RODRIGO GARGIONI DE SOUZA

LEI SARBANES-OXLEY,

AUDITORIA E FRAUDES

FLORIANÓPOLIS
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	Projeto de Conclusão de Estágio, apresentado como requisito de aprovação na disciplina CAD 5400 do Curso de Administração da Universidade Federal de Santa Catarina, sob orientação do Prof. Doutor Gilberto de Oliveira Moritz

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Esta monografia foi apresentada como trabalho de conclusão do Curso de Ciências da Administração da Universidade Federal de Santa Catarina, obtendo a média .....8,5..... atribuída pela banca examinadora composta pelos professores abaixo nominados.

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RESUMO

Este trabalho tem por objetivo principal discutir os benefícios, conflitos e impacto da Lei *Sarbanes-Oxley*, Lei sancionada pelo presidente George W. Bush em 30 de julho de 2002 criada por 2 parlamentares americanos a partir dos escândalos fraudulentos envolvendo grandes corporações como a *Enron*, *WorldCom* e *Tyco*, conforme opiniões de especialistas, nas companhias de capital aberto e de que forma ela pode reduzir casos de fraude. O presente trabalho ainda pretende esclarecer o que é auditoria, identificar os tipos de auditoria existentes, distinguir auditoria interna de auditoria externa, diferenciar auditoria de perícia contábil, descrever as normas de auditoria, verificar os procedimentos de auditoria, divulgar a Lei *Sarbanes-Oxley,* apresentar opiniões de profissionais especializados sobre a Lei e seu impacto nas empresas de capital aberto, analisar os benefícios e conflitos da Lei, segundo especialistas, quando de sua implementação nas companhias de capital aberto. Por fim serão interpretadas as opiniões de especialistas e será dada a contribuição final. Na intenção de disponibilizar maiores informações sobre a Lei, esta está, em sua versão original, integralmente anexada ao trabalho.

Palavras-Chave: Auditoria, Fraudes, Lei *Sarbanes-Oxley*.

SUMÁRIO

AGRADECIMENTOS

A Deus, por iluminar meus atos e caminhos.

Aos meus pais, Antônio e Lucilene, que nunca mediram esforços para me dar a melhor educação e pela atenção especial dada neste trabalho.

A Paola, pelo amor e carinho.

CAPÍTULO 1. INTRODUÇÃO E HISTÓRICO

A auditoria como é conhecida nos tempos atuais nasceu no Reino Unido no século passado, após inúmeros processos de falência de empreendimentos que captavam dinheiro do povo, para aplicação em negócios altamente especulativos e, na maior parte das vezes pouco sérias. O volume de dinheiro em giro era muito grande como decorrência do progresso trazido pela Revolução Industrial. Isso fez com que os contadores da época sentissem a necessidade de se organizarem para a prestação de serviços capaz de suprir aquele mercado profissional subjacente, uma vez que eles entendiam ser possível desenvolver uma atuação de apoio e proteção dos investidores, através do exame das demonstrações financeiras e outros aspectos técnicos. A maior preocupação dos contadores era o estabelecimento de padrões profissionais, de tal modo que pudessem servir de orientação para condução dos trabalhos de auditoria. Foi pensando assim que se organizaram associações profissionais, sendo a primeira delas a Sociedade de Contadores de Edimburgo, fundada em 1853. A partir de então formaram-se muitas outra entidades, com idênticos objetivos. Atualmente o *Institute of Chartered Acconstants* é a instituição que conta com maior prestigio na Grã-Bretanha.

Embora tenha sido uma invenção, por assim dizer, inglesa, a auditoria recebeu grande impulso nos E.U.A, de onde são emanados os procedimentos técnicos adotados por contadores de quase todos os paises do chamado mundo capitalista, inclusive o Brasil. Nos E.U.A a auditoria foi introduzida por contadores ingleses enviados para auditarem as firmas norte-americas

pertencentes a capitais britânicos. A primeira firma de auditoria se estabeleceu na América em 1893. Aqui, também, os contadores procuraram formar associações profissionais, valendo-se sempre da experiência britânica, sendo que a Associações Americana de Contadores Públicos

No Brasil, somente a partir dos anos setenta é que a auditoria tomou maior impulso, motivando a comunidade contábil após a promulgação de uma serie de dispositivos legais sobre o assunto. Historicamente, o desenvolvimento da auditoria em nosso país pode ser dividido em três fases:

1. Até 1946, quando tivemos a promulgação do Decreto-Lei 9.295.
2. De 1964 até 1967, com os Decretos-Lei 199 e 200, ambos de 25 de fevereiro de 1967.
3. Após 1967

Até 1946, a atividade de auditoria no Brasil praticamente não existia, exceto em empresas estrangeiras, como uma continuidade dos hábitos adotados por suas matrizes. A esta altura, só se recorria aos contadores de maior gabarito profissional, os medalhões quando se desejava apurar alguma fraude, esclarecer suspeita de desfalque, falência fraudulenta ou dirimir controvérsia envolvendo apuração de haveres. Era um trabalho pericial, bem diferente de uma auditoria. A partir de 1946, com advento do Decreto-Lei 9.295, que regulamentou a profissão de contador no Brasil, nos moldes atuais, estabeleceu-se para o contador a prerrogativa de exclusividade na execução dos trabalhos de auditoria e perícia. Convém assinalar que naquela época o termo "auditoria" não era corrente, preferindo-se "revisão de escrita" para assinalar as atividades típicas desta especialização da profissão contábil.

Nunca é demais lembrar que o Decreto-Lei em questão não criou a profissão de auditor, tão somente atribuiu ao contador exclusividade. Portanto, auditoria é uma especialização, em grau máximo, da profissão de contador.

Para o desenvolvimento da auditoria no Brasil, o Decreto-Lei 9.295/46 teve o indiscutível mérito de preservar a qualidade dos trabalhos, a partir do momento que exigiu qualificação técnica para os profissionais executores, reservando aos bacharéis em ciências contábeis o direito de praticar auditoria. Ainda hoje, as regras estabelecidas pelo referido decreto-Lei encontram-se em pleno vigor, de sorte que os contadores brasileiros contam, com prerrogativas legais bem mais amplas do que aquelas conquistadas por seus colegas de paises economicamente mais adiantados. Releva notar que, na Grã Bretanha, pátria-mãe da auditoria, não há regulamentação tão poderosa a favor dos contadores.

A reforma da legislação fiscal e da administração publica no Brasil, a partir de 1964, trouxe para o contador muitas oportunidades profissionais, ao lado da necessidade de maior especialização, continuo aperfeiçoamento e o estabelecimento de padrões de comportamento ético.

Após ter criado, em 1968 o registro de empresas de auditoria e de auditores independentes, o Bacen baixou em 10 de maio de 1972 a Resolução 220, tornando obrigatória a auditoria, por auditores independentes, para documentos a que se refere a letra A do item VI, bem como para outras peças e demonstrativos contábeis que o Banco Central venha exigir.

Assim, as empresas que desejassem abrir o seu capital a participação pública e para aquele que já tinham feito, teriam necessariamente que exibir

demonstrações contábeis e outras informações indispensáveis pelo Bacen, acompanhada de um parecer contendo a opinião de um auditor independente credenciado por aquela instituição governamental.

A comunidade contábil nacional prestou também uma importante contribuição para o estabelecimento dos padrões de auditoria em nosso país. Isso aconteceu quando o conselho federal de contabilidade expediu as resoluções 317 e 321, em 1972, tratando exclusivamente de auditoria.

A resolução 317 criou o "Cadastro Especial de Auditores Independentes – CEAI" junto aos conselhos regionais de contabilidade. Os requisitos para inscrição nesse cadastro contrariavam as prerrogativas já conquistadas pelos contadores através do Decreto- Lei 9.295, o que levou o CFC a revogar tal resolução.

A resolução 321, de 14 de abril de 1972, aprovou as "Normas e Procedimentos de Auditoria", consistindo no primeiro documento oriundo de um órgão profissional regulamentando a auditoria no Brasil. No entanto, qualquer trabalho de auditoria somente tem validade quando realizado com estrita observância dos ditames desta resolução.

Os dispositivos aqui relacionados representam os mais importantes para o desenvolvimento da auditoria no Brasil, mas não são os únicos que deveriam merecer a atenção dos interessados. O processo de desenvolvimento profissional via institucionalização jurídica continua seguindo o seu curso, estando o mercado de trabalho bastante ampliado. Por força legal, todas as instituições financeiras, seguradoras, construtoras que operam com recursos do sistema financeiro de habitação, empresas de navegação, empresas de

transporte rodoviário internacional, empresas aéreas, entre outras, são obrigadas a apresentar suas demonstrações contábeis acompanhadas de parecer firmados por auditores independentes.

No que concerne as entidades profissionais, em nosso país contamos com várias organizações que se dedicam ao desenvolvimento da contabilidade com profissão, como os sindicatos dos contabilistas localizados em várias unidades da federação, entre outras.

1.1 Justificativa

As fraudes contra as empresas movimenta bilhões de dólares por ano apenas nos Estados Unidos e estão se tornando um negócio cada vez mais rentável para as auditorias.

Os recentes escândalos envolvendo grandes corporações americanas serviram para conscientizar acionistas e executivos no mundo inteiro para a dimensão do problema. A prevenção e detecção de fraudes não é um ramo novo para os auditores, porém mais do nunca as empresas de auditoria estão investindo nessa área, contratando profissionais qualificados e criando áreas especializadas em fraudes. A Associação dos Investigadores Certificados de Fraudes americana (ACFE, na sigla em inglês), que tem 25 mil membros em 100 países, mostram que as fraudes levam o equivalente a 6% da receita bruta das companhias, um valor que pode chegar a US$ 600 bilhões neste ano. No Brasil, segundo dados da firma GBE Peritos & Investigadores Contábeis, o

percentual do faturamento perdido em golpes contra empresas também estaria próximo de 6%.

O relatório de 2002 da ACFE, que serviu de modelo para a brasileira GBE, foi baseado em 663 casos das chamadas fraudes ou abusos "ocupacionais" que causaram prejuízos de US$ 7 bilhões. Mais de 80% dos golpes envolviam roubo de ativos, mas o maior volume de dinheiro está na fraude de balanços .

Fraude ocupacional, segundo a ACFE, é o uso do cargo para enriquecimento por meio de mau uso deliberado dos ativos ou recursos da empresa ou organização. É um conceito amplo que vai desde levar para casa papel de impressora até a participação em esquemas de maquiagem de balanço. Em 90% dos casos, dinheiro é o ativo mais visado.

Desta forma a lei *Sarbanes-Oxley* um pacote de reformas dedicado a ampliar a responsabilidade dos executivos, aumentar a transparência, assegurar mais independência ao trabalho dos auditores, introduzir novas regras para o trabalho desses profissionais e reduzir os conflitos de interesses que envolvem analistas de investimentos entra para ampliar substancialmente as penalidades associadas a fraudes e crimes do colarinho branco.

1.2 Problema de pesquisa

De que forma a Lei *Sarbanes-Oxley* contribui para a redução de fraudes em empresas de capital aberto?

1.3 Objetivos

1.3.1 Objetivo geral

O presente trabalho tem como objetivo discutir os benefícios, conflitos e impacto da Lei *Sarbanes-Oxley* nas companhias de capital aberto e de que forma contribui para a redução de fraudes nessas organizações.

1.3.2 Objetivos Específicos

- Apresentar um panorama geral do que é auditoria;
- Identificar os tipos de auditoria existentes ;
- Distinguir auditoria interna de auditoria externa;
- Diferenciar auditoria de perícia contábil;
- Descrever as normas de auditoria;
- Verificar os procedimentos de auditoria;
- Divulgar a Lei *Sarbanes-Oxley*;
- Apresentar opiniões de profissionais especializados sobre a Lei e seu impacto nas empresas de capital aberto;
- Analisar os benefícios e conflitos da Lei, segundo especialistas, quando de sua implementação nas companhias de capital aberto.

1.4 Delimitações

Devido à diversidade dos fatores e da abrangência de pontos que compõem a Lei *Sarbanes-Oxley*, este projeto de pesquisa limitar-se-à a discutir de que forma a Lei contribui para a redução de fraudes nos balanços das empresas de capital aberto.

1.5 Método Científico e Procedimentos Metodológicos

1.5.1 Método Científico

O conhecimento e a estruturação da pesquisa a partir de uma metodologia cientifica reconhecida e aceita, confere confiabilidade a pesquisa. Neste sentido o presente trabalho está estruturada dentro de padrões reconhecidos pela comunidade cientifica.

Quanto à classificação, esta pesquisa caracteriza-se como bibliográfica porque é desenvolvida com base em material já elaborado, constituindo-se principalmente de livros, apostilas e reportagens de jornais.

Segundo Gil (2002) "a principal vantagem da pesquisa bibliográfica reside no fato de permitir ao investigador a cobertura de uma gama de fenômenos muitos mais ampla do que aquela que poderia pesquisar diretamente".

Essa vantagem torna-se particularmente importante porque este problema de pesquisa requer dados muito dispersos que seria impossível ao pesquisador percorrer todo o território em busca de informações sobre auditoria e opiniões de especialistas sobre a Lei *Sarbanes-Oxley*. Todavia se é possível ter à disposição uma bibliografia adequada não teremos maiores obstáculos para contactar com as informações requeridas.

1.5.2 Procedimentos Metodológicos

Minayo (1994, p. 16), nos diz que "entendemos por metodologia o caminho do pensamento e a prática exercida na abordagem da realidade".

Os procedimentos metodológicos deste trabalho de pesquisa foram desenvolvidos envolvendo as seguintes etapas:

- Levantamento bibliográfico de livros e apostilas sobre auditoria;
- Obtenção e leitura na íntegra da Lei *Sarbanes-Oxley*;

- Levantamento de reportagens expressando a opinião de especialistas sobre a Lei *Sarbanes-Oxley* e seus impactos;
- Seleção das informações pertinentes e relevantes;
- Após o levantamento dos dados bibliográficos pesquisados foi feita uma análise dos benefícios e conflitos da Lei sobre as empresas de capital aberto.

1.6 Estrutura do Trabalho

O presente trabalho foi estruturado em 4 capítulos. A descrição de cada um dos capítulos num contexto geral é a seguinte:

O capítulo 1 enfoca a parte introdutória sobre o tema, a justificativa da proposta, problema de pesquisa, objetivos, hipótese, delimitações, método científico e procedimentos metodológicos.

O capítulo 2 apresenta uma fundamentação teórica sobre conceitos e objetivos da auditoria; razão econômica para a função de auditoria; responsabilidade dos auditores, qualificações profissionais requeridas; tipos de auditoria; auditoria contábil; auditoria operacional; auditoria interna; origem da auditoria externa; auditoria externa ou independente; diferença entre auditoria e perícia contábil; evolução da auditoria externa no Brasil; o que leva uma empresa a contratar um auditor externo; contratação do auditor externo e execução do serviço de auditoria; responsabilidade sobre as demonstrações financeiras e na descoberta de irregularidades; normas de auditoria geralmente aceitas; procedimentos de auditoria e Lei *Sarbanes-Oxley*.

