disagree.

This is the bottom line. H.R. 3763 is going to strengthen our financial reporting system which in turn will strengthen our capital markets. It is a huge step in the right direction. However, that does not mean that this legislation is comprehensive or that it could not stand improvement. For example, it completely ignores the President's call for corporate governance reform. It simply calls for a study on whether CEOs who engage in fraud should surrender their stock options. The President does not think we need to study this matter. He has publicly stated that they should disgorge those earnings. The President also does not think corporate officers who engage in fraud should be permitted to serve on another board. But again H.R. 3763 is silent on this matter.

Is this bill better than what we currently have? Yes. But I want to urge my colleagues on both sides of the aisle who truly want to protect the interests of investors to also support Ranking Member LAFALCE's substitute.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Alabama (Mr. BACHUS), a subcommittee chair.

Mr. BACHUS. I thank the gentleman for yielding me this time.

Mr. Chairman, Members will recall that 2 years ago, the SEC proposed to limit auditors from doing several nonauditing functions for their clients, consulting work and other nonauditing services. When the SEC proposed that, they do what they always do, what this body has insisted they do, what they ought to do, that they put those proposals out for public comment, because all knowledge does not come from Washington. It is not all inside the Beltway. They made 10 specific proposals to ban nonauditing services. Consumer groups came in and testified before the Securities and Exchange Commission. Consumer groups came in and testified before Arthur Levitt and the SEC. Industry groups came in and testified. Over a 4- or 5-, 6-month period, they looked at the rules, they listened to witnesses, they refined the rules, they revised the rules. And in September, Arthur Levitt had this to say about that process of letting the public participate in how they are governed. He said this: ''Thanks to the thoughtful and constructive public input, we see ways to revise the proposed rules to avoid unintended consequences and to address other legitimate concerns.''

There are unintended consequences when you propose a rule. There are other legitimate concerns that people have when you put a rule out there for public comment. As a result, Arthur Levitt said, ''We've gone through this process and we have got better rules, we have got more effective rules, we have got a good product.'' Basically that is what the bill that Chairman BAKER and Chairman OXLEY have put out for us, is the result of that process by Arthur Levitt, with public comment from consumer groups, labor groups and industry groups.

Both bills ban these nonauditing services. Both of them ban them. But the difference is that the gentleman from New York (Mr. LAFALCE) and, in fact, when I mentioned this in committee, the gentleman from New York said, ''I realize that's a major problem,'' but it is a problem that we still have in the substitute. The gentleman from New York went back and actually adopted the proposed rules, not the final rules as the base text has. He went back to the proposed rules, throw out all the comments by the consumer groups, throw out all the comments by the business groups, throw out all the comments by the labor organizations, throw out all the comments by those in the academic world. He goes back to the original proposed rules, like starting all over again. That is not what this place is all about. It is about including the public.

Mr. LAFALCE. Mr. Chairman, I yield myself 30 seconds. The gentleman from Alabama (Mr. BACHUS) was referring to an amendment that was offered within the committee, but he is not referring at all to the provision that is in the substitute. So all his remarks were irrelevant to the provisions within the substitute.

Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. DOGGETT).

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Mr. DOGGETT. Mr. Chairman, a few months ago, one really could not turn on the television at night or open a newspaper without hearing about the plight of those who suffered in the Enron-Andersen debacle—people whose tomorrow was stolen, many of them innocent, hard-working employees for the very companies that were engaged in these questionable deals. Even expert investors, including those at a public state retirement system in Austin, Texas, lost millions of dollars in Enron investments. Many people who were working to prepare their own tax returns saw that Enron was not paying much in the way of taxes; in fact, it apparently was not paying any taxes at all.

There were two reactions to this debacle. There were some people, like the gentleman from New York (Mr. LAFALCE) who said, how can we prevent something like this from happening again? What can we do? What is the best way? Certainly, it is challenging and complex, but what is the best way to be sure that more people do not suffer like this in the future?

And then there was a second response, the response we normally hear in Washington from those special interest lobbyists: how can we keep the loopholes, the back doors, the exceptions, the special preferences and exemptions that we worked so diligently over the years to be sure that Congress gave us, how can we be sure we keep them in the future?

In the face of this Enron-Andersen fiasco, those lobbyists, that second group, could not come with a straight face and say, ''do nothing.'' So their best avenue to thwart any meaningful reform was to say, ''do next to nothing,'' and we will call it ''something''; and that is precisely where we are today. The bill before us is ''next to nothing'' and it is being called ''something'' to blunt attempts to exact more far-reaching reform.

As if that were not bad enough, there are some lobbyists who saw this Andersen-Enron crisis as an opportunity, an opportunity to get a little more. And so when we took up the pension bill a couple of weeks ago, the first response in this House to Enron, instead of doing something to help the employees, a little more discrimination was approved in favor of the executives at the top. Today, in this bill, instead of making it more difficult for corporate wrongdoers to assume a position of responsibility at another corporation, this bill makes it easier.

When it comes to tax problems, the same accountants that are causing many of these problems, as Forbes magazine said a couple of years ago, they are the ''tax shelter hustlers,'' ''respectable accountants'' who are out peddling dicey corporate tax loopholes. And when today ends, they will still be able to do it. The analysts will still be able to think one thing and say another to those they advise to purchase stock. The accountants will still be held to a level of responsibility under this law that is less than even the modest changes President Bush proposed and less than what even the accountants agreed to do voluntarily.

Many people in this country, many Americans, are absolutely amazed that Enron could have fallen apart last year like it did. This year, they will be similarly amazed that Congress did next to nothing about it.

The CHAIRMAN. The Chair will advise Members that there are 5½ minutes remaining on both sides of the debate.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON), a new and valuable member of our committee.

Mr. FERGUSON. Mr. Chairman, I want to commend the gentleman from Ohio (Mr. OXLEY) for his great work on this legislation and for also working so closely with the major investigators: the Justice Department, the SEC, the Enron and Andersen internal teams, to achieve the goal that we have been able to achieve with this legislation. The Committee has heard from a diverse group of witnesses representing a broad spectrum of views from across America regarding the securities markets and the government's role in protecting investors.

The distinct differences in the testimony, including former SEC officials and the securities industry and a leading consumer organization and the accounting industry, have confirmed that the committee and the members on the committee have taken the necessary steps to improve the current regulatory system with this legislation, the CARTA legislation.

This legislation is a product of a multitude of views and months of work by the committee to improve the public's confidence in our capital markets and to strengthen the overall financial system in the most appropriate manner. It is effective because it gets to the heart of the issues that will prevent future Enrons from happening in this country, without drowning our businesses in a sea of red tape.

It is important that this legislation avoids the temptation to overreact and to over-legislate in a manner that is going to cripple the entire business community. In fact, the Federal Reserve Chairman, Alan Greenspan, recently testified that the Enron collapse has already generated a significant shift in corporate transparency and responsibility, highlighting the market's sometime ability to self-correct. Clearly, over-legislating would be counterproductive and make it impossible for our markets to function properly.

Clearly we need to legislate, and I think we have done that in this bill. But legislating should not be the end of the Congress's role in addressing these issues. The collapse of Enron represents a combination of irresponsible actions on the part of some decisionmakers with knowledge of the company's financial well-being, and a meltdown of the financial safeguards that we have used to identify problems at a stage when corrective action still might be possible. We have to continue to work directly with the private sector to instill a spirit of corporate responsibility. We must challenge America's business leaders to meet the highest standards of ethics and responsibility to their employees and their shareholders.

There have been dozens of legislative measures introduced by both sides of the aisle to address these issues. It is time we put partisan wrangling aside and to move forward with the practical solutions that will actually help. We need to increase the American people's confidence in our capital markets, because by doing so, we will increase their confidence in our economy at a time when our economy needs to continue to grow.

I urge my colleagues to support the CARTA legislation.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the very distinguished gentlewoman from California (Ms. WATERS), the ranking member of the Subcommittee on Financial Institutions.

Ms. WATERS. Mr. Chairman, I rise in opposition to H.R. 3763. I truly believe the gentleman from Ohio (Mr. OXLEY), the chairman of the committee, had good intentions, and I appreciate that he accepted one of my amendments on the disgorgement fund at SEC. However, the bill simply does not respond to the outrageous and corrupt behavior of Enron, Arthur Andersen, Global Crossing, and perhaps many other corporations and Wall Street firms. What more harm to our citizens will we tolerate?

This bill does not recognize the wake-up call we have been afforded. This bill will not prevent another Enron from happening. Unfortunately, there are major problems with the larger bill which does not offer strong enough protections to prevent what appears to be a growing number of unscrupulous corporate practices.

Instead of instituting real accounting reforms, the Republican bill leaves the bulk of the work to the SEC, who can be pressured by the industry into issuing so-called reforms that are meaningless. The Democratic substitute, however, creates a powerful new regulatory board with authority to set strict standards on auditors, with strong investigative and disciplinary powers, recognizing that years of the accounting industry's self-policing has failed.

The Republican bill fails to ban consultant services that create conflicts of interest. The Democratic substitute ensures auditor independence by prohibiting consulting services that create conflicts of interest, and gives audit committees of corporate boards authority to hire and fire auditors. The Republican bill protects executive corporate wrongdoers by making it more difficult to bar guilty officers and directors from serving at other public companies. The Democratic substitute holds CEOs accountable for their financial statements and subjects them to criminal penalties for knowingly lying. It requires those who make false or misleading statements to surrender their stock bonuses, and it also bars guilty officers and directors from serving at other public companies.

The Democratic substitute bars analysts from holding stock in the companies they cover and ending incentives to act as salesmen rather than objective experts.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from New York (Mr. GRUCCI), one of our outstanding freshman members of the committee.

Mr. GRUCCI. Mr. Chairman, I thank the gentleman for yielding.

First of all, I would like to thank the gentleman from Ohio (Mr. OXLEY) and my colleagues on the Committee on Financial Services for their tireless effort to swiftly address this crisis.

Mr. Chairman, the Enron debacle highlights the need for reform of our accounting and investment standards. However, any bill in response to this cannot go overboard in restricting our already self-regulating markets. For this purpose, I believe that this corporate responsibility bill strikes a solid balance, and I am in favor of its passage.

First, the corporate responsibility bill creates a public regulatory organization to make sure accounting laws are followed and audits are done properly. This is a necessary, commonsense approach to restoring investors' faith. Next, the bill applies the same stock bailout period to corporate executives as it does to employee shareholders, as is only fair. Finally, it demands that executives disclose their stock trades faster so employees and analysts truly know what is going on inside the company.

The beauty of the corporate responsibility bill is that it does not try to put the brakes on the wheels of our markets. Instead, it restores fairness and honesty to the system, while leaving its main tenets in place. It allows the investor to still be a master of his or her own destiny, but in a much safer environment. The self-regulating nature of our free enterprise system is left intact, and now it will be open to staying more clean.

The era of corporate mystery must end. Either we can let the corporate responsibility bill take us on a path to transparency and legitimacy where rules are valued and fraud is exposed and prevented, or we can watch as more innocent Americans are deprived of their life savings by greed and callousness. Although the corporate responsibility bill was written as a response to recent events, it is commonsense legislation that should have been considered long ago, and I urge my colleagues to vote in favor of it.

Mr. LAFALCE. Mr. Chairman, I yield myself the balance of the time remaining.

Mr. Chairman, we have an enormous, enormous problem on our hands. Investors have lost hundreds of billions of dollars, and sometimes it may have been due to bad investment decisions they made, but an awful lot of the time it was due to earnings manipulation or analyst hype or corporate or accounting wrongdoing. We need to rise to the challenge. This bill just does not do that. We could say, well, if we gave it a test and somebody gets 50 percent of the answers right, we would say, well, pass them. I think we flunk them if that is as good as they could do, especially if they do a poor job on all of the important issues. I think the main bill does a very poor job on all of the important issues.

Let us go to, for example, officers of corporations. What should we do about that? Well, the President has told us what he thinks should be done at a minimum. In President Bush's 10-point plan, proposal number 3: ''CEOs should personally vouch for the veracity, timeliness and fairness of their company's public disclosures, including their financial statements.'' The Republican bill punts on that. It does not do anything on that. Our substitute legislatively codifies what President Bush asked for.

What about boards of directors? Well, we have to make them more responsible. One way is to make sure that they are responsible for both the hiring and the firing of the auditors, so that the auditors then would be independent from the officers. The Republican bill does nothing on that. Our bill specifically says that it is a right and responsibility of the board of directors, the audit committee in particular, to perform that function.

Something else that we need to do to deal with officers or directors is if they are proven unfit, we need to be able to bar them from serving as officers and directors on other publicly traded corporations, and the SEC has complained that they do not have that power. President Bush says, proposal number 5: ''CEOs or other officers who clearly abuse their power should lose their right to serve in any corporate leadership positions.''

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The Republican bill codifies bad judicial law and makes it more difficult for the SEC to bar officers and directors. Our proposal adopts the reforms that have been advocated by the SEC, another fundamental threshold difference.

What about auditors? Well, we need a regulatory organization. The Republican approach is to say to the SEC, ''Well, if you think there should be regulatory organization for accountants, then you should create one. It is discretionary on your part. You decide what powers they will have and you decide who shall serve.''

We say that there shall be created an independent regulatory organization for accountants, we specify what their powers should be, and we also indicate the type of person who should be appointed: individuals who are representative of the pension plans of private employees, individuals who are representative of the pension plans of public employees, et cetera.

And very importantly, with respect to research analysts, the Republican bill says, well, we ought to study that problem. We say, look, the SEC has studied it. The SEC has given report after report showing conflicts. The Attorney General of New York has come out with unbelievable revelations.

On all other legislation, for example, Graham-Leach-Bliley, we created firewalls between banking, securities, and insurance. We need a firewall within securities firms with respect to the compensation that research analysts are given and the revenues that are generated for the investment arm of the firm. The quality of research should be the sole determinant of the compensation of research analysts. The Republican bill does nothing on that. We take meaningful action.

Mr. OXLEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this has been a worthwhile debate and I think does clearly point out some of the philosophical differences between at least a portion of the Democratic Party and the Republican approach.

This committee acted. We are the only committee who have acted responsibly in this manner with moving legislation forward. We had the first hearing in December on the Enron debacle. We have had six subsequent hearings. We have had 33 witnesses. We had a markup that lasted over 2 days, for 11 hours. We debated this thoroughly.

At the end of the process, at the end of the process in committee, over half of the Democrats on the committee supported the final passage of this legislation to recommend it for a floor vote. That is a positive development. So I stand here today supporting the bipartisan legislation that came out of our committee, and I am very proud of that.

My friend, the gentleman from New York (Mr. LAFALCE), points out the alleged differences with the White House. Let me point out and read the statement of administrative policy for the Members.

''The administration supports House passage of H.R. 3763 as an important step toward improving corporate responsibility. The bill is consistent with the President's 10-point plan, and is guided by the core principles of providing better information to investors, making corporate officers more accountable, and developing a stronger, more independent audit system.''

That is the statement of administration policy. They support this legislation. Let us support this bipartisan proposal as we move forward.

Mr. BARR of Georgia. Mr. Chairman, I rise today in support of the Corporate Auditing and Accountability, Responsibility and Transparency Act (CARTA) of 2002, H.R. 3763. This legislation represents necessary—but measured—response to the Enron and Global Crossing scandals.

It is important Congress continues to respond efficiently and effectively to the concerns of American investors, retirees, and employees. The Financial Services Committee has worked hard in order to send this solid, bipartisan legislation to the House floor.

I commend Chairman MICHAEL OXLEY for his continued efforts on this legislation. He has been dedicated to work with Members on both sides of the aisle, the industries and the administration in order to create a bill which would strike a reasonable balance.

H.R. 3763 is a tough bill on auditor accountability and corporate transparency and addresses the weaknesses revealed in the bankruptcies by carefully strengthening the markets. In addition, H.R. 3763 will help to protect America's shareholders by providing better information to investors, making corporate officers more accountable, and developing a stronger, more independent audit system.

Mr. Chairman, some may support the idea to create even more regulation and bureaucracy to prevent future collapses of major corporations like Enron or Global Crossing. However, the idea does not bear out. Neither Congress, nor the government should be in the position of handcuffing the private sector and how it does business.

H.R. 3763 gives the Securities and Exchange Commission the tools to identify future criminal wrongdoing, without imposing such strict regulatory guidelines that it would take an act of Congress to give any flexibility. Such restrictions would hamstring the agency and businesses. Moreover, we could, in the end, wrap an endless stream of red tape around the capital markets. As we emerge from the most recent economic slowdown, it would be the height of irresponsibility by this Congress to dampen investment.

I urge my colleagues to pass H.R. 3763 which would protect working families investing in their futures.

Mr. BEREUTER. Mr. Chairman, this Member rises today to express his support for H.R. 3763, the Corporate and Auditing Accountability, Responsibility and Transparency Act of 2002. This bill, of which I am an original cosponsor, is necessary to protect investors by ensuring auditor independence in the accounting of publicly traded companies.

This Member would express his appreciation to the distinguished gentleman from Ohio, Mr. OXLEY, the chairman of the House Financial Services Committee, for introducing H.R. 3763. In addition, this Member would like to express his appreciation to the distinguished gentleman from Louisiana, Mr. BAKER, the chairman of the Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, for his efforts in getting this measure to the House floor for consideration.

In large part, H.R. 3763 is a response to the grossly negligent activities by Arthur Andersen in their accounting audit of the Enron Corporation. For example, Arthur Andersen provided both consulting and auditing services to Enron, which certainly would appear to be an obvious conflict of interest. In addition, after the Securities and Exchange Commission, SEC, began investigating the Enron matter, Arthur Andersen nonetheless allegedly continued to destroy documents and e-mails related to its audit of Enron.

Therefore, H.R. 3763, among many things, would do the following:

First, prohibit firms from offering the consulting services of financial information system design and internal audit services to companies that are externally auditing.

Second, establish a new public regulatory board, the Public Regulatory Organizations PROs, to conduct oversight over the accounting industry. The PROs would be under the direct authority of the SEC. Currently, accountants are subject to partial oversight by their professional organization, the American Institute of Certified Public Accountants; the Federal Accounting Standards Board; and the State Boards of Accountancy, which license accountants. Under H.R. 3763, the power of these State boards is not diminished.

Third, prohibit corporate executives from buying or selling company stock during any period where 401(k) plan participants are unable to buy or sell securities. This provision would address the particular actions of Enron corporate executives who sold their stock when 401(k) participants were prohibited from selling their shares of stock.

Fourth, make it a crime for a corporate official to fraudulently influence, coerce, manipulate, or mislead an accountant performing an audit of a company.

Fifth, require companies to make real-time disclosures of financial information that is important to investors, such as material changes in a company's financial condition.

Sixth, require corporate executives to disclose when they sell securities they own in the company immediately. Current regulations allow corporate executives up to 40 days to make such disclosures.

This Member would also like to note that while H.R. 3763 is certainly a step towards protecting investors in the future, he also hopes that the corporate executives at Enron and the relevant auditors at Arthur Andersen are punished in the proper manner for their grossly irresponsible, probably illegal, corporate behavior.

In closing, this Member urges his colleagues to support H.R. 3763.

Mrs. MINK of Hawaii. Mr. Chairman, H.R. 3763, the Corporate Accountability, Responsibility, and Transparency Act of 2002, does not go far enough to reform the accounting industry and strengthen corporate disclosure rules, which are critical to restoring investor confidence, which was shattered by the collapse of the Enron Corporation.

The implosion of what was once the Nation's seventh largest company and dominant energy-trading enterprise proved that the integrity of the system of checks and balances that is supposed to prevent an Enron-like debacle has been compromised. The system's failure has devastated thousands of individuals and their families.

Enron's employees, the vast majority of whom were unaware of the breadth and scope of the company's questionable financial dealings, lost not only their jobs but also much of their life savings. Enron's executives fared considerably better, cashing in $1.1 billion in stock, as they overstated the company's revenues and concealed much of its debt in off-balance-sheet partnerships.

The employees of Arthur Andersen LLP, the auditing firm responsible for verifying the accuracy of Enron's books, have similarly been victimized by the actions of a relative handful of Anderson partners and personnel that chose to overlook Enron's fraudulent bookkeeping activities. Today, Arthur Andersen LLP faces huge civil lawsuits and is steadily losing clients, thereby causing many of its employees to become unemployed.

In addition to the employees of Enron and Arthur Andersen, many thousands of investors that relied on the supposed independent advice of stock analysts were victimized by the Enron debacle. Because Wall Street investment companies reaped huge fees for brokering Enron's numerous deals, they continued to lavish praise on the company's stock, even after it nosedived in October 2001.

While H.R. 3763 is intended to strengthen the independent auditing of publicly traded companies, it does not address actual accounting standards. For example, it is silent on the question of whether certain types of debt may be moved off a company's balance sheets, which, it cannot be stressed enough, was a hallmark of Enron's accounting machinations. The Democratic substitute to H.R. 3763 would: Require CEOs to certify the accuracy of their company's financial statements; allow the Securities and Exchange Commission to bar those guilty of wrongdoing from serving as corporate officers; prohibit auditors from performing consulting and auditing services for the same client; and prohibit analysts from owning stock in the companies on which they report.

Investor confidence is the bedrock upon which our market system is built. Investors must have full confidence that business executives will look after the long-term interests of their companies, directors will look after the interests of shareholders, auditors will verify the accuracy of financial statements, and analysts will offer sound investment advice. There is no question that investor confidence has been badly shaken, if not lost. If that confidence is to be fully restored, more than good intentions are required. It will require provisions with force and teeth. It will, in short, require the Democratic substitute. I strongly urge my colleagues to vote for it.

Mr. CASTLE. Mr. Chairman, I rise today to express my strong support for the Corporate and Auditing Accountability, Responsibility, and Transparency Act. Americans should know that this is the second piece of legislation the House has passed to protect them from future ''Enrons.'' Earlier this month, the House passed legislation to enhance pension protections and give employees more tools to diversify their retirement plans.

