

H.R.3763

Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002  
(Introduced in the House)

- Sec. 1. Short Title
- Sec. 2. Auditor Oversight
- Sec. 3. Improper Influence on Conduct of Audits
- Sec. 4. Real-Time Disclosure of Financial Information
- Sec. 5. Insider Trades during Pension Fund Blackout Periods Prohibited
- Sec. 6. Improved Transparency of Corporate Disclosures
- Sec. 7. Study of Rules Relating to Analyst Conflicts of Interest
- Sec. 8. Oversight of Financial Disclosures
- Sec. 9. Review of Corporate Governance Practices
- Sec. 10. Study of Enforcement Actions
- Sec. 11. Study of Credit Rating Agencies
- Sec. 12. Enforcement Authority
- Sec. 13. Definitions

#### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Corporate and Auditing Accountability , Responsibility, and Transparency Act of 2002'.

Top

#### SEC. 2. AUDITOR OVERSIGHT.

(a) CERTIFIED FINANCIAL STATEMENT REQUIREMENTS- If a financial statement is required by the securities laws or any rule or regulation thereunder to be certified by an independent public or certified accountant, such accountant shall not be considered to be qualified to certify such financial statement, and the Securities and Exchange Commission shall not accept a financial statement certified by such accountant, unless such accountant--

(1) is subject to a system of review by a public regulatory organization that complies with the requirements of this section and the rules prescribed by the Commission under this section; and

(2) has not been determined in the most recent review completed under such system to be not qualified to certify such a statement.

(b) ESTABLISHMENT OF PRO- The Commission shall by rule establish the criteria by which a public regulatory organization may be recognized for purposes of this section. Such criteria shall include the following requirements:

(1) The board of such organization shall be comprised of both members of the accounting profession and public members who are not members of the accounting profession, and such public members shall comprise at least two-thirds of the board of such organization.

(2) Such organization is so organized and has the capacity--

(A) to be able to carry out the purposes of this section and to comply, and to enforce compliance by accountants and persons associated with accountants, with the provisions of this Act, the securities laws, the rules and regulations thereunder, and the rules of the organization;

(B) to perform a review of the work product (including the quality thereof) of an accountant or a person associated with an accountant; and

(C) to perform a review of any potential conflicts of interest between an accountant (or a person associated with an accountant) and the issuer, the issuer's board of directors and committees thereof, officers, and affiliates of such issuer, that may result in an impairment of auditor independence.

(3) Such organization shall have the authority to impose sanctions, including a determination that an accountant is not qualified to certify a financial statement, or any categories of financial statements, required by the securities laws, or that a person associated with an accountant is not qualified to participate in such certification, if, after conducting a review and providing an opportunity for a hearing, the organization finds that--

(A) such accountant or person associated with an accountant has violated the standards of independence, ethics, or competency in the profession;

(B) such accountant or person associated with an accountant has violated the securities laws or a rule or regulation thereunder;

(C) an audit conducted by such accountant or any person associated with an accountant has been materially affected by an impairment of auditor independence;

(D) such accountant or person associated with an accountant has performed both auditing services and consulting services in violation of the rules prescribed by the Commission pursuant to subsection (c); and

(E) such accountant or any person associated with an accountant has impeded, obstructed, or otherwise not cooperated in such review.

(4) Any such organization shall disclose publicly, and make available for public comment, proposed procedures and methods for conducting such reviews.

(5) Any such organization shall have in place procedures to minimize and deter conflicts of interest involving the public members of such organization, and have in place procedures to resolve such conflicts.

(6) Any such organization shall have in place procedures for notifying the boards of accountancy of the States of the results of reviews, including any findings under paragraphs (2) and (3).

(7) Any such organization shall have in place procedures for notifying the Commission of any findings of such reviews, including any findings regarding suspected violations of the securities laws.

(8) Any such organization shall consult with boards of accountancy of the States.

(9) Any such organization shall have in place a mechanism to allow the organization to operate on a self-funded basis. Such funding mechanism shall ensure that such organization is not solely dependent upon members of the accounting profession for such funding and operations.

(c) PROHIBITION ON THE OFFER OF BOTH AUDIT AND CONSULTING SERVICES--

(1) MODIFICATION OF REGULATIONS REQUIRED- The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered independent with respect to an audit client if the accountant provides to the client the following non-audit services (as such term is defined in such regulations as in effect on the date of enactment of this Act)--

(A) financial information system design or implementation; or

(B) internal audit services.

(2) DEADLINE FOR RULEMAKING- The Commission shall prescribe the revisions to its regulations required by paragraph (1) within 180 days after the date of enactment of this Act.