O capítulo 3 trata da análise interpretativa sobre a lei à luz dos comentários de especialistas referenciados no trabalho.

E finalmente, no capítulo 4 conclusão, considerações finais e sugestões para futuros trabalhos.

CAPÍTULO 2. FUNDAMENTAÇÃO TEÓRICA

2.1 Conceitos e Objetivos da Auditoria

O conceito de auditoria tem se ampliado ao longo do tempo, incorporando as novas utilizações das técnicas fundamentais de coleta de evidências, em resposta às solicitações crescentes da comunidade interessada nos serviços de auditoria.

Segundo Franco e Marra (1991, p. 22), "a auditoria compreende o exame de documentos, livros e registros, inspeção e obtenção de informações e confirmações internas e externas, relacionadas com o controle do patrimônio, objetivando mensurar a exatidão desses registros e das demonstrações contábeis deles decorrentes".

Modernamente, podemos definir auditoria como sendo o estudo de avaliações sistemáticas das transações realizadas e das demonstrações contábeis conseqüentes. Neste sentido, sua principal finalidade é determinar até que ponto existe conformidade com os critérios preestabelecidos emitindo uma opinião a respeito.

É igualmente aceitável o conceito de que auditoria representa o processo sistemático de obtenção e avaliação de evidencias a respeito de um conjunto de afirmações sobre ações e eventos de natureza econômica, para verificar o grau de correspondência entre tais afirmações dos critérios preestabelecidos, comunicando os resultados aos usuários interessados.

Nos dias de hoje, a sociedade é dominada por grandes organizações que têm significativo impacto em quase todos os aspectos da vida moderna.

Por causa da sua penetrante influencia, essas organizações devem manter informadas as partes externas interessadas a respeito de suas ações. Para monitorar as ações dessas organizações, é necessário projetar um meio de comunicação entre a entidade e as ditas partes externas. Um método aceitável de comunicação, é a disseminação de dados econômicos. Ocorre que, individualmente, as partes externas não são capazes de verificar a exatidão das informações que lhes são transmitidas. Por conseguinte, afim de assegurar que as informações são apresentadas de maneira totalmente imparcial, faz-se necessário para essas partes externas que os dados sejam auditados ou revisados (TREVISAN, 2004).

2.2 Razão Econômica para a Função de Auditoria

De forma objetiva, costuma-se definir economia como o estudo da melhor alocação de recursos escassos. O nosso ambiente de negócios é caracterizado por regime de livre empresa ou simplesmente capitalismo, em que a estrutura de preços é utilizada para a alocação de recursos escassos. Uma das características do capitalismo é a presença de compradores e vendedores que têm informações completas sobre o que devem fazer a respeito de decisões de natureza econômica. Se esta condição existe acrescida de outros pré-requisitos, a elaboração de mercadorias e serviços baseada na estrutura de preços proverá uma solução ótima para os objetivos da sociedade, no que concerne à maximização do bem estar dos participantes da economia.

Por outro lado, se os dados econômicos sobre os quais os participantes se baseiam para tomar decisões contêm erros ou omissões significativas, não haverá uma alocação ótima de fatores, de acordo com os conceitos clássicos de economia. O papel do auditor é monitorar o dado econômico constante das demonstrações contábeis, afim de assegurar que estão apresentados de acordo com os padrões estabelecidos pela sociedade e para as circunstancias. Esta é a contribuição do auditor para a sociedade em que vive, sendo sua função, então, essencial ao sistema de livre empresa (TREVISAN, 2004).

2.3 Responsabilidade dos Auditores, Qualificações Profissionais Requeridas

Segundo Trevisan (2004) a principal responsabilidade do auditor é expressar uma opinião independente acerca da fidelidade dos dados econômicos apresentados sobre as forma de demonstrações contábeis, tendo como quadro de referencia para o seu julgamento os princípios de contabilidade. O relatório do auditor, como vimos, representa o meio de comunicação para as suas conclusões.

A empresa é responsável pela correta aplicação dos princípios de contabilidade quando do reconhecimento contábil de todas as transações por ela realizadas, bem como pelo estabelecimento de um sistema de controles internos eficientes. O conhecimento que o auditor tem das transações realizadas está limitado àquele adquirido durante o exame normal de auditoria, o que conduz ao raciocínio de que cabe à empresa integral responsabilidade pela adequação das demonstrações contábeis. Assim a responsabilidade do

auditor está limitada à emissão do parecer de auditoria sobre a fidedignidade das demonstrações contábeis.

2.4 Tipos de Auditoria

2.4.1 Auditoria Contábil

A auditoria contábil é um sistema coordenado de verificações especializadas praticadas em organizações administrativas, abrangendo:

- Levantamento dos requisitos legais atinentes à atividade desenvolvida pela organização;
- Observações do sistema de controles internos;
- Exame detalhado de registros e documentos contábeis;
- Verificação física dos bens declarados como existentes;
- Confirmação de créditos e débitos relativos a transações realizadas e;
- Comprovação se as demonstrações contábeis expressão a realidade financeira e patrimonial do empreendimento.

A realização de auditoria contábil depende da existência de critérios estabelecidos, promulgados pelas autoridades competentes. Estas normas fornecem as bases para a mensuração quanto à conformidade ou não da entidade auditada em relação ao estabelecido. Adicionalmente às regras

estabelecidas, existem outros elementos que devem estar presentes para assegurar a consecução bem-sucedida da auditoria contábil.

Estes componentes adicionais incluem:

- um auditor capaz de realizar auditoria;
- documentação adequada das transações realizadas pela entidade auditada e;
- um método de comunicação dos resultados da auditoria contábil.

A auditoria contábil, pode, então, ser classificada como uma auditoria que visa certificar o grau de conformidade de demonstrações contábeis e dos procedimentos processuais internos da entidade objeto da auditoria.

A base de atuação da auditoria contábil é fornecida pelos princípios de contabilidade promulgados pelo Conselho Federal de Contabilidade. A documentação contábil e o sistema de controles internos consistem nos elementos a serem examinados pelo auditor. Finalmente, o relatório de auditoria é o método pelo qual o auditor se comunica com os usuários das demonstrações contábeis, informando-lhe seu julgamento (TREVISAN, 2004).

2.4.2 Auditoria Operacional

A auditoria operacional consiste em um sistema coordenado de verificações especializadas realizadas em organizações administrativas, abrangendo:

- coleta de dados e informações;
- análises específicas e;
- cálculo de produtividade e rentabilidade.

Este tipo especial de auditoria surgiu ao fim da segunda guerra mundial, com objetivos muito mais amplos do que aqueles à auditoria contábil. Diferentemente da auditoria contábil, a auditoria operacional não conta com uma fonte autorizada que lhe forneça critérios para servir de base à sua atuação. Isto é verdadeiro porque a auditoria operacional se preocupa com a efetividade e eficiência de uma organização. Devemos entender "efetividade" como uma medida de como uma entidade é bem-sucedida na consecução das metas e objetivos estabelecidos. Por "eficiência" entende-se como uma organização utiliza bem os seus recursos em um nível particular de atividade. Devido à natureza extensa da auditoria operacional ela é executada por uma variedade de profissionais. O grupo de auditoria pode ser composto por contadores, engenheiros, analistas de sistemas, economistas e advogados. O relatório de auditoria, em conseqüência, assume uma variedade de formas, afim de atender a esta diversificação.

A auditoria contábil esta intimamente ligada à contabilidade, fornecendo aos usuários a certeza quanto à verdade contida nas demonstrações contábeis. Já a auditoria operacional está ligada a administração aferindo desempenhos não necessariamente objeto de apreciação por parte da contabilidade tradicional.

Quanto à forma de "intervenção" a auditoria pode ser dividida em mais dois tipos: auditoria interna e auditoria externa ou independente (TREVISAN, 2004).

2.5 Auditoria Interna

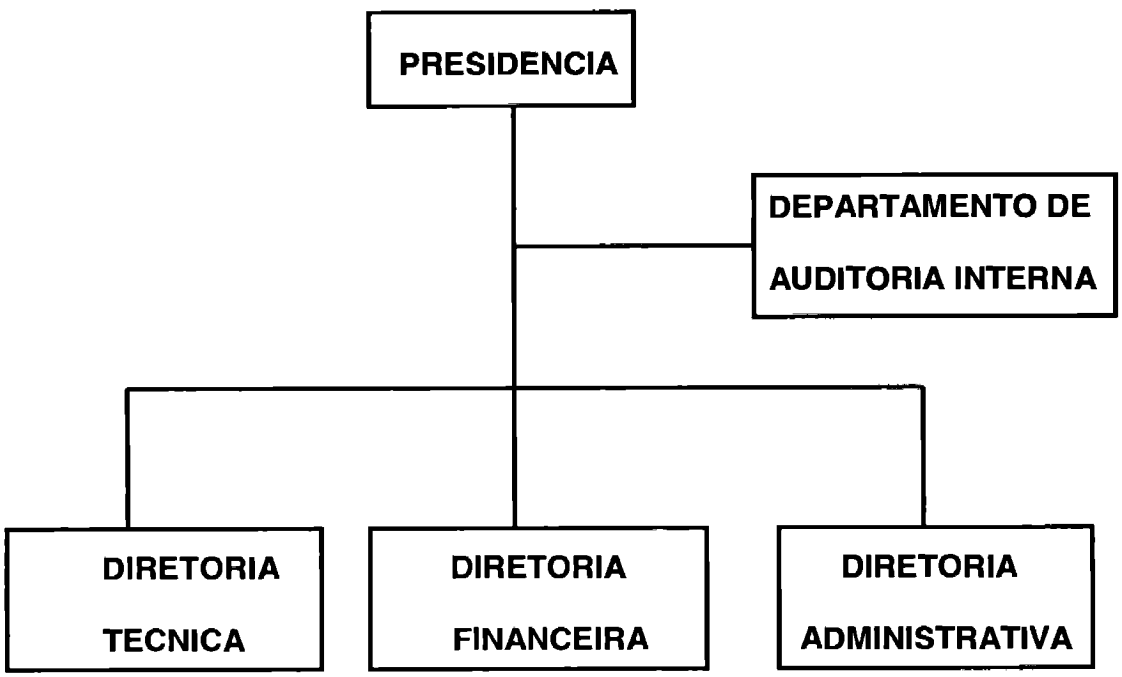
O outro tipo de auditoria que surgiu a partir da profissão de auditor externo foi a auditoria interna.

Segundo Almeida (1996, p. 25) "a administração da empresa, com a expansão dos negócios, sentiu a necessidade de dar maior ênfase às normas ou aos procedimentos internos devido ao fato de que o administrador, ou em alguns casos o proprietário de empresa, não poderia supervisionar pessoalmente todas as atividades. Entretanto, de nada valia a implantação desses procedimentos internos sem que houvesse um acompanhamento, no sentido de verificar se esses estavam sendo empregados da empresa".

Adicionalmente, o auditor externo ou independente, além de dar a sua opinião ou parecer sobre as demonstrações contábeis, passou a emitir um relatório- comentário, no qual apresenta sugestões para solucionar os problemas da empresa, que chegaram a seu conhecimento no curso normal de

seu trabalho de auditoria. Entretanto, o auditor externo passava um período de tempo muito curto e seu trabalho estava totalmente direcionado para o exame das demonstrações contábeis. Para atender à Administração da empresa, seria necessária uma auditoria mais periódica, com maior grau de profundidade e visando também às outras áreas não relacionadas com a contabilidade (sistema de qualidade, administração de pessoal, etc.) (ALMEIDA, 1996, p.25).

Desta forma surgiu o auditor interno como uma ramificação da profissão de auditor externo. O auditor interno, é um empregado da empresa e dentro de uma organização ele não deve estar subordinado àqueles cujo trabalho examinam. Além disso, o auditor não deve desenvolver atividades que ele possa vir um dia examinar para que não interfira na sua independência. Esse departamento de auditoria ficaria situado conforme organograma abaixo:



As diferenças entre auditor interno e externo são as seguintes:

AUDITOR INTERNO	AUDITOR EXTERNO
❑ é empregado da empresa auditada;	❑ não tem vínculo empregatício com a empresa auditada;
❑ menor grau de independência;	❑ maior grau de independência;
❑ executa auditoria contábil e operacional;	❑ executa apenas auditoria contábil;
❑ verifica se as normas internas estão sendo seguidas;	❑ o principal objetivo emitir um parecer ou opinião dobre as demonstrações contábeis, no sentido de verificar se estas refletem adequadamente a posição patrimonial e financeira, o resultado das operações e as origens e aplicações de recursos das empresas examinada. Também, se estas demonstrações foram elaboradas de acordo com os princípios contábeis e se estes princípios foram aplicados com uniformidade em relação ao exercício social anterior;
Quanto aos objetivos: ❑ verifica a necessidade de aprimorar as normas internas vigentes; ❑ verifica a necessidade de novas normas internas; ❑ efetua auditoria das diversas áreas das demonstrações contábeis e em áreas operacionais; ❑ - executa um maior volume de testes (tem maior tempo na empresa para executar os serviços de auditoria).	❑ menor número de testes já que o auditor externo esta interessado em erros que individualmente ou cumulativamente possam alterar de maneira substancial as informações das demonstrações contábeis;

2.6 Origem da Auditoria Externa

Segundo Almeida (1996, p. 21) "A auditoria externa ou auditoria independente surgiu como parte da evolução do sistema capitalista. No inicio as empresas eram fechadas e pertenciam a grupos familiares. Com a expansão do mercado e o acirramento da concorrência, houve a necessidade de a empresa ampliar suas instalações fabris e administrativas, investir no desenvolvimento tecnológico e aprimorar os controles e procedimentos internos em geral, principalmente visando à redução de custos e portanto, tornando mais competitivos os seus produtos no mercado."

Contudo, o processamento de todas essas mudanças requer um volume de recursos impossível de ser gerado apenas pelas operações lucrativas da empresa ou do patrimônio de seus proprietários. Dessa forma, a empresa teve de captar esses recursos junto a terceiros por meio de empréstimos bancários e através da abertura do capital social para novos acionistas (ALMEIDA, 1996).

Esses futuros investidores, por sua vez, tinham a necessidade de conhecer a posição patrimonial e financeira, a capacidade de gerar lucros e como estava sendo efetuada a administração financeira dos recursos da empresa – natureza das fontes de recursos e aplicação destes. Todas essas medidas tinham o objetivo de criar condições para que os acionistas pudessem avaliar a segurança, liquidez e rentabilidade de seu futuro investimento. A melhor forma de obter essas informações era por meio de demonstrações contábeis da empresa, ou seja, o balanço patrimonial, a demonstração do resultado do exercício, a demonstração das mutações do patrimônio liquido, a

demonstração das origens e aplicação de recursos e as notas explicativas. Como conseqüência, as demonstrações contábeis passaram a ter importância muito grande para os aplicadores de recursos. Como medida de segurança contra a possibilidade de manipulação das informações os futuros investidores passaram a exigir que essas informações fossem examinadas por um profissional independente da empresa e de reconhecida capacidade técnica. Esse profissional, que examina as demonstrações contábeis da empresa e emite sua opinião sobre estas, é o auditor externo ou auditor independente (ALMEIDA, 1996).