This legislation is designed to enhance the independence of the accounting industry to make sure the stock markets and investors have a more accurate picture of a corporation's financial conditions so they can make wise and informed decisions on where to invest their money. In particular, the bill creates a new Public Regulatory Organization, PRO, to oversee the activities of accountant. The PRO would be subject to direct SEC authority. A majority of the PRO board members will be independent of the accounting industry to assure that the PRO itself is not ''captured'' by the very industry it is regulating.

One of the other Enron-related problems this bill addresses is the failure to disclose the types of off-balance-sheet partnerships that Enron used to distort its financial condition. This bill requires prompt disclosure of these partnerships.

This bill also reigns in corporate management sales of company stock. Among the most disturbing actions Enron executives took was to sell their company stock at the same time there was a blackout period on the employees 401(k) retirement plan. They were preserving their own assets at the same time their employees were losing their retirements as the Enron ship continued to sink. From now on, whenever employee stock trades are prohibited, corporate management stock trades will also be prohibited.

Finally, while some have urged Congress to take further steps, I want to caution people that freezing additional reforms in legislation based upon our current understanding of the causes of these problems can lead to its own set of problems. In passing Gramm-Leach-Bliley a few years ago, Congress finally fixed some of the mistakes that were made in attempting to address the causes of the Great Depression. Critics should also note that this legislation calls on the SEC and other regulators to explore additional reforms. Congress will maintain active oversight of the SEC as they continue to develop sound ideas to prevent future Enrons.

Mr. Chairman, again, I want to express my strong support for this bill and urge my colleagues on both sides of the aisle to join the 49 bipartisan members of the House Financial Services Committee who reported this bill favorably to the House floor. This is a responsible step toward preventing future Enrons that does not punish the innocent.

Mr. STARK. Mr. Chairman, I rise in opposition to H.R. 3763, the Corporate and Auditor Responsibility Act, because the bill does nothing to prevent another Enron debacle from occurring in the future.

Enron's collapse has highlighted major gaps in our securities laws. These gaps jeopardize the retirement savings of millions of hard working Americans who have their retirement funds invested in securities. After the Enron collapse, the American people overwhelmingly called for strong measures to prevent such a debacle from happening again. They called on Congress to act, but this bill falls far short.

This so-called ''Corporate and Auditor Responsibility Act'' is nothing more than a political document for Republicans to appear like they are protecting investors and workers when, in fact, they are protecting corporations and CEOs. H.R. 3763 would actually increase the likelihood of another Enron situation because it limits the SEC's authority to prohibit Enron's corporate officers and directors from serving in such positions in the future if they are found guilty of misconduct.

What happened to the GOP mantra of holding executives accountable for corporate misconduct? H.R. 3763 fails miserably to hold CEOs even remotely accountable for their actions. Even President Bush thinks it makes sense to have a company's CEO certify the accuracy of their financial statements. This bill fails to take even that small step.

The Enron scandal happened less than 6 months ago, yet my Republican colleagues have quickly forgotten some of its major components. While thousands of Enron employees were being told to invest their retirement savings in Enron securities, Enron's CEO sold millions of dollars worth of company stock. Corporate officers knew that hollow deals were taking place to prop up the stock price, and the employees had to pay the price.

Shouldn't company CEOs be responsible for signing on the dotted line and verifying the company's books? Of course they should! Which makes it all the more unfathomable that the GOP would submit a bill without a provision to hold CEOs responsible for the veracity of their company's bottom line. Our Republican friends are basically saying to Ken Lay: feel free to get another CEO gig, create some new tax shelters for the company, prop up the stock price and then walk away with millions in personal profit. Today's bill does nothing to prevent that.

In contrast, the Democratic substitute addresses the more egregious corporate misconduct issues.

First and foremost, the Democratic substitute requires the CEO and chief financial officer (CFO) of publicly-traded companies to certify the accuracy and veracity of the company's financial statements. This is a reasonable first step to ensure that executives be held accountable for misleading investors and employees.

Next, the Democratic substitute allows the Securities and Exchange Commission (SEC) to recover all executive compensation received (including salaries, commissions, fees, bonuses, and stock options) for any period during which the executive falsified a company's financial statements. The Republican bill only allows the SEC to recover stock transaction proceeds for the six months prior to a corporate restatement of earnings. Under the Republican bill, an executive making a $3 million salary, who falsifies company financial records, will be able to keep it. He can also keep hundreds of millions of dollars in stock option proceeds accumulated under falsified accounting from previous years.

Finally, the Democratic substitute bill will empower the SEC to bar directors and officers found guilty of corporate misconduct from holding similar positions in the future. CEOs who mislead and defraud their investors and employees must not be allowed to return to similar positions. Without a strong provision such as this, incentives will continue to abound for CEOs to choose personal profit over corporate integrity.

This Republican bill is another sham on the American public who expect Congress to pass effective legislation to restore corporate accountability. I urge my colleagues to vote for the Democratic substitute and no on the Republican bill.

Mr. PAUL. Mr. Chairman, 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 today's debate will largely be 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, Mr. Speaker, 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, Mr. Speaker, 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 regulations 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, Mr. Chairman, 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 disclosures 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 our 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 if for truly independent evaluations of investment risk.

Increased Federal interference in the market could also harm consumers by crippling innovative market mechanisms to hold corporate managers accountable to their shareholders. Ironically, Mr. Chairman, current SEC regulations make it difficult for shareholders to challenge management decisions. Thus government regulations encourage managers to disregard shareholder interests!

Unfortunately, the Federal Government has a history of crippling market mechanisms to protect 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 shareholders 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, manaagers 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!

If left alone by Congress, the market is perfectly capable of disciplining businesses who engage in unsound practices. After all, before the government intervened, Arthur Andersen 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 that pick the taxpayer's pockets through Ex-Im and OPIC.

If nothing else, Mr. Chairman, Enron's success at obtaining State favors is another reason to think twice about 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, Mr. Chairman, 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, the legislation before us today 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.

Mr. BLUMENAUER. Mr. Chairman, I rise today in support of H.R. 3763, the Corporate and Auditing Accountability and Responsibility Act. This bill moves policy in the direction necessary to strengthen corporate and auditor oversight needed to prevent future debacles that we have seen recently at Enron and Global Crossing, and in the past with the Savings and Loan catastrophe.

These oversight failures have led to the loss of hundreds of billions of dollars of savings by innocent investors and employees. These losses have shattered the lives of families, including those in my district who are employed at Portland General Electric, which was purchased by Enron in 1997. Congress owes it to the American public to put in place measures that will eliminate conflicts of interest, lack of independence, and special protections given to accountants and lawyers, which have all been critical factors leading to corporate and industry failures.

Due to the severe impact that these corporate failures create, I urge the House to implement more significant reforms by passing the Democratic Substitute amendment, which:

Creates an independent regulatory board that can set strict standards for auditor independence, with sweeping investigative and disciplinary powers over audit firms.

Holds corporate CEOs accountable by requiring them to certify the accuracy of their financial statements and empowers the SEC to bar those guilty of wrongdoing from serving as corporate officers or directors at other companies.

Prohibits auditors from doing consulting work for the same clients they are in charge of auditing, thereby insuring that auditors remain independent and are not subject to conflicts of interests.

Bans analysts from owning stocks in the companies on which they report and prohibits their pay from being based on their investment firm's banking revenue.

The Democratic approach ensures that our corporate leaders, financial statement auditors, and stock analysts have adequate independent oversight and regulations to fulfill their professional duties. However, I also support the underlying bill, H.R. 3763, which begins the process of putting in place the reforms needed to prevent future tragedies that are so devastating to the savings and lives of American workers and investors.

Mr. SHOWS. Mr. Chairman, today I rise in favor of commonsense legislation that provides necessary reform for the auditing profession.

The Corporate and Auditing Accountability, Responsibility, and Transparency Act (CAARTA) offers the appropriate framework for addressing the concerns raised by the Enron debacle and the revelation of improprieties by its auditor, Arthur Andersen.

The consumers, employees, and investors affected by the demise of Enron due to unlawful misrepresentation of financial information deserve both answers and solutions so that confidence in accounting independence, objectivity, and integrity is restored. However, government should not overreact with prescriptive regulations. Instead, we should provide thoughtful and balanced measures that encourage sound auditing practices yet mandate compliance.

Auditors must maintain an independent relationship with businesses whose books are under review. CAARTA establishes the appropriate guidelines for determining true auditor independence without treading the slippery slope of unnecessary and debilitating regulation. Small businesses throughout Mississippi rely on their local accountants to provide more than just auditing services. These businesses rely on advice and counsel for all types of accounting problems such as bookkeeping, payroll services budgeting, and income tax preparation. We must keep local accountants and small businesses in Rural America in mind when we legislate policy that might impact these relationships in the future.

With these small businesses and local accountants in mind, I oppose any provision requiring auditors of publicly traded companies to meet a netcapital requirement of 50% of its annual audit revenue from publicly traded companies. I agree that auditors of SEC reporting companies ought to have enough capital and insurance to cover the liability they incur when an audit is performed; however, my concern remains with the small businesses and accountants in Rural America whose practices could eventually fall under the same requirement, devastating local, small-town accountants and debilitating the services they currently provide.

I support CAARTA's creation of a public regulatory organization (PRO) made up of both members of the public and members of the accounting profession. The American public and the accounting profession will be better served by this independent governmental body that is given the authority to sanction and discipline those accountants who violate codes of ethics, standards of independence and competency, or securities laws.

As United States Comptroller General David Walker identified in his written testimony before the Financial Services committee on April 9, 2002, the current self-regulatory system for auditors ''involves many players in a fragmented system that is not well coordinated, involves certain conflicts of interest, lacks effective communication, and has a discipline system that is largely perceived as being ineffective.'' Mr. Walker concluded, ''direct government intervention to statutorily create a new independent Federal government body to regulate the accounting profession is needed.'' I support this conclusion and the means and degree by which CAARTA creates a public regulatory board to address those concerns.

There were two specific issues that I would have liked strengthened or included in this reform package: a stronger section providing for disgorgement of bonuses and other incentives and the inclusion of a requirement for CEOs and CFOs to be held accountable for their companies' financial statements. CEOs must not be allowed to profit from inaccurate and falsified financial statements. Bonuses and other incentive-based forms of compensation should be given back to the workers who lost their pensions and the consumers who lost their investments resulting from misconduct and erroneous accounting statements at the hands and direction of corporate executives. Furthermore, CEOs and CFOs must be responsible for a company's financial statement and certify its accuracy. This is a good business practice that is now, unfortunately, no longer the norm.

We must restore confidence in the accounting profession by enacting legislation that ensures accurate and responsible financial disclosure. CAARTA represents commonsense reform, which makes a deliberate attempt to safeguard American workers, investors, and consumers.

Mr. SHAYS. Mr. Chairman, I want to commend Chairman MIKE OXLEY and Chairman RICHARD BAKER for their work on the legislation we are debating. The reforms contained in this accounting bill represent a balanced approach between industry and government oversight and I am pleased to support it.

The Corporate and Auditing Accountability, Responsibility, and Transparency Act meets the tests for reform put forward by President Bush. It prohibits accounting firms from offering certain controversial consulting services to companies they're also auditing. And it establishes a new, public regulatory board to certify any accountant wishing to audit the financial statement required from public issuers of stock. This board will have enforcement powers and will be under the direction of the Securities and Exchange Commission.

Under CAARTA, all publicly-traded companies will be responsible for ensuring that their accounting firms are in good standing and for having their financial statement certified by the regulatory board.

Well, maybe I shouldn't be so quick to say ''all'' publicly-traded companies. You see, there are two giant private corporations that enjoy a very special privilege from the federal government: they are completely exempt from our federal securities laws.

Mr. Chairman, these companies are Fannie Mae and Freddie Mac, and all the important improvements this legislation makes won't apply one iota to them.

After studying the collapse of Enron and Global Crossing, the Financial Services Committee determined that a number of reforms were necessary to restore confidence in corporate America. These reforms build on the Securities Act of 1933 and the Securities Exchange Act of 1934, the two landmark securities laws to which all publicly-traded companies, except Fannie and Freddie, must adhere.

The reforms contained in this legislation will strengthen securities laws and accounting standards—except when it comes to Fannie and Freddie. This legislation improves transparency in our capital markets and protects investors—unless they're investing in Fannie Mae and Freddie Mac securities.

What this legislation highlights is that we have two separate rules in corporate America: those that apply to Fannie and Freddie, and those that apply to every other publicly-traded company.

The Financial Services Committee has had a number of hearings on the unfair advantages these two secondary mortgage companies have over the rest of the mortgage industry. With Chairman OXLEY's support, I hope we can continue to ask Fannie Mae and Freddie Mac why they can't play by the same rules as all other companies and why they continue to seek exemptions from federal laws designed to protect investors.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered as read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3763

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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 concluded 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. 78l) 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. 78l) 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. 78l) 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 arrangements 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 include 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.

The CHAIRMAN. No amendment to the committee amendment in the nature of a substitute is in order except those printed in House Report 107–418. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 107–418.

AMENDMENT NO. 1 OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer amendment No. 1 made in order pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. OXLEY:

Page 9, line 24, strike ''study'' and insert ''reviews''.

Page 11, line 10, insert ''or'' after ''review''.

Page 11, line 17, strike ''board'' and insert ''organization''.

Page 33, line 7, strike ''DEFINITION'' and insert ''DEFINITIONS''; on line 8, strike ''term 'beneficial owner' has the meaning'' and insert ''terms 'officer', 'director', and 'beneficial owner' have the meanings''; and line 9, strike ''term'' and insert ''terms''.

Page 39, strike line 5 and all that follows through page 40, line 9; and on page 40, line 10, strike ''(d) CHANGES IN CODES OF CONDUCT.—''.

Page 42, lines 9 and 11, strike ''accountants report'' and insert ''accountant's report''.

Page 42, line 17, insert ''or her'' after ''his'', and beginning on line 18, strike ''an opinion cannot be expressed'' and insert ''he or she cannot express an opinion''.

Page 53, line 23, strike ''the role played by'' and insert ''whether'', and on line 24, strike ''in assisting'' and insert ''assisted''.

Page 54, line 18, insert ''which may have been'' before ''designed solely''.

Page 57, line 9, insert ''7, 8,'' after ''6,''.

The CHAIRMAN. Pursuant to House Resolution 395, the gentleman from Ohio (Mr. OXLEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Chairman, I yield myself 5 minutes to explain the amendment.

Mr. Chairman, this manager's amendment clarifies the language in a few portions of the legislation to give greater effect to the committee's intent in reporting out H.R. 3763.

The amendment clarifies that certain terms used in the bill are meant to be consistent with how those terms are used in the securities laws. It also removes some language that the committee had adopted which would have required self-regulatory organizations to undertake specific rule-makings. Because this is not standard practice under the securities laws, that language was deleted, with the consent of its original sponsor, the gentlewoman from New York (Mrs. MALONEY). However, important provisions relating to the requirement that issuers may make public any waiver of their code of ethics was retained.

The amendment also clarifies a section directing the GAO to conduct a study of investment banks. The original sponsor of the language, the gentleman from New York (Mr. LAFALCE) agrees with these changes, which were designed to ensure that the GAO study is fair, impartial, and accurate.

Lastly, the amendment specifies that certain provisions of the bill are not designed to apply to investment companies that are currently registered with the SEC. Because these investment companies are already fully regulated by the SEC under the Investment Company Act of 1940, application of the noted provisions to them would be inappropriate.

Mr. Chairman, these changes mostly fall within the realm of technical and conforming amendments. I know of no opposition to these amendments, and I certainly urge their adoption.

Mr. Chairman, I reserve the balance of my time.

Mr. CAPUANO. Mr. Chairman, I rise to claim the time on my side.

The CHAIRMAN. The gentleman from Massachusetts (Mr. CAPUANO) is recognized for 5 minutes.

Mr. CAPUANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have no objection to the manager's amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the manager's amendment and the underlying bill. Mr. Chairman, the aim of this legislation is to ensure a continued faith in our capital markets, and to allow America's families and the investing public to continue to benefit from the free flow of accurate information.

This bill, the manager's amendment, provides a surgical strike approach to address the issues arising out of the Enron bankruptcy without hampering our markets' ability to thrive and the benefit they provide to America's families.

We have heard discussion today on the floor, Mr. Chairman, about the issues that arose under the Enron bankruptcy: the issue about the blackout period, the fact that we ought not have employees blacked out while executives have the ability to sell company stock. That is addressed.

We also have addressed in the bill the disclosure of off-balance-sheet transactions, that they all must be disclosed.

The other side speaks about the fact that certain specified nonaudit services are not prohibited under this legislation, but I would bring to the body's attention that there were 10 nonaudit services that the SEC proposed restrictions on. Of these ten, seven were prohibited by the SEC's final independent rules, and two, two of them, the financial systems work and internal auditing ability, are prohibited under the chairman's bill.

The one remaining nonaudit service was expert services, which the SEC decided in its final rule should not be prohibited. Accordingly, Mr. Chairman, the other side is largely proposing redundant legislation that is already in place under existing rules, except for one.

There is one major problem with the proposal coming from the other side. By adopting word for word the SEC's proposed rules, the other side would codify prohibitory and definitional language that the SEC, through notice and comment rule-making, has already determined to be unacceptable.

Mr. Chairman, I urge adoption of the manager's amendment and the underlying bill.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 1 minute to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Chairman, I thank the gentleman for yielding time to me.

Enron was a great tragedy; it was a tragedy for the employees, for the investors, and it was a tragedy for the American public. It was a tragedy for our Nation.

We clearly need legislation. We need legislation that will give investors better access to information necessary to judge a firm's performance, the financial risk, the condition of that company. We need legislation that will give investors prompt information that is critical to decide whether or not they should make an investment.

We also need legislation that will deal with dishonest and unscrupulous CEOs, legislation that will bar them from serving as an officer of a company, that will force them to disclose critical information about what they are doing when they buy or sell stock in that company.

This legislation before us addresses all of those issues. It would be a greater tragedy if we were, in this body, to introduce legislation that would create unnecessary and burdensome red tape for American industries, that would nationalize the accounting industry. It would be inappropriate for us to put forward legislation that would create ambiguous and difficult-to-understand standards.

This is a good bill. I urge all colleagues on both sides of the aisle to support it. I commend the chairman and the subcommittee chairman who worked on this very important legislation.

Mr. OXLEY. Mr. Chairman, I yield the final 30 seconds, with apologies, to my good friend, the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I will be brief. By creating an independent regulatory organization comprised of a majority of financial experts from outside of the accounting profession, this bill brings much needed reform and oversight to the status quo ante of self-regulation within the auditing profession.

By requiring that CEOs and other corporate insiders disclose their trades in company stock within 48 hours, within 48 hours of making that trade, this bill will increase the speed and transparency of information disclosure necessary for the efficient operation of our capital markets.

By preventing these same executives from unloading these shares during the lockdown of an employee pension account, it ensures that all stakeholders in a company are treated equitably and fairly, not as first- and second-class shareholders in equity.

For these reasons, I urge support for the manager's amendment and for the underlying bill. I thank the chairman, the gentleman from Ohio (Mr. OXLEY), for the Corporate and Auditing Accountability, Responsibility, Transparency Act of 2002.

The CHAIRMAN. Does any Member rise in opposition?

If not, the question is on the amendment offered by the gentleman from Ohio (Mr. OXLEY).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 107–418.

AMENDMENT NO. 2 OFFERED BY MR. CAPUANO

Mr. CAPUANO. Mr. Chairman, I offer amendment No. 2.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. CAPUANO:

Page 3, beginning on line 21, strike paragraph (1) of section 2(b) through page 4, line 9, and insert the following:

(1)(A) The board of such organization shall be comprised of five members—

(i) two of whom shall be persons who are licensed to practice public accounting and who have recent experience in auditing public companies;

(ii) two of whom may be persons who are licensed to practice public accounting, if such person has not worked in the accounting profession for any of the last two years prior to the date of such person's appointment to the board; and

(iii) one of whom shall be a person who has never been licensed to practice public accounting.

(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.

The CHAIRMAN. Pursuant to House Resolution 395, the gentleman from Massachusetts (Mr. CAPUANO) and a Member in opposition each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. CAPUANO).

Mr. CAPUANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is relatively simple. It does one small item in the proposed bill which simply guarantees that one, only one of the five seats, will be someone who has never been licensed as an accountant.

It simply is the best way that I could think of to guarantee that the general public has at least one voice at the table. The other four seats are just as submitted in the current draft; namely, two seats shall be people who are licensed to practice accounting, and two people may have a license to practice accounting, as long as they have not practiced in the last 2 years.

It is exactly what the bill says, with the sole exception of one person who has never been licensed. I think that is the least we can do to guarantee the general public, the investing public, has at least one seat at the table without having been subject to practice for the last 30 or 40 years.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. For what purpose does the gentleman from Ohio (Mr. OXLEY) rise?

Mr. OXLEY. Mr. Chairman, I claim the time in opposition to the amendment, though I am not opposed to the amendment.

The CHAIRMAN. Without objection, the gentleman from Ohio (Mr. OXLEY) is recognized for 10 minutes.

There was no objection.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank my friend, the gentleman from Massachusetts (Mr. CAPUANO), a fine member of the Committee, for his good work on this amendment. I rise in strong support of it. By clarifying that at least two members of the five-member public reporting organization created by CARTA must be certified public accountants, the Capuano amendment recognizes the need for accounting expertise.

Equally important, it guarantees that at least one member of the board, and potentially three, is not a CPA. That would guarantee a level of independence from the accounting profession that is absolutely essential to keeping our financial reporting system the best in the world.

Mr. Chairman, I thank the gentleman and urge all Members to vote aye.

□ 1230

Mr. OXLEY. Mr. Chairman, I support the Capuano amendment.

Mr. Chairman, I have no further speakers, and I yield back the balance of my time.

Mr. CAPUANO. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. CAPUANO).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 3 printed in House Report 107–418.

AMENDMENT NO. 3 OFFERED BY MR. SHERMAN

Mr. SHERMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. SHERMAN:

In section 21 strike "and 15" amd insert "and 16" and after section 13, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 14. AUDITOR MINIMUM CAPITAL.