(d) PRO ACCOUNTANT REVIEW PROCEEDINGS-

(1) REVIEW PROCEEDING FINDINGS- Any accountant review conducted under this section shall include any finding that a financial statement audited by such accountant and submitted to the Commission may have been materially affected by an impairment of independence, or by a violation of the securities laws or a rule or regulation thereunder. Such findings shall be submitted to the Commission. The Commission shall immediately notify an issuer of any such finding that relates to the financial statements of such issuer.

(2) CONFIDENTIAL TREATMENT OF PROCEEDINGS PENDING SEC REVIEW- Except as otherwise provided in this section, but notwithstanding any other provision of law, neither the Commission nor a recognized public regulatory organization shall be compelled to disclose any information concerning any accountant review proceeding and the findings therein. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. Neither the Commission nor the recognized public regulatory organization shall disclose the results of any such finding until the completion of any review by the Commission under subsections (d) and (e), or the conclusion of the 30-day period for seeking review if no motion seeking review is filed within such period. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(e) REVIEW OF SANCTIONS-

(1) NOTICE- If any recognized public regulatory organization--

(A) makes a finding with respect to or imposes any final disciplinary sanction on any accountant;

(B) prohibits or limits any person in respect to access to services offered by such organization; or

(C) makes a finding with respect to or imposes any final disciplinary sanction on any person associated with an accountant or bars any person from becoming associated with an accountant,

the recognized public regulatory organization shall promptly submit notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(2) REVIEW BY COMMISSION- Any action with respect to which a recognized public regulatory organization is required by paragraph (1) of this subsection to submit notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within 30 days after the date such notice was filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(f) CONDUCT OF COMMISSION REVIEW-

(1) BASIS FOR ACTION- In any proceeding to review a final disciplinary sanction imposed by a recognized public regulatory organization on an accountant or a person associated with such accountant, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the recognized public regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)--

(A) if the Commission finds that such accountant or person associated with an accountant has engaged in such acts or practices, or has omitted such acts, as the recognized public regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this section, the securities laws, the rules or regulations thereunder, or the rules of the recognized public

regulatory organization, as have been specified in the determination of the public regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this section, the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the recognized public regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the recognized public regulatory organization for further proceedings; or

(B) if the Commission does not make any such finding, it shall, by order, set aside the sanction imposed by the recognized public regulatory organization and, if appropriate, remand to the recognized public regulatory organization for further proceedings.

(2) REDUCTION OF SANCTIONS- If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a recognized public regulatory organization upon an accountant or person associated with an accountant imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this Act or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

(g) REVIEW AND APPROVAL OF RULES-

(1) SUBMISSION, PUBLICATION, AND COMMENT- Each recognized public regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such recognized public regulatory organization (hereinafter in this subsection collectively referred to as a 'proposed rule change') accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) APPROVAL OR PROCEEDINGS- Within 35 days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the recognized public regulatory organization consents, the Commission shall--

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the recognized public regulatory organization consents.

(3) BASIS FOR APPROVAL OR DISAPPROVAL- The Commission shall approve a proposed rule change of a recognized public regulatory organization if it finds that such proposed rule change is consistent with the requirements of this Act and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a recognized public regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(4) RULES EFFECTIVE UPON FILING-

(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the recognized public regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the recognized public regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the recognized public regulatory organization, or (iii) concerned solely with the administration of the recognized public regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as outside the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, or otherwise in the public interest. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a recognized public regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this Act, the securities laws, the rules and regulations thereunder, and applicable Federal and State

law. At any time within 60 days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the recognized public regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect, shall not be subject to court review, and shall not be deemed to be 'final agency action' for purposes of section 704 of title 5, United States Code.

(h) COMMISSION ACTION TO CHANGE RULES- The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as 'amend') the rules of a recognized public regulatory organization as the Commission deems necessary or appropriate to insure the fair administration of the recognized public regulatory organization, to conform its rules to requirements of this Act, the securities laws, and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this Act, in the following manner:

(1) The Commission shall notify the recognized public regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the recognized public regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the recognized public regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the recognized public regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)



(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under the securities laws.

Top

### SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

It shall be unlawful in contravention of such rules and regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors for any officer, director, or affiliated person of an issuer of any security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) to take any action to willfully and improperly influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of such issuer for the purpose of rendering such financial statements materially misleading. In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder.

Top

### SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMATION.

#### (a) REAL-TIME ISSUER DISCLOSURES REQUIRED-

(1) OBLIGATIONS- Every issuer of a security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) shall file with the Commission and disclose to the public, on a rapid and essentially contemporaneous basis, such information concerning the financial condition or operations of such issuer as the Commission determines by rule is necessary in the public interest and for the protection of investors. Such rule shall--

(A) specify the events or circumstances giving rise to the obligation to disclose or update a disclosure;

(B) establish requirements regarding the rapidity and timeliness of such disclosure;

(C) identify the means whereby the disclosure required shall be made, which shall ensure the broad, rapid, and accurate dissemination of the information to the public via electronic or other communications device;

(D) identify the content of the information to be disclosed; and

(E) without limiting the Commission's general exemptive authority, specify any exemptions or exceptions from such requirements.