2.7 Auditoria Externa ou Independente

O auditor independente freqüentemente aceita aproveita grande parte das tarefas conduzidas pelo auditor interno, entre as quais se destacam, segundo Trevisan (2004):

- Contagens físicas de estoques e investimentos;
- Reconciliações bancárias e;
- Confirmações de saldos entre outras.

Em empresas que contam com auditoria interna, o primeiro passo do auditor independente é avaliar a qualidade desses serviços, determinando o grau de imparcialidade com que os trabalhos são conduzidos, a competência de pessoal encarregado das tarefas e só então decide quanto ao aproveitamento de tais serviços, o que quase sempre acontece.

É necessário frisar que o aproveitamento dos serviços executados pelos auditores internos ocorrera sobre inteira e exclusiva responsabilidade do auditor independente, que poderá, a seu critério, repetir todos os exames já realizados pelos auditores internos.

Os procedimentos técnicos são semelhantes tanto para auditoria interna para auditoria independente. A diferença básica situa-se quase que exclusivamente, na independência com que os trabalhos são conduzidos (TREVISAN, 2004).

Ainda segundo Trevisan (2004), a auditoria ainda pode ser dividida em auditoria transacional e auditoria analítica.

A auditoria transacional ou de transações é a forma mais tradicional de se executar um exame das demonstrações contábeis e nasceu a partir do enfoque inicialmente dado à auditoria que consistia em examinar, de forma exaustiva, a documentação comprobatória. Com o passar dos tempos os auditores verificaram que o exame da documentação tenderia a se tornar inviável a partir da complexidade dos negócios e grande volume de transações.

A partir de 1948, os auditores passaram a dar mais atenção ao sistema de controles internos instituídos pelas organizações, do que propriamente do que aos documentos em si. Desta forma, a auditoria transacional, hoje em dia consiste na combinação de uma revisão minuciosa do sistema de controles internos com uma investigação parcial das transações realizadas. A quantidade de transações examinadas esta na dependência direta da qualidade do sistema de controles internos. Quanto mais eficiente o sistema de controles internos, menor será a quantidade de transações a examinar.

Assim, a auditoria transacional, a avaliação e o exame do sistema de controles internos visam determinar a natureza, época e extensão das verificações na documentação comprobatória. Entretanto, a ênfase principal desse tipo de auditoria é o exame das transações.

Já a auditoria analítica é orientada para os sistemas e se baseia na analise de fluxogramas e em provas limitadas de procedimentos. Por enfatizar a analise dos sistemas como forma de obter evidencias, a auditoria assim descrita recebe o nome de auditoria analítica. De acordo com esta descrição, a auditoria analítica é dirigida para a avaliação da segurança proporcionada pelo sistema de controles internos. A auditoria analítica explora o sistema e tenta descobrir como exatamente são produzidos os resultados. Também parte do principio de que se a mecânica do sistema for analisada com intensidade e uma investigação detalhada mostrar que é consistente, com medidas apropriadas para prevenir erros, então os resultados produzidos por esse sistema serão exatos.

A auditoria analítica esta dividida em duas etapas. A primeira etapa orienta-se para avaliação do sistema e a segunda para a investigação das possíveis deficiências. Esta segunda etapa determina a quantidade de verificações a serem conduzidas sobre a documentação comprobatória.

Como visto, a principal ênfase da auditoria analítica é o exame do sistema de controles internos, constituindo o exame das transações uma prova acessória.

Esse tipo de auditoria é de desenvolvimento recente, cabendo aos auditores canadenses R.M. Skinner e R.J. Anderson o seu aperfeiçoamento e estruturação funcional.

A auditoria analítica tem sido empregada por auditores independentes, embora com certas restrições por parte dos profissionais americanos. A experiência tem demonstrado que a auditoria analítica tem grande utilidade para os auditores internos, pois esta muito voltadas para o interior dos sistemas organizacionais.

Com o incremento de sistemas de processamento eletrônico de dados nas organizações e a crescente informatização da sociedade, este tipo de auditoria deverá ser largamente empregado no futuro, ensejando provavelmente o desaparecimento da auditoria transacional.

2.8 Diferença entre Auditoria e Perícia Contábil

No passado, Trevisan (2004) praticamente não se considerava diferente um trabalho de auditoria e de uma perícia contábil. Com o desenvolvimento da auditoria, ficou evidente que se tratavam de coisas bem distintas, pela natureza da responsabilidade envolvida e pelo conteúdo propriamente dito de cada atividade.

A auditoria envolve uma apreciação global de todas as transações praticadas pela organização, uma vez que o parecer do auditor se refere às demonstrações contábeis que necessariamente, incluem o resultado dessas transações. Em seu trabalho, o auditor examina todos os principais

grupamentos de contas, visto que um erro cometido em um setor certamente afetará outros setores. Em auditoria não se pode considerar examinada uma determinada conta sem que também tenham examinado a outra conta que com ela esta correlacionada. Por exemplo, a conta que representa as aplicações em estoques em determinada data somente poderá ser considerada auditada quando tiver sido examinada em conjunto com a outra conta que registrar o custo das mercadorias vendidas e com a conta de vendas.

No que concerne aos trabalhos típicos de uma perícia contábil, o exame se concentra em um determinado aspecto, setor ou conta e não necessariamente sobre toda a demonstração contábil; perícia contábil é, assim, um exame localizado, especificamente indicado pelo parte interessada.

São trabalhos típicos de uma perícia contábil:

- apuração de haveres;
- partilhas de patrimônio social;
- reavaliação de bens patrimoniais;
- verificação de disponibilidade e;
- verificação de contas a receber e a pagar.

2.9 Evolução da Auditoria Externa no Brasil

Nas últimas décadas instalaram-se no Brasil diversas empresas com associações internacionais de auditoria externa. Esse fato ocorreu em função da necessidade legal, principalmente nos Estados Unidos da América, de os investimentos no exterior serem auditados. Essas empresas praticamente

iniciaram auditoria no Brasil e trouxeram todo o conjunto de técnicas de auditoria, que posteriormente foram aperfeiçoadas. Basicamente, somente em 1965 pela lei 4.728 – disciplinou o mercado de capitais e estabeleceu medidas para o seu desenvolvimento - foi mencionada pela primeira vez na legislação brasileira a expressão "auditores independentes". Posteriormente, o Banco Central do Brasil – BCB – estabeleceu uma série de regulamentos, tornando obrigatória a auditoria externa ou independente em quase todas as entidades integrantes do sistema financeiro nacional – CFM – e companhias abertas. O BCB estabeleceu também, por meio da circular número 179, de 11-5-1972, as normas gerais de auditoria. Cabe ressaltar que a resolução número 321/72 do Conselho Federal de Contabilidade – CFC – aprovou as normas e os procedimentos de auditoria, os quais foram elaborados pelos Instituto dos Auditores Independentes do Brasil – IAIB atualmente denominado Ibracon (Instituo Brasileiro de Contadores). (Almeida, 1996, p. 24)

Mais recentemente, a lei das sociedades por ações (Lei nº 6.404/76, art. 177) determinou que as demonstrações financeiras ou contábeis das companhias abertas (ações negociadas em Bolsa de Valores) serão obrigatoriamente auditadas por auditores independentes registrados na Comissão de Valores Mobiliários – CVM.

Finalizando, em 13 de Setembro de 1974, a CVM emitiu a instrução número 38, que dispõe a cerca do seguinte:

- hipótese de impedimento de realizar auditoria, principalmente a relacionada com a independência do auditor em relação à companhia a ser

auditada (vinculo conjugal, vinculo de parentesco, vinculo como sócio, vinculo como administrador ou qualquer situação de conflito de interesse);

- deveres e responsabilidades do auditor independente (zelo profissional; aplicar as normas de auditoria; verificar a observância pela companhia dos limites das emissões de seus valores mobiliários; atentar para a existência de garantias; no caso de emissão de debêntures; observar quanto a atos praticados pela administração em desacordo com as disposições legais; elaborar relatório-comentário; guardar papeis de trabalho de auditoria pelo prazo de três anos; assinalar eventos subseqüentes não divulgados; assinalar falta de divulgação de informações não relevantes e a inobservância dos princípios contábeis; obter carta de representação da administração; e estar atento quanto à continuidade normal dos negócios da companhia) (ALMEIDA, 1996, p. 24-25).

2.10 O que leva uma Empresa a Contratar um Auditor Externo

Segundo Almeida (1996, p.29-30) os principais motivos que levam uma empresa a contratar um auditor externo ou independente são os seguintes:

- obrigação legal (companhias abertas e quase todas as sociedades integrantes do SFN);
- como medida de controle interno tomada pelos acionistas, proprietários ou administradores da empresa;
- imposição de um banco para ceder empréstimo;
- imposição de um fornecedor para financiar a compra de matéria prima;

- afim de atender às exigências do próprio estatuto ou contrato social da companhia ou empresa;
- para efeito de compra da empresa (o futuro comprador necessita de uma auditoria afim de determinar o valor contábil correto do patrimônio liquido da empresa a ser comprada);
- para efeito de incorporação da empresa (é a operação pela qual a empresa é absorvida por outra que lhe sucede em todos os direitos e obrigações);
- para efeito de fusão de empresas (é a operação pela qual se unem duas ou mais empresas para formar uma nova sociedade, que lhes sucede em todos os direitos e obrigações);
- para fins de cisão da empresa (é a operação pela qual a empresa transfere parcelas de seu patrimônio para uma ou mais sociedades, constituídas para esse fim ou já existentes, extinguindo a empresa cindida, se houver versão de todo o seu patrimônio, ou dividindo-se seu capital, se parcial a distribuição);
- para fins de consolidação das demonstrações contábeis (a consolidação é obrigatória para a companhia aberta que tiver mais de 30% do valor de seu patrimônio liquido representado por investimentos em sociedades controladas).

2.10.1 Contratação do Auditor Externo e Execução do Serviço de Auditoria

Normalmente, as empresas subsidiarias estrangeiras no Brasil contratam os serviços das firmas com associações internacionais de auditoria cedida no Brasil, cuja associada no exterior audita a matriz da subsidiaria. Já que as empresas nacionais contratam auditores por meio de concorrências ou tomadas de preço, em que se buscam obter as melhores condições comerciais na contratação do serviço de auditoria.

O auditor externo ou independente é um prestador de serviços, e , como todo prestador de serviços seu custo principal é com pessoal. Portanto, por ocasião de uma concorrência, o auditor externo colhe informações junto à empresa para que possa estimar, por área (caixa e bancos, contas a receber, etc.) e categoria de profissional, as horas que são gastas no serviço de auditoria. Posteriormente, o auditor externo valoriza essas horas pelas taxas-padrão por categoria de profissional. Usualmente, as taxas-padrão são fixadas com base em índice ou moeda estável, como, por exemplo, quantidades de UFIR.

Normalmente o auditor externo ou independente executa o serviço de auditoria em duas fases que são chamadas de fase preliminar e fase final. A fase preliminar representa as vistas que o auditor faz à empresa entes do encerramento do exercício social, cujo objetivo principal é obter maior conhecimento sobre suas operações, coordenar junto a ela as necessidades de informações e dados para a execução do serviço de auditoria e tentar

identificar previamente problemas relacionados, principalmente com contabilidade, impostos e auditoria. Na fase preliminar, o auditor examina parte das demonstrações financeiras, como, por exemplo: receitas, despesas, compras e estoque e de bens do ativo imobilizado e etc. A fase final representa a visita que o auditor externo faz à empresa após o encerramento do exercício social, quando então ele completa o exame das demonstrações financeiras e emite sua opinião ou parecer (ALMEIDA, p. 30).

2.11 Responsabilidade sobre as Demonstrações Financeiras e na Descoberta de Irregularidades

A empresa é responsável pela implantação de sistemas de controle interno de modo a permitir que as demonstrações contábeis ou financeiras reflitam sua posição patrimonial e financeira, o resultado de suas operações e as origens e aplicações de seus recursos. As demonstrações financeiras elaboradas pela empresa, são de sua inteira responsabilidade, mesmo no caso em que o auditor as tenha preparado totalmente ou em parte. O auditor externo é um profissional contratado pela empresa para opinar sobre suas demonstrações financeiras, que representam informações contábeis fornecidas por esta; conseqüentemente a responsabilidade do auditor externo restringe-se a sua opinião ou parecer expresso sobre essas demonstrações financeiras.

O auditor externo deve examinar as demonstrações contábeis de acordo com as normas de auditoria geralmente aceitas; portanto não é seu objetivo principal detectar irregularidades (roubos, erros propositais e etc.), conquanto estas possam vir a seu conhecimento durante a execução do serviço de

auditoria. Se o auditor externo fosse dirigir o seu trabalho no sentido de detectar irregularidades o preço de seu serviço seria muito alto; mesmo assim, ele não poderia assegurar-se de que todas as irregularidades foram descobertas, devido ao fato de que é muito difícil detectar irregularidades não registradas (como por exemplo: o comprador da empresa recebe uma comissão por fora e a nota fiscal de compra sai pelo valor correto, roubos em conluio, etc.

Cumpre ressaltar que durante a execução do serviço de auditoria o auditor externo tem acesso a muitas informações confidenciais da empresa (salários, sistema de apuração de custos, sistema de produção, política de vendas e etc.). Como qualquer outro profissional, o auditor externo deve manter sigilo dessas informações, mesmo dentro da própria empresa. Como medida de sigilo profissional, o auditor externo não deve permitir que terceiros tenham acesso a seus papeis de trabalho sobre a empresa (ALMEIDA, 1996, p. 32).