(a) REGULATION REQUIRED.—The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered independent unless such accountant complies with such capital adequacy standards as the Commission shall prescribe by regulation.

(b) MINIMUM STANDARD.—The capital adequacy standards established by the Commission pursuant to this section shall require that the net capital of an accountant be equal to not less than one-half of the annual audit revenue received by such accountant from issuers registered with the Commission.

(c) TREATMENT OF CAPITAL AND REVENUE.—For purposes of this section—

(1) net capital shall include the sum of capital, reserves, and malpractice insurance available to the accountant for the performance of audit functions; and

(2) annual audit revenue shall include the sum of all audit fees received by the accountant, but shall not include any fees for non-audit services, as such terms are defined in regulations of the Commission in effect on the date of enactment of this Act.

The CHAIRMAN. Pursuant to House Resolution 395, the gentleman from California (Mr. SHERMAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Mr. Chairman, I yield myself such as I may consume.

Mr. Chairman, I know there are others that would like to speak in favor of this amendment, but this whole process has gone more quickly than expected, so we will see if they can make it here to the floor.

Mr. Chairman, the financial auditing system is the only one where the umpire is paid by one of the teams. That is to say, we have a situation where the auditor must make tough judgment calls, particularly as to how to apply generally accepted accounting principals which are not mechanical but, rather, require judgment. And the firm must make those judgments relative to the client, sometimes being the difference between whether the stock sells for $20 a share or $40 a share. The auditing firm must make that decision affecting the clients when they are being paid by that client.

The one financial check on this is the fact that if the auditor does not make the right decision, but is rather negligent, they may be sued. The other check on this, of course, is the integrity and the professionalism of the individual auditors involved in the process. But our system, our capitalist system works well when we rely on the good spirit of people but also on financial incentives, financial checks and balances. Those financial checks and balances, however, ring hollow in the present system.

Back when I was practicing—and, Mr. Chairman, that was a long time ago, I had hair when I was doing it, that tells us how long ago it was—we had general partnerships that were the Big Eight, now the Big Five accounting firms. That meant that every partner's personal assets were on the line if the firm committed malpractice. So of course the firms purchased malpractice insurance. And it meant that if an investor was hurt by malpractice, that that investor would at least get some compensation.

Now our corporate laws have changed. There are professional corporations, limited liability companies, and limited liability partnerships.

As a result, those investors hurt by auditor malpractice can only look to the assets of the firm. It makes sense that we make sure that there are at least some assets there so that investors hurt by accounting malpractice at least get some compensation.

That is not the case at the present time. Arthur Andersen is supposed to be paying $217 million, not in relation to Enron, but in relation to the Baptist Foundation of Arizona audit in which they also committed malpractice. And now it looks like those investors are not going to be paid. It looks like the Enron investors are not going to get a penny from Arthur Andersen. Why? Because Arthur Andersen has virtually no malpractice insurance and virtually no reserves.

Mr. Chairman, if you are going to drive your car, you might hurt somebody. And that is why every State in this Union requires you to have some sort of reserve or auto insurance. If you are going to operate a fleet of thousands of taxis, certainly you would have insurance, because driving down Main Street you might make a mistake and hurt somebody.

Well, driving on Wall Street is also potentially dangerous. And those who drive down Wall Street and can cause billions of dollars of harm if they are not careful, should also have the same insurance required of every driver in this country. Wall Street is as dangerous for pedestrians as Main Street, and that is why I have proposed this amendment.

I want to be very clear on what it does not do. It does not have an effect on the 99 percent of CPA firms that do not audit public companies. It has virtually no effect on the regional firms that do a very few SEC audits. It requires them to have such minimal capital reserves that if they just own their own computers, they meet the test. They probably would have malpractice insurance anyway.

This bill affects the Big Five firms. It says that those firms that do 99.5 percent of all the SEC auditing have to have reserves or they have to have malpractice insurance. It ensures that if investors are hit on Wall Street, they will at least get some recompense. We provide that assurances to pedestrians. We ought to provide it to investors as well.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio (Mr. OXLEY) is recognized for 10 minutes.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment before us requires audit firms to establish and maintain huge capital reserves, at least 50 percent of annual audit revenue. The Sherman amendment was offered in committee and defeated by an overwhelming margin of 49 to 9. Though well intentioned, it would establish a burdensome and wholly unprecedented requirement, expanding government's reach into the financing and structuring of audits firms. Minimum capital requirements would harm small audit firms in particular and would result in less stability for public companies, higher audit cost for public companies, lower profits for investors, and more speculative lawsuits.

Clearly this is a case of using a sledgehammer to crack a nut.

I urge all Members to oppose this amendment and support the base bill.

Mr. Chairman, I reserve the balance of my time.

Mr. SHERMAN. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from California has 5 minutes remaining.

Mr. SHERMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me respond to the comments of our distinguished chairman.

This is hardly a sledgehammer. Keep in mind that 20 years ago, every one of the accounting firms, big and small, had far more reserves available to those who were affected by accounting malpractice. Twenty, 30 years ago, they were all general partnerships, so they had malpractice insurance. One of the reasons they had it is that the personal assets of every partner were on the line. The assets available to the creditors of Arthur Andersen 30 years ago would have been tens of billions of dollars, adjusted for inflation, talking about 2002 dollars. Today we have an empty shell.

I remind the House that when they ask poor people in each district who need to drive somewhere to work to earn the minimum wage, we insist they have liability insurance, because while we are concerned about their ability to drive, we are also concerned that those who are hurt by negligence get at least something. And yet we turn to what will probably be the Big Four accounting firms, each with many billions of dollars of revenue, and say that they do not have to have any liability insurance.

Is that a fair society? Do we really believe that driving down Wall Street is not as hazardous as driving down any street in America? Certainly all the automobile accidents in this country will not add up to the losses suffered by Enron investors. If we require those who drive to have insurance and we do not regard that as an undue burden on driving, how can we say that auditing publicly traded corporations, an activity engaged in by only five accounting firms for the most part, maybe two or three others, are we going to say that the five or eight or nine largest accounting firms in the country do not need any liability insurance? I do not think we should. I think at this time it is reasonable to say that if you are engaging in activity that only exists because the securities law requires it, if you are receiving billions of dollars in fees because publicly-traded companies are required by Federal law to have an audit, then you ought to have liability insurance.

I will give another example. If a small plumbing contractor wishes to do the plumbing on a Federal building or a State construction project, surely we would require a completion bond or other insurance that the work will be done appropriately. How can we turn to individual drivers and say they must have insurance, the smallest companies who do construction work, and say they must have insurance, and then turn to the Big Four accounting firms and say they can walk away scot-free no matter what liability a court imposes on them? It is an illusory liability. The Enron investors will probably get nothing from Arthur Andersen.

I do not think that is a fair system. I think instead it is reasonable to require that those who engage in activities which may make them liable to someone else have reasonable amounts of insurance. I want to repeat, this bill will affect only the Big Four or, today, Big Five accounting firms. It will have no effect on the 99 percent of firms who do no SEC auditing and will have no effect or virtually no effect on the four, five, or six other regional firms who may have a very few SEC audits. Only when a firm is deriving a very large percentage of its revenue from SEC audit does this bill have any effect.

So I ask my colleagues to require that investors who are mamed on Wall Street at least be able to get some amounts of compensation, as they would if they were hurt walking across the street in their hometown.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Richmond, Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Chairman, I rise in opposition to the gentleman from California's (Mr. SHERMAN) amendment, and with all due respect, I beg to differ. We are not talking about insurance here. What we are talking about is a totally unprecedented and, in my opinion, unjustified expansion of government's reach into the financing and structuring of accounting firms.

Let us address the first issue that the gentleman from Ohio (Mr. OXLEY) made here, that this particular amendment would really contribute to the instability of any public company that was required to have audited financial statements. Just imagine if the auditing firm dipped below the required level of reserve while that firm was in the middle of an audit. That public company who is required to have the audited financial statements would be left in the lurch. There would be no other option in that firm than to go out and seek another accounting firm to restart the audit or pick up where the one that is now disqualified left off, thus adding to the cost of having audited financial statements. In addition, I think it would take away from the quality of the audit itself.

Mr. Chairman, I would also say that in any other instance where the government requires a certain capital, minimum capital requirement, for instance the banking industry, there is some type of quasi-guarantee relationship that the government has and in some sense is the insurer of the industry. In this particular case, there is no relationship by the government to the auditing firm. In the case of the banks, the government is there to provide some type of confidence to the depositors that their personal funds will be insured to a certain extent. Here there is no such relationship and, in fact, auditing firms are precluded from maintaining any deposits from individuals or from clients.

Think about the effect that this amendment would have on small accounting firms. Many firms with reduced access to capital and costly insurance will be now precluded from seeking or acquiring business elsewhere. When we are talking about a firm having to have 50 percent of the annual audit fee in reserve, that is a tremendous financial and capital hurdle for most American businesses, not just to mention auditing firms. Such a requirement to have that type of reserve will certainly add to the cost of the financial audit, ultimately adding to the cost and taking away the benefit to the investors in that company.

Mr. Chairman, I would say this amendment goes in the wrong direction and I urge my colleagues to oppose the amendment.

□ 1245

The CHAIRMAN. The Chair will advise Members that the gentleman from Ohio (Mr. OXLEY) has 6 minutes remaining. The gentleman the California (Mr. SHERMAN) has 30 seconds remaining.

Mr. SHERMAN. Mr. Chairman, I yield myself the remaining time.

This bill will not adversely affect small accounting firms. It restores a system similar to what we had 30 years ago when every firm had malpractice insurance because the LLC and LLP structures had yet to be invented under State law. We in the federal government require that an audit be conducted because of the securities law, and we ought to require that those who will rely on those financial statements will get some compensation in the event that auditor malpractice takes place.

State governments require insurance to drive a car. We ought to require insurance to drive on Wall Street.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Before yielding back, I would only reiterate the fact that we debated this in committee, the same amendment. The gentleman from California was able to get nine votes in favor of his amendment, 49 against. I think the committee understood the issue and reacted accordingly.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in support of the Sherman amendment to H.R. 3763, the Corporate and Auditing Accountability and Responsibility Act.

This amendment would establish capital standards for accounting companies that audit publicly traded companies.

This amendment would require the SEC to set capital standards at a level no lower than half of the firm's annual audit revenues. Moreover, it allows auditors to apply capital, reserves and malpractice insurance to meet this net capital requirement.

Accounting firms that fail to maintain required levels of capital reserves would be prohibited from auditing publicly traded companies.

As evidenced by the relationship between Enron and its auditor, Arthur Andersen, there are many flaws in the system that needs fixing. This amendment is another step in the right direction.

It is very likely that because Arthur Andersen did not carry adequate malpractice insurance, the Enron shareholders, many of them former Enron employees, will not see any monetary compensation from their auditor. This amendment does not and will not hurt small accounting firms because nearly all SEC audits are done by the big five accounting firms.

It is important to note that this amendment is being offered so that auditors of SEC reporting companies will to have enough capital and insurance to cover the liability they incur when they perform a large audit and would only affect auditors performing audits for companies required to file disclosures with the SEC.

This is an important amendment and I urge you to support it.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. SHERMAN).

The amendment was rejected.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 107–418.

AMENDMENT NO. 4 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. KUCINICH

Mr. KUCINICH. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 4 in the nature of a substitute offered by Mr. KUCINICH:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Investor, Shareholder, and Employee Protection Act of 2002''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The failure of accounting firms to provide accurate audits of its clients is not a new or isolated problem.

(2) Accounting firms have been implicated in failed audits that have cost investors billions of dollars when earnings restatements sent stock prices tumbling.

(3) Auditors have an inherent conflict of interest. They are hired, and fired, by their audit clients.

(4) This conflict of interest pressures auditors to sign off on substandard financial statements rather than risk losing a large client.

(5) Auditing a public company for the benefit of small as well as large investors requires independence.

(6) Therefore the only truly independent audit is one by a governmental agency.

(7) The Federal Bureau of Audits, closely regulated by the Commission, will provide honest audits of all publicly traded companies.

SEC. 3. ESTABLISHMENT OF BUREAU.

(a) ESTABLISHMENT.—There is hereby established within the Commission an independent regulatory agency to be known as the Federal Bureau of Audits.

(b) FUNCTION OF THE BUREAU.—The Bureau shall conduct an annual audit of the financial statements that are required be submitted by reporting issuers and to be certified under the securities laws or the rules or regulations thereunder.

(c) OFFICERS.—

(1) BUREAU HEAD.—The head of the Bureau shall be a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) ADDITIONAL OFFICERS.—There shall also be in the Bureau a Deputy Director and an Inspector General, each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(3) TERMS.—The Director, Deputy Director, and Inspector General shall be appointed for terms of 12 years, except that—

(A) the first term of office of the Deputy Director shall be eight years; and

(B) the first term of office of the Inspector General shall be 4 years.

(d) INDEPENDENCE.—Except as provided in sections 4 and 5, in the performance of their functions, the officers, employees, or other personnel of the Bureau shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Commission.

(e) ADMINISTRATIVE SUPPORT.—The Commission shall provide to the Bureau such support and facilities as the Director determines it needs to carry out its functions.

(f) RULES.—The Bureau is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions, but the Bureau may not establish any auditing standards within the jurisdiction of the Commission under sections 4 and 5.

(g) ADDITIONAL AUTHORITY.—In carrying out any of its functions, the Bureau shall have the power to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Bureau may, by one or more of its officers or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) CONFLICT OF INTEREST PROVISIONS.—A person previously employed by the Bureau may not accept employment or compensation from an issuer audited by the Bureau or an accountant that provides audit related services to an issuer audited by the Bureau for 10 years after the last day of employment at the Bureau. Any current employee of the Bureau shall be required to place all investments in a blind trust, in accordance with regulations prescribed by the Commission. The employees of the Bureau who conduct the audits shall be exempt from the civil service pay system under section 4802 of title 5, United States Code, and shall be paid salaries that are competitive with similar private sector employment.

(i) LEGAL REPRESENTATION.—Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Director of the Bureau may appear for, and represent the Bureau in, any civil action brought in connection with any function carried out by the Bureau pursuant to this Act or as otherwise authorized by law.

SEC. 4. ASSUMPTION OF AUTHORITY BY COMMISSION OVER AUDITING STANDARDS.

(a) ASSUMPTION OF AUTHORITY.—Pursuant to its authority under the securities laws to require the certification, in accordance with the rules of the Commission, of financial statements and other documents of reporting issuers of securities, the Commission shall, by rule, establish and revise as necessary auditing standards for audits of such financial statements.

(b) INCORPORATION OF CURRENT STANDARDS.—In adopting auditing standards under this section, the Commission shall incorporate generally accepted auditing standards in effect on the date of enactment of this Act, with such modifications as the Commission determines are necessary and appropriate in the public interest and for the protection of investors.

(c) ADDITIONAL REQUIREMENTS FOR RULES.—The rules prescribed by the Commission under subsection (a)—

(1) shall be available for public comment for not less than 90 days;

(2) shall be prescribed not less than 180 days after the date of enactment of this Act; and

(3) shall be effective on the first January 1 that occurs after the end of such 180 days.

SEC. 5. FEES FOR THE RECOVERY OF COSTS OF OPERATIONS.

(a) IN GENERAL.—The Commission shall in accordance with this section assess and collect a fee on each reporting issuer whose financial statements are audited by the Bureau. This section applies as of the first fiscal year that begins after the date of enactment of this Act (referred to in this section as the 'first applicable fiscal year').

(b) TOTAL FEE REVENUES; INDIVIDUAL FEE AMOUNTS.—The total fee revenues collected under subsection (a) for a fiscal year shall be the amounts appropriated under subsection (d)(2) for such fiscal year. Individual fees shall be assessed by the Commission on the basis of an estimate by the Commission of the amount necessary to ensure that the sum of the fees collected for such fiscal year equals the amount so appropriated.

(c) FEE WAIVER OR REDUCTION.—The Commission shall grant a waiver from or a reduction of a fee assessed under subsection (a) if the Commission finds that the fee to be paid will exceed the anticipated present and future costs of the operations of the Bureau.

(d) CREDITING AND AVAILABILITY OF FEES.—

(1) IN GENERAL.—Fees collected for a fiscal year pursuant to subsection (a) shall be credited to the appropriation account for salaries and expenses of the Bureau and shall be available until expended without fiscal year limitation.

(2) APPROPRIATIONS.—

(A) FIRST FISCAL YEAR.—For the first applicable fiscal year, there shall be available for the salaries and expenses of the Bureau $5,150,000,000.

(B) SUBSEQUENT FISCAL YEARS.—For each of the four fiscal years following the first applicable fiscal year, there shall be available for the salaries and expenses of the Bureau an amount equal to the amount made available by paragraph (1) for the first applicable fiscal year, multiplied by the adjustment factor for such fiscal year (as defined in subsection (f)).

(e) COLLECTION OF UNPAID FEES.—In any case where the Commission does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

(f) DEFINITION OF ADJUSTMENT FACTOR.—For purposes of this section, the term 'adjustment factor' applicable to a fiscal year is the lower of—

(1) the Consumer Price Index for all urban consumers (all items; United States city average) for April of the preceding fiscal year divided by such Index for April of the first applicable fiscal year; or

(2) the total of discretionary budget authority provided for programs in categories other than the defense category for the immediately preceding fiscal year (as reported in the Office of Management and Budget sequestration preview report, if available, required under section 254(c) of the Balanced Budget and Emergency Deficit Control Act of 1985) divided by such budget authority for the first applicable fiscal year (as reported in the Office of Management and Budget final sequestration report submitted for such year).

For purposes of this subsection, the terms ''budget authority'' and ''category'' have the meaning given such terms in the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 5. DEFINITIONS.

As used in this Act:

(1) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(2) 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.).

(3) REPORTING ISSUER.—The term ''reporting issuer'' means any registrant under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or any other issuer required to file periodic reports under section 13 or 15 of such Act (15 U.S.C. 78m, 78o).

The CHAIRMAN. Pursuant to House Resolution 395, the gentleman from Ohio (Mr. KUCINICH) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I include for the RECORD an article in the New Yorker entitled ''The Accountants' War,'' and it has many interesting details about the collapse of accounting responsibilities in this country. It says that Enron was forced to reveal that its profits had been off by about 20 percent over 3 years and that as early as 1997 Arthur Andersen had known that Enron was inflating its income, but when Enron declined to correct the numbers, Andersen certified them anyway.

[From the New Yorker, Apr. 22, 2002]

THE ACCOUNTANTS' WAR

(By Jane Mayer)

Nothing, it has been said, is duller than accounting—until someone is defrauded. And after every modern financial diseaster—the stock-market crash of 1929, the bankruptcy of the Penn Central Railroad in 1970, the savings-and-loan crisis of the eighties, and now the bankruptcy of the Enron Corporation—investors have tended to ask the same question: where were the auditors?

Arthur Levitt, Jr., who was the chairman of the Securities and Exchange Commission under President Bill Clinton, believes that in the years leading up to Enron's collapse the auditors were busy organizing themselves into a lobbying force on Capitol Hill—one that has been singularly effective. Levitt, who issued a series of warnings about the accounting profession in those years, suggests that the aim of the so-called Big Five accounting firms—PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young, K.P.M.G., and Arthur Andersen, Enron's auditor—was to weaken federal oversight, block proposed reform and overpower the federal regulators who stood in their way. ''They waged a war against us, a total war,'' Levitt said.

Some have portrayed Enron's crash and the woes of Arthur Andersen simply as huge business failures. ''There are always going to be bad apples,'' said Jay Velasquez, a former aide to Senator Phil Gramm, who is now a Washington lobbyist for the accounting profession, and who has fought increased regulation. Barry Melancon, who heads the American Institute of Certified Public Accountants, the profession's trade group, which has three hundred and fifty thousand members, fears that those who are trying to impose political solutions will overreact. ''We live in a free-market system,'' Melancon told me. ''Businesses fail. People are not infallible.''

But Levitt casts the Enron story in starker terms. It is, as he puts it, ''the story of the nineties''—a battle between public and private interests that is being fought at a time when there is more corporate money in politics than ever before. ''This is about corporate greed,'' Levitt told me. ''It is the result of two decades of erosion of business ethics. It was the ultimate nexus of business and politics. If there was ever an example where money and lobbying damaged the public interest, this was clearly it.''

Levitt, who is seventy-one and has silver hair, exhibits a starchy correctness. He still seems bitter about his war with the accounting trade, and called one adversary ''an oily weasel'' and another ''a sly mongoose'' as he spoke about the influence of money on politics. ''It used to be that if industries had a problem they would try to work it out with the regulatory authorities,'' he said, in his sleek office at the Carlyle Group, in midtown Manhattan, surrounded by mementos of years in public life. ''Now they bypass the regulators completely, and go right to Congress.'' Their campaign contributions lend them clout. ''It's almost impossible to compete with the effect that money has on these congressmen.'' Enron's campaign contributions and its political power have received much attention, but two of the top five accounting firms—Arthur Andersen and Deloitte—and the accountants' trade association actually spent more during the 2000 elections. ''The money was enormous,'' Levitt said. ''Look at the end result.''

Not many years ago, Levitt was considered a consummate Wall Street insider, even an operator. In 1993, when President Clinton picked him to run the Securities and Exchange Commission, he was a centrist, a well-connected fundraiser who had contributed to both parties. He had founded his own lobbying organization, the American Business Conference, to advocate the interests of small business on Capitol Hill. He was also someone with a knack for cultivating famous and powerful friends. In the nineteen-sixties, he joined a successful start-up New York firm as a stockbroker, and he eventually counted among his clients Leonard Bernstein, Aaron Copland, and Kenneth Clark. Three of Levitt's original partners were Sanford Weill, who became the chairman of Citigroup; Arthur Carter, now the publisher of the New York Observer; and Roger Berlind, who became a Broadway producer. (Levitt had his own ties to Broadway; his aunt was Ethel Merman). Levitt thrived, too, and by the late sixties he was running Shearson Hayden Stone, which later became Shearson Lehman Brothers.