(2) ENFORCEMENT- The Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder in civil proceedings.

(b) ELECTRONIC DISCLOSURE OF INSIDER AND AFFILIATE TRANSACTIONS-

(1) DISCLOSURES OF TRADING- The Commission shall, by rule, require that any disclosure required by the securities laws or any rule or regulation thereunder of the sale of any securities by an officer, director, or other affiliated person of the issuer of those securities shall be made available electronically--

(A) to the Commission by the officer, director, or affiliated person, before the end of the next business day after the day on which the transaction occurs;

(B) to the public by the Commission, to the extent permitted under applicable law, upon receipt, but in no case later than the end of the next business day after the day on which the disclosure is received under subparagraph (A); and

(C) in any case in which the issuer maintains a corporate website, on that website, before the end of the next business day after the day on which the disclosure is received by the Commission under subparagraph (A).

(2) OTHER FORMATS; FORMS- In the rule prescribed under paragraph (1), the Commission shall provide that electronic filing and disclosure shall be in lieu of any other format required for such disclosures on the day before the date of enactment of this subsection. The Commission shall revise all forms and schedules required to be filed with the Commission pursuant to paragraph (1) in order to facilitate such electronic filing and disclosure.

Top

## SEC. 5. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION- It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY- Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED- The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

Top

## SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DISCLOSURES.

(a) MODIFICATION OF REGULATIONS REQUIRED- The Commission shall revise its regulations under the securities laws pertaining to the disclosures required in periodic

financial reports and registration statements to require such reports to include adequate and appropriate disclosure of--

(1) the issuer's off-balance sheet transactions and relationships with unconsolidated entities or other persons, to the extent they are not disclosed in the financial statements and are reasonably likely to materially affect liquidity or the availability of, or requirements for, capital resources, or otherwise expose the issuer to material current or future possible liability, obligations, expenses, or cash flow changes, or affect the recognition of revenue, carrying value, or potential impairment of assets, credit ratings, earnings, cash flows, or stock price; and

(2) relationships and material transactions with related or other persons or entities that may involve transactions on terms that differ materially from those that would likely be negotiated with third parties, including a description of the elements of the transactions that are necessary for an understanding of their business purpose and economic substance, their effects on the financial statements, and the special risks or contingencies arising from the transactions.

(b) DEADLINE FOR RULEMAKING- The Commission shall prescribe the revisions to its regulations required by paragraph (1) within 180 days after the date of enactment of this Act.

(c) ANALYSIS REQUIRED-

(1) TRANSPARENCY, COMPLETENESS, AND USEFULNESS OF FINANCIAL STATEMENTS- The Commission shall conduct an analysis of the extent to which, consistent with the protection of investors and the public interest, disclosure of additional or reorganized information may be required to improve the transparency, completeness, or usefulness of financial statements and other corporate disclosures filed under the securities laws.

(2) ALTERNATIVES TO BE CONSIDERED- In conducting the analysis required by paragraph (1), the Commission shall consider--

(A) requiring the identification of the key accounting principles that are most important to the issuer's reported financial condition or results of operation, and that require management's most difficult, subjective, or complex judgments;

(B) requiring an explanation, where material, of how different available accounting principles applied, the judgments made in their application, and the likelihood of materially different reported results if different assumptions of conditions were to prevail;

(C) in the case of any issuer engaged in the business of trading non-exchange traded contracts, requiring an explanation of such trading activities when such activities require the issuer to account for contracts at fair value, but for which a lack of market price quotations necessitates the use of fair value estimation techniques;

(D) establishing requirements relating to the presentation of information in plain language; and

(E) requiring such other disclosures, included in the financial statements or in other disclosure by the issuer, as would in the Commission's view improve the transparency of such issuer's financial statements and other required corporate disclosures.

(3) RULES REQUIRED- If the Commission, on the basis of the analysis required by this subsection, determines that it is necessary in the public interest or for the protection of investors, would improve the transparency of issuer financial statements, and would not be unduly burdensome on issuers, the Commission shall prescribe rules reflecting the results of such analysis and the considerations required by paragraph (2).

Top

## SEC. 7. STUDY OF RULES RELATING TO ANALYST CONFLICTS OF INTEREST.

(a) STUDY AND REVIEW REQUIRED- The Commission shall conduct a study and review of any final rules by any self-regulatory organization registered with the Commission related to matters involving equity research analysts conflicts of interest. Such study and report shall include a review of the effectiveness of such final rules in addressing matters relating to the objectivity and integrity of equity research analyst reports and recommendations.