2.12 Normas de Auditoria Geralmente Aceitas

Segundo Almeida (1996, p.32-33) as normas de auditoria representam as condições necessárias a serem observadas pelos auditores externos no desenvolvimento do serviço de auditoria, são as seguintes:

- normas relativas à pessoa do auditor:

a auditoria deve ser executada por pessoa legalmente habilitada, perante o CRC;

- o auditor deve ser independente em todos os assuntos relacionados com o seu trabalho; o auditor deve aplicar o máximo de cuidado e zelo na realização de se exame e na exposição de suas conclusões;

- normas relativas a execução do trabalho:
  - o trabalho deve ser adequadamente planejado, quando executado por contabilistas- assistentes, estes devem ser convenientemente supervisionados pelo auditor responsável;
  - o auditor deve estudar e avaliar o sistema contábil e o controle interno da empresa como base para determinar a confiança que neles pode depositar, bem como fixas a natureza, a extensão e a profundidade dos procedimentos de auditoria a serem aplicados;
  - os procedimentos de auditoria devem ser estendidos e aprofundados até a obtenção dos elementos comprobatórios necessários para fundamentar o parecer do auditor;

- normas relativas ao parecer:
  - o parecer deve esclarecer: (1) se o exame foi estudado de acordo com as normas de auditoria normalmente aceitas; (2) se as demonstrações contábeis examinadas foram preparadas de acordo com os princípios de contabilidade geralmente aceitos; (3) se os referidos princípios foram aplicados, no exercício examinado, com uniformidade em relação ao exercício anterior;;
  - salvo declaração em contrario, entende-se que o auditor considera satisfatórios os elementos contidos nas demonstrações

contábeis examinadas e nas exposições informativas constantes das notas que as acompanham;

- o parecer deve expressar a opinião do auditor sobre as demonstrações contábeis tomadas em conjunto. Quando não se puder expressar opinião sem ressalvas sobre todos os elementos contidos nas demonstrações contábeis e notas informativas, devem ser declaradas as razões que motivaram esse fato. Em todos os casos, o parecer deve conter indicação precisa da natureza do exame e do grau de responsabilidade assumida pelo auditor.

2.13 Órgãos Relacionados com os Auditores

De acordo com Almeida (1996) os principais órgãos relacionados com os auditores são os seguintes:

- CVM;
- Instituto Brasileiro de Contadores – Ibracon;
- CFC e Conselhos regionais de Contabilidade – CRC;
- Instituto dos Auditores Internos do Brasil.

2.13.1 CVM

A Comissão de Valores Mobiliários (CVM), criada pela Lei nº 6385/76, é uma entidade autárquica e vinculada ao Ministério da Fazenda. Ela funciona

como um órgão fiscalizador do mercado de capitais no Brasil. O auditor externo ou independente, para exercer atividade no mercado de valores mobiliários (companhias abertas e instituições, sociedades ou empresas que integram o sistema de distribuição e intermediação de valores mobiliários), está sujeito a prévio registro na CVM.

Segundo a instrução nº 04/78 da CVM, o auditor externo, para obter o registro nesta, deve comprovar cumulativamente:

- Estar registrado no CRC;
- Haver exercido atividade de auditoria por um período não inferior a cinco anos, contado a partir da data e registro no CRC;
- Estar exercendo atividade de auditoria, mantendo escritório profissional legalizado, em nome próprio, com instalações compatíveis com o exercício da atividade de auditoria independente.

A CVM estabelece normas de contabilidade a serem seguidas pelas citadas sociedades. Exemplos de normas emitidas:

- Avaliação de investimentos pelo método de equivalência patrimonial;
- Consolidação de demonstrações financeiras;
- Reavaliação de ativos.

2.13.2 Ibracon

O Instituto de Auditores Independentes do Brasil (IAIB), fundado em 13-12-1971, passou a chamar-se de Instituto Brasileiro de Contadores (Ibracon) a partir de julho de 1982. O Ibracon é uma pessoa jurídica de direito privado sem fins lucrativos, e anteriormente tambpem foi denominado Instituto dos Contadores Públicos do Brasil e Instituo Brasileiro dos Auditores Independentes, em 1957 e 1968, respectivamente. Os principais objetivos desse instituto são os seguintes:

- Fixar princípios de contabilidade;
- Elaborar normas e procedimentos relacionados com a auditoria (externa e interna) e perícias contábeis.

O Ibracon está dividido em seis câmaras, denominadas como segue:

- Câmara dos Auditores Independentes;
- Câmara dos Auditores Internos;
- Câmara dos Peritos Judiciais;
- Câmara dos Contadores da Área Privada;
- Câmara dos Contadores da Área Publica;
- Câmara de Professores.

O Ibracon tem as categorias de associados, membros e estudantes.

O membro deverá estar registrado no CRC e atuando na área profissional correspondente à câmara que deseja participar. O estudante deverá comprovar que esta estudando no curso de Ciências Contábeis.

O Ibracon a exemplo da CVM, também emite normas de contabilidade, a seguir exemplificadas:

- Empréstimo compulsório à Eletrobrás;
- Contabilização de variações cambiais;
- Receitas e despesas – resultados;
- Investimentos;
- Estoques;
- Consolidação;
- Contratos de construção, fabricação ou serviços;
- Contingências;
- Imobilizado;
- Ativo diferido;
- Imposto de renda diferido;
- Reavaliação de ativos.

Vale destacar que a CVM, sempre que julga necessário aos interesses do mercado, referencia em ato próprio as normas emitidas pelo Ibracon.

2.13.3 CFC e CRC

O Conselho Federal de Contabilidade e os Conselhos Regionais de Contabilidade (CFC e CRC) foram criados pelo Decreto-Lei nº 9.295, de 27-5-1946. Esses conselhos representam entidades de classe dos contadores, ou

seja, é o local onde o aluno, após concluir o curso de Ciências Contábeis na universidade, se registra na categoria de contador.

A finalidade principal desses conselhos é o registro e fiscalização do exercício da profissão de contabilista.

2.13.4 OIO

O Instituto dos Auditores Internos do Brasil (OIO), fundado em 20-11-1960, é uma sociedade civil de direito privado e não tem fins lucrativos. O principal objetivo da OIO é promover o desenvolvimento da auditoria interna, mediante o intercambio de idéias, reuniões, conferências, intercambio com outras instituições, congressos, publicação de livros e revistas e divulgação da importância da auditoria interna junto a terceiros.

Os membros do OIO constituem-se de três classes, conforme mencionadas a seguir:

- membros efetivos – para essa classe somente são aceitos auditores internos
- membros associados – auditores independentes, educadores, escritores e outros, desde que ocupem de assuntos relativos a auditoria e correlatos, mas não possam qualificar-se como membros efetivos.
- membros honorários – esta classe é composta de pessoas que, por grandes serviços prestados à auditoria interna ou ao Instituto, mereçam distinção por recomendação unânime da diretoria e aprovação do conselho deliberativo.

2.14 Procedimentos de Auditoria

Os procedimentos de auditoria representam um conjunto de técnicas que o auditor utiliza para colher as evidencias sobre as informações das demonstrações financeiras. A seguir, exemplificaremos os principais procedimentos de auditoria, conforme Almeida (1996, p. 45-47).

2.14.1 Contagem Física

Esse procedimento é utilizado para as contas do ativo e consiste em identificar fisicamente o bem declarado nas demonstrações financeiras. Exemplificaremos ativos que normalmente são submetidos á contagem física pelo auditor:

- dinheiro em caixa;
- estoques;
- títulos (ações, títulos de aplicações financeiras, etc.);
- bens do ativo imobilizado.

2.14.2 Confirmação com Terceiros

Esse procedimento é utilizado pelo auditor para confirmar, por meio de carta, bens de propriedade da empresa em poder de terceiros, direitos a receber e obrigações, conforme exemplificado abaixo:

- dinheiro em conta corrente bancária;
- contas a receber de clientes;
- estoques em poder de terceiros;
- títulos em poder de terceiros;
- contas a pagar a fornecedores;
- empréstimos a pagar.

2.14.3 Conferência de Cálculos

O contador efetua diversos cálculos em todo o processo de elaboração das demonstrações financeiras. Evidentemente, um erro de cálculo ocasiona uma informação errônea nessas demonstrações. Portanto o auditor deve conferir, na base de testes, esses cálculos.

A seguir exemplificaremos transações para as quais o auditor utiliza esse procedimento de auditoria:

- cálculos de valorização de estoques;
- cálculos de amortização de despesas antecipadas e diferidas;
- cálculos das depreciações dos bens do ativo imobilizado;
- cálculos da correção monetária sobre o ativo permanente e o patrimônio liquido;
- cálculos sobre juros provisionados.

2.14.4 Inspeção de Documentos

Existem dois tipos de documentos: os internos e os externos. Os documentos internos são traduzidos pela própria empresa, já os externos são fornecidos por terceiros à empresa, normalmente comprovando algum tipo de transação. Esses documentos representam os comprovantes hábeis que suportam os lançamentos contábeis das contas de ativo, passivo, receita e despesa. Os auditor examina esses documentos com o objetivo de constatar a veracidade dos valores registrados.

São exemplos de documentos internos:

- relatório de despesas;
- boletim de caixa;
- mapas demonstrativos (apropriação de custos, depreciação, amortizações, etc.);
- requisição de compra;
- mapa de licitação de compras;
- registro de empregado;
- folha de pagamento;
- livros sociais (atas de reunião de acionistas, conselho de administração, diretoria e conselho fiscal).

São exemplos de documentos externos:

- notas fiscais, faturas e duplicatas de fornecedores;
- apólice de seguro;
- contratos;
- escrituras de imóveis;
- certificados de propriedade de veículos.

Após esta breve explanação do que é auditoria, seus conceitos, atribuições e responsabilidades passaremos a discutir a Lei *Sarbanes-Oxley* aprovada em julho de 2002 pelo presidente George W. Bush que trata das questões de segurança, transparência e maior independência para a auditoria que está em estudo para entrar em vigência nos principais países do mundo.

2.15 Lei Sarbanes-Oxley

A Lei *Sarbanes-Oxley*, sancionada pelo presidente George W. Bush em 30 de julho de 2002, após aprovação pelo Congresso, proíbe que novos empréstimos sejam concedidos a conselheiros e executivos de empresas abertas, com algumas poucas exceções. Também exige que o Presidente e Diretor Financeiro reembolsem a companhia com seus bônus ou outros benefícios de renda variável caso a empresa anuncie erros em sua contabilidade. Obriga também que todos os conselheiros do comitê de auditoria das empresas listadas sejam independentes e que assuntos relacionados à auditoria sejam tratados no comitê.

Quanto à transparência das informações, a nova lei prevê que a SEC (CVM nos Estados Unidos) revisará pelo menos um a cada três balanços anuais divulgados. Executivos com mais de 10% de uma determinada classe de ações terá que reportar eventuais mudanças em suas posições acionárias em até dois dias úteis. A *Sarbanes-Oxley* cria ainda o Comitê Geral de Contabilidade, órgão submetido à SEC e responsável pela adoção de padrões de qualidade, ética e independência para as empresas de auditoria. A lei limita o escopo dos serviços correlatos prestados por empresas de auditoria e determina que, quando existirem, devem ser pré-aprovados pelo comitê de auditoria.

A *Sarbanes-Oxley* também aborda os conflitos de interesse inerentes ao trabalho de pesquisa de analistas de investimentos. Exige que a SEC ou organizações como a Associação Nacional das Corretoras da Valores (Nasd) ou a Bolsa de Valores de Nova York (Nyse) adotem regras que permitam aos analistas escapar de pressões geradas por funcionários do banco de investimentos e declarar conflitos. (GAZETA MERCANTIL, p. B4, São Paulo, 13 de Agosto de 2002. URL: http://www.portalpwc.com.br/BRASIL/PORT/braccnoticibr.nsf/[News]/5369D69F410F0F1683256C210048C397?OpenDocument&Flag=Home, acessado em 13/09/2004).

O jornal (Gazeta Mercantil, p.B3) de 21 de agosto de 2002 menciona que o Brasil divulga aprovação americana

"A Comissão de Valores Mobiliários (CVM) concorda com a aplicação da *Sarbanes-Oxley* para companhias estrangeiras. Luiz Antonio Sampaio, diretor da autarquia, avalia que os princípios da legislação não são conflitantes com as regras nacionais e que, ao contrário, são até complementares em alguns

casos. "A nova lei trará benefícios para as empresas brasileiras com ações nos Estados Unidos e, por conseqüência, para todo o nosso mercado", afirma.

Segundo Sampaio, a CVM está avaliando se algumas das novidades trazidas pela Sarbanes poderiam ser implementadas no Brasil. A maioria das regras, entretanto, precisaria ser submetida à aprovação do Congresso Nacional via projeto de lei, uma vez que não está na alçada da autarquia. Sampaio avalia que os americanos estão corretos ao defender a extensão da legislação para os estrangeiros. "Caso contrário, haveria uma brecha para que companhias com sede nos Estados Unidos saíssem do país para poder continuar em bolsa sem atender às regras", afirma.

Outras normas da nova lei americana proíbe, com poucas exceções, que as companhias concedam empréstimos aos principais executivos. Exige ainda que eles reembolsem com seus próprios bônus eventuais prejuízos causados por erros em balanços. Regras de transparência, como a pronta divulgação de mudanças nas expectativas de resultados e a apresentação de informações complementares para balanços pro forma, também constam da Sarbanes. Aos advogados de empresas abertas, a lei atribui a responsabilidade de reportar irregularidades ao CEO (presidente) ou ao comitê de auditoria. À SEC, obriga a revisão dos informativos divulgados ao mercado uma vez a cada três anos. (GAZETA MERCANTIL, p. B3, URL:http://www.portalpwc.com.br/BRASIL/PORT/braccnoticibr.nsf/[News]/29DAAB38F2DDD09A83256C21004C448C?OpenDocument&Flag=Home, acessado em 15/09/2004).

Com o intuito de recuperar a confiança do mercado financeiro, George W. Bush em 30 de julho, assinou a legislação, incluída na Sarbanes-Oxley, proibindo que as auditorias prestem serviços de consultoria em tecnologia e auditoria interna para clientes de auditoria externa. Exigiu também que outros serviços sejam permitidos somente com a aprovação dos comitês de auditoria - uma engenhosa alternativa para restringi-los, uma vez que os comitês, pela nova lei, serão formados apenas por conselheiros independentes. (AZEVEDO, Simone. GAZETA MERCANTIL. Capital Aberto. URL: http://www.citadini.com.br/auditoria/gm020819a.htm, em 19/8/2002, p.B-3, acessado em 16/09/2004).

Os diretores financeiros e presidentes de companhias brasileiras com ações negociadas na Bolsa de Valores de Nova Iorque podem estar vulneráveis às sanções previstas no *Sarbanes-Oxley Act*. A nova lei de reforma corporativa foi sancionada pelo governo americano para evitar manipulações nos balanços financeiros das companhias e escândalos como o da Enron, que abalou a credibilidade da bolsa. A lei, entretanto, extrapola os limites territoriais dos Estados Unidos.

A *Sarbanes-Oxley Act* é aplicável às empresas estrangeiras que possuem valores mobiliários registrados na *Securities and Exchange Commission* (SEC). Ela prevê multas de milhões de dólares e pena de até 20 anos de prisão caso os documentos apresentados não correspondam à realidade e ficar comprovado que os diretores tinham conhecimento do fato. Fabio Magalhães, advogado do escritório Demarest & Almeida, diz que os principais executivos das companhias estão obrigados a conferir e assinar os

relatórios periódicos enviados à SEC, assumindo a responsabilidade sobre os dados.