In 1977, after being asked to head a search committee for the next leader of the American Stock Exchange, he got the job himself. A few years later, he was thinking of investing in The National Journal, a policy-oriented magazine in Washington, when he learned of the publication's interest in acquiring Roll Call, a struggling newspaper on Capitol Hill. Levitt declined to invest in The National Journal but bought Roll Call himself, for about five hundred thousand dollars. Seven years later, he sold it for fifteen million dollars.

At the same time, Levitt was drawn to public life. He had grown up in a political household, the only son of Arthur Levitt, Sr., a Democrat who for twenty-four years was the New York State comptroller. Both his father and his mother, a public-school teacher in Brooklyn, were dependent on public pensions for their retirement, and they cared deeply about the protection of small investors.

When Levitt began his S.E.C. job, he acknowledged the populist tradition of the Roosevelt Administration, which created the S.E.C. in 1934, to insure the integrity of American financial markets. The agency's new Web site carried the motto of his most famous predecessor, William O. Douglas: ''We are the investors' advocates.'' The S.E.C.'s basic requirement was that all publicly traded companies register with the agency and submit to annual independent audits. Douglas liked to say that the S.E.C. was ''the shotgun behind the door.'' But Levitt soon discovered that the agency's arsenal was no match for the bull markets of the nineties. The new economy spawned new accounting schemes that raised concerns almost from the start.

One early fight was over stock options. Many pointed out that the accounting convention that kept these expenses, unlike ordinary executive compensation, off the books was deceptive. It meant that investors could not see a company's real liabilities. Levitt recalls that when he took office the first thing that Senators David Boren and Carl Levin, who were both active in regulatory reform, told him was that he ''had to do something about stock options.''

Congress soon got involved in the stock-option fight, and the politicization of accounting became more apparent than ever. Supporters of Wall Street and Silicon Valley, including many ordinarily pro-regulatory Democrats, fought against changing the stock-option rules; one, for example, was Senator Joseph Lieberman, of Connecticut, a state with a large concentration of Fortune 500 companies, many of which are campaign contributors. More surprising, the accounting profession, rather than remaining neutral, joined forces with its clients to fight the change. Together, they exerted pressure on the organization that sets the rules for the accounting business, the Financial Accounting Standards Board, or F.A.S.B. ''This was a defining moment for me,'' Levitt said. A lawyer who was with the S.E.C. at the time says, ''The accountants were going beyond good accounting. They were advocating a business position. They wanted to keep their customers happy. It was quite unseemly.''

At first, Levitt played a hesitant role. In what he now regards as his ''biggest mistake'' at the commission, he, too, urged the F.A.S.B. to back off. His rationale, he said, was a fear that, if the board tried to resist the anti-regulatory feeling then sweeping Congress, it would be crushed altogether. (Sarah Teslik, the executive director of the Council of Institutional Investors, an advocate for shareholders, is among those who argue that Levitt "wasn't the hero he makes himself out of be.") Levitt told me that the episode showed him that the accounting trade was undergoing a cultural transformation. Instead of overseeing corporate America, it was joining forces with it. "The kind of greed that produced Enron and Arthur Anderson was symbolized by the way the companies dealt with stock options," he said. "I realized something was wrong."

Until the Second World War, the American accounting industry has stayed close to its eighteenth-century roots in bookkeeping. But with the rise of information technology the accounting firms branched into consulting. During the nineteen-nineties, the Big Five doubled their collective revenues, to $26.1 billion. Their consulting practices, in particular, were hugely profitable, and brought in three times as much revenue as auditing did, according to a study soon to be published in The Accounting Review. Auditors started coming under pressure to attract non-audit business. At some firms, like Andersen, auditors compensation depended upon their ability to sell other services to clients; equity partners began to be paid like investment bankers. Inevitably, there were conflicts between the independent role required of an auditor and the applicant role of a salesman trying to expand services.

At Enron, for example, Andersen did consulting on taxes and on internal auditing. Both projects threatened to put the outside auditors in the awkward position of assessing their own company's work. The relationship was further compromised by the fact that Enron's management included many former Andersen employees, among them the company's president, vice-president, and chief accounting officer. Auditors were thus in the position of judging former colleagues—and prospective bosses.

More than a year ago, well before Enron's problems became public, an internal e-mail revealed that fourteen top Andersen partners had pointed out several of the financial schemes that eventually contributed to Enron's fall. In a discussion about retaining Enron as a client the partners considered whether Enron's "aggressive . . . transaction structuring" was too risky. It appears from the e-mail, however, that the partners' concerns were outweighed by possible future rewards. The e-mail noted that their fees "could reach $100 million per year."

"If you get too friendly and too relaxed, you can wind up nodding your head yes when you should be saying no," said Charles Bowsher, a former head of the General Accounting Office, who worked at Andersen for many years and has been retained to help reform the firm. "There's a lot of art in addition to science in accounting." Bowsher says that "most fraud flourishes in gray areas." But James Cox, a professor of corporate and securities law at Duke University, suggests that Enron's accounting gimmickry was black-and-white. "It was not even close," he said. "It was dead wrong."

Levitt said that, as the country's senior guardian of fair markets, he watched the transformation of the accounting profession with alarm. "The brakes on the worst instincts of the business community weren't working," he says. "The gatekeepers were letting down the gates." The number of audit failures afflicting corporate America was increasing; Lynn Turner, who served under Levitt as the chief accountant at the S.E.C., estimates that investors lost a hundred billion dollars owing to faulty, misleading, or fraudulent audits in the six years preceding Enron's crash. Many of the best-known corporations in the country were affected, among them Cendant, W. R. Grace, Sunbeam, Xerox, Lucent, and Oxford Health Plans. In fact, the number of publicly traded companies forced to re-state their earnings went from three in 1981 to a hundred and fifty-eight last year, according to a doctoral thesis at New York University's Stern School of Business. (Barry Melancon, of the American Institute of Certified Public Accountants, calls concern over these numbers misleading, noting that they represent "fewer than one per cent of the audits performed.")

Shareholder lawsuits against the accounting firms proliferated. In response, the Big Five and their trade association united as a political force. According to the nonpartisan Center for Responsive Politics, between 1989 and 2001 accounting firms spent nearly thirty-nine million dollars on political contributions. The contributions were bipartisan, reaching more than half the current members of the House and ninety-four of a hundred senators.

By 1995, this investment had started to pay off. Congress passed the Private Securities Litigation Reform Act, making it harder for shareholders to sue businesses and their auditors when the businesses failed. The legislation was championed by the Speaker of the House, Newt Gingrich, as part of his Contract with America. "What we were after was trying to get rid of the frivolous, meritless cases," Mark Gitenstein, a lawyer and lobbyist who helped shape the legislation, said. "We convinced Congress that you needed a system that did a better job of screening the marginal cases from the serious ones." The resulting legislation, Professor Cox said, reversed "eighty years of federal procedure."

At first, Levitt tried to fight the private-securities bill, but when it became clear that the federal regulators couldn't compete with the accountants' clout in Congress, he looked for a compromise. "It was a case where the industry had more power that the regulators," he said. Then, as now, there were approximately seventy-five lobbyists for every member of the House and Senate; in the Gingrich era, they were more integrated into the lawmaking process than ever before. Jeffrey Peck, a former Democratic Senate aide who was then the head of Arthur Andersen's Washington lobbying office and is now an outside lobbyist for the firm, says that after this fight there was "really bad feeling" between Levitt and the profession. "It was as if two people had gone out on a first date and had a bad time," he says. "But the rules required them to keep dating."

Levitt told me that he has always been proud of his ability to create consensus, and in the spring of 1996 he tried to involve the profession in reforming itself. He urged the big accounting firms to strengthen their oversight system and toughen discipline for transgressors. He proposed giving investors and other members of the public a bigger role. But, he said, the accountants resisted, and progress was made only after "huge fights."

Rules governing auditors' independence hadn't been updated in two decades. To examine the growing number of questions about conflicts of interest, Levitt created a new board, whose membership was divided between independent business leaders and people from the accounting industry. "They were constantly deadlocked by differences of opinion," Levitt said, and added, "When I asked for support, I never got it. I never heard in any speech they"—the accountants—"gave the words 'public interest.' They were so stilted, and terse, and non-productive—I realized it was an industry that completely lacked leadership.".

The accounting industry hired Harvey Pitt, who was known as one of the smartest and most aggressive private-securities lawyers in the country. Pitt responded to Levitt's call for greater public oversight by arguing, in a lengthy white paper, that the accounting firms were better off policing themselves. "The staff regarded his white paper as a kick in the stomach, because it was so one-sided and confrontational," Levitt said. One S.E.C. official recalls that Pitt made the negotiations over the new board "the most horrible ever," and Lynn Turner says, "It was doomed from day one."

Pitt, who was appointed by President George W. Bush to succeed Levitt as chairman of the S.E.C., said, "There was a lot of misperception about what the white paper said. For some reason, early on people seemed to get in their mind that I opposed what Levitt did," to reform accounting. "I tried to give him may own help on a personal basis."

In the summer of 1998, Levitt received a report about a problem in Pricewaterhouse's Tampa office. According to the report, nine executives there had made eighty investments in companies that they were supposed to be auditing—a violation of the most basic independence standards. Under the S.E.C.'s direction, the firm initiated a company-wide investigation. To the shame of the entire profession, it turned up more than eight thousand such violations. The S.E.C. fined Pricewaterhouse two and a half million dollars, and called for an investigation into compliance with independence rules at the rest of the Big Five firms; Levitt asked an independent group, the Public Oversight Board, which had been created after the Penn Central collapse, to undertake this task.

Levitt also took his battle public, in the fall of 1998, he gave a speech that attacked the "number game." He said, "Accounting is being perverted. Auditors who want to retain their clients are under pressure not to stand in the way." He explained, "Auditors and analysts are participants in a game of nods and winks. . . . I fear we are witnessing an erosion in the quality of earnings, and therefore the quality of financial reporting." In conclusion, he said, "Today American markets enjoy the confidence of the world. How many half-truths and accounting sleights of hand will it take to tarnish that faith?"

The Public Oversight Board, made up of major business figures, was supposed to act as the profession's conscience. But in May, 2000, before its investigation could be completed, the P.O.B.'s head, Charles Bowsher, received a letter from officials at the American Institute of Certified Public Accountants, which finances the board, announcing that it would "not approve nor authorize" funding for further investigations. Bowsher, who had himself been a high-ranking officer with Arthur Andersen before becoming the head of the General Accounting Office, says that he was shocked; the industry was effectively stopping the investigation. Melvin Laird, a former Secretary of Defense, who was the longest-serving member of the P.O.B., called it "the worst incident in my seventeen years." Barry Melancon, the head of the trade association, defended the association's position. "We were never opposed to the concept," he told me, referring to the investigation. "We just felt the P.O.B. was undertaking a project that it couldn't define."

At the same time, the S.E.C. was uncovering a huge case of accounting fraud involving the garbage-disposal company Waste Management: Arthur Andersen had put an unqualified seal of approval on numbers that the government said it either knew or should have known were misleading. As if in anticipation of the revolving-door conflicts at Enron, practically ever C.F.O. and C.A.O. in Waste Management's history had come from Andersen, S.E.C. enforcement documents from the investigation reveal something else: at least two of the partners who were singled out for scrutiny by the S.E.C. remained in influential positions at Andersen while being investigated, and both have now surfaced in connection with the Enron affair. (One executive, Robert Kutsenda, who was later barred by the S.E.C. from auditing public companies for a year, was placed in charge of redesigning the firm's policy on which documents to retain and which to shred, an issue in the Enron case. Kutsenda and Steve Samek, who was also investigated in the Waste Management case but not publicly sanctioned, were among those involved in the discussion of whether to retain Enron as a client. None of the executives involved in the Waste Management matter were fired by Andersen, which last year agreed to pay a seven-million-dollar penalty to the S.E.C., without admitting or denying guilt, after it was charged with fraud. In addition, two of the Andersen partners targeted by the S.E.C. in the fraud case now serve on the profession's standard-setting board, the F.A.S.B.)

By 2000, Levitt, faced with what he calls the Big Five's ''fortress mentality,'' had initiated a series of meetings with the firms at which he insisted that they needed to do more to police themselves. Levitt's message, Turner told me, was that the firms could either cooperate with an investigation into their compliance with independence rules or ''we'll issue the subpoenas tomorrow—take your pick.''

In the spring of 2000, the S.E.C. announced that it planned to draft new rules that would greatly restrict accountants' ability to consult for the same companies they audited. Arthur Andersen reportedly argued that this would cut its market potential by forty per cent, and vowed to fight back. A June meeting in Deloitte's New York headquarters with the heads of the three firms who most vehemently opposed the new rules ''was so icy you could have stored cold meat in that room,'' Turner says. The heads of Andersen, Deloitte, and K.P.M.G. joined Melancon on one side of a conference table. (Pricewaterhouse and Ernst & Young were more supportive of Levitt, and didn't attend.) Levitt and two S.E.C. officials were on the other. When Levitt made it clear that he intended to move forward, Andersen's chief executive, Robert Grafton, declared, ''This is war.''

''It was unbelievable, just unbelievable,'' Turner recalled. ''They all went after Arthur. They made clear that everything was fair game.'' Turner says that the attitude of the firms was ''You know we're going to win anyway in the end, so why not save us the expense, and give up now?''

''As soon as I left that meeting,'' Levitt told me, ''it was clear the fight was going to Capitol Hill.'' Such clashes over commercial interests are commonplace in Congress, but ''this wasn't about legislation,'' he said. ''It was about S.E.C. rule-making—we're supposed to be an independent agency. I'd never seen anything like it at the S.E.C.''

During this period, Levitt said, he got a letter from Representative W.J. (Billy) Tauzin, of Louisiana, the chairman of the House Energy and Commerce Committee, who has received more than two hundred and eighty thousand dollars from the accounting industry over the past decade. The letter consisted of four pages of pointed questions. In a not very veiled threat, Tauzin asked how many violations Levitt and the other members of the S.E.C. would have if their stock holdings were subjected to the independence rules being proposed for the accountants. He also demanded that Levitt produce proof that non-audit consulting undermines auditors' accuracy. ''It was a shot across the bow from the industry,'' Levitt says. ''They were saying, 'If you go forward, expect a lot of pain.' ''

In the following weeks, he said, Tauzin ''badgered me relentlessly. He knew what the accountants were doing before I did. He was working very closely with them. I don't mean to sound cynical, but is it because he loves accountants?'' At one point, relations between the two men grew so bad that Levitt hung up on Tauzin, because he felt that ''his words and his tone were threatening.''

Tauzin was not alone. In the four weeks after Levitt announced his intention to go through with the proposed new rules, forty-six more congressmen wrote to him questioning them. Data from the Center for Responsive Politics show that in 2000 the accountants contributed more than ten million dollars to political campaigns and spent $12.6 million on federal lobbying. Arthur Andersen alone nearly doubled its lobbying budget in the second half of the year, to $1.6 million. Among the lobbyists hired by the industry were Vic Fazio, a former congressman; Jack Quinn, a former Clinton White House counsel; Ed Gillespie, a former Bush campaign adviser; Patrick Griffin, Clinton's former congressional liaison; Dan Brouillette, a former aide to Tauzin who is now an Assistant Energy Secretary; and a number of other former Hill staff people.

Now, however, Tauzin has joined in the public outrage toward Enron and Andersen; in a House hearing that he chaired, he called the case ''an old-fashioned example of theft by insiders, and a failure of those responsible for them to prevent that theft.'' He told me that money hadn't influenced his earlier defense of the accountants. ''Donations have never bought anybody any slack with this committee,'' he said. ''I'm not saying that contributions don't have the power to corrupt. They do. But I always assume people contribute to me because they like the work I do.''

By early fall of 2000, Levitt says, he began to hear another kind of threat; lobbyists told him that if he didn't back off there would be a push to cut the S.E.C.'s funding. ''They were going to place a rider on our appropriations budget,'' Levitt said, still sounding as if he could not believe it. Jay Velasquez, a lobbyist for the accountants at the time, confirmed this. ''You have to consider all your options,'' he said. ''There is no doubt that the rider was a consideration. In these battles, everything is on the table.'' Henry Bonilla, a Texas Republican with an anti-regulatory temperament who is a member of the House Appropriations Committee, was prepared to attach the rider. Bowsher, the former G.A.O. head, says that such threats were once unthinkable. ''In the old days, the S.E.C. was off limits to that kind of pressure. It was a place the private sector respected. Nobody, nobody, would have thought about asking Congress to cut the budget.''

Representative Tom Udall, a Democrat from New Mexico, says that his staff urged him to sign a widely circulated letter to Levitt opposing the proposed rules, because so many of his colleagues had. ''There's sort of a herd mentality,'' he said. He refused; he knew Levitt slightly, through mutual friends in Santa Fe. ''Levitt was out to solve these things before people realized there was a problem. That's the sign of a leader. But the special interests have such a hold on members of Congress that they were able to stop a lot of things.''

Levitt initiated a nationwide series of public hearings about accounting abuses, fighting back as if he were involved in a political campaign. Damon Silvers, an A.F.L.–C.I.O. official who supported the S.E.C.'s position, recalls that ''Levitt looked like a figure from some old movie—he was sitting at a huge desk at the S.E.C. with a bank of phones, talking on several lines at once.''

But by then Levitt's eight-year term at the S.E.C. was about to expire, and the accounting-industry supporters developed a new strategy: they started to oppose the rule's substance on procedural grounds, arguing that there hadn't been enough time for public hearings. ''Of course, we knew that by calling for more time it would mean the end of Levitt,'' one lobbyist said.

With the accounting firms threatening to take the S.E.C. to court if he went ahead with the rules, Levitt tried to strike a deal with the three firms who opposed him, at which point the two firms who had previously supported him turned against him. That night, one aide recalled, Levitt gave up. ''I lost it,'' Levitt said.

In the end, he kept negotiating, and the S.E.C. agreed to let the firms continue to consult for the companies they audited. But the firms agreed to disclose the details to investors. ''I knew it wasn't enough, but I thought we'd be overruled by Congress in one fashion or another,'' Levitt said. ''The part of me that was insecure wanted a bird in the hand.''

Almost exactly a year later, Enron's outside auditor, Arthur Andersen L.L.P., a company whose image had virtually defined Midwestern probity, made an astonishing admission. During the previous three years, when it had vouched for Enron's financial statements, the company's net income had actually been inflated by almost six hundred million dollars. In a financial market where stocks plummet if corporate earnings fall a penny short of projections, Enron was forced to reveal that its profits had been off by about twenty per cent over three years. As early as 1997, Andersen had known that Enron was inflating its income. But when Enron declined to correct the numbers Andersen certified them anyway. Within six months, Enron had filed for bankruptcy and Andersen had been indicted on charges of obstruction of justice for destroying documents related to its Enron work. Investors lost an estimated ninety-three billion dollars, a sum nearly equal to the amount of the economic-stimulus package that President Bush requested for the entire country. In the year before Enron's crash, Andersen had collected a million dollars a week from Enron for its expertise. More than half of that, Andersen acknowledged, in compliance with the new S.E.C. rule, was for non-auditing work.

''If these reforms had been in place earlier, we wouldn't have had an Enron,'' Lynn Turner told me. He laughed, but the laugh sounded a little forced as he spoke about Congress's newfound interest in reform. ''Maybe the congressman were listening more than I thought—we just weren't giving them enough money,'' he said.

Not long ago, Levitt was called to testify before Congress about what went wrong at Arthur Andersen. ''It was a play within a play,'' he told me. He said that he has little hope for meaningful change in the profession, despite all the bills under consideration, and despite commitments from Harvey Pitt, his successor at the S.E.C. Before Enron collapsed, Pitt promised the accountants ''kinder and gentler'' treatment than Levitt had shown them, but he has since sharpened his rhetoric and proposed a great many reforms. Pitt told me that his work for the accountants has made him better able to persuade them to change their ways because, ''to put it bluntly, I know where the bodies are buried.'' But Pitt dismissed Levitt's approach—separating auditing from consulting—as ''a simplistic solution to a complex problem,'' and told me that he thought it could prove counterproductive. ''A firm that does only audits may be incompetent,'' he said.

''That's the same argument that the accountants put forward,'' Levitt said with a sigh. ''I didn't accept it then, and I accept it even less today. I have to conclude it's specious. It's very sad. The Administration is missing a glorious opportunity to reform this industry.''

The failure of Arthur Andersen to provide an accurate audit of Enron for several years is not a new or isolated problem. All of the Big Five accounting firms have been implicated in failed audits that cost investors billions of dollars when earnings restatements sent stock tumbling. I have here a chart that shows how failed audits have cost investors billions, how a company named MicroStrategy with PricewaterhouseCoopers, the auditor, lost $10 billion, $10.4 billion in lost market capitalization; and the list is a pretty extensive list.

For-profit private auditors have an inherent conflict of interest. They are hired and fired by their audit clients. If their draft audit does not please the firm they are auditing, they may lose future business unless they change their ways to please the firm.

As a result, auditors have a strong incentive to sign-off on substandard financial statements rather than risk losing a client. The integrity and the independence of the audit is undermined by the profit-seeking motive of the private auditing firm.

This amendment which I have brought before the House would ensure the independence of the audit, and I am offering a substitute amendment. Actually, this bill creates a Federal bureau of audits to regulate corporate America's books by auditing all publicly traded companies.

Americans rely on the FBI to protect them from criminals and terrorists, but who protects the American shareholders from corporate criminals? The Enron scandal suggests that we need audit cops, the Federal bureau of audits. This is a conservative pro-free market amendment to the Corporate and Auditing Accountability, Responsibility, and Transparency Act because it guarantees shareholders accurate and partial information about their investments that requires an absolute separation between the auditors and companies they audit.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio (Mr. OXLEY) is recognized for 10 minutes.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

This amendment offered by my friend from Ohio would basically create a Federal bureau of audits. The Kucinich amendment would actually put the Federal Government in charge of auditing the 17,000 public companies in the United States, essentially nationalizing the accounting profession; and that is simply not a good idea. In fact, it is really quite dangerous.