(b) REPORT REQUIRED- The Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on such study and review no later than 180 days after any such final rules by any self-regulatory organization registered with the Commission are delivered to the Commission. Such report shall include recommendations to the Congress, including any recommendations for additional self-regulatory organization rulemaking regarding matters involving equity research analysts. The Commission shall annually submit an update on such review.

Top

## SEC. 8. OVERSIGHT OF FINANCIAL DISCLOSURES.

(a) MINIMUM PERIODIC REVIEW REQUIREMENTS- The Commission shall set minimum periodic review requirements to ensure that issuers with the largest market capitalization, most actively traded securities, or most widely held securities will be subject to a regular and thorough review by the Commission, including substantive comments where appropriate on the issuer's financial statements and all other disclosures.

(b) ANNUAL REPORTS REQUIRED- The Securities and Exchange Commission shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on an annual basis on its compliance with these requirements.

Top

## SEC. 9. REVIEW OF CORPORATE GOVERNANCE PRACTICES.

(a) STUDY OF CORPORATE PRACTICES- The President's Working Group on Financial Markets shall conduct a study and review of current corporate governance standards and practices to determine whether such standards and practices are serving the best interests of shareholders. Such study and review shall include an analysis of--

(1) whether current standards and practices promote full disclosure of relevant information to shareholders;

(2) whether corporate codes of ethics are adequate to protect shareholders, and to what extent deviations from such codes are tolerated;

(3) to what extent conflicts of interests are aggressively reviewed, and whether adequate means for redressing such conflicts exist;

(4) to what extent sufficient legal protections exist to ensure that any manager who attempts to manipulate or unduly influence an audit is subject to appropriate sanction and liability;

(5) whether rules, standards, and practices relating to determining whether independent directors are in fact independent are adequate;

(6) whether rules, standards, and practices relating to the independence of directors serving on audit committees are uniformly applied and adequate to protect investor interests;

(7) whether the duties and responsibilities of audit committees should be established by the Commission; and

(8) what further or additional practices or standards might best protect investors and promote the interests of shareholders.

(b) PARTICIPATION OF STATE REGULATORS- In conducting the study required under subsection (a), the President's Working Group on Financial Markets shall seek the views of, and consult with, the securities and corporate regulators of the various States.

(c) REPORT REQUIRED- The President's Working Group on Financial Markets shall submit a report on the analysis required under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate no later than 180 days after the date of enactment of this Act.

Top

## SEC. 10. 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 all restatements of financial statements, over the last five years to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED- The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days of the date of enactment of this Act and shall use such findings to revise its rules and regulations, as necessary.

Top

## SEC. 11. STUDY OF CREDIT RATING AGENCIES.

(a) STUDY REQUIRED- The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market. Such study shall examine--

- (1) the role of the credit rating agencies in the evaluation of issuers of securities;
- (2) the importance of that role to investors and the functioning of the securities markets;
- (3) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;
- (4) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;
- (5) 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
- (6) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED- The Commission shall submit a report on the analysis required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after the date of enactment of this Act.

Top

## SEC. 12. ENFORCEMENT AUTHORITY.

For the purposes of enforcing and carrying out this Act, the Commission shall have all of the authorities granted to the Commission under the securities laws. Actions of the Commission under this Act, including actions on rules or regulations, shall be subject to review in the same manner as actions under the securities laws.



Top

SEC. 13. DEFINITIONS.

As used in this Act:

(1) BLACKOUT PERIOD- The term `blackout period' with respect to the equity securities of any issuer--

(A) means any period during which the employees of such issuer are precluded from purchasing (or otherwise acquiring) or selling (or otherwise transferring) their interest in any equity security of such issuer held in an individual account plan of such issuer; but

(B) does not include a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction--

(i) incorporated into the individual account plan; and

(ii) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan.

(2) BOARDS OF ACCOUNTANCY OF THE STATES- The term `boards of accountancy of the States' means any organization or association chartered or approved under the law of any State with responsibility for the registration, supervision, or regulation of accountants.

(3) COMMISSION- The term `Commission' means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN- The term `individual account plan' has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER- The term `issuer' shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

(6) PERSON ASSOCIATED WITH AN ACCOUNTANT- The term 'person associated with an accountant' means any partner, officer, director, or manager of such accountant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such accountant, or any employee of such accountant who performs a supervisory role in the auditing process.

(7) RECOGNIZED PUBLIC REGULATORY ORGANIZATION- The term 'recognized public regulatory organization' means a public regulatory organization that the Commission has recognized as meeting the criteria established by the Commission under subsection (b) of section 2.

(8) SECURITIES LAWS- The term 'securities laws' means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), notwithstanding any contrary provision of any such Act.

Top