Segundo Magalhães, apenas 38 companhias brasileiras negociam suas ações na bolsa de Nova York, mas em grandes quantidades. Entre elas, a Petrobrás, Vale do Rio Doce, Ambev, Aracruz e os bancos Bradesco e Itaú. Para ele, "é humanamente impossível verificar todas as equivalências patrimoniais que estão no balanço". A dúvida permanece quanto à capacidade dos Estados Unidos punirem empresários brasileiros. "A principal punição para as companhias estrangeiras deve ser a exclusão da listagem da bolsa" , opina Magalhães.

Especialista em mercado de capitais, o advogado Marcelo Trindade, do escritório Tozzini, Freire, Teixeira e Silva, se diz tranqüilo quanto à repercussão da nova lei no Brasil. "Os administradores brasileiros já têm que cumprir as obrigações do *Sarbanes-Oxley* porque elas estão na legislação brasileira. O que eles precisam saber é que também poderão ser responsabilizados lá fora por estes atos criminosos", avalia.

A independência entre a companhia e a auditoria contratada para checar esses balanços é um exemplo. A Comissão de Valores Mobiliários (CVM) estabeleceu-a na Instrução Normativa nº 308 em 1999, que determina o rodízio das auditorias em prazo de cinco anos e proíbe a prestação de serviços paralelos, como as avaliações de mercado (LIMA. JORNAL VALOR ECONÔMICO. Lei americana atinge executivos em 09.10.2002).

A lei *Sarbanes Oxley* é uma reação do governo americano aos escândalos de fraudes contábeis em grandes empresas como *Enron* e *WorldCom*. Em 30 de julho, após aprovação pelo Congresso, o presidente da República, George W. Bush, sancionou a nova lei.

Em abril, a lei *Oxley*, elaborada pelo congressista americano *Michael Oxley*, já tramitava no Congresso. Com os escândalos contábeis, a lei uniu-se à *Sarbanes*, do parlamentar *Paul S. Sarbanes*, dando origem à lei *Sarbanes-Oxley*.

Essa regra é a mais importante mudança na legislação do mercado americano desde a criação das bases da lei atual, em 1933 e 34.

A *Sarbanes* é muito ampla, aumentando o grau de responsabilidade desde o presidente e a diretoria da empresa até as auditorias e advogados contratados.

Entre as principais regras estão: certificação dos balanços pelo presidente e diretor financeiro, sob pena de multa de até US$ 5 milhões e prisão de até 20 anos no caso de informações erradas; proibição de empréstimos a conselheiros e diretores; criação de um comitê de auditoria; proibição de determinados serviços por auditores; e criação de um código de ética para os administradores.

Há um consenso de que o governo exagerou na dose. Bruno Machado Ferla, do Pinheiro Neto, diz que a lei amarrou de tal forma as empresas que tornou difícil a sua administração. "Os EUA passaram por dois processos traumáticos em 2001, os ataques terroristas e a quebra da *Enron*." "E a reação

foi radical nos dois casos." A *Sarbanes*, na sua opinião, é uma "arma de um calibre muito maior do que o necessário". Geraldo Soares, vice-presidente do Instituto Brasileiro de Relações com Investidores, concorda que as regras são "muito fortes". Para ele, normas brasileiras, como o rodízio de auditores, "são mais efetivas".(D.C. e N. N. Valor Econômico. *Sarbanes-Oxley* é uma reação aos escândalos. São Paulo em 11.10.2002)

As empresas brasileiras com ações listadas nos Estados Unidos estão acionando seus escritórios de advocacia para sugerir mudanças na nova lei corporativa americana, a *Sarbanes-Oxley*, tão logo a Comissão de Valores Mobiliários americana (SEC, na sigla em inglês) coloque essa legislação em audiência pública, o que deve acontecer nos próximos meses.

Alguns pontos da nova lei são conflitantes com a legislação dos outros países, o que torna problemático o seu cumprimento. A expectativa é que a SEC isente as companhias estrangeiras de seguirem tais regras.

A exemplo das empresas européias e japonesas, que já colocaram em marcha uma campanha com esse objetivo, as companhias brasileiras também estão trabalhando, com menos estardalhaço, para minimizar os impactos da nova legislação, que foi uma reação do governo americano aos recentes escândalos corporativos nos Estados Unidos.

Segundo Ricardo Anzaldua, sócio do escritório de advocacia americano *Cleary Gottlieb Steen & Hamilton*, a SEC mostrou-se disposta a ouvir as reivindicações das empresas estrangeiras e possivelmente aprovar algumas isenções. "A SEC já percebeu que algumas partes da *Sarbanes-Oxley* são

inconsistentes para essas companhias", diz Anzaldua. O escritório está auxiliando algumas das 38 empresas brasileiras com certificados de depósito (ADR) nos EUA a se adaptar à lei e também preparar sugestões para quando ela estiver em audiência.

No caso das empresas brasileiras, o ponto de maior conflito é o que trata do comitê de auditoria. Pela lei, a empresa precisa criar esse comitê, formado por membros independentes do conselho de administração, e que será diretamente responsável pela nomeação e fiscalização da empresa de auditoria.

O primeiro conflito é que no Brasil já existe a figura do conselho fiscal que exerce a função de fiscalizar as contas da companhia e o trabalho da auditoria. "O comitê de auditoria nas empresas brasileiras gera uma espécie de duplicidade com o conselho fiscal que é previsto por lei", diz Alexandre Barreto, sócio do Souza, Cescon Avedissian, Barrieu e Flesch Advogados.

Bruno Machado Ferla, do escritório Pinheiro Neto, também chama a atenção para essa duplicidade. Segundo ele, os dois conselhos teriam funções similares, mas não poderiam ser unificados "porque as atribuições do conselho fiscal não podem, por lei, ser transferidas para outro órgão da companhia", afirma.

Outra questão polêmica é que o comitê de auditoria seria responsável pela escolha da firma de auditoria externa, enquanto pela lei brasileira essa atribuição é do conselho de administração.

Segundo Anzaldua, as empresas brasileiras também terão dificuldade para formar comitês de auditoria com membros independentes uma vez que nos conselhos de administração estão os representantes dos controladores. "Não conheço uma empresa brasileira com conselho independente por causa da estrutura societária das empresas com controle definido". Já nos EUA, há mais conselheiros independentes porque o controle é fragmentado.

Na visão do advogado americano, a *Sarbanes* é muito diferente da realidade brasileira porque é uma lei que veio como reação aos escândalos de abuso dos administradores das empresas americanas, enquanto no Brasil os problemas são as relações entre os acionistas controladores e os minoritários.

Anzaldua acredita que a SEC também deve isentar os auditores das empresas estrangeiras de terem que ser registrados na comissão de fiscalização dos auditores que será criada pela própria SEC. Nesta semana, o regulador do mercado americano já sinalizou com essa possibilidade.

Para alguns advogados, a *Sarbanes-Oxley* é exagerada com relação as penalidades ao presidente e diretor financeiro (multa de até US$ 5 milhões e prisão de 20 anos) no caso desses profissionais certificarem balanços contendo informações erradas. "Esses dois profissionais perdem a função estratégica para virar investigadores dentro da empresa", diz Fábio Guimarães Leite, advogado do escritório Demarest & Almeida. Ele acredita que as pesadas punições podem criar uma rede de "laranjas" que serão presidentes e diretores apenas formalmente, eximindo do risco os reais administradores.

Segundo Ronaldo Veirano, sócio da Veirano Advogados, a partir de agora, as empresas com ações listadas nos EUA terão dificuldade para encontrar profissionais dispostos a ocuparem esses dois cargos. "Isso vai encarecer os salários e as apólices de seguros desses executivos. As empresas com certeza vão repassar esses custos ao consumidor." Segundo Veirano, a proibição de empréstimos das empresas aos diretores e conselheiros também pode afetar as empresas brasileiras. "Algumas companhias costumam fazer isso", afirma.

Ferla, do Pinheiro Neto, acredita que haverá uma aumento substancial de custos para as empresas brasileiras, principalmente no que se refere à auditoria das demonstrações contábeis pelos princípios americanos. "As companhias não devem ter grandes dificuldades de adaptação, mas os custos serão maiores", diz. "As auditorias terão que usar mais profissionais para fazer o trabalho num prazo menor, como quer a lei".

Para Renato Ochman, sócio do Ochman Real Amadeo Advogados, como o controle das empresas brasileiras é definido, os controladores deveriam responder pelas responsabilidade junto com os dois executivos. (CAMBA e NIERO. VALOR ECONÔMICO. Aperto americano. Empresas terão dificuldade para se adaptar a regra. S.A. brasileira listada nos EUA critica rigor da SEC. São Paulo em 11.10.2002)

As empresas estrangeiras com papéis negociados nos EUA estão aumentando a pressão para tentar atenuar o impacto das novas e severas regras americanas para combater as fraudes corporativas.

Empresas européias, principalmente as alemãs, e japonesas, devidamente representadas por funcionários do governo e entidades de classe, começaram uma campanha em reação ao que consideram "exageros" da lei *Sarbanes-Oxley.*

A Federação das Empresas Japonesas, presidida pelo presidente da *Toyota, Hiroshi Okuda*, declarou que os EUA devem isentar as companhias japonesas. Segundo um comunicado da mais poderosa organização empresarial do país, a lei americana "contém vários aspectos que são inconsistentes com a legislação japonesa".

Mais de um terço das cerca de 80 companhias asiáticas que estão no mercado americano são japonesas, incluindo *Toyota, Sony, Mitsubishi Tokyo Financial Group e Nippon Telegraph & Telephone.*

Ontem, *Harvey Pitt*, presidente da *Securities and Exchange Commission* (SEC), a CVM americana, disse que será "receptivo e criativo" às sugestões sobre a interpretação das novas regras.

Em Bruxelas, para discutir o assunto com autoridades da União Européia, *Pitt* afirmou estar aberto a conversações com os órgãos reguladores "em todo o mundo".

A principal preocupação das companhias estrangeiras com negócios nas bolsas americanas - são mais de 200 papéis de companhias européias - é que a nova lei poderá entrar em conflito com as legislações de seu país de origem.

Pitt encontrou-se ontem com *Fritz Bolkestein*, comissário de serviços financeiros da Comissão Européia que mandou uma carta de protesto a Washington logo depois do presidente americano George W. Bush assinar a *Sarbanes-Oxley* , em 30 de julho.

Apesar de "concordar com os objetivos da legislação e entender a necessidade de restaurar a confiança do investidor", a União Européia tem "preocupações práticas" quanto à sua aplicação, declarou Jonathan *Todd* , porta-voz de *Bolkestein*:

"Sabemos que algumas leis em alguns países podem conflitar com a *Sarbanes-Oxley*", disse Pitt "Temos que achar um jeito de interpretar a lei mantendo seu espírito, sem esquecer as legislações locais". Mesmo abrindo espaço para negociação, Pitt mandou sua mensagem: "A única coisa relevante que se pode dizer sobre a *Sarbanes-Oxley* é que é a lei, foi aprovada pelo Congresso." (VALOR ECONÔMICO. Companhias japonesas reivindicam isenção. Agências internacionais. São Paulo em 11.10.2002).

Os golpes que funcionários aplicam nas empresas vão começar a vir a público com muito mais freqüência. As novas regras corporativas americanas, que vieram com força de lei (a *Sarbanes-Oxley*) como reação oficial aos escândalos contábeis, exigem que todas as fraudes detectadas sejam informadas à comissão de valores americana.

Atualmente, estima-se que 90% dos casos sejam abafados e o funcionário não seja processado, diz *Thomas W. Golden*, sócio da *PricewaterhouseCoopers.*

Golden, que lidera a área de investigação e detecção de fraudes da PwC, esteve na semana passada no Brasil para visitar um cliente, uma multinacional cujo o nome não foi revelado. Aproveitou para fazer uma palestra para um grupo de executivos na sede da PwC em São Paulo.

Um dos exemplos citados foi o de uma subsidiária no Equador de uma grande empresa americana, com prejuízo de US$ 30 milhões em dinheiro. A fábrica foi fechada, mas o fraudador (um executivo) não foi preso. "As empresas preferiam evitar o escândalo e os danos que isso poderia causar à sua imagem", diz Golden. "No entanto, isso vai mudar e os casos vão cada vez mais vir a público."

Com a nova legislação que ameaça mandar executivos para a cadeia, será crescente a preocupação das grandes corporações americanas com suas subsidiárias. Golden diz não ter dados sobre a situação na América Latina, mas alguns funcionários de sua equipe, que inclui ex-agentes do FBI, são fluentes em espanhol. "Com operações em lugares distantes como a América Latina, (os) sinais de aviso ficam ainda mais longe dos olhos da matriz", diz o folheto da PwC que anuncia os serviços de investigação.

Mas não são só as grandes auditorias que estão de olho neste mercado. "É um oportunidade muito interessante", diz João Juenemann, da firma gaúcha Juenemann & Associados, que vai começar a atuar nesse segmento. "Muitas empresas estão com medo da fraude." (NN. Valor Económico. Mais casos devem vir a público com nova lei. De São Paulo em 15.10.2002).

O enquadramento das empresas brasileiras à Lei *Sarbanes-Oxley*, a mais significativa legislação comercial dos últimos 50 anos dos Estados

Unidos, deverá ocorrer sem nenhuma dificuldade, apesar de as certificações pedidas pela legislação americana implicarem em investimentos e despesas para as companhias. Essa relativa facilidade de adaptação deve-se ao fato de existirem várias legislações brasileiras com normas parecidas.

Aprovada em 2002, a Lei *Sarbanes-Oxley*, conhecida como *SOx*, foi uma reação aos grandes escândalos contábeis e financeiros de empresas como *Enron*, *WorldCom* e *Tyco*, que abalaram o mercado de capitais. Com 1.107 artigos, a legislação estabelece severas punições para os executivos que burlarem suas normas, como multas de até US$ 5 milhões e prisão de até 20 anos. Todo esse rigor tem como objetivo proteger o acionista minoritário do mercado de capitais.

A nova lei dos Estados Unidos, com prazo de enquadramento para as empresas americanas até dezembro deste ano e até de julho de 2005 para as companhias estrangeiras com ADR (Americana Depositary Receipts) nas bolsas americanas, é o assunto do momento nas grandes corporações daquele país, na medida em que se aproxima a data final de adaptação às suas normas. O seminário "Os efeitos da Lei *Sarbanes-Oxley* no Brasil", promovido pelo Valor e patrocinado pela *PeopleSoft,* reuniu ontem em São Paulo mais 150 pessoas para debater o assunto.

"O atendimento às exigências da Lei *Sarbanes-Oxley* relativos às certificações demandarão investimentos e despesas pelas companhias, mas será feito sem nenhuma dificuldade", afirmou o presidente da Associação Brasileira das Companhias Abertas (Abrasca), Alfried Plöger. Isso acontecerá,

segundo ele, porque muitos artigos da legislação americana foram adotados com antecedência pelo Brasil ao longo dos anos.