Overnight we would go from having the strongest capital market system in the world, with the best accounting, most integrity and most transparent disclosures to investors, to becoming the laughingstock of the global economy. Remember, this is the same Federal Government that cannot deliver a letter on time, cannot keep out illegal immigrants, and cannot buy a hammer for under $500.

The amendment would create a massive bureaucracy that is almost unimaginable, produce truly disastrous results, reducing substantially the quality of public audits and financial disclosures to investors. America's nearly 100 million investors, and investors from all over the world for that matter, would no longer have confidence in the audited financial statements of our 17,000 public companies.

It is not hyperbole to say this amendment would do great damage to our capital markets; but if my colleagues think the solution to the Enron problem is attacking with the creativity and efficiency of the DMV, then they should support this amendment. If they think, as I do, that a fair and balanced approach by experts is the best way to protect American investors, they should support the base bill and oppose this amendment.

Mr. Chairman, I strongly urge all Members to vote ''no'' on this very dangerous proposal, and later I will tell my colleagues what I really think.

Mr. Chairman, I reserve the balance of my time.

Mr. KUCINICH. Mr. Chairman, I yield myself such time as I may consume.

It is good to see my friend from Ohio's feelings about this, particularly in light of the fact that America's investors have lost over $100 billion in a system where people are allowed to profit where they cook the books.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), who knows firsthand from the constituents she represents in Texas what happens under this current system.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from Ohio (Mr. KUCINICH) very much for his distinguished leadership on this issue, and I cannot thank the gentleman from New York (Mr. LAFALCE) enough for the leadership he has given to this, and may I personally on the floor of the House thank him for the assistance he has given to ex-Enron employees. We are very much appreciative of that.

Let me announce to the House that right now we are in the midst of very, very intense negotiations to simply be able to provide a refund of the severance pay that is owed over 4,000 employees that was canceled out by the bankruptcy filing over the weekend; and the day after it was cancelled, 4,000 of my constituents and Houstonians were laid out into the street.

I believe, unlike one of the journalists who suggested that those of us who represent Enron are trying to reconstruct ourselves, and I would like to take him on on that issue, I think what we are trying to do is to think out of the box and be able to respond to what the American people would like. They want some very strong legislation that answers these concerns, and that is why I am supporting the Brad Sherman amendment. I am supporting the LaFalce substitute, and I come to the floor for the gentleman from Ohio (Mr. KUCINICH) because I believe that the previous announcement is incorrect.

The American people want a strong oversight bureau such as the Federal bureau of audits within the SEC. One of the problems was the weakness of the SEC in dealing with the debacle that occurred. We are not castigating those hardworking employees that are now trying to rebuild Enron in another name and do its business selling gas, but what we are saying is because there was no one looking into the dark of night, turning the light bulb on and letting us know about these audits that were coming in, individuals who could divest themselves of their investments, independent individuals who are not consulting and auditing at the same time, not only did we bring a company down that we in Houston believe was a great corporate citizen, giving to all the charities around; but we have put a taint on corporate America.

It is imperative that we pass the Kucinich amendment, the Sherman amendment, and the LaFalce substitute.

Mr. Chairman, I rise today in support of the Kucinich substitute to H.R. 3763, the Corporate and Auditing Accountability and Responsibility Act.

This substitute would create a new office, the Federal Bureau of Audits, within the SEC. This office would be responsible for performing annual audits on the financial statements of all publicly-traded companies and replaces the current system of private auditors.

This new office would be afforded adequate powers to investigate, such as the power to hold hearings, issue subpoenas, administer oaths and examine witnesses. Moreover, Bureau employees would be required to place their investments in a blind trust and they would be prohibited from taking jobs or consulting fees from any company audited by the bureau for 10 years from the time they leave the agency.

I believe that this substitute adequately addresses the relationship between audit firms and companies that hire them. This Congress has witnessed and investigated in detail the conflict of interest that could occur in such a partnership.

Moreover, it guarantees shareholders accurate, impartial information about their investments. Many of my constituents in the 18th Congressional District were employed by Enron and deceived by shady auditing practices. They are now jobless and it is the responsibility of this body to see that this never happens again.

I urge my colleagues to vote for the Kucinich substitute.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from New York (Mrs.

KELLY), the chairman of the Subcommittee on Oversight and Investigations of the Committee on Financial Services.

Mrs. KELLY. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Ohio (Mr. KUCINICH). This amendment is not balanced. It goes too far, and I do not believe it would do anything but great harm to the businesses of this country.

The free market is important, and it is important that we do not do things that will have unintended consequences and choke that free market. This amendment could do away with all accounting firms because, as the amendment states, and I quote, ''The only truly independent audit is one by a government agency.''

As we heard, the amendment creates the Federal bureau of audits. I guess it is modeled after the FBI so I can see auditors storming into companies with their calculators drawn, demanding individuals to freeze and drop their pencils.

The amendment seems to envision that the most efficient and effective auditor would be the U.S. Government. Somehow I just cannot agree with that, and I think this amendment is important for us to take a good look at for its unintended consequences.

I think the author is looking to combine the same level of efficiency to accounting that HUD brought to housing, perhaps. I imagine that the author is looking for the effectiveness of the IRS in its customer service.

Finally, with the accounting expertise of the Department of Defense with $100 hammers, I am sure our corporations will be in the best hands possible.

This amendment does not understand, I think, the concepts of reasonable, responsive response from our government, and I think this amendment needs to be defeated. I urge Members on both sides of the aisle to think about this and join us in the opposition to the amendment.

Mr. KUCINICH. Mr. Chairman, I yield myself such time as I may consume.

I want to point out that Arthur Andersen not only participated in a fraud, it manipulated this Congress to ensure that the firm could participate in other frauds with deceptive company executives.

Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. FILNER).

Mr. FILNER. Mr. Chairman, I thank the gentleman from Ohio (Mr. KUCINICH) for yielding me the time.

I rise in support of the Kucinich and Progressive Caucus substitute to H.R. 3763. This substitute restores integrity to investor-owned companies by ensuring that the investors and taxpayers and employees get an accurate assessment of a corporation.

We know that the Enron debacle demonstrated how corrupting the so-called free market is when corporate officials and auditing firms are intertwined. When we create the Federal bureau of audits we remove this corrupting influence, and appointments for 12 years remove the temptation of Congress to tamper with the watchdog duties.

So let us remove the conflict of interest between corporations and auditing firms they can hire and fire. We can guarantee shareholders accurate and impartial information about their investments, and that is the true free market solution to this problem.

The underlying bill is more than a no no bill. It is a no no no no no no no no no bill because does the bill help the SEC recover ill-gotten gains from corporate executives? No. Does it make CEOs responsible for their companies' public disclosures? No. Does it help the SEC send those who commit fraud to jail? No. Does it bar bad executives from serving in other companies? No. Does it make auditors independent? No. Does it ensure the oversight board is independent? No. Does it give the oversight board a clear mandate? No. Does it require auditors to be rotated? No. Does it close the revolving doors between accountants and their clients? No.

The underlying bill could be termed the Ken Lay Protection Act. We can no longer have the fox guarding the hen house. The Kucinich amendment fixes the problem.

□ 1300

The CHAIRMAN. The Chair advises Members that the gentleman from Ohio (Mr. OXLEY) has 6 minutes remaining and the gentleman from Ohio (Mr. KUCINICH) has 2½ minutes remaining.

Mr. OXLEY. Mr. Chairman, I would inquire of the Chair whether the gentleman from Ohio has further speakers.

Mr. KUCINICH. Right here. I will be closing. Mr. Chairman, I have the right to close on this?

The CHAIRMAN. The Chair will advise the Member that the gentleman from Ohio (Mr. OXLEY) has the right to close.

Mr. KUCINICH. Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana (Mr. BAKER).

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding me this time.

The Kucinich amendment is an interesting one in its practical effect. We are going to create a government entity that is going to have the sole and specific authority to evaluate the financial condition of 17,000 public corporations. Now, if anyone has tried to read a single financial statement and understand it and then evaluate its accuracy, one can pretty quickly determine that this is a responsibility beyond any magnitude that anyone could possibly comprehend.

The amendment, I am sure, is based on a good-faith effort to be responsive to the Enron crisis, but this would be the crisis of all crises. We would have a complete inability to have a free flow of information from the corporation to their investors without this intervening government regulatory body giving its stamp of approval.

I do not know how many of you have ever had any difficulty, let us say, with the IRS in trying to work through its maze of regulatory constraints and get a direct answer overnight on whether or not you are filing the form properly. This is like taking the IRS and sticking it in the corporate board room of every corporation in America. This will not work.

I understand the gentleman's concerns and share those concerns. Many innocent third parties were harmed by the failure of Enron, Global Crossing, and perhaps others yet to be disclosed. And I feel for those individuals who likely will never get any of those funds back in their retirement accounts or who have lost their jobs. But let us make it clear, there are ongoing criminal investigations, and prosecutions certainly to follow, because under the simplest of rules, under rule 10(b)5 of the SEC's regulations, there was fraud committed. People are going to jail.

What we are trying to do is to create a manner in which a free flow of accurate information can be given to investors to make quality decisions. That is what the underlying bill will do.

Mr. KUCINICH. Mr. Chairman, I yield myself 1 minute.

Americans are urged to own a piece of the rock; invest in corporate America. We have gone from a psychology of owning a piece of the rock to owning a piece of the Brooklyn Bridge. Because what is happening is that investors are not being given accurate information by accountants who have an inherent conflict of interest.

It is said the pen is mightier than the sword. Well, this pencil is mightier than the free market, apparently, because a pencil can change the nature of the free market by misstating earnings and then restating earnings and having the value of the stock drop. And then what happens to investors? Nothing. They lose it all.

We need to take a stand here. A free market requires accurate information to operate efficiently. My amendment is the only amendment that guarantees accurate information for investors, and my amendment is profoundly conservative. It is totally dedicated to protecting and conserving the property of investors.

Who is taking a stand here for the investors, to make sure that investors get information that is accurate and upon which they can make decisions on how they are going to spend their money?

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I understand I have the right to close and I plan to do so, and would so indicate to my friend.

Mr. KUCINICH. How much time remains, Mr. Chairman?

The CHAIRMAN. The gentleman from Ohio (Mr. KUCINICH) has 1½ minutes remaining, the gentleman from

Ohio (Mr. OXLEY) has 4 minutes remaining.

Mr. KUCINICH. Mr. Chairman, I continue to reserve the balance of my time, unless the gentleman is going to close right now.

Mr. OXLEY. I am prepared to close.

Mr. LAFALCE. Mr. Chairman, will the gentleman from Ohio yield me 1 minute?

Mr. OXLEY. Mr. Chairman, I am pleased to yield 1 minute to the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, I want to commend the gentleman from Ohio (Mr. KUCINICH) for his good-faith effort to deal with the problem, and if we were starting anew, I might well favor this approach.

We do have examiners for our banks, our national banks and our State banks, and they work for the government. We do have examiners for our thrifts, and they work for the government. We do have examiners for our credit unions, and they work for the government. It works. And the reason we had examiners for the government is because we trusted them. We thought that they would be representing the public interest.

We devised this system in an era when most people put almost all of their money in banks, in thrifts, in credit unions. That is no longer the case. Now, most people are putting most of their hard-earned money in publicly traded corporations.

And while I suspect the amendment of the gentleman from Ohio (Mr. KUCINICH) goes further than we can politically do at this juncture, I commend him for at least raising the issue.

Mr. KUCINICH. Mr. Chairman, I yield myself the balance of my time.

Let us go to middle America, where men and women who work hard all their lives to establish some kind of a financial nest egg put their faith not only in the market, but in this country, and invest in various corporate enterprises. Mr. and Mrs. Middle America are the backbone of this economy. They work, they help produce taxes for this country, and they help produce wealth that can continue to grow and make America the strong country which it is.

What happens when they cannot have confidence that the earnings statements of the companies in which they are investing are real? What if there is no credibility for a market that one day goes up and the other day goes down because people are lying about their books?

There is something that is at stake here that is much larger than this bill that is before the House for debate. And what is at stake here is the confidence that people need to have in our free market system. And the only way you can rescue that in a climate where the accounting industry has basically stolen a march on regulators is to retrieve the role of the government in assuring that people's investments are going to be protected.

That is what this amendment is about. The free market economy again requires accurate information to operate efficiently. And so I ask all of my colleagues, where is your commitment to free markets today? Where will you stand when your constituents ask what happened to my investment; why did they lie to me; and why did you not do something about it?

Mr. OXLEY. Mr. Chairman, I yield myself the balance of my time.

I would welcome my friend from Ohio to the conservative ranks if I really thought this amendment was conservative in nature, but it is hardly that. This is a big government solution. It is a one-size-fits-all solution. It is essentially the neutron bomb. I guess his message is, if you have lost faith in the free market, you need to have faith in big government.

I do not think people are ready to make that leap. I think they understand intuitively, based on their investments, that they trust the free market, and they trust that our markets are the most open and efficient markets in the world, represented by the American marketplace. That is really the message.

And, indeed, people have changed dramatically. Probably just a few years ago when I first came to Congress, two-thirds of people's savings were in bank accounts and only a third in equities. That is totally turned around now. We have become a Nation of investors from a Nation of savers, and that is a positive development. We have 46 million in 401(k) plans that are invested in those accounts. We have over half of the households today invested in equities.

We have the most robust market in the history of the world. Let us not change that. Let us not endanger that free market with the Kucinich amendment. I ask the Members to vote against the Kucinich amendment and for the underlying bill.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Ohio (Mr. KUCINICH).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. KUCINICH. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 39, noes 381, not voting 14, as follows:

[Roll No. 107]

AYES—39

Abercrombie
Baldwin
Berkley
Bonior
Clayton
Clyburn
Conyers
Davis (IL)
Evans
Filner
Frank
Green (TX)
Gutierrez
Hastings (FL)
Hilliard
Jackson (IL)
Jackson-Lee (TX)
Kaptur
Kennedy (RI)
Kucinich
Lee
Lewis (GA)
McDermott
McKinney
Mink
Olver
Owens
Pascrell
Pastor
Payne
Roybal-Allard
Sanders
Schakowsky
Solis
Stark
Thompson (MS)
Waters
Watson (CA)
Woolsey

NOES—381

Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clement
Coble
Collins
Combest
Condit
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
Eshoo
Etheridge
Everett
Farr
Fattah
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Ortiz
Osborne
Ose
Otter
Oxley
Pallone
Paul
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri

Phelps	Scott	Thomas
Pickering	Sensenbrenner	Thompson (CA)
Pitts	Serrano	Thornberry
Platts	Sessions	Thurman
Pombo	Shadegg	Tiahrt
Pomeroy	Shaw	Tiberi
Portman	Shays	Tierney
Price (NC)	Sherman	Toomey
Putnam	Sherwood	Towns
Quinn	Shimkus	Turner
Radanovich	Shows	Udall (CO)
Rahall	Shuster	Udall (NM)
Ramstad	Simmons	Upton
Rangel	Simpson	Velazquez
Rehberg	Skeen	Visclosky
Reyes	Skelton	Vitter
Reynolds	Slaughter	Walden
Rivers	Smith (MI)	Walsh
Roemer	Smith (NJ)	Wamp
Rogers (KY)	Smith (TX)	Watkins (OK)
Rogers (MI)	Snyder	Watt (NC)
Rohrabacher	Souder	Watts (OK)
Ros-Lehtinen	Spratt	Waxman
Ross	Stearns	Weldon (FL)
Rothman	Stenholm	Weldon (PA)
Roukema	Strickland	Weller
Royce	Stump	Wexler
Rush	Stupak	Whitfield
Ryan (WI)	Sullivan	Wicker
Ryun (KS)	Sununu	Wilson (NM)
Sabo	Sweeney	Wilson (SC)
Sanchez	Tancredo	Wolf
Sandlin	Tanner	Wu
Sawyer	Tauscher	Wynn
Saxton	Tauzin	Young (AK)
Schaffer	Taylor (MS)	Young (FL)
Schiff	Taylor (NC)	
Schrock	Terry	

NOT VOTING—14

Blagojevich	Houghton	Smith (WA)
DeGette	Pryce (OH)	Thune
English	Regula	Traficant
Gilchrest	Riley	Weiner
Hart	Rodriguez	

□ 1333

Messrs. BACA, KINGSTON, SAXTON, Mrs. DAVIS of California, Messrs. CUMMINGS, GEORGE MILLER of California, BURR of North Carolina and Ms. CARSON of Indiana changed their vote from ''aye'' to ''no.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. ENGLISH. Mr. Speaker, on rollcall vote No. 107, I was unavoidably detained at an event with several of my colleagues and missed the vote. Had I been present, I would have voted "no."

Mr. WEINER. Mr. Speaker, on Wednesday, April 24, 2002, I was unavoidably detained and missed rollcall vote No. 107. Had I been present, I would have voted "no."

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 107–418.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 5 OFFERED BY MR. LAFALCE

Mr. LAFALCE. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute No. 5 offered by Mr. LAFALCE:

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.—

(1) ESTABLISHMENT REQUIRED.—Not later than 90 days after the date of enactment of this section, the Commission shall establish a public regulatory organization to perform the duties set forth in this section.

(2) CHAIRMAN.—The Chairman of the public regulatory organization shall be appointed by the Commission for a term of 5 years.

(3) APPOINTMENT OF PUBLIC REGULATORY ORGANIZATION MEMBERS.—There shall be 6 additional public regulatory organization members, who shall be selected jointly by the Chairman of the public regulatory organization and the Chairman of the Commission.

(4) ACCOUNTANT MEMBERS.—Up to 2 of the members may be present or former certified public accountants, provided such members—

(A) are not currently in public practices;

(B) have not been a person associated with a public accounting firm for a period of at least 3 years; and

(C) agree to not be a person associated with a public accounting firm or to receive consulting fees from a public accounting firm for a period of 5 years after leaving the public regulatory organization.

(5) NOMINATIONS.—In making appointments of members, the Chairman of the public regulatory organization and the Chairman of the Commission shall consult with, and make appointments from nominations received from—

(A) institutional investors;

(B) public employee pension plans;

(C) pension plans organized pursuant to the Employee Retirement Income Security Act of 1974; and

(D) pension plans organized pursuant to the Taft-Hartley Act.

(6) TERMS.—The members of the public regulatory organization shall have terms of 4 years, except that the Chairman of the public regulatory organization and the Chairman of the Commission shall adopt procedures for staggering the initial terms of the members first so appointed to provide for a reasonable overlapping of the terms of office of subsequently elected members.

(7) FULL-TIME BASIS.—The members of the public regulatory organization shall serve on a full-time basis, severing all business ties with former firms or employers prior to beginning service on the public regulatory organization.

(8) RULES.—Following selection of the initial members of the public regulatory organization, the public regulatory organization shall propose and adopt rules, which shall provide for—

(A) the operation and administration of the public regulatory organization, including the compensation of the members of the public regulatory organization, which shall be at a level comparable to similar professional positions in the private sector;

(B) the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the public regulatory organization's functions under this section;

(C) the registration of public accounting firms with the public regulatory organization pursuant to subsections (d); and

(D) the matters described in subsections (e) and (f).

(9) FUNDING OF THE PUBLIC REGULATORY ORGANIZATION.—

(A) SELF-FINANCING.—The public regulatory organization shall establish rules for the assessment and collection of fees sufficient to recover the costs and expenses of the public regulatory organization and to permit the public regulatory organization to operate on a self-financing basis.

(B) ASSESSMENT AND COLLECTION.—The fees shall be assessed on issuers that file any financial statements, reports, or other documents with the Commission under the securities laws that must be certified by a public accounting firm. The fees shall be collected through the public accounting firm that certifies such statement, report, or document.

(C) PAYMENT A CONDITION OF REGISTRATION.—The public regulatory organization shall terminate or suspend the registration under subsection (d) of any public accounting firm that fails to collect and transmit a fee assessed under this subsection.

(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, subject to such conditions and exemptions as the Commission shall prescribe:

(A) financial information system design or implementation; or

(B) internal audit services.

(2) AUDIT COMMITTEE APPROVAL OF NONAUDIT SERVICES.—The Commission shall

revise its regulations pertaining to auditor independence to require that—

(A) an accountant shall not be considered to be independent for purposes of certifying the financial statements or other documents of an issuer required to be filed with the Commission under the securities laws for any fiscal year of the issuer if, during such fiscal year, the accountant provides any nonaudit services unless the provision of such nonaudit services was approved in advance by the audit committee or, in the absence of an audit committee, the equivalent board committee or the entire board of directors; and

(B) in approving such services, the audit committee shall evaluate the impact of the provision of such services on the independence of the auditor.

(3) 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.

(4) ADDITIONS BY RULE.—After conducting the review required by paragraph (3) 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).

(5) 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.

(6) DEFINITIONS.—For purposes of this subsection:

(A) FINANCIAL INFORMATION SYSTEM DESIGN OR IMPLEMENTATION.—The term ''financial information systems design or implementation'' means designing or implementing a hardware or software system used to generate information that is significant to the audit client's financial statements taken as a whole, not including services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls.

(B) INTERNAL AUDIT SERVICES.—The term ''internal audit services'' means internal audit services for an audit client or an affiliate of an audit client, not including nonrecurring evaluations of discrete items or programs and operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

(7) 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) REGISTRATION WITH PUBLIC REGULATORY ORGANIZATION.—

(1) REGISTRATION REQUIRED.—Beginning 1 year after the date on which all initial members of the public regulatory organization have been selected in accordance with subsection (b), it shall be unlawful for a public accounting firm to furnish an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law, unless such firm is registered with the public regulatory organization.

