

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods.
- Sec. 307. Rules of professional responsibility for attorneys.
- Sec. 308. Fair funds for investors.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.
- Sec. 402. Enhanced conflict of interest provisions.
- Sec. 403. Disclosures of transactions involving management and principal stockholders.

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- Sec. 404. Management assessment of internal controls.
- Sec. 405. Exemption.
- Sec. 406. Code of ethics for senior financial officers.
- Sec. 407. Disclosure of audit committee financial expert.
- Sec. 408. Enhanced review of periodic disclosures by issuers.
- Sec. 409. Real time issuer disclosures.

TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

- Sec. 601. Authorization of appropriations.
- Sec. 602. Appearance and practice before the Commission.
- Sec. 603. Federal court authority to impose penny stock bars.
- Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.
- Sec. 702. Commission study and report regarding credit rating agencies.
- Sec. 703. Study and report on violators and violations.
- Sec. 704. Study of enforcement actions.
- Sec. 705. Study of investment banks.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

- Sec. 801. Short title.
- Sec. 802. Criminal penalties for altering documents.
- Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
- Sec. 804. Statute of limitations for securities fraud.
- Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 807. Protection for employees of publicly traded companies who provide evidence of fraud.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

- Sec. 901. Short title.
- Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
- Sec. 903. Criminal penalties for mail and wire fraud.
- Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
- Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
- Sec. 906. Corporate responsibility for financial reports.

TITLE X—CORPORATE TAX RETURNS

- Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

- Sec. 1101. Short title.
- Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
- Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 1104. Amendment to the Federal Sentencing Guidelines.
- Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
- Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.

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

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.

(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.

(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

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF
2002

JULY 3, 2002.—Ordered to be printed

Filed, under the authority of the order of the Senate of June 26, 2002

MR. SARBANES, from the Committee on Banking, Housing, and Urban Affairs, submitted the
following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2673]

The Committee on Banking, Housing and Urban Affairs reported an original bill to improve the quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes, and reports favorably thereon and recommends that the bill do pass.

INTRODUCTION

On June 18, 2002, the Senate Committee on Banking, Housing, and Urban Affairs considered the “Public Company Accounting Reform and Investor Protection Act of 2002,” a bill to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard-setting process for accounting practices, to strengthen the independent of firms that audit public companies, to increase cor-

that some investors find trades by insiders to be probative of whether investing in a company is desirable and feel that, in today's markets, the current deadline imposed by Section 16(a) allows too long a delay in reporting.

The bill would amend Section 16(a) to require directors, officers and 10 percent equity holders to report their purchases and sales of securities more promptly, that is, by the end of the second day following the transaction or such other time established by the SEC where the two-day period is not feasible. The purpose is to make available to investors information about insider transactions more promptly so they can make better informed investment decisions.

F. Management assessment of internal controls

The Committee heard testimony from former Comptroller General Bowsher, who recommended:

Management of public companies should be required to prepare an annual statement of compliance with internal controls to be filed with the SEC. The corporation's chief financial officer and chief executive officer should sign this attestation and the auditor should review it. An auditor's review and report on the effectiveness of internal controls would—as the General Accounting Office (GAO) found in a 1996 report—improve “the auditor's ability to provide more relevant and timely assurances on the quality of data beyond that contained in traditional financial statements and disclosures.” Both the POB and the AICPA supported the recommendation when the GAO made it, but the SEC did not adopt it.⁶³

In order to enhance the quality of reporting and increase investor confidence, the bill requires that annual reports filed with the SEC must be accompanied by a statement by the management of the issuer that management is responsible for creating and maintaining adequate internal controls. Management must also present its assessment of the effectiveness of those controls. A similar requirement was enacted in 1991 and has been imposed on depository institutions through Section 36 of the Federal Deposit Insurance Act.

In addition, the company's auditor must report on and attest to management's assessment of the company's internal controls. In requiring the registered public accounting firm preparing the audit report to attest to and report on management's assessment of internal controls, the Committee does not intend that the auditor's evaluation be the subject of a separate engagement or the basis for increased charges or fees. High quality audits typically incorporate extensive internal control testing. The Committee intends that the auditor's assessment of the issuer's system of internal controls should be considered to be a core responsibility of the auditor and an integral part of the audit report.

G. Exemptions for investment companies

The bill exempts investment companies from certain disclosure requirements. The Committee feels that the objectives of those disclosure sections are adequately addressed by existing Federal secu-

⁶³ Bowsher Testimony, March 19, 2002.

rities laws and the rules thereunder affecting investment companies.

For example, Section 17(a) of the Investment Company Act of 1940 and Rule 17J-1 thereunder prohibit affiliated persons of an investment company from borrowing money or other property to or from the investment company, or any company that the investment company controls. Investment company officials therefore would not have any insider loans to report, as would be required under the bill.

H. Code of ethics for senior financial officers

The problems surrounding Enron Corp. and other public companies raise concerns about the ethical standards of corporations and their senior financial managers. The Committee believes that investors have a legitimate interest in knowing whether a public company holds its financial officers to certain ethical standards in their financial dealings. The bill requires issuers to disclose whether or not they have adopted a code of ethics for senior financial officers and, if not, why not. This section was recommended by Senator Corzine.

I. Disclosure of audit committee financial expert

As discussed above, the Committee received testimony about the important role played by the audit committee in corporate governance. The Committee believes the effectiveness of the audit committee depends in part on its members' knowledge of and experience in auditing and financial matters. Investors may find it relevant in making their investment decisions whether an issuer's audit committee has at least one member who has relevant, sophisticated financial expertise with which to discharge his or her duties.

The bill requires the SEC to adopt rules requiring issuers to disclose whether their audit committees include among their members at least one "financial expert." In defining "financial expert," the SEC shall consider whether a person understands GAAP and financial statements, has experience with internal accounting controls, and understands audit committee functions.

TITLE V—ANALYST CONFLICTS OF INTEREST

The Committee heard persuasive testimony that a serious problem exists regarding conflicts of interest between Wall Street stock analysts and their employing brokerage firms, on the one hand, and the public companies that the stock analysts cover, on the other hand. Growing knowledge of these conflicts is harming the integrity and credibility to the public of stock analyst recommendations.

The Committee heard testimony from Thomas A. Bowman, President and CEO of the Association for Investment Management and Research, who said, "Clearly, the erosion of investor confidence in