Nos Estados Unidos, lembrou Plöger, uma das origens dos grandes escândalos foi a remuneração adicional de diretores com as opções de compra de ações. "Como a remuneração dependia da valorização das ações, diretorias de empresas naquele país manipulavam os dados para valorizar as ações no curto prazo e, assim, ganharem mais." No Brasil, esse sistema de remuneração dos administradores de empresas não é relevante.

Como a Lei *Sarbanes-Oxley* exige das corporações a criação de um comitê de auditoria, integrado por membros independentes, a Abrasca e a Comissão de Valores Mobiliários (CVM) solicitaram à *Securities and Exchange Comission* (SEC), órgão regulador dos Estados Unidos, que fossem levadas em consideração algumas especificidades da legislação brasileira. A SEC aceitou e fez referência explícita que o conselho fiscal das companhias brasileiras pode substituir o comitê de auditoria. A atuação dos conselhos fiscais, de acordo com Plöger, é adequada ao equilíbrio societário existente no Brasil. Há ainda um "movimento reforçado pelos fundos de pensão. Que por serem acionistas minoritários de grande número de companhias indicam representantes para seus conselhos", destacou.

Entre as características legais existentes aqui, o presidente da Abrasca citou "as boas garantias de demonstrações financeiras fidedignas", que existem desde 1976 com a Lei das S.A e que os controladores das empresas brasileiras são bem definidos, donos da maior parte das ações com direito a

voto na sociedade, ao contrário do que acontece nos Estados Unidos, onde a maior parte das ações são pulverizadas.

A representante da CVM, Aline de Menezes Santos, além de apontar que no Brasil já existe parte das regras exigidas pela *Sarbanes-Oxley*, elogiou a rapidez da aprovação da legislação americana. De fato, os escândalos ocorreram em 2001, a *SOx* foi aprovada em 2002, a SEC fez a regulamentação em 2003 e as empresas americanas devem se enquadrar até o final deste ano. "A resposta rápida é exemplar para o mercado perceber que o órgão regulador está atuante e observando o que acontece", disse. Ao falar das penalidades mais rígidas nos Estados Unidos em relação às demonstrações financeiras, Aline afirmou que o Congresso Nacional poderia estabelecer penas maiores para esses tipos de crimes.

Ivan Clark, do Instituto Brasileiro de Governança Corporativa (IBGC), também defendeu a importância do Congresso Nacional votar o projeto de lei 3.741, que prevê a auditoria em grandes empresas limitadas e sociedades anônimas com capital fechado. Essa auditagem permitira maior transparência, o que interessa à Receita Federal e impediria escândalos como o da Parmalat. O projeto facilitaria ainda a convergência das práticas contábeis brasileiras com as normas internacionais de contabilidade.

Apesar de a SEC aceitar para as empresas brasileiras a substituição do comitê de auditoria pelos conselhos fiscais, Clark afirmou que não há unanimidade em relação ao assunto: algumas empresas preferem cumprir totalmente as exigências da *Sarbanes-Oxley*, as companhias de

telecomunicações optaram pelo conselho fiscal por eles serem permanentes e outras estão em fase de definição.

Na sua palestra, José Luiz Homem de Mello, do escritório Pinheiro Neto Advogados, lembrou que *Sarbanes-Oxley* prevê normas também para os advogados das empresas. Pela legislação, eles têm a obrigação de se dirigirem ao seu superior no caso de constatarem erros ou irregularidades. Se nenhuma medida for adotada, têm de ir "subindo na hierarquia" para comunicar o fato até chegar ao comitê de auditoria. Estão ainda em discussão regras específicas para analistas de investimentos, agências de *rating* e bancos de investimentos.

Os executivos das empresas que precisam se adaptar à lei *Sarbanes-Oxley,* segundo Homem de Mello, não podem deixar seu negócio de lado com a preocupação de cumprir a legislação, porque "a governança corporativa melhora as informações da empresas, não é um fim, mas um meio para se adequar". Os executivos americanos, no momento, estão muito preocupados com a seção 404, que determina uma avaliação anual dos controles e procedimentos internos das empresas para a emissão de relatórios financeiros.

Para Luiz Fontes, da Trevisan, para as empresas melhorarem seus controles internos é fundamental terem pessoas capacitadas, treinadas e disciplinadas para atender as exigências da SOx. No Brasil, segundo ele, deve-se gastar menos recursos do que lá fora nos procedimentos internos. "Os gastos devem ser considerados como investimento e não como despesas, porque há vantagens como as melhorias dos controles."

Além de apresentar as soluções desenvolvidas pela *PeopleSoft*, segunda maior empresa de software empresarial do mundo, com 12.400 clientes, para ajudar as corporações a se adaptarem a *Sarbanes-Oxley*, a diretora de marketing da empresa, *Jennifer Toomey*, afirmou que as companhias americanas "estão sendo muito impactadas" este ano. Em 2005, será a vez das companhias estrangeiras, mas elas têm a vantagem de terem mais tempo para se adaptar e ainda podem ver o que aconteceu nos EUA.

Com a nova legislação, disse Jennifer, os executivos terão períodos cada vez mais curtos para apresentar os resultados financeiros, baixando de 90 dias para 75 dias e, no próximo ano, para 60 dias. Segundo ela, fatos importantes que afetem as empresas também terão de ser divulgados rapidamente. A seção 409, que ainda não foi regulamentada, exigirá comunicados das empresas quando houver, por exemplo, perda de algum contrato importante ou de carga se um navio afundar.

As empresas americanas devem gastar US$ 5,5 bilhões com *Sarbanes-Oxley* em 2004, de acordo com a *AMR Research*, segundo levantamento realizado no ano passado. O mesmo instituto, citado por Jennifer, pesquisou 100 empresas há dois meses: Os resultados são: 35% das empresas revelaram que gastaram mais do previam para atender as exigências da lei, 43% ficaram dentro do previsto e 21% gastaram menos do que esperavam. Para 2005, os gastos para se enquadrar à legislação deverão aumentar para 68% das empresas, 19% esperam gastar o mesmo do que em 2004 e 13% menos do que neste ano. (VIEIRA. VALOR ECONÔMICO. Adequação no Brasil deve ser tranqüila. São Paulo em 23/03/04).

Com as rígidas exigências da Lei *Sarbanes-Oxley* nos controles internos das corporações surgiram uma série de oportunidades de negócios para as empresas de Tecnologia de Informação (TI), que lançaram uma série de serviços para atender as necessidades das companhias na área de gerenciamento de riscos, arquivamento de documentos e segurança de informações.

A *PeopleSoft*, segunda maior empresa de software do mundo com faturamento de US$ 2,3 bilhões em 2003, lançou no mercado solução para automatizar a execução de controles internos das corporações. O *PeopleSoft Internal Controls Enforcer* permite, entre outros, monitorar os principais controles internos, alertando a administração para mudanças nos sistemas e grau de exposição de risco. "A solução ajuda os executivos a identificar possíveis desvios nos controles internos", diz Adalberto Ribeiro, consultor de negócios na área financeira da empresa.

Como existem várias etapas de adaptação das empresas à *Sarbanes-Oxley*, com aceleração nos três anos iniciais e estabilização em 2008, a IBM, maior empresa de tecnologia de informação do mundo, anunciou um pacote de softwares para os clientes se adaptarem à nova legislação. "Os negócios vão se intensificar no segundo ano do enquadramento das empresas à *Sarbanes-Oxley*, porque as empresas precisarão ter dados disponíveis em tempo real e armazenar dados por dez anos", diz Leonardo Scudero, executivo da área de riscos e segurança da IBM Brasil.

Entre as soluções da IBM constam: um software que ajuda a gerenciar o arquivamento de mensagens sujeitas às regulamentações governamentais, com monitoramento e arquivamento de e-mails; conjunto integrado de produtos e serviços que auxiliam as corporações a gerenciar os controles internos em diversos idiomas e auditoria automatizada para identificar vulnerabilidades na estrutura geral de segurança.

Para Marco Stefanini, presidente da *Stefanini IT Solutions*, a lei *Sarbanes-Oxley* abre uma janela de oportunidades para as empresas de TI, mas "não é uma onda enorme" como foi o *bug* do milênio no ano 2000. A Stefanini, que deverá faturar R$ 240 milhões este ano, tem softwares para parte dos processos de controles internos, segurança de dados e metodologias para melhores práticas de gestão de tecnologia de informação.

A EMC2, líder no segmento de armazenamento de informações, tem soluções para emissões de relatórios fiscais e contábeis; revisão e incremento de processos internos; trilhas de auditoria e detecção de vulnerabilidades na segurança de informações. (VIEIRA. VALOR ECONÔMICO. Controles rígidos estimulam negócios na área de TI. São Paulo em 12/04/2004).

A lei *Sarbanes-Oxley*, a mais profunda mudança na legislação corporativa dos Estados Unidos depois da introdução do *New Deal* na década de 30, sacode as grandes empresas americanas e estrangeiras e movimenta bilhões de dólares para que elas possam se enquadrar às regras que visam a proteção dos acionistas minoritários do mercado de capitais.

Dados de consultorias apontam a existência de 14 mil empresas que precisam se enquadrar à Lei *Sarbanes-Oxley*, das quais cerca de 10% são

estrangeiras com operações de ADRs (*American Depositary Receipts*) nas bolsas dos Estados Unidos. As companhias americanas gastarão este ano, somente com tecnologia de informação, US$ 5,5 bilhões para se adaptar à lei, mas os gastos deverão continuar crescendo, segundo dados da AMR *Research*, firma de pesquisas da área de software. Os efeitos da lei *Sarbanes-Oxley* no Brasil foram debatidos ontem em seminário promovido pelo Valor, com patrocínio da *PeopleSoft*.

"A demanda por especialistas nos Estados Unidos é tão grande, que nós mandamos 40 pessoas do Brasil para ajudar. Depois, eles voltarão trazendo experiências", afirma Ivan Clark, sócio responsável na América Latina para a área de *Global Capital Market* da *PricewaterhouseCoopers*. A empresa de consultoria e auditagem possui cerca de 120 mil profissionais no mundo, dos quais a metade nos Estados Unidos e 2 mil no Brasil. No total, de 15 mil a 20 mil pessoas, de acordo com Clark, estão trabalhando com Lei *Sarbanes-Oxley*, conhecida como *SOx*.

Presente em 140 países e com 119 mil profissionais, a *Deloitte Touche Tohmatsu* também mandou gente do Brasil, onde trabalham 2.500 pessoas, para os Estados Unidos para ajudar no atendimento aos clientes. "Somente da área de gestão de riscos mandamos 15 pessoas", diz Juarez Lopez de Araújo, sócio da área de riscos empresariais da empresa no Brasil. A ida de profissionais reforça as equipes americanas, uma vez que as corporações daquele país têm prazo até 31 de dezembro deste ano para se enquadrar à nova legislação.

A constatação da KPMG, com 100 mil funcionários espalhados por 150 países, é que há uma pressão na demanda de serviços por parte das empresas americanas. A unidade brasileira não mandou gente para os Estados Unidos, mas poderá contar mais adiante com ajuda profissionais daquele país no Brasil. "Estamos assoberbados de trabalho", destaca Carlos Sá, diretor de *Management Assurance Services* da KPMG Brasil. Ele lembra que as empresas não devem considerar a adequação à lei apenas como gastos, mas como investimentos porque o gerenciamento de riscos e controles internos mais eficientes reduzem custos.

Uma das maiores preocupações de executivos em todo mundo é com o artigo 404 da *Sarbanes-Oxley*, que exige o aval do diretor-presidente e do diretor-financeiro nos controles e procedimentos internos das empresas para a realização dos relatórios financeiros. "Pela primeira vez na história, isso é exigido dos administradores. Também pela primeira vez, o auditor externo terá de dar seu parecer sobre a qualidade das informações dos controles internos das corporações", destaca Ivan Clark.

Com o prazo de enquadramento das companhias americanas acabando no final deste ano, as expectativas se voltam para o primeiro trimestre de 2005, quando a *Securities and Exchange Comission* (SEC), o poderoso órgão regulador dos Estados Unidos, irá avaliar se elas se enquadraram de forma correta à legislação e determinar possíveis punições se não tiverem atendido todas as exigências.

A preocupação é tão grande, dizem especialistas, que há empresas americanas contratando uma segunda consultoria para avaliar se o trabalho realizado pela primeira está de acordo com o que estabelece a *Sarbanes-Oxley*. Os custos de uma consultoria podem chegar a até US$ 30 milhões no caso empresas do porte de uma *General Electric, General Motors ou British Petroleum*, mas os gastos médios são da ordem de US$ 2 milhões a US$ 3 milhões. Pode parecer exagero contratar uma segunda consultoria, mas um procedimento incorreto pode representar pesados prejuízos com a queda dos preços das ações nas bolsas. Informações incorretas também podem significar multas de até US$ 5 milhões e para os administradores penas de prisão de até 20 anos.

"No primeiro trimestre de 2005, haverá avaliação se as informações das companhias americanas estão corretas. Ainda há muitas zonas cinzentas na legislação", afirma Leonardo Scudere, executivo da área de riscos e segurança da IBM do Brasil. Em junho, segundo ele, em um seminário realizado em Boston, surgiram muitas dúvidas sobre a SOx. Diariamente, de um fórum informal do qual o executivo participa, aparecem de 60 a 70 mensagens com dúvidas ou interpretações diferentes sobre lei.

Para Juarez Lopez, o enquadramento na Lei *Sarbanes-Oxley* "não uma coisa meramente burocrática, de só cumprir a legislação. Ele exige a melhora dos controles e procedimentos internos, tornando-os mais eficazes". Segundo ele, 90% dos grupos empresariais brasileiros com ADRs nas bolsas americanas iniciaram o processo de enquadramento, que vence em dezembro de 2005. Na prática, as empresas brasileiras terão de se adaptar à lei até julho

do próximo ano, porque no segundo semestre os auditores farão seus testes para ver se todos os controles internos estão corretos. "Nenhuma auditoria externa vai assinar um parecer, se não fizer seus próprios testes sobre as informações prestadas pela empresa", diz Lopez.

Na corrida das empresas americanas para se adequar à legislação, a IBM, maior empresa de tecnologia de informação do mundo, terminou a implementação da seção 404, que envolveu a companhia como um todo. Agora, está sendo auditada pela *PricewaterhouseCoopers* até o final de setembro. "A IBM já era uma empresa com fortes processos de controles, mas com as exigências da *Sarbanes-Oxley* ganhou uma roupagem mais estruturada", afirma Francisco Crespo, diretor financeiro da IBM Brasil. De acordo com ele, há maior transparência externa da empresa e maior engajamento de todas as áreas da companhia com os processos de controles internos.

A *EMC2 Corporation*, líder mundial em sistemas, softwares, redes e serviços no segmento de armazenamento de informações, é outra empresa que cumpriu todas as etapas de enquadramento para que seu balanço "nasça limpo" em 2005, garante Hermann Pais, diretor de Tecnologia para a América Latina. Os sistemas internos foram redesenhados para que todos os documentos financeiros, fiscais e e-mails sejam guardados. As ferramentas usadas, fornecidas também aos clientes, impedem adulterações, inclusive por profissionais de informática, na documentação das empresas como ocorreu nos escândalos da *Enron* ou *Worldcom*.