(2) APPLICATION FOR REGISTRATION.—A public accounting firm may be registered under this subsection by filing with the public regulatory organization an application for registration in such form and containing such information as the public regulatory organization, by rule, may prescribe. Each application shall include—

(A) the names of all clients of the public accounting firm for which the firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission;

(B) financial information of the public accounting firm for its most recent fiscal year, including its annual revenues from accounting and auditing services, its assets, and its liabilities;

(C) a statement of the public accounting firm's policies and procedures with respect to quality control of its accounting and auditing practice;

(D) information relating to criminal, civil, or administrative actions or formal disciplinary proceedings pending against such firm, or any person associated with such firm, in connection with an accountant's report furnished by such firm;

(E) a list of persons associated with the public accounting firm who are certified public accountants, including any State professional license or certification number for each such person; and

(F) such other information that is reasonably related to the public regulatory organization's responsibilities as the public regulatory organization considers necessary or appropriate.

(3) PERIODIC REPORTS.—Once in each year, or more frequently as the public regulatory organization, by rule, may prescribe, each public accounting firm registered with the public regulatory organization shall submit reports to the public regulatory organization updating the information contained in its application for registration and containing such additional information that is reasonably related to the public regulatory organization's responsibilities as the public regulatory organization, by rule, may prescribe.

(4) EXEMPTIONS.—The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any public accounting firm or any accountant's report, or any class of public accounting firms or any class of accountant's reports, from any provisions of this section or the rules or regulations issued hereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) CONFIDENTIALITY.—The public regulatory organization may, by rule, designate portions of the filings required pursuant to paragraphs (2) and (3) as privileged and confidential. This paragraph shall be considered to be a statute described in section 552(b)(3)(B) of title 5, United States Code, for purposes of that section 552.

(e) DUTIES REGARDING QUALITY CONTROL.—

(1) OBJECTIVES; ATTAINMENT.—The public regulatory organization shall seek to promote a high level of professional conduct among public accounting firms registered with the public regulatory organization, to improve the quality of audit services provided by such firms, and, in general, to protect investors and promote the public interest. The public regulatory organization shall attain these objectives—

(A) by establishing standards regarding the performance of financial audits in accordance with the requirements of paragraph (2);

(B) by the direct performance of quality reviews and inspections of audits in accordance with the requirements of paragraphs (3) and (4); and

(C) by the supervision and oversight of peer review organizations in accordance with the requirements of paragraph (5).

(2) AUDIT QUALITY STANDARDS.—

(A) IN GENERAL.—The public regulatory organization shall, by rule, establish quality standards applicable to the conduct of audit services provided by public accounting firms. Such standards shall include—

(i) independence standards;

(ii) quality control standards;

(iii) professional and ethical standards; and

(iv) such other standards as the public regulatory organization determines to be necessary to carry out the objectives specified in paragraph (1).

(B) SPECIFIC CONTENTS OF STANDARDS.—In establishing the quality standards required by subparagraph (A), the public regulatory organization shall also establish—

(i) procedures for the monitoring by public accounting firms of their compliance with professional ethical standards established by the public regulatory organization, including its independence from its audit clients;

(ii) procedures for the assignment of personnel to audit engagements;

(iii) procedures for consultation within a public accounting firm or with other accountants relating to accounting and auditing questions;

(iv) procedures for the supervision of audit work;

(v) procedures for the review of decisions to accept and retain audit clients;

(vi) procedures for the internal inspection of the public accounting firms own compliance with such policies and procedures;

(vii) requirements for public accounting firms to prepare and maintain for a period of no less than 7 years, audit work papers and other information related to any audit report, in sufficient detail to support the conclusions reached in an audit report issued by a public accounting firm; and

(viii) procedures establishing ''concurring'' or ''second'' partner review systems for the evaluation and review of audit work by a partner that is not in charge of the conduct of the audit.

(3) DIRECT REVIEWS OF PUBLIC ACCOUNTING FIRMS.—The public regulatory organization shall, by rule, establish procedures for the conduct of a continuing program of inspections of each public accounting firm registered with the public regulatory organization to assess compliance by such firm, and by persons associated with such firm, with applicable provisions of this Act, the securities laws, the rules and regulations thereunder, the rules adopted by the public regulatory organization, and professional standards. Except as provided in paragraph (5), the public regulatory organization shall annually inspect each public accounting firm that audits more than 100 issuers on an ongoing annual basis, to the extent practicable, and all other public accounting firms no less than at least once every 3 years. In conducting such inspections, the public regulatory organization shall, among other things, inspect selected audit and review engagements. The review shall include evaluations of the firm's quality control procedures and compliance with all legal and ethical requirements. In connection with each review, the public regulatory organization shall prepare a report of its findings and such report, accompanied by any letter of comments by the public regulatory organization or reviewer and any letter of response from the firm under review, shall be made available to the public. The public regulatory organization shall take any appropriate disciplinary

or remedial action based on its findings after completion of such review and an opportunity for a hearing.

(4) QUALITY REVIEW OF INDIVIDUAL AUDITS.—The public regulatory organization shall, by rule, establish procedures for the conduct of direct inspection and review of individual audits of issuers and standards under which it will evaluate audit service quality. A finding by the public regulatory organization that an individual audit of an issuer did or did not meet the standards of the public regulatory organization with respect to the quality of the 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.

(5) USE OF PROFESSIONAL PEER REVIEW ORGANIZATIONS.—

(A) OPTION TO UTILIZE PEER REVIEW ORGANIZATIONS.—The public regulatory organization may, by rule, establish requirements for the use of peer review organizations for the purposes of conducting the continuing program of inspections to assess compliance as required by paragraph (3) of each public accounting firm registered with the public regulatory organization. Such rule shall provide for appropriate oversight and supervision of such peer review organization by the public regulatory organization to ensure that such inspections meet the requirements of such paragraph.

(B) PENALTIES.—If the public regulatory organization establishes requirements for the conduct of peer reviews under subparagraph (A), the violation by a public accounting firm or a person associated with such a firm of a rule of the peer review organization to which the firm belongs shall constitute grounds for—

(i) the imposition of disciplinary sanctions by the public regulatory organization pursuant to subsection (g); and

(ii) denial to the public accounting firm or person associated with such firm of the privilege of appearing or practicing before the Commission.

(6) CONFIDENTIALITY.—Except as otherwise provided by this section, all reports, memoranda, and other information provided to the public regulatory organization solely for purposes of paragraph (3) or (4), or to a peer review organization certified by the public regulatory organization, shall be confidential, unless such confidentiality is expressly waived by the person or entity that created or provided the information.

(f) DISCIPLINARY DUTIES OF PUBLIC REGULATORY ORGANIZATION.—The public regulatory organization shall have the following duties and powers:

(1) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—The public regulatory organization shall establish fair procedures for investigating and disciplining public accounting firms registered with the public regulatory organization, and persons associated with such firms, for violations of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission.

(2) INVESTIGATION PROCEDURES.—

(A) IN GENERAL.—The public regulatory organization may conduct an investigation of any act, practice, or omission by a public accounting firm registered with the public regulatory organization, or by any person associated with such firm, in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission that may violate any applicable provision of the Federal securities laws, the rules and regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the public regulatory organization.

(B) POWERS OF PUBLIC REGULATORY ORGANIZATION.—For purposes of an investigation under this paragraph, the public regulatory organization may, in addition to such other actions as the public regulatory organization determines to be necessary or appropriate—

(i) require the testimony of any person associated with a public accounting firm registered with the public regulatory organization, with respect to any matter which the public regulatory organization considers relevant or material to the investigation;

(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the public regulatory organization, or any person associated with such firm, wherever domiciled, that the public regulatory organization considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy of any documents or information so supplied; and

(iii) request the testimony of any person and the production of any document in the possession of any person, including a client of a public accounting firm registered with the public regulatory organization, that the public regulatory organization considers relevant or material to the investigation.

(C) SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE.—The refusal of any person associated with a public accounting firm registered with the public regulatory organization to testify, or the refusal of any such person to produce documents or otherwise cooperate with the public regulatory organization, in connection with an investigation or hearing under this section, shall be cause for suspending or barring such person from associating with a public accounting firm registered with the public regulatory organization, or such other appropriate sanction authorized by paragraph (3)(B) as the public regulatory organization shall determine. The refusal of any public accounting firm registered with the public regulatory organization to produce documents or otherwise cooperate with the public regulatory organization, in connection with an investigation or hearing under this section, shall be cause for the suspension or revocation of the registration of such firm, or such other appropriate sanction authorized by paragraph (3)(B) as the public regulatory organization shall determine.

(D) REFERRAL TO COMMISSION.—

(i) IN GENERAL.—If the public regulatory organization is unable to conduct or complete an investigation or hearing under this section because of the refusal of any client of a public accounting firm registered with the public regulatory organization, or any other person, to testify, produce documents, or otherwise cooperate with the public regulatory organization in connection with such investigation, the public regulatory organization shall report such refusal to the Commission.

(ii) INVESTIGATION.—The Commission may designate the public regulatory organization or one or more officers of the public regulatory organization who shall be empowered, in accordance with such procedures as the Commission may adopt, to subpoena witnesses, compel their attendance, and require the production of any books, papers, correspondence, memoranda, or other records relevant to any investigation by the public regulatory organization. Attendance of witnesses and the production of any records may be required from any place in the United States or any State at any designated place of hearing. Enforcement of a subpoena issued by the public regulatory organization, or an officer of the public regulatory organization, pursuant to this subparagraph shall occur in the manner provided for in section 21(c). Examination of witnesses subpoenaed pursuant to this subparagraph shall be conducted before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(iii) REFERRALS TO COMMISSION.—The public regulatory organization may refer any investigation to the Commission, as the public regulatory organization deems appropriate.

(E) IMMUNITY FROM CIVIL LIABILITY.—An employee of the public regulatory organization engaged in carrying out an investigation or disciplinary proceeding under this section shall be immune from any civil liability arising out of such investigation or disciplinary proceeding in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(3) DISCIPLINARY PROCEDURES.—

(A) DECISION TO DISCIPLINE.—In a proceeding by the public regulatory organization to determine whether a public accounting firm, or a person associated with such firm, should be disciplined, the public regulatory organization shall bring specific charges, notify such firm or person of the charges, give such firm or person an opportunity to defend against such charges, and keep a record of such actions.

(B) SANCTIONS.—If the public regulatory organization, after conducting a review and providing an opportunity for a hearing, finds that a public accounting firm, or a person associated with such firm, has engaged in any act, practice, or omission in violation of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards, the public regulatory organization may impose such disciplinary sanctions as it deems appropriate, including—

(i) temporary or permanent revocation or suspension of registration under this section;

(ii) limitation of activities, functions, and operations;

(iii) fine;

(iv) censure;

(v) in the case of a person associated with a public accounting firm, suspension or bar from being associated with a public accounting firm registered with the public regulatory organization; and

(vi) any such other disciplinary sanction or remedial action as the public regulatory organization has established by rule that the public regulatory organization determines to be appropriate to prevent the recurrence of the violation.

(C) STATEMENT REQUIRED.—A determination by the public regulatory organization to impose a disciplinary sanction shall be supported by a written statement by the public regulatory organization that shall be made available to the public and that sets forth—

(i) any act or practice in which the public accounting firm or person associated with such firm has been found to have engaged, or which such firm or person has been found to have omitted;

(ii) the specific provision of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards which any such act, practice, or omission is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

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

(i) for any person as to whom a suspension or bar is in effect willfully to be or to become associated with a public accounting firm registered with the public regulatory organization, in connection with the preparation of an accountant's report on any financial statement, report, or other document filed with the Commission, without the consent of the public regulatory organization or the Commission; and

(ii) for any public accounting firm registered with the public regulatory organization to permit such a person to become, or remain, associated with such firm without the consent of the public regulatory organization or the Commission, if such firm knew or, in the exercise of reasonable care should have known, of such suspension or bar.

(4) REPORTING OF SANCTIONS.—If the public regulatory organization imposes a disciplinary sanction against a public accounting firm, or a person associated with such firm, the public regulatory organization shall report such sanction to the Commission, to the appropriate State or foreign licensing public regulatory organization or public regulatory organizations with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

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

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

(C) the nature of the sanction; and

(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the public regulatory organization deems appropriate.

(5) DISCOVERY AND ADMISSIBILITY OF PUBLIC REGULATORY ORGANIZATION MATERIAL.—

(A) DISCOVERABILITY.—

(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the public regulatory organization, and the deliberations and other proceedings of the public regulatory organization and its employees and agents in connection with an investigation or disciplinary proceeding under this section shall not be subject to any form of civil discovery, including demands for production of documents and for testimony of individuals, in connection with any proceeding in any State or Federal court, or before any State or Federal administrative agency. This subparagraph shall not apply to any information provided to the public regulatory organization that would have been subject to discovery from the person or entity that provided it to the public regulatory organization, but is no longer available from that person or entity.

(ii) EXEMPTION.—Submissions to the public regulatory organization by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a public regulatory organization proceeding (other than a public hearing), including documents generated by the public regulatory organization itself, shall be exempt from discovery to the same extent as the material described in clause (i), whether in the possession of the public regulatory organization or any other person, if such submission—

(I) is prepared specifically for the purpose of the public regulatory organization proceeding; and

(II) addresses the merits of the issues under investigation by the public regulatory organization.

(iii) HEARINGS PUBLIC.—Except as otherwise ordered by the public regulatory organization on its own motion or on the motion of a party, all hearings under this paragraph shall be open to the public.

(B) ADMISSIBILITY.—

(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the public regulatory organization, the deliberations and other proceedings of the public regulatory organization and its employees and agents in connection with an investigation or disciplinary proceeding under this section, the fact that an investigation or disciplinary proceeding has been commenced, and the public regulatory organization's determination with respect to any investigation or disciplinary proceeding shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

(ii) TREATMENT OF CERTAIN DOCUMENTS.—Submissions to the public regulatory organization by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a public regulatory organization proceeding, including documents generated by the public regulatory organization itself, shall be inadmissible to the same extent as the material described in clause (i), if such submission—

(I) is prepared specifically for the purpose of the public regulatory organization proceedings; and

(II) addresses the merits of the issues under investigation by the public regulatory organization.

(C) AVAILABILITY AND ADMISSIBILITY OF INFORMATION.—

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

(I) available to the Commission;

(II) available to any other Federal department or agency in connection with the exercise of its regulatory authority to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation;

(III) available to Federal and State authorities in connection with any criminal investigation or proceeding;

(IV) admissible in any action brought by the Commission or any other Federal department or agency pursuant to its regulatory authority, to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation and in any criminal action; and

(V) available to State licensing public regulatory organizations to the extent authorized in paragraph (6).

(ii) OTHER LIMITATIONS.—Any documents or other information provided to the Commission or other authorities pursuant to clause (i) shall be subject to the limitations on discovery and admissibility set forth in subparagraphs (A) and (B).

(6) PARTICIPATION BY STATE LICENSING PUBLIC REGULATORY ORGANIZATIONS.—

(A) NOTICE.—When the public regulatory organization institutes an investigation pursuant to paragraph (2)(A), it shall notify the State licensing public regulatory organizations in the States in which the public accounting firm or person associated with such firm engaged in the act or failure to act alleged to have violated professional standards, of the pendency of the investigation, and shall invite the State licensing public regulatory organizations to participate in the investigation.

(B) ACCEPTANCE BY STATE PUBLIC REGULATORY ORGANIZATION.—If a State licensing public regulatory organization elects to join in the investigation, its representatives shall participate, pursuant to rules established by the public regulatory organization, in investigating the matter and in presenting the evidence justifying the charges in any hearing pursuant to paragraph (3)(A).

(C) STATE SANCTIONS PERMITTED.—If the public regulatory organization or the Commission imposes a sanction upon a public accounting firm or person associated with such a firm, and that determination either is not subjected to judicial review or is upheld on judicial review, a State licensing public regulatory organization may impose a sanction on the basis of the public regulatory organization's report pursuant to paragraph (4). Any sanction imposed by the State licensing public regulatory organization under this clause shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

(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 concluded 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 arrangements 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. 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. 9. 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. 10. REMOVAL OF UNFIT CORPORATE OFFICERS.

(a) REMOVAL IN JUDICIAL PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title 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 that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 11. DISGORGEMENT REQUIRED.

(a) ADMINISTRATIVE ACTIONS.—Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations to require disgorgement, in a proceeding pursuant to its authority under section 21A, 21B, or 21C (15 U.S.C. 78u–1, 78u–2, 78u–3), of salaries, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided through securities transactions obtained by an officer or director of an issuer during or for a fiscal year or other reporting period if such officer or director engaged in misconduct resulting in, or made or caused to be made in, the filing of a financial statement for such fiscal year or reporting period which—

(1) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

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

(b) JUDICIAL PROCEEDINGS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(5) ADDITIONAL DISGORGEMENT AUTHORITY.—In any action or proceeding brought or instituted by the Commission under the securities laws against any person—

''(A) for engaging in misconduct resulting in, or making or causing to be made in, the filing of a financial statement which—

''(i) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

''(ii) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or

''(B) for engaging in, causing, or aiding and abetting any other violation of the securities laws or the rules and regulations thereunder,

such person, in addition to being subject to any other appropriate order, may be required to disgorge any or all benefits received from any source in connection with the conduct constituting, causing, or aiding and abetting the violation, including (but not limited to) salary, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided through securities transactions.''.

SEC. 12. CEO AND CFO ACCOUNTABILITY FOR DISCLOSURE.

(a) REGULATIONS REQUIRED.—The Securities and Exchange Commission shall by rule require, for each company filing periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) DEADLINE.—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

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. AUTHORIZATION OF APPROPRIATIONS OF THE SECURITIES AND EXCHANGE COMMISSION.

In addition to any other funds authorized to be appropriated to the Securities and Exchange Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

(1) not less that $134,000,000 shall be available for the Division of Corporate Finance and for the Office of Chief Accountant;

(2) not less than $326,000,000 shall be available for the Division of Enforcement; and

(3) not less than $76,000,000 shall be available to implement section 8 of the Investor and Capital Markets Fee Relief Act, relating to pay comparability.

SEC. 15. ANALYST CONFLICTS OF INTEREST.

(a) STUDY AND REVIEW REQUIRED.—The Securities and Exchange Commission shall conduct a study and review of any final rules by any self-regulatory organization registered with the Commission pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) 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 Securities and Exchange 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 pursuant to section 19 of the Securities Exchange Act of 1934 are approved by the Commission. Such report shall include 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.

(c) ADDITIONAL RULES REQUIRED.—Unless the final rules reviewed by the Commission under subsections (a) and (b) contain the following provisions, the Commission shall, by rule—

(1) prohibit equity research analysts from—

(A) holding any beneficial interest in any equity security (as such term in defined in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)) in any issuer covered by such analyst; and

(B) receiving compensation based on the investment banking revenues of the firm with which the analyst is associated, or on the investment banking revenues of such firm and its affiliates, except that this prohibition shall not prohibit such an analyst from receiving compensation based on the overall revenues of such firm or of such firm and its affiliates;

(2) prohibit the investment banking department of such firm from having any input in the compensation, hiring, firing, or promotion of analysts; and

(3) require such self-regulatory organizations—

(A) to establish criteria for evaluating analyst research quality; and

(B) to require analyst compensation to be based principally on the quality of the equity research analyst's research.

SEC. 16. INDEPENDENT DIRECTORS.

(a) RULEMAKING REQUIRED.—The Commission shall adopt rules, effective no later than 6 months after the date of enactment of this Act, to require that the independent directors on the board of directors of any issuer of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) be nominated for election by a nominating committee that is composed exclusively of other independent directors of such issuer.

(b) INDEPENDENCE.—The rules required by subsection (a) shall require the same degree of independence for service on the nominating committee of an issuer as is required for purposes of service on the audit committee of an issuer by the listing standards concerning corporate governance of the exchange or association on which the securities of such issuer are listed.

SEC. 17. ENFORCEMENT OF AUDIT COMMITTEE GOVERNANCE PRACTICES.

The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered to be independent for purposes of certifying the financial statements or other documents of an issuer required to be filed with the Commission under the securities laws unless—

(1) an issuer's auditor is appointed by and reports directly to the audit committee of the board of directors or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors;

(2) the audit committee meets with the accountants engaged to perform such audit on a regular basis, at least quarterly; and

(3) the audit committee is provided with the opportunity to meet with such accountants without the attendance at such meetings of any officer, director, or other member of the issuer's senior management.

SEC. 18. 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. 19. 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. 20. 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. 21. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General shall conduct a study on whether investment banks and financial advisors assisted 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 which may have been 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. 22. 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. 23. 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. 24. 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. 25. 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) PUBLIC REGULATORY ORGANIZATION.—The term ''public regulatory organization'' means the public regulatory organization 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.

The CHAIRMAN. Pursuant to House Resolution 395, the gentleman from New York (Mr. LAFALCE) and the gentleman from Ohio (Mr. OXLEY) each will control 20 minutes.

The Chair recognizes the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, Members can vote against the substitute, and they can vote for final passage of the bill if they want. This will enable them to put a press release out to the public telling them that they have done something meaningful about the problem. This will also enable them to go to corporate America, to the accounting profession, to Wall Street and receive at the very least a pat on the back and they will tell them a job well done because they will be very pleased that an opportunity to enact meaningful reform has been passed and eluded and avoided by passage of the Republican bill. I hope we will not let this opportunity pass without meaningful reform.

My substitute is the barest minimum of what is necessary to have meaningful reform. I say the barest minimum, because I wanted to try to attract as many votes as I possibly could. What do we do? First of all, with respect to auditing, we do a number of things. First of all, we say there shall be a PRO, a professional review organization. We do not make it permissive. We do not say it is something the SEC may do, whatever they want to, if they want to. Secondly, we spell out what its powers and responsibilities are. We make it a real organization with powers and responsibilities in the legislation. We do not leave it totally to the discretion of the SEC, which may or may not do something.

And, third, we spell out the nature of the composition of this PRO. We do not want all accountants, and now through an amendment it will not be all accountants, but we do not want the Ken Lays of this world on that review authority, either. And so we spell out that it shall consist of representatives of groups such as pension plans of private employees, pension plans of public employees, et cetera. So what it shall do and who shall be on it are extremely important and there is a fundamental difference between the gentleman from Ohio's approach which the Washington Post this morning says punts on the issue and the approach that we would take.

Secondly, who shall hire and who shall fire the auditors? We think that is an important issue. There has been too close of a relation between the CEOs, the CFOs, and the auditors. It has been an incestuous relationship. We specify what virtually all good corporate governance individuals have been calling for now, a delineation of the rights and responsibilities of the boards of directors and most especially the audit committee. We say that the hiring and the firing of the auditors shall not be by the officers but by the audit committee of the board of directors. That is a very important provision. We also think that there should be a reasonable, but real, distinction between auditing and nonauditing functions.

And so what we have done is taken the Republican version, not the version that I offered in committee that the gentleman from Alabama (Mr. BACHUS) was referring to, and cleaned it up, took out the language that made it meaningless so that with the deletion of about one sentence, it can be meaningful; and that is all we have done on that score. Except, of course, saying that the board of directors, too, is the one that should be hiring and firing the auditors.

President Bush has also called for a certain type of action. The Republican bill does nothing to effectuate what President Bush called for. Our substitute, as President Bush called for, requires CEOs and CFOs to certify the accuracy of their firm's financial statements. The Republican bill says nothing on it and, therefore, leaves it to the voluntary discretion of corporate America. That will not work.

The substitute also requires corporate officers who falsify their financial statements to disgorge their compensation, including stock bonuses and other incentive pay for any period in which they falsified statements. The Republican bill does nothing on that score. It is absolutely outrageous that corporate officers are able to walk away with tens of millions of dollars or more in the past 2- or 3-year period that they have been engaging in fraudulent activity and misleading manipulation of their earnings statement at the expense of investors. The investors should be able to go after that and obtain redress from those officers and directors. The substitute does something about it, as President Bush wants. The main bill, the Republican bill, does nothing.

Our substitute also empowers the SEC in an enforcement proceeding to bar officers and directors from serving as an officer or director of a public company if they are found guilty of wrongdoing and determined to be unfit. This too was proposed by the President. The SEC said that existing case law makes it virtually impossible for them to do this, to bar unfit officers and directors. And what have the Republicans done? They have taken that bad case law and codified it. In that respect the Republican bill is worse than the status quo.

Finally, with respect to securities analysts, the research analysts, most individuals rely most heavily on the recommendations of Wall Street. Yet we regrettably have learned that there has been a terrible relationship between research analysts and the investment banking arms of the securities firms. Research analysts have been compensated in large part by the revenues they have been able to generate for the investment banking arm of the firm because there are no fire walls within those firms between the research analyst and the investment banking.

The Republican bill has no fire walls whatsoever. Our substitute creates fire walls. That is what has been called for by the Attorney General of the State of New York, by the President of the AFL-CIO, et cetera. Our bill says that the research analysts' compensation shall in no way have any bearing to revenues that are generated by the investment banking portion of the securities firm. This is extremely important. What do the Republicans do? The Republicans say, Gee, that's an issue we ought to think about.

If Members want to please corporate America, the officers, if they want to please the accounting firms, if they want to please Wall Street and be able to put out a piece of paper that says they have done something about it, it will be a wrong piece of paper, it will be a misleading piece of paper. They will be able to get a pat on the back from all those special interests, but they will not really be helping investors. Vote for the substitute. If the substitute passes, vote for final passage. If the substitute should go down, oppose this cosmetic approach that is being advanced to the floor today.

Mr. Chairman, I rise to offer a substitute for H.R. 3763. As I described in detail earlier, the bill before us does virtually nothing to correct the systemic flaws in our financial reporting system. The substitute I offer will provide real reform to restore integrity to our financial markets and protect the savings and pensions plans of millions of Americans that remain threatened by future Enrons. My substitute will provide improvement and reform in several major areas.

First, the substitute would create a powerful new regulatory board with the authority and responsibility to ensure that auditors will be truly independent and objective. My substitute provides for a regulator that: Sets audit and quality standards for auditors of public companies; possesses sweeping investigative and disciplinary powers over audit firms; and is controlled by a board comprised of public members and not the accounting history. This is a decidedly different approach from H.R. 3763, which punts decisions on almost all of the functions and powers of the regulator to the SEC. Only a regulator with explicit powers and duties, and a defined composition, such as the one I propose, will ensure that the abuses we witnessed in the Enron debacle will not be repeated.

Second, while the Republican bill purports to prohibit auditors from providing their audit clients with two nonaudit services—financial reporting systems design and internal auditing—in reality, it prohibits nothing, merely codifying the limited restrictions in existing SEC rules. In contrast, my amendment modifies the definitions of these two services to actually ban these consulting services, which create significant conflicts of interest for auditors.

Third, the substitute includes important corporate governance reforms that will ensure that the audit committees of public companies have the authority they need to better protect shareholder interests. The substitute ensures that audit committees, not management, are responsible for hiring and firing the auditors. It requires that audit committees approve any consulting services that auditors provide to an audit client. These provisions will ensure that auditors give their allegiance to shareholders, not to corporate management.

Fourth, in a bipartisan spirit, we have taken three meritorious elements of President Bush's proposals on corporate responsibility and executive accountability and given them legislative substance and real teeth,unlike the provisions contained in H.R. 3763. Our substitute requires CEOs and CFOs to certify the accuracy of their firms' financial statements. Violation of this provision would carry with it the civil penalties provided for under the securities laws, and potentially criminal penalties for willful violations. The Republican bill contains no similar provision. It is essential that Congress require officers of public companies to stand behind their public disclosures. It is the minimum we should require.

The substitute requires corporate officers who falsify their financial statements to disgorge their compensation, including stock bonuses and other incentive pay, for any period in which they falsified statements. Our amendment would empower the Securities and Exchange Commission, SEC, to seek such a disgorgement in an administrative proceeding, or in court. H.R. 3763 requires only a study of this issue, and limits the scope of any disgorgement actions by the SEC to 6 months prior to a restatement.

The amendment would also empower the SEC in an enforcement proceeding to bar officers and directors from serving as an officer or director of a public company if they found guilty of wrongdoing and determined to be unfit. It would also remove judicial hurdles to seeking such a bar in court. H.R. 3763, however, makes obtaining director and officer bars more difficult, codifying the most restrictive judicial standard, a standard that the head of the SEC's Enforcement Division has stated publicly is almost impossible to meet. We must not codify a standard that makes it harder than ever for the SEC to obtain officer and director bars at a time when accounting fraud and earnings manipulation by corporate executive is at an all time high.

Finally, my substitute seeks to ensure that stock analysts are truly independent and objective. The substitute achieves this by: Barring analysts from holding stock in the companies they cover; prohibiting analysts' pay from being based on their firms' investment banking revenue; and barring their firm's investment banking department from having any input in to analysts' pay or promotion. The revelations brought to light by Eliot Spitzer, the NY State attorney general, in his investigations of major Wall street firms' analysts, confirm the need to address analysts' conflicts of interest. In urging the Financial Services Committee to adopt reforms, Attorney General Spitzer stated, ''[o]nly if the pernicious link between investment banking and research compensation is severed will the public receive the unbiased research it deserves and the public market's integrity be preserved.'' Unfortunately, as with other important topics in this legislation, the Republican bill requires only a study.

The Democratic substitute is a strong reform bill that mandates tough corporate responsibility and strict accounting industry reforms. I urge Members to vote for the real reforms my substitute offers.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield myself 3 minutes. Mr. Chairman, as we have heard throughout this debate, H.R. 3763 is a tough bill which imposes much-needed reforms in the areas of auditor and corporate responsibility and accountability. The legislation ensures that investors in America's capital markets will know that they have access to accurate and understandable information regarding publicly traded companies.

In the committee's hearings and debate on H.R. 3763, we had an opportunity to hear from a broad group of regulators, investors, and corporate employees. We were told by some that our proposal went too far. Others, not far enough. At the end of the day we decided to strike a balance, create a bill that is tough but fair, which punishes those who do wrong, while encouraging the vast number of America's honest and ethical companies to keep up the good work.

During the debate on the bill, the committee had the opportunity to consider a similar substitute amendment to the one Ranking Member LAFALCE is offering today. After a fair debate, the committee rejected the amendment by voice vote. The committee then adopted H.R. 3763 along bipartisan lines with a vote of 49 to 12 with more Members of the minority voting for the bill than against it. We should not overturn the bipartisan consensus reached by our committee. We should not reject the balanced approach taken by the members of the committee, both Republican and Democrat, which will make our markets stronger.

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I commend the ranking member, the gentleman from New York (Mr. LAFALCE) for his efforts throughout this process. In fact, many of his ideas were adopted by the committee. But his substitute amendment represents an honest difference of opinion between us.

I do not believe we should micromanage the tough, new accountant regulatory body that we create. I do not believe we should preempt the laws of the States with regard to how corporations are governed, and I do not believe we should overturn the will of the committee when it adopted this legislation.

The President supports H.R. 3763. This legislation represents the ideas he presented in his 10-point plan on corporate responsibility. Where the President requests legislation, we legislate. Where the plan urges that the regulators be given the freedom to act, we give them that freedom.

Mr. Chairman, I urge my colleagues to support the President's plan. I urge my colleagues to support the bipartisan approach that the committee took in passing CARTA. I ask all of my colleagues to reject the LaFalce amendment and to pass H.R. 3763.

Mr. Chairman, I reserve the balance of my time.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the distinguished ranking member of the Subcommittee on Capital Markets, who has done an outstanding job in this entire area and has shown tremendous leadership.

Mr. KANJORSKI. Mr. Chairman, I thank the gentleman from New York for yielding me this time.

Mr. Chairman, I rise in favor of the substitute amendment. I heard the chairman of the committee say that this is the embodiment of the President's plan. If it is, then it is an example of the President having spoken on one occasion as to what is necessary, and then seeing it reduced to legislation that does not comport with what the President indicated in his public appearances as to what he wanted us to do.

This is opting out. When we have an opportunity to do something well, the underlying bill ignores or virtually sets aside any of the real reform and just plasters over the defects within the system. The substitute bill, although in my own opinion is maybe premature in itself but we are stuck with the rules of having to come here, I support the substitute because it at least puts meat on the bones. It says something to corporate America, that we are going to hold you responsible. We are going to hold corporate executives responsible when they put out statements that are fraudulent or grossly overstated. We are going to tell the accounting industry that they cannot have conflicts of interest and, if they do, there is a penalty to be had, and perhaps a loss of their business. We are going to say to Main Street America and the investors, that you can understand that corporate America plays by the same rules you do, and that they are fair and they are honest and they are straightforward; that they are not swindlers, that they are not tellers of untruth in order to encourage 50 percent of the American people to make investments in equities in our market today who are getting information that they cannot rely on. Not in all instances, not all corporations by a long shot, but enough that we see a need for remedial legislation.

Instead, the underlying bill is an attempt to cover and do little or nothing. But in the substitute bill, we have substance, we have material that will correct some of the Enron problems, will give some form of integrity back to Wall Street and some sort of support to Main Street investors.

Mr. Chairman, I urge my colleagues to support the substitute amendment and, if that fails, to vote ''no'' on the underlying bill.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from Pennsylvania (Mr. TOOMEY).

Mr. TOOMEY. Mr. Chairman, I thank the gentleman for yielding me this time. I would start by observing that the Enron debacle is obviously devastating in many ways to many people. One of the most devastating ways is the way that collapse has shaken public confidence and really raised the question about financial reporting, even in the accounting profession, and the stability of our financial markets.

This underlying bill is going to have several very significant and very positive effects. It is going to help investors make better informed investment decisions; there is no question about that. It is going to require greater disclosure. It is going to enhance audit quality and the quality of financial reporting. By doing those things, it is going to increase the confidence in our capital markets, our financial reporting system, and those effects can only be beneficial for our financial system and our economy and our economic growth.

I would remind my colleagues that this bill passed our committee by a vote of 49 to 12. It was obviously supported by a bipartisan effort, and it takes some unprecedented measures. We take some very dramatic steps, one of which is the creation of the Public Regulatory Organization. This is going to be an organization that is going to be able, for the first time, to really discipline accountants that violate standards of ethics, competency, or independence, and it includes even disbarment. This is a major step in the regulation of the accounting profession, a dramatic departure from the traditional model in which this profession was entirely self-regulated.

But I think that it is impossible for us to know today, here in this Chamber, all of the answers to all of the questions that that regulatory organization needs to address. That is why instead of specifying in great detail every rule that we want them to promulgate, what we ought to do instead is set the broad parameters, and then give them the authority to carry this out, together with the regulators like the SEC, and that is what the underlying bill does.

My main criticism of the substitute amendment is that it goes too far in trying to micromanage this process in spelling out in great detail rules that ought to be left to the SEC and to others.

Mr Chairman, the ranking member does an outstanding job and does a lot of great work in our committee. Today's substitute differs from the substitute he offered in the committee; it is more similar to ours than the substitute offered in committee. Maybe in another few weeks we would see something quite similar to our bill. In fact, it is not enormously different. I do not think that the differences are that huge, but they are important, and they differ in the sense that I think the ranking member has gone too far in trying to specify details that ought to be left to others.

Several have mentioned the President's principles that have been discussed. Let there be no question about it: The President supports this bill. The administration has issued a statement of their policy, and it clearly supports this bill.

Let me look at a couple of the specifics in which the ranking member gets very specific. Disgorgement is one. But look at what we do with disgorgement. We take a very tough approach. It is unprecedented, the approach we take in this bill. If an officer or director sells stock in a company 6 months prior to a restatement, then the SEC can require the disgorgement of any profits that were earned or avoided losses. That is probably all we need to say about this. Let us let the specifics be developed by the SEC. Instead, in the substitute, basically, the SEC's rule is written for them. I do not think that is a good idea.

With regard to analyst conflicts, again, this bill tries to micromanage how analyst conflicts should be addressed. But we have entities, the NASD, the New York Stock Exchange, they are already in the process of producing rules on how this is going to be governed. I think the ranking member, as well as other members on this committee, have had input on that rulemaking process. It is still under review. It is they who should be doing this job, not us.

I think part of the problem with the substitute is an underlying failure to appreciate the ability of the marketplace to impose some discipline as well. But we have already seen how severely and appropriately investors have responded to companies who have even questionable accounting practices after this Enron debacle. It is not as though the investment community has not noticed and has not taken the precautions to demand certain greater disclosures and more transparency in financial reports and to punish companies that have engaged in perhaps dubious accounting principles, and that same kind of discipline is going to continue; it is going to continue with respect to analysts and other matters between the market's discipline.

In this bill, the underlying bill that the majority is proposing, we take some unprecedented measures. I am very confident we are going to encourage a greater degree of honesty and transparency in financial statements. It is going to be extremely helpful. I would suggest to my colleagues that we reject the substitute, reject the micromanagement of what should be done by regulators who have the expertise in this area, and support the underlying bill.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York City (Mrs. MALONEY), the distinguished ranking minority member of the Subcommittee on Domestic Monetary Policy.

Mrs. MALONEY of New York. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in strong support of the LaFalce substitute.

The implosion of Enron is a scandal on a massive scale that demands a real response. Enron's failure has shaken the accounting industry, once again exposed the conflicts Wall Street analysts face in rating stocks, and ruined the lives of thousands of innocent employees and retirees.

For financial markets to work, investors must be able to trust the information on which they base decisions. Auditors must not be under pressure to cook the books because their firm is chasing a consulting contract, and analysts must not have their compensation tied to investment banking deals.

The LaFalce substitute best addresses each of these areas with concrete, real reforms. The Enron scandal has done serious, lasting damage to the reputation of the accounting industry. The majority of accountants, many of whom live in my district, are honest and hard-working, but this scandal has revealed serious weaknesses in the industry's oversight structure, and only the substitute, the LaFalce substitute, directly spells out standards for a new accounting oversight board.

We need a new accounting oversight board because the current structure has failed dramatically. There are 17,000 public companies in the United States, and we may be down to just 4 major accounting firms to audit financial statements. Therefore, we need stronger regulation.

It is not enough for Congress to delegate regulation of the industry to the SEC. We owe it to the public to do the job ourselves and support the LaFalce substitute.

Long after the con men of Enron fade from memory, the conflicts faced by accountants and analysts will still be in place unless Congress acts now.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Chairman, I rise in opposition to the substitute amendment offered by the gentleman from New York (Mr. LAFALCE).

The substitute makes clear the different philosophical positions from which we seek to address the problems of the accounting industry. While CARTA gives broad authority to the SEC to set up the new public regulatory organization, this substitute stipulates exactly how it is going to be set up, to what extent the powers will be, regardless of what the experts may think, especially the experts at the SEC. Unfortunately, I do not believe that most of these provisions would actually do anything to prevent future Enrons and Global Crossings. So I am thinking about what the American investors do. I think the American investors will only risk their savings based on truth and transparency in the market. No smart investor should be required to buy a ''pig in a poke.''

This bill provides control without choking the free market. The reason the people put their money in the market is to make a good return on their money. Many Americans have saved for their retirement through pension funds and 401(k)s. This money is often invested in the markets, so the markets must function with transparency and truth if we expect our citizens to invest their future in the stock of American corporations and other investment vehicles that are offered in the markets.

The CARTA act will ensure transparency and truth responsibly and appropriately. This substitute was defeated during committee consideration and does not enjoy the broad bipartisan support that the underlying bill enjoys. So I urge my colleagues on both sides of the aisle to join us in opposition to this amendment.

Mr. LAFALCE. Mr. Chairman, I yield myself 10 seconds to advise the gentlewoman that this substitute was never offered in committee, and what was offered was defeated on a voice vote, not a recorded vote.

Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. DINGELL), the distinguished dean of the House of Representatives, and the ranking member of the Committee on Energy and Commerce, who for so many years had jurisdiction over the field of securities.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

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Mr. DINGELL. Mr. Chairman, I rise in strong support of the amendment and in opposition to the bill. I say to the sponsors of the legislation, shame. This is a piece of drivel. It is not a piece of legislation, it is a gift to the accounting industry and those who would steal from the American investing public.

Look at the history: Enron, Global Crossing, Baptist Foundation of Arizona, Waste Management, Sunbeam, Xerox, Rite Aid, Microstrategy. Accountants and fat cat officers of corporations stole billions and lied to the American investing public. That is what happened, and that is what needs to be corrected, and that is not what is addressed here.

The watchdogs in those cases and many others were asleep, or benefiting from their wrongdoing, or just plain blind. What is the response of the legislation to this outrage? The bill passes the buck to the SEC on every major issue, and avoids addressing important issues altogether by requiring that the SEC conduct studies.

If Members like studies and they want to waste money, that is a fine way to do it. If they want to hurt the investing public, that is a fine way. Enron would have loved this legislation. Anderson would have found it to be splendid.

I would be embarrassed to put a piece of legislation of this kind on the House floor. The LaFalce substitute ends the farcical self-regulation by the accounting industry which is encouraged and fostered by the committee bill. It creates a strong regulatory board that sets strict standards for auditor independence and auditor quality, and it is a shame if the House does not accomplish this important reform today.

The LaFalce substitute also requires executives to surrender ill-gotten gains made as a result of financial frauds, and empowers the SEC to bar officers guilty of wrongdoing from serving with other companies so that they may steal again. I think that that is necessary. It also imposes strong penalties for lying, including criminal penalties.

The committee bill actually makes it harder for the SEC to bar crooked executives from serving in other companies. On whose side are the authors of this legislation?

Mr. Chairman, our financial markets run on confidence. Those on this side apparently do not know that. If the people have confidence, everybody makes lots of money. They do not run on money, and no confidence will exist, where there is stealing, dishonesty, false accounting, and the kinds of things which we have seen going on in the accounting industry.

I would note that it is time that we deal with these things, and deal vigorously. The American public wants action. They do not trust the accounting, they do not trust the financial markets, and they want to see something in which they can have faith.

Unless and until Members do something about the situation that the American public sees, again with the Enrons and the other corporations where this is going on, and about the Andersens, we are going to see no confidence in the securities markets, and we are going to find that the economy of this country is going to hurt.

I say vote for the LaFalce amendment, vote against the committee bill. The committee bill is a sad, sorry, and repugnant joke. Vote for a piece of legislation that protects the American public. Vote for a piece of legislation that protects the investors of this Nation. Let us give confidence to the markets, instead of passing a sorry, silly charade like this.

Mr. OXLEY. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, at least my friend, the gentleman from Michigan, has been consistent in his strong support for big government and lack of respect and recognition of the free market. So I congratulate him on his consistency, if nothing else.

Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana (Mr. BAKER), the chairman of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises.

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me.

I would join him in recognizing the importance of the preceding speaker's remarks in characterizing the legislation now pending before the House, as in free enterprise, as buyer beware. We should carefully evaluate and analyze any representation made by some salesman as to his product.

I think it is also an advisable warning to those listening to speeches by Members of Congress.

Mr. Chairman, let me turn for a moment to the criticism of the bill with regard to analysts' conduct. Some would have us believe that this Congress has turned its back, protecting the Wall Street interests, walking away from the working families of America, letting the pillaging continue without restraint.

They seem to fail to remember just last year this committee, with bipartisan help, spent hours in evaluating the approach to take in resolving inappropriate conduct by analysts on Wall Street.

Let me explain. When a company wants to raise money on Wall Street, they have to hire a firm to go sell their stock. In order to sell that stock, they need to have a research department that says, is this a good investment or not? And investors rely on that research, understanding that the investment bank is separate from the research.

Well, unfortunately, that has not always been the case. Apparently, in some limited instances, the research was held out by the investment bank sort of as a marketing tool, to say, if you give us a good research product, the investment bank gets the business, and huge profits were made.

Here is the change: Research integrity is restored by having analyst independence from investment bankers. The investment banker cannot talk to the research analyst anymore. They have to be maintained in separate divisions of the business, and there are consequences if they do collude.

It restricts the ties between analysts' compensation and investment banking transactions. If there is any connection, if there is, it must be stated publicly in a report for all to see, or else there is a violation of the law.

It prohibits promising favorable research for the investment bank to get the work in compensation for the firm. So they cannot go out and use the research department information for the investment bank to go make the deal with the corporation. That is illegal. They cannot do it anymore.