No mundo da informática, Herman Pais, lembra que era muito comum que as empresas no final do ano fiscal desovassem seus equipamentos nos distribuidores para os estoques não constarem de seus balanços. Se eles não vendessem os produtos, poderiam devolvê-los. Agora, com a *Sarbanes-Oxley* isso acabou porque só podem aparecer nos balanços os resultados efetivamente realizados. "Executivos podem ser punidos civil e criminalmente por declaração de receitas que não ocorreram. Um executivo brasileiro, por exemplo, pode não ser preso no Brasil por não cumprir a *Sarbanes-Oxley*, uma vez que não existe extradição do Brasil para lá, mas ele não poderá entrar nos Estados Unidos e sua carreira profissional pode acabar", alerta. (VIERA, VALOR ECONÔMICO. Profissionais brasileiros reforçam equipes nos EUA. São Paulo em 03/05/2004).

Com prazo até o final de 2005, as 41 empresas brasileiras, de 22 grupos empresariais, com operações nas bolsas de valores dos Estados Unidos, começam a se movimentar de forma mais intensa para atender às exigências da Lei *Sarbanes-Oxley*, aprovada em 2002 depois dos grandes escândalos contábeis e financeiros da *Enron, Wordcom, Tyco* e Arthur Andersen. As estimativas são de que cerca de 150 companhias, entre nacionais e subsidiárias das multinacionais, terão de se adequar no Brasil à nova legislação americana.

Pelas informações de consultorias, cerca de 90% das corporações no Brasil que precisam se enquadrar à *Sarbanes-Oxley* iniciaram o processo. Em agosto, aproximadamente 80% das empresas estão com suas fases iniciais de adaptação prontas e 50% com seus testes prontos, diz Carlos Sá, diretor de

Management Assurance Services da KPMG Brasil. Os índices são considerados semelhantes aos das americanas no mesmo período do ano passado. As empresas estrangeiras devem estar com seus procedimentos prontos até julho de 2005, porque no segundo semestre as auditorias independentes vão testar se os dados informados pelas companhias são corretos. Se houver necessidade, ajustes serão feitos para que tudo esteja pronto em dezembro de 2005.

Das empresas nacionais, todas começaram o processo de adaptação, mas várias "ainda não perceberam o tamanho do problema", afirma Ivan Clark, sócio responsável na América Latina para a área de Global Capital Market da *PricewaterhouseCoopers* e do Instituto Brasileiro de Governança Corporativa (IBGC). Para o diretor de tecnologia para a América Latina da EMC2, Hermann Pais, algumas companhias brasileiras estão "lentas, deixando o tempo correr e postergando um pouco as decisões".

Entre as companhias que avançaram na adaptação à *Sarbanes Oxley,* pelas informações obtidas, estão a Petrobrás, Embraer, empresas de telecomunicações e, principalmente, as instituições financeiras. Os bancos têm fortes controles internos, estabelecidos pelo Banco Central, que há quatro anos baixou normas nesse sentido através da Resolução 2554 do Conselho Monetário Nacional (CMN).

O diretor de Contabilidade e Relações com Investidores do Unibanco, Ney Ferraz Dias, afirma que há um "esforço grande de revisão nos processos de controles internos mais relevantes " , sendo a adaptação à *Sarbanes-Oxley*

uma oportunidade de revisá-los. O trabalho está sendo realizado 90% com profissionais da própria instituição e 10% por consultores externos. O banco pode contar com a experiência da empresa AIG, com a qual tem uma *joint venture* na área de seguros.

No Bradesco, maior instituição financeira privada do país, foram tomadas as seguintes iniciativas: criação os códigos de ética corporativa e setorial; criação do comitê de auditoria; certificação pelo diretor-presidente e diretor-financeiro dos relatórios anuais entregues à *Securities Exchange Comission* (SEC), órgão regulador americano, e Bolsa de Nova York (NYSE); criação do comitê de controles internos e *compliance* e está em desenvolvimento o sistema de mitigação de riscos operacionais e gestão de riscos de crédito. No Itaú, os cronogramas também sendo cumpridos.

Na Perdigão, com receita líquida de R$ 3,6 bilhões em 2003, de acordo com a revista Valor 1000, a gerente de relações com investidores, Edna Biava, afirma que a empresa está analisando os processos a serem adotados, implementando seus controles internos e deverá estar enquadrada à Lei *Sarbanes-Oxley* no prazo.

As operadoras que compõem a Vivo, que encerrou o mês de junho com 23,5 milhões de clientes, estão em dia com o cronograma, tendo cumprido a seção 302, que exige entre outros a criação do código de ética e do comitê de auditoria. De acordo com informações da diretoria de relações com os investidores, a implementação da seção 404 deve "ocorrer sem traumas".

Atualmente, a maior preocupação das empresas que precisam se adaptar à *Sarbanes-Oxley* é com a seção 404, que trata dos controles internos e sistemas contábeis. Os principais administradores precisam atestar os dados dos relatórios financeiros e há necessidades de os auditores externos aprovarem os procedimentos adotados pela administração (VIEIRA. VALOR ECONÔMICO. Prazo para o processo de adaptação no país termina no final de 2005. São Paulo em 13/06/2004).

CAPÍTULO 3. ANÁLISE INTERPRETATIVA SOBRE A LEI À LUZ DOS COMENTÁRIOS DE ESPECIALISTAS REFERENCIADOS NO TRABALHO.

A lei *Sarbanes-Oxley* surgiu como uma reação aos escândalos envolvendo grandes corporações americanas, que abalaram fortemente a credibilidade da bolsa, tendo como objetivos aumentar a transparência, a fiscalização e o grau de responsabilidade, que vai desde a diretoria até as empresas responsáveis pela auditoria externa e advogados contratados.

Os principais pontos da lei *Sarbanes-Oxley* são a proibição de concessão de novos empréstimos a conselheiros e executivos de empresas abertas, salvo algumas raras exceções. Determina também que o Presidente e Diretor Financeiro reembolsem a companhia com seus bônus ou outros benefícios de renda variável caso estes aprovem erros em suas operações e demonstrações contábeis. Obriga também independência dos conselheiros do comitê de auditoria das empresas listadas e que assuntos referentes à auditoria sejam tratados dentro do comitê.

Em relação à transparência das informações, a nova lei estabelece que a SEC efetuará revisão de pelo menos um de cada três balanços anuais divulgados. Os executivos detentores de quantidade superior a 10% de uma determinada classe de ações terão de esclarecer possíveis mudanças em suas posições acionárias dentro de no máximo dois dias úteis, exigindo uma justificativa adequada evitando a mudança da posição acionária por planejamento e execução de fraude. A lei também prevê que a divulgação de

mudanças nas expectativas de resultados e a apresentação de informações complementares para balanços sejam realizadas de forma imediata. A *Sarbanes-Oxley* é responsável pela criação do Comitê de Auditoria, órgão submetido à SEC e responsável pela adoção de padrões de qualidade, ética e independência para as empresas de auditoria. Aos advogados de empresas abertas, a lei atribui a responsabilidade de reportar irregularidades ao presidente ou ao comitê de auditoria. A lei limita a diversidade dos serviços correlatos prestados por empresas de auditoria proibindo que as auditorias prestem serviços de consultoria em tecnologia e auditoria interna para clientes de auditoria externa, e determina que, quando existirem, devem ser pré-aprovados pelo comitê de auditoria.

A nova lei, como era de se esperar, gerou tanto reações positivas como conflitantes a respeito da rigidez e abrangência dos diversos pontos que aborda, principalmente no tocante à punição do presidente e diretor financeiro através de multa de até cinco milhões de dólares e prisão de até 20 anos no caso de aprovação de demonstrações errôneas. Existe receio de que o presidente e diretor financeiro deixem suas funções estratégicas para virarem rígidos fiscais das demonstrações financeiras da empresa. Outra questão remete à nomeação de "laranjas" para esses cargos sendo que a efetiva administração da empresa dar-se-á por outros profissionais "camuflados", exaurindo o risco aos reais fraudadores.

Alguns pontos da nova lei são conflitantes com a legislação dos outros países, o que torna problemática a sua execução e cumprimento. As empresas européias e japonesas, logo que a lei foi aprovada, iniciaram uma campanha

com esse objetivo, as companhias brasileiras também estão trabalhando para reduzir os impactos da nova legislação, com reação bem mais tranqüila em relação à outras nações, tendo a legislação brasileira muitos pontos semelhantes aos da nova lei. A independência entre a companhia e a auditoria contratada para checar esses balanços é um exemplo. A Comissão de Valores Mobiliários (CVM) estabeleceu essa independência na Instrução Normativa nº 308 no ano de 1999, determinando um limite de cinco anos para o trabalho de auditoria com a mesma empresa e proibindo a prestação de serviços paralelos, como as avaliações de mercado.

No caso das empresas brasileiras, o ponto que criou mais conflito é o que tratava do comitê de auditoria. Pela lei, as empresas precisariam criar esse comitê que seria formado por membros independentes do conselho de administração, e que seria diretamente responsável pela escolha e fiscalização da empresa de auditoria.

A questão é que no Brasil já existe o conselho fiscal que tem a função de fiscalizar as contas da companhia e o trabalho da auditoria. Os dois conselhos teriam funções similares, mas não poderiam ser unificados porque as atribuições do conselho fiscal não podem ser transferidas para outro órgão da companhia por definição de lei. Quanto a esta questão a SEC aceitou que o conselho fiscal das companhias brasileiras pode substituir o comitê de auditoria. A organização americana cita ainda que o equilíbrio societário no Brasil é adequado a função do conselho fiscal. Os fundos de pensão, por serem acionistas minoritários de grande número de companhias indicam representantes para seus conselhos, criando mais obstáculos para fraudes.

Outros fatores que favorecem as empresas brasileiras é a lei das S.A e que os controladores das empresas brasileiras são bem definidos e donos da maior parte das ações com direito a voto na sociedade.

Outra questão polêmica é que o comitê de auditoria seria responsável pela escolha da firma de auditoria externa, enquanto pela lei brasileira essa atribuição é do conselho de administração.

A crença de que haveria um aumento substancial nos custos da empresa não deve ser encarada como um problema adicional já que os gastos são na realidade investimentos e não despesas, porque existem inúmeras vantagens como as melhorias dos controles de todos os procedimentos da organização.

Existe ainda grande importância do Congresso Nacional votar o projeto de lei 3.741, que prevê a auditoria em grandes empresas limitadas e sociedades anônimas de capital fechado. Essa auditagem permitirá maior transparência, o que interessa à Receita Federal e impediria escândalos de fraudes como o da Parmalat.

Nos Estados Unidos as empresas tiveram um custo estimado de cerca de 5,5 bilhões de dólares para se adequar à lei neste ano de 2004, sem dúvida expressivo, mas muito abaixo do montante levado em fraudes apenas em 2002, quase 8 bilhões de dólares.

No Brasil ainda não foram estimados os custos com a adequação das empresas à *Sarbanes-Oxley*, sabe-se porém que será muito menor do que nos

Estados Unidos pelo simples fato de serem pouco mais de 40 empresas que negociam seus papéis nas bolsas de Nova Iorque e Nasdaq.

CAPÍTULO 4. CONCLUSÃO, CONSIDERAÇÕES FINAIS E SUGESTÕES PARA FUTUROS TRABALHOS

4.1 Conclusão E Considerações Finais

A análise realizada a partir do material colhido e consultado permite concluir que a lei *Sarbanes-Oxley* não terá grande impacto nem exigirá grandes adequações às empresas brasileiras, que pela legislação nacional vigente já aborda, de forma direta ou indireta, vários pontos constantes na nova lei, assim como o equilíbrio societário previsto pela Lei das S.A´s e as posições e atribuições dos conselhos de administração e fiscal.

Um dos pontos onde incorrerão custos extras será na parte dos controles exigidos pela nova lei, ponto que não entra como um fator negativo já que as empresas precisarão centrar esforços na melhoria desses controles, favorecendo todos os sistemas da empresa.

Quanto aos custos, podemos ainda declarar que o montante que será economizado com a redução de fraudes e conseqüente queda do valor das ações nas bolsas já compensará e muito os esforços financeiros na adequação da nova Lei.

No contexto mundial pode-se prever que alguns países com legislação completamente oposta à nova lei passarão algum trabalho para se adequar as normas da lei e continuar negociando seus papeis nas bolsas americanas.

O Panorama criado pela nova lei contra fraude corporativa norte americana e seus efeitos no mercado de capitais internacional pode ser visto como o de maior transparência e independência por parte das empresas de

auditorias que prestam serviços para as companhias abertas e de maior fiscalização tanto por parte do governo quanto por parte das próprias companhias com relação a atos praticados por seus administradores. A *Sabanes-Oxley Act* é a reação às incertezas do mercado de capitais norte americano, e, certamente, sua aplicação refletirá no mercado de capitais global.

As empresas de auditoria estão investindo recursos na qualificação profissional e especialização, enxergando a entrada da nova Lei com bons olhos, conferindo votos de confiança no sentido desta ser o maior ato em termos de transparência, independência e fiscalização, tanto por parte do governo como da própria empresa.

4.2 Sugestões Para Futuros Trabalhos

- Estudos mais apurados sobre o impacto da lei nas empresas brasileiras, com ações negociadas nas bolsas americanas, após sua efetiva aplicação;
- Verificar os resultados práticos em relação a redução de fraudes.

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ANEXO

Public Law 107–204
107th Congress

An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

July 30, 2002
[H.R. 3763]

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

Sarbanes-Oxley Act of 2002.
Corporate responsibility.
15 USC 7201 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Sarbanes-Oxley Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

15 USC 7201.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term "appropriate State regulatory authority" means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States

having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) AUDIT REPORT.—The term "audit report" means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term "Board" means the Public Company Accounting Oversight Board established under section 101.

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

(7) ISSUER.—The term "issuer" means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) NON-AUDIT SERVICES.—The term "non-audit services" means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms "person associated with a public accounting firm" (or with a "registered public accounting firm") and "associated person of a public accounting firm" (or of a "registered public accounting firm") mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term "security" has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term "securities laws" means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting "the Sarbanes-Oxley Act of 2002," before "the Public".

SEC. 3. COMMISSION RULES AND ENFORCEMENT. 15 USC 7202.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,";

(B) in subsection (d)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,";

(C) in subsection (e), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,"; and

(D) in subsection (f), by inserting "or the Public Company Accounting Oversight Board" after "self-regulatory organization" each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by inserting "registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002)," after "government securities dealer,".

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking "sections 12," each place it appears and inserting "sections 10A(m), 12,"; and

(B) striking "and 16," each place it appears and inserting "and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,".

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

15 USC 7211.

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon,

registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors Deadline.

of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

Contracts.