It limits analysts' own purchasing and trading of stocks on which they issue research, and prohibits trading against their recommendations. It would be wrong if I were an analyst to say, go buy, gobble it up, America, this is a great stock, and privately I was in the back room selling my own interest to protect my financial position. This prohibits such conduct, and there are penalties, including up to disbarment from the profession.

We require potential conflicts of interest to be disclosed clearly. If we have missed something, if there is something inappropriate that an investor should know, they have a professional obligation to disclose it, and if they do not, there are penalties for that inappropriate conduct.

We have taken action. We have stood up to Wall Street. We are protecting working families across this country. To vote against this bill would be in their disinterest.

Mr. LAFALCE. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. INSLEE), a member of the Committee.

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Chairman, I speak in favor of the substitute and against the bill. This Enron collapse really did rock underlying confidence in the American people, and I think all of us know that the American people want and expect a real guard dog around their life's savings, a bulldog, someone with teeth, vigilance.

This bill, charitably, has all the attributes of a Chihuahua. It fails. It fails to do even what the President of the United States has suggested to require CEO accountability.

It fails in dealing with board independence, to make sure that the board answers to stockholders and not management by preventing payments to the directors by management.

It fails to address the separation of accounting services that even accounting companies have adopted on their own initiative.

It fails and it is disappointing. It is going to disappoint the American people, but it will not surprise the American people that the Republican Party, who gave us an energy policy based on Enron, is giving us an accounting policy based on Arthur Andersen.

Mr. LAFALCE. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Texas (Mr. BENTSEN), a member of the Committee.

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Chairman, the underlying bill is not perfect, and I do not think the substitute is necessarily perfect, but there are certain pieces of the substitute that I think would make the underlying bill better.

Number one, the substitute is stronger on the issue of scope of services for auditing firms. Originally, I thought the gentleman from New York (Mr. LAFALCE) went too far in the committee.

The language he has adopted would bolster the language that the gentleman from North Carolina (Mr. WATT) and I put in the bill that was accepted by the chairman, and I think that is very good in ensuring that the SEC is on the job and doing what it is supposed to do.

Second of all, as the gentleman from Michigan (Mr. DINGELL) pointed out, the substitute is much stronger on giving authority to the SEC to remove officers and directors who engage in misconduct in public companies, and I think that needs to be done.

I have some concerns, as the gentleman from Louisiana (Mr. BAKER) pointed out, about the analyst provisions. I think they go too far. But I think what the gentleman from New York (Mr. LAFALCE) has put together in the substitute would add greatly to where we want this bill to go when it finally gets to the President's desk.

For those reasons, I think I will support the substitute.

Mr. LAFALCE. Mr. Chairman, I yield 1 minute and 15 seconds to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, I rise in support of the LaFalce substitute and in opposition to the underlying bill.

Mr. Chairman, accounting is a boring profession. It is easier to watch grass grow than be an accountant, unless people want to engage in financial fraud. Then it is a fascinating subject, because it affects thousands or millions of people, and that is what happened in this country: Auditors decided they were going to be financiers at the same time. They were going to play both roles.

They cannot do that, and this bill does not correct the fundamental, underlying problem that caused the Enron-Arthur Andersen scandal. It does not go nearly far enough to deal with the causes of the financial chicanery that have turned, overnight, people who thought they had their life's savings protected into those who are wondering about the future.

Specifically, the public regulatory organization created by the bill is a joke. It is set up in such a way that it will be dominated and controlled by the accounting profession. It lacks the investigative and enforcement powers needed to be an effective regulatory agency. The SEC is not given the powers needed to properly oversee its operation.

There is not a proper separation between the auditing and the consulting functions that led to the very core of the problems that were created that have defrauded millions of Americans out of their hard-won savings.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Chairman, I rise today in opposition to the amendment offered by the gentleman from New York (Mr. LAFALCE), who earlier claimed that the underlying bill would make it harder for the SEC to ban officers and directors from serving on corporate boards.

Quite the contrary. For the first time in history, H.R. 3763 will allow, through the administrative process, the SEC to provide greater oversight of corporate officers. Currently, the SEC must go to court to obtain such a ban. This change makes it easier, not harder, for the SEC to go after malfeasance. H.R. 3763 does not allow such a ban to be imposed without providing at least minimum standards for the SEC to consider.

What we do in this bill is to provide the SEC with the tools it needs to tighten corporate oversight without giving the SEC carte blanche authority. We cannot, as someone suggests, grant the SEC unwarranted powers that would alter its appropriate role in maintaining the integrity of the capital markets, but we should give the SEC the ability to efficiently remove those who have no business serving as corporate officers.

Mr. LAFALCE. Mr. Chairman, I yield 1 minute to the distinguished gentleman from the State of Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Chairman, I thank the ranking member for yielding time to me.

Mr. Chairman, thousands of workers of Portland General Electric lost their entire life's savings when Enron collapsed. I praise the gentleman from New York (Mr. LAFALCE) for introducing legislation that would have prevented that tragedy.

I am particularly concerned about a provision in the Republican majority bill which does not allow State boards of accountancy to know if there have been irregularities and penalties imposed. Let me refer Members to a letter from James Caley, a CPA from Vancouver, Washington, who called for precisely such notification.

Mr. Caley wrote, "A system which encourages cooperation between State and Federal regulatory agencies increases the overall effectiveness of both entities, ensuring maximum protection to the public." State agencies need to know if there have been irregularities recognized by Federal entities. The Republican bill, the majority bill, does not provide that notification. The substitute of the gentleman from New York (Mr. LAFALCE) does. I commend the gentleman for including that.

□ 1415

Mr. LAFALCE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I do not want individuals to kid themselves. If Members vote against this substitute or even if Members vote for the substitute, it goes down and then Members vote for final passage of this bill, Members are voting for basically a cover-up because we are not dealing in a fundamental way with the fundamental problems. We are not dealing with the problems of officers who either knowingly or through negligence engage in wrongdoing. We are not dealing with the problems of directors. We are not dealing with the problems of auditors. We are not dealing adequately with the problems of research of the securities firms.

You are relying on two things basically in your bill, the SROs, the Self Regulatory Organizations. So let the officers and directors take care of themselves. Let the securities individuals take care of themselves. Let the accountants take care of themselves. And the magic of the marketplace, you say the marketplace will punish. The marketplace punishes investors. It does not punish the wrongdoers. You have got it wrong.

Mr. OXLEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have had a good debate here today about competing ideas. We made some decisions about our direction and now it comes time to cast our vote.

Today we are acting for America's employees, retirees and investors. At the same time, we recognize that every company in America is not an Enron, every company is not a Global Crossing. The vast majority of American companies are led and managed by good, hard-working citizens. They want to provide benefits and a good living for their employees and they want their companies to prosper and grow. Similarly, the vast majority of accountants are honest and trustworthy individuals who make an invaluable contribution to our financial systems.

If we have learned anything in recent months, we have learned that we need a strong and vibrant accounting community to give us that objective view of companies' financial conditions.

We understand to overreact would make things worse, not better as Chairman Greenspan and Chairman Pitt both admonished in testimony before our committee. So we are not going to make life even more difficult for every American company that is just trying to come out of a slump. We will ask them to provide more and better information. We will ask them to take on some more corporate responsibility, and we will support the accounting industry with a solid and effective oversight organization, while strengthening the Securities and Exchange Commission.

We will ensure that the new rules for analysts are working as they are intended, to provide higher-quality information for investors. We are going to review corporate governance practices to ensure that they adequately protect shareholders and employees. We will look at the credit reporting agencies to ensure they are free of conflicts of interest and provide accurate reports.

CARTA really gets to the heart of what went wrong. CEOs and other corporate insiders will have to publicly reveal in 2 days when they sell their company stock, as compared with 60 days now. It will be a crime to try to interfere with an audit. And never again will employees be locked into owning company stock while the executives are selling.

Mr. Chairman, today we have the chance to offer more than just talk. Today we have a chance to take a scandal and offer a real solution. Today, Mr. Chairman, we have an opportunity to pass a bipartisan product that came out of the Committee on Financial Services. Oppose the LaFalce substitute and pass CARTA.

Ms. SCHAKOWSKY. Mr. Chairman, I am dismayed that the Republican leadership of this body has not responded to the widespread corruption in our financial markets. The Republican so called "reforms" bill will not protect investors and pension holders from conflicts of interest and corporate greed. By failing to enact meaningful reform we are failing the American people.

We all know that if not for Enron's collapse we would not consider these important matters today. I am concerned that some want to characterize the Enron collapse as just a case of one bad actor in the market place. I disagree with that interpretation. Enron's collapse has systemic causes. Corporate board of directors, Wall Street analysts, and the big five accounting firms all have an economic incentive to provide biased analysis of large, profitable companies.

Enron used its political ties to persuade the government to carry out its business plan. Just take a look at California, President Bush, his regulators, and congressional Republicans opposed price caps for consumers while Enron manipulated the market, causing the California energy crisis. Enron had incredible access to the White House. President Bush received over $736,000 throughout his career as an elected official. Vice President CHENEY had at least six meetings with Enron officials while drafting the Administration's energy plan. Enron's economic and political power effectively muted people who were skeptical of the company's economic stability. Enron is not an isolated case and this is not only a business scandal it is also a political scandal.

The fact of the matter is we do not have the laws and procedures in place to protect common investors. I have little doubt that corporate executives' greed and deception will victimize more people. We in Congress cannot simply rely on free market dogma. The American people deserve better than this sham of a reform bill.

I am a member of the Financial Services Committee and I voted against final passage of this cosmetic excuse for a bill. I am dismayed to report that Republicans on the committee refused to even pass an amendment that called for CEO's and CFO's to certify financial statements. I think most Americans would be surprised to learn that this is not a requirement that already exists.

Employees and pension managers must be involved in corporate decision making. Boards that are dominated by corporate executives are inherently flawed, a lesson we learned from Enron's collapse.

Enron's collapse had a major impact on working families—many lost their life savings while Enron's executives gained millions. It is estimated that Illinois' state pension fund lost $25 million. That means that hard working teachers, police officers, and firefighters who worked for the public good may not be able to enjoy their hard-earned retirement. Back home in my home Chicago thousands of Andersen employees have, through no fault of their own, lost their jobs. For this reason, as well as many others, it is important that we do act in order to prevent those kinds of layoffs and to protect investors and pension holders from unfettered corporate greed. I hope that the final bill that is sent to the President's desk will make real reforms that will help prevent this from occurring, again.

A real reform bill will:

Make sure that our auditors are independent.

Create a strong public regulatory body that does not have conflict of interest or financial ties to the industry being regulated.

Ensure that investors have at least the same rights and receive the same treatment as corporate executives.

Ensure those employees, investors and pension holders have access to pertinent information and participate in corporate decision making.

Ensure that Enron executives cannot keep the money they stole from their employees and investors.

Our ranking member, JOHN LAFALCE, has crafted an alternative that will accomplish these goals. Please join me in voting for his substitute.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. LAFALCE).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LAFALCE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 202, noes 219, not voting 13, as follows:

[Roll No. 108]

AYES—202

Abercrombie	Bentsen	Brady (PA)
Ackerman	Berkley	Brown (FL)
Allen	Berman	Brown (OH)
Andrews	Berry	Capps
Baca	Bishop	Capuano
Baird	Blumenauer	Cardin
Baldacci	Bonior	Carson (IN)
Baldwin	Borski	Carson (OK)
Barcia	Boswell	Clay
Barrett	Boucher	Clayton
Becerra	Boyd	Clement

Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McInnis
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—219

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Blagojevich
Davis, Tom
DeGette
Ferguson
Gilchrest
Houghton
Obey
Rodriguez
Smith (WA)
Stark
Thune
Traficant
Watts (OK)

□ 1440

Mr. JOHNSON of Illinois and Mr. YOUNG of Alaska changed their vote from ''aye'' to ''no.''

Messrs. UDALL of Colorado, MCINNIS and BARCIA changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. WATTS of Oklahoma. Mr. Chairman, on rollcall No. 108, I was inadvertently detained. Had I been present, I would have voted ''no.''

Mr. FERGUSON. Mr. Chairman, on rollcall No. 108, I was unavoidably detained. Had I been present, I would have voted ''no.''

The CHAIRMAN. There being no further amendments permitted under the rule, the question is on the committee amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAHOOD) having assumed the chair, Mr. SWEENEY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration 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, pursuant to House Resolution 395, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. LAFALCE

Mr. LAFALCE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. LAFALCE. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. LAFALCE moves to recommit the bill H.R. 3763 to the Committee on Financial Services with instructions to report the same back to the House forthwith with the following amendment:

AMENDMENT TO H.R. 3763, AS REPORTED OFFERED BY MR. LAFALCE OF NEW YORK

(executive responsibility)

Strike sections 11 and 12 and insert the following (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 11. REMOVAL OF UNFIT CORPORATE OFFICERS.

(a) REMOVAL IN JUDICIAL PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title 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 that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 12. DISGORGEMENT REQUIRED.

(a) ADMINISTRATIVE ACTIONS.—Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations to require disgorgement, in a proceeding pursuant to its authority under section 21A, 21B, or 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1, 78u–2, 78u–3), of salaries, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided through securities transactions obtained by an officer or director of an issuer during or for a fiscal year or other reporting period if such officer or director engaged in misconduct resulting in, or made or caused to be made in, the filing of a financial statement for such fiscal year or reporting period which—

(1) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading.

(b) JUDICIAL PROCEEDINGS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(5) ADDITIONAL DISGORGEMENT AUTHORITY.—In any action or proceeding brought or instituted by the Commission under the securities laws against any person—

''(A) for engaging in misconduct resulting in, or making or causing to be made in, the filing of a financial statement which—

''(i) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

''(ii) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or

''(B) for engaging in, causing, or aiding and abetting any other violation of the securities laws or the rules and regulations thereunder,

such person, in addition to being subject to any other appropriate order, may be required to disgorge any or all benefits received from any source in connection with the conduct constituting, causing, or aiding and abetting the violation, including (but not limited to) salary, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided through securities transactions.''.

SEC. 13. CEO AND CFO ACCOUNTABILITY FOR DISCLOSURE.

(a) REGULATIONS REQUIRED.—The Securities and Exchange Commission shall by rule require, for each company filing periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) DEADLINE.—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

In section 21, strike ''and 15'' and insert ''and 16''.

Mr. LAFALCE (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The gentleman from New York is recognized for 5 minutes on his motion to recommit.

Mr. LAFALCE. Mr. Speaker, I am trying to make the motion to recommit easy to vote for and very difficult to vote against, and how am I doing this?

First of all, I am taking the Republican bill that has been passed in its entirety with three exceptions, and the exceptions were all called for by President George Bush who offered a 10-point plan. Three of those points require, in my judgment, legislation.

The Republican bill does nothing about it. The motion to recommit would report out the bill that the floor has just reported, but with the three separate addition. What are they? First of all, let me read from the President's proposal.

The President in proposal Number 3 says, CEOs should personally vouch for the veracity, timeliness and fairness of their company's public disclosures, including their financial statements. CEOs would personally attest each quarter that the financial statements and company disclosures accurately and fairly disclose the information of which the CEO is aware that a reasonable investor should have to make an informed investment decision. The Republican version leaves it up to corporate America to do this or not do this. The motion to recommit legislatively codifies this Presidential recommendation.

Secondly, the President said, CEOs or other officers should not be allowed to profit from erroneous financial statements. We codify that, too, and they say cannot profit from it and we could obtain their moneys back.

□ 1445

The motion to recommit also deals in a markedly different way from the Republican bill with respect to the surrendering of officer compensation, including stock bonuses and other incentive pay. The motion to recommit empowers the SEC, in either an administrative proceeding or in court, to seek such disgorgement.

The Republican bill says that the SEC shall study the issue and then, if they make a determination that it is warranted, they can go back and seek disgorgement, but only for what took place in the past 6 months; and if something took place 7 months or so ago, they made $10 million, $20 million, and they are home free under the Republican bill. That is an absurdity.

Vote for the motion to recommit.

And then, third, I want to read to my colleagues from a speech given by the head of enforcement of President Bush's SEC just about a month or so ago. He is referring to judicially decreed tests that you have to adhere to before you can declare an officer or director unfit to serve at a future firm. And he says, ''These tests, which require, amongst other things, a showing that the misconduct at issue is likely to recur, has created an unreasonably high standard for obtaining a bar. 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.''

What do the Republicans do? They codify that test that the SEC denounces. We give the SEC the authority they have said they need in order to bar such individuals who are unfit from serving as future officers and directors.

The only reason to vote against the motion to recommit is partisanship. We ought to transcend that, because we are taking the Republican bill and President Bush's recommendations which we have codified. Do not go home and say that you have passed something that is meaningful when corporate America and the accounting firms and Wall Street are going to give you a pat on the back for letting them escape once again.

Mr. OXLEY. Mr. Speaker, I rise in strong opposition to the motion to recommit.

Mr. BAKER. Mr. Speaker, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Louisiana, the chairman of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises.

Mr. BAKER. Mr. Speaker, I thank the gentleman for yielding to me.

It was 1896, and the Dow Jones industrial average was constructed. Today, 106 years later, only one United States corporation remains in existence that was included in that publication of that first Dow Jones average.

Capital markets, free markets, are difficult because of the enormous competition that exists to succeed, but it yields tremendous benefit for us all. Today, we are about a debate in how to best regulate those aberrant actors in the marketplace.

Let it be understood, the vast majority of professionals who conduct their business in all sectors of the marketplace today, are that, professional. We are acting today to identify those few aberrant actors who have brought about great harms to innocent third parties. And act we shall.

It is important to recognize that in constructing this regulatory or legislative oversight that we not go too far. In evidence of the point, this bill came out of our committee by a 16-to-12 vote by Democrat Members. They see it as reasonable. They see it as an appropriate first step.

We have a higher obligation. All those working families today who struggle to make ends meet and invest either in their 401(k) by payroll deduction or by putting that $200 online investment through their computer at home expect fairness. That is what this bill is about: honest, transparent disclosure, so you can make informed decisions for your family to buy that first home, invest for your children's education, or for your own retirement.

Inscribed on this wall behind us is an admonition to Members of the House that I read every day. ''Let us develop the resources of the land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also in this hour, day, and generation may perform something worthy to be remembered.''

Daniel Webster is telling us what our job is. Let us make a difference. Let us stand for the working people of America today. Let us not let the Wall Street interests take away people's future by disclosing inappropriate information. That is what this bill is about. It is about standing in the face of those who have abused their corporate and business opportunities to the disinterest of their employees and their investors.

We can make a difference. Vote down the motion to recommit and pass this bill.

Mr. OXLEY. Mr. Speaker, reclaiming my time, the first provision in the amendment which deals with removal of unfit corporate officers is more appropriately addressed in the underlying bill. CARTA, the bill before us, gives the SEC the authority to administratively bar directors and officers from serving in public companies. Under our legislation, the commission no longer would have to go to Federal Court to do this. The SEC must consider a number of factors, longstanding standards used by the courts, in order to make that determination. Our language is endorsed by the White House.

CARTA also prevents corporate officers from profiting from erroneous financial statements. Our legislation was carefully crafted with the focus on bad actors. This language is also endorsed by the White House.

On the issue of CEO certification, we are sympathetic to this well-intentioned legislative provision, but it is important to note that the President never requested legislation to accomplish this objective. The SEC already has the authority to require certification and is currently considering whether to do so. The SEC is in the best position to decide whether and how such a requirement would operate. It would do more harm than good to legislatively mandate what such a rule would look like, and that is exactly what we were told by Chairman Greenspan and Chairman Pitt.

Proponents say this is the President's plan. The fact is, nothing could be further from the truth. Let us be clear. The President endorses the underlying legislation, the CARTA legislation. If my friends want to advance the President's agenda, they should support the underlying bill and reject the motion.

Oppose the motion to recommit. Pass this CARTA legislation, this historic legislation. It is in the best interest of the investing public and the United States.

The SPEAKER pro tempore (Mr. SWEENEY). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. LAFALCE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 205, noes 222, not voting 7, as follows:

[Roll No. 109]

AYES—205

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—222

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn

Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—7

Blagojevich
Gilchrest
Houghton
Rodriguez
Smith (WA)
Thune
Traficant

□ 1513

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. OXLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 334, noes 90, not voting 10, as follows:

[Roll No. 110]

AYES—334

Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clement
Coble
Collins
Combest
Condit
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Eshoo
Etheridge
Everett
Farr
Ferguson
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McIntyre
McKeon
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Napolitano
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Pallone
Pascrell
Pastor
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sanchez
Sandlin
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stearns
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thurman
Tiahrt
Tiberi
Toomey
Towns
Turner
Udall (CO)
Upton
Velazquez
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watt (NC)
Watts (OK)
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—90

Abercrombie
Ackerman
Baldwin
Barrett
Becerra
Berman
Bonior
Borski
Brady (PA)
Brown (OH)
Carson (IN)
Clayton
Clyburn
Conyers
Coyne
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doggett
Engel
Evans
Fattah
Filner
Flake
Frank
Gephardt
Hastings (FL)
Hinchey
Honda
Jackson (IL)
Jackson-Lee (TX)
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kucinich
LaFalce
Larson (CT)
Lee
Levin
Lewis (GA)
Lowey
Lynch
Maloney (NY)
Markey
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Miller, George
Mink
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Paul
Payne
Pelosi
Rahall
Rangel
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schakowsky
Scott
Serrano
Slaughter
Solis
Stark
Tierney
Udall (NM)
Visclosky
Waters
Watson (CA)
Waxman
Wexler
Woolsey

NOT VOTING—10

Blagojevich
Gilchrest
Houghton
Kolbe
Rodriguez
Shows
Smith (MI)
Smith (WA)
Thune
Traficant

□ 1524

Mr. NEAL of Massachusetts and Mr. RUSH changed their vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 3763, the bill just passed.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Ohio?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 3763, CORPORATE AND AUDITING ACCOUNTABILITY, RESPONSIBILITY, AND TRANSPARENCY ACT OF 2002

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 3763, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mr. HASTINGS of Florida. Mr. Speaker, from April 16, 2002, through April 18, 2002, I was absent from the House of Representatives proceedings because I was fulfilling my duties as a