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission. Deadline.

SEC. 102. REGISTRATION WITH THE BOARD. 15 USC 7212.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

Deadline.

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required

to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES. 15 USC 7213.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the

Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) INDEPENDENCE STANDARDS AND RULES.—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

(1) IN GENERAL.—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) EVALUATION OF STANDARD SETTING PROCESS.—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS. 15 USC 7214.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

15 USC 7215.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

Establishment.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

Notification.

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine

whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable

care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission 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) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

15 USC 7216.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm

(or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD. 15 USC 7217.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 17(a)(1) and 17(b)(1).

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase "consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization" in section 19(b)(2) of that Act shall be deemed to read "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

(B) the phrase "otherwise in furtherance of the purposes of this title" in section 19(b)(3)(C) of that Act shall be deemed to read "otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002".

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 19(c), except that the phrase "to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title" in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read "to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this title" in that section 19(e)(1) shall be deemed to read "consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines 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, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, 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, remove

from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

15 USC 7218.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b) RECOGNITION OF ACCOUNTING STANDARDS.—

"(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body—

"(A) that—

"(i) is organized as a private entity;

"(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

"(iii) is funded as provided in section 109 of the Sarbanes-Oxley Act of 2002;

"(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

"(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

"(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

"(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.".

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors. Regulations.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING. 15 USC 7219.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) LIMITATION ON FEE.—The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in

a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking "and" at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: "; and

"(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.".

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

"(g) PROHIBITED ACTIVITIES.—Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

"(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

"(2) financial information systems design and implementation;

"(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

"(4) actuarial services;

"(5) internal audit outsourcing services;

"(6) management functions or human resources;

"(7) broker or dealer, investment adviser, or investment banking services;

"(8) legal services and expert services unrelated to the audit; and

"(9) any other service that the Board determines, by regulation, is impermissible.

"(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).".

15 USC 7231.

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

"(i) PREAPPROVAL REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

"(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

"(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

"(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

"(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

"(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

"(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

"(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.".

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

"(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.".

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

"(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

"(1) all critical accounting policies and practices to be used;

"(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

"(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.".

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(58) AUDIT COMMITTEE.—The term 'audit committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the

purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

"(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

"(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.".

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm";

(2) by striking "the independent public accountant" each place that term appears and inserting "the registered public accounting firm";

(3) in subsection (c), by striking "No independent public accountant" and inserting "No registered public accounting firm"; and

(4) in subsection (b)—

(A) by striking "the accountant" each place that term appears and inserting "the firm";

(B) by striking "such accountant" each place that term appears and inserting "such firm"; and

(C) in paragraph (4), by striking "the accountant's report" and inserting "the report of the firm".

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking "independent public accountants" each place that term appears and inserting "a registered public accounting firm"; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking "an independent public accountant" each place that term appears and inserting "a registered public accounting firm".

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended— 15 USC 78j–1.

(1) by striking "DEFINITION" and inserting "DEFINITIONS"; and

(2) by adding at the end the following: "As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.".

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

"(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in

any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.".

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS. 15 USC 7232.

(a) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section. Deadline.

(c) DEFINITION.—For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY. 15 USC 7233.

(a) COMMISSION REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title. Deadline.

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES. 15 USC 7234.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following: 15 USC 78j–1.

"(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

"(1) COMMISSION RULES.—

Deadline.

"(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

"(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

"(3) INDEPENDENCE.—

"(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

"(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

"(ii) be an affiliated person of the issuer or any subsidiary thereof.

"(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

"(4) COMPLAINTS.—Each audit committee shall establish procedures for—

"(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

"(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

"(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

"(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

"(B) to any advisers employed by the audit committee under paragraph (5).".

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS. 15 USC 7241.

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) 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) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

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

15 USC 7242.

SEC. 303. 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 or director of an issuer, or any other person acting under the direction thereof, 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 that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) 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 issued thereunder.

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

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

15 USC 7243.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

(1) 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".

(2) 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".

(b) EQUITABLE RELIEF.—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:

"(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.".

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS. 15 USC 7244.

(a) PROHIBITION OF INSIDER TRADING DURING PENSION FUND BLACKOUT PERIODS.—

(1) IN GENERAL.—Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) REMEDY.—

(A) IN GENERAL.—Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this subsection 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 fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) RULEMAKING AUTHORIZED.—The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for

appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) BLACKOUT PERIOD.—For purposes of this subsection, the term "blackout period", with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under 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 individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term "individual account plan" has the meaning provided in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34), except that such term shall not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of such Act (29 U.S.C. 1021(i)(8)(B))).

(6) NOTICE TO DIRECTORS, EXECUTIVE OFFICERS, AND THE COMMISSION.—In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) NOTICE REQUIREMENTS TO PARTICIPANTS AND BENEFICIARIES UNDER ERISA.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating the second subsection (h) as subsection (j), and by inserting after the first subsection (h) the following new subsection:

"(i) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR BENEFICIARY UNDER INDIVIDUAL ACCOUNT PLAN.—

"(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

"(2) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

"(i) the reasons for the blackout period,

"(ii) an identification of the investments and other rights affected,

"(iii) the expected beginning date and length of the blackout period,

"(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

"(v) such other matters as the Secretary may require by regulation.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

"(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

"(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), and a fiduciary of the plan reasonably so determines in writing, or

"(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

"(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

"(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such

blackout period to the issuer of any employer securities subject to such blackout period.

"(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIMITED APPLICABILITY.—In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

"(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

"(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

"(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

"(7) BLACKOUT PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'blackout period' means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

"(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

"(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

"(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

"(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee

(as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)).

"(8) INDIVIDUAL ACCOUNT PLAN.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'individual account plan' shall have the meaning provided such term in section 3(34), except that such term shall not include a one-participant retirement plan.

"(B) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of subparagraph (A), the term 'one-participant retirement plan' means a retirement plan that—

"(i) on the first day of the plan year—

"(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

"(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of the Internal Revenue Code of 1986)),

"(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

"(iii) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses),

"(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

"(v) does not cover a business that leases employees.".

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.— The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection. Deadlines. Regulations.

(3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.— Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking "(5), or (6)" and inserting "(5), (6), or (7)";

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

"(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.".

(3) PLAN AMENDMENTS.—If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) EFFECTIVE DATE.—The provisions of this section (including the amendments made thereby) shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

15 USC 7245.

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Deadline.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

15 USC 7246.

SEC. 308. FAIR FUNDS FOR INVESTORS.

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) 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 a disgorgement fund described in subsection (a). Such 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 (a).

(c) STUDY REQUIRED.—

(1) SUBJECT OF STUDY.—The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding the date of the enactment of this Act that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) 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 after of the date of the 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 actions that are recommended or that may be necessary to address concerns identified in the study. Deadline.

(d) CONFORMING AMENDMENTS.—Each of the following provisions is amended by inserting ", except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002" after "Treasury of the United States":

(1) Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)).

(2) Section 21A(d)(1) of such Act (15 U.S.C. 78u-1(d)(1)).

(3) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(4) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(5) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(e) DEFINITION.—As used in this section, the term "disgorgement fund" means a fund established in any administrative or judicial proceeding described in subsection (a).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS. 15 USC 7261.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been

identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

Deadline. Regulations.

"(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.".

Deadline.

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act fo 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

Deadline.

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

Deadline.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

"(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

"(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e)), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

"(A) made or provided in the ordinary course of the consumer credit business of such issuer;

"(B) of a type that is generally made available by such issuer to the public; and

"(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

"(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained

by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).".

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

(a) AMENDMENT.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by striking the heading of such section and subsection (a) and inserting the following:

"SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

"(a) DISCLOSURES REQUIRED.—

"(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every 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 pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

"(2) TIME OF FILING.—The statements required by this subsection shall be filed—

"(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

"(B) within 10 days after he or she becomes such beneficial owner, director, or officer;

"(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

"(3) CONTENTS OF STATEMENTS.—A statement filed—

"(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

"(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

Deadline. "(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

"(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

Deadline. "(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

"(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.". Deadline.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act. 15 USC 78p note.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS. 15 USC 7262.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION. 15 USC 7263.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS. 15 USC 7264.

(a) CODE OF ETHICS DISCLOSURE.—The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions. Regulations.

(b) CHANGES IN CODES OF ETHICS.—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers. Regulations.

(c) DEFINITION.—In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

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

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

15 USC 7265.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING "FINANCIAL EXPERT".—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

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

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

15 USC 7266.

SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 be reviewed under this section less frequently than once every 3 years.

SEC. 409. REAL TIME ISSUER DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(l) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.".

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS AND NATIONAL SECURITIES EXCHANGES.

(a) RULES REGARDING SECURITIES ANALYSTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15C the following new section:

"SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS. 15 USC 78o–6.

"(a) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed— Deadline.

"(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

"(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

"(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

"(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

"(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

"(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

"(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

"(b) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

"(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

"(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

"(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

"(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

"(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

"(c) DEFINITIONS.—In this section—

"(1) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

"(2) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.".

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by inserting "15D," before "15B".

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest. 15 USC 78o–6 note.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

"In addition to any other funds authorized to be appropriated to the 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) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

"(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

"(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and

disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.".

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

15 USC 78d–3.

"SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

"(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

"(1) not to possess the requisite qualifications to represent others;

"(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

"(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

"(b) DEFINITION.—With respect to any registered public accounting firm or associated person, for purposes of this section, the term 'improper professional conduct' means—

"(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

"(2) negligent conduct in the form of—

"(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

"(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.".

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

"(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

"(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes

any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.".

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

"(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

"(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.".

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;"; and

(2) in subparagraph (G), by striking the period at the end and inserting the following: "; or

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

(1) by striking paragraph (7) and inserting the following:

"(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;";

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F))—

(i) by striking "or (G)" and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated";

(B) in each of section 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o–4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o–5(c)(1))—

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by striking "or omission" each place that term appears, and inserting ", or is subject to an order or finding,"; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q–1(c))—

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated" each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended—

(A) by striking "or (8)" and inserting "(8), or (9)"; and

(B) by inserting "or (3)" after "paragraph (2)".

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

15 USC 7201 note.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Deadline.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

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

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

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

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

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

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

Deadline.

(b) REPORT REQUIRED.—The Commission shall submit a report on the study 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 not later than 180 days after the date of enactment of this Act.

SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIOLATIONS.

(a) STUDY.—The Commission shall conduct a study to determine, based upon information for the period from January 1, 1998, to December 31, 2001—

(1) the number of securities professionals, defined as public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

(A) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (collectively referred to in this section as "Federal securities laws"), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such an action or proceeding (referred to in this section as "aiders and abettors"); and

(B) who have been found to have been primary violators of the Federal securities laws;

(2) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

(A) the specific provision of the Federal securities laws violated;

(B) the specific sanctions and penalties imposed upon such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

(C) the occurrence of multiple violations by the same person or persons, either as an aider or abettor or as a primary violator; and

(D) whether, as to each such violator, disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

(3) the amount of disgorgement, restitution, or any other fines or payments that the Commission has assessed upon and collected from, aiders and abettors and from primary violators.

(b) REPORT.—A report based upon the study conducted pursuant to subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 704. 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 5-year period preceding the date of enactment of this Act, 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, not later than 180 days after 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. Deadline.

SEC. 705. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the rule of investment banks and financial advisers—

(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 financial 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 fiberoptic cable capacity, in the 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 Comptroller General shall report to Congress not later than 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 Deadline.

are recommended or that may be necessary to address concerns identified in the study.

Corporate and Criminal Fraud Accountability Act of 2002.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

18 USC 1501 note.

SEC. 801. SHORT TITLE.

This title may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1520. Destruction of corporate audit records

"(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

Regulations.

"(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

"(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

"(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

"1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

"1520. Destruction of corporate audit records.".

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by adding at the end, the following:

"(19) that—

"(A) is for—

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

"(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.".

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Except"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

"(1) 2 years after the discovery of the facts constituting the violation; or

"(2) 5 years after such violation.".

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act. 28 USC 1658 note.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action. 28 USC 1658 note.

28 USC 994 note.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

(a) ENHANCEMENT OF FRAUD AND OBSTRUCTION OF JUSTICE SENTENCES.—Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

Deadline.

(b) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the prcedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

"§ 1514A. Civil action to protect against retaliation in fraud cases

"(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)),

or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

"(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

"(A) a Federal regulatory or law enforcement agency;

"(B) any Member of Congress or any committee of Congress; or

"(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

"(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs. Deadline.

"(c) REMEDIES.—

"(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

"(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

"(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

"1514A. Civil action to protect against retaliation in fraud cases.".

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Securities fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1348. Securities fraud.".

White-Collar Crime Penalty Enhancement Act of 2002.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

18 USC 1341 note.

SEC. 901. SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL FRAUD OFFENSES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1348 as added by this Act the following:

"§ 1349. Attempt and conspiracy

"Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1349. Attempt and conspiracy.".

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five" and inserting "20".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five" and inserting "20".

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(2) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES. 28 USC 994 note.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1349, as created by this Act, the following:

"§ 1350. Failure of corporate officers to certify financial reports

(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act pf 1934 (15 U.S.C. 78m or 78o(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

"(c) CRIMINAL PENALTIES.—Whoever—

"(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

"(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1350. Failure of corporate officers to certify financial reports.".

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

Corporate Fraud Accountability Act of 2002.

SEC. 1101. SHORT TITLE.

15 USC 78a note.

This title may be cited as the "Corporate Fraud Accountability Act of 2002".

SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.".

SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended by adding at the end the following:

"(3) TEMPORARY FREEZE.—

"(A) IN GENERAL.—

"(i) ISSUANCE OF TEMPORARY ORDER.—Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

"(ii) STANDARD.—A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that

notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

"(I) become effective immediately;

"(II) be served upon the parties subject to it; and

"(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

"(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

"(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

"(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

"(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.".

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking "This" and inserting "paragraph (1)".

28 USC 994 note.

SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and

any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired. Deadline.

SEC. 1105. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) 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:

"(f) AUTHORITY OF THE COMMISSION 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) 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, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

(b) 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 of the following:

"(f) AUTHORITY OF THE COMMISSION 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) 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 the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

(1) by striking "$1,000,000, or imprisoned not more than 10 years" and inserting "$5,000,000, or imprisoned not more than 20 years"; and

(2) by striking "$2,500,000" and inserting "$25,000,000".

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

Penalties.

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.".

Approved July 30, 2002.

LEGISLATIVE HISTORY—H.R. 3763 (S. 2673):

HOUSE REPORTS: Nos. 107–414 (Comm. on Financial Services) and 107–610 (Comm. of Conference).

SENATE REPORTS: No. 107–205 accompanying S. 2673 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 148 (2002):

Apr. 24, considered and passed House.

July 15, considered and passed Senate, amended, in lieu of S. 2673.

July 25, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 38 (2002):

July 30, Presidential remarks and statement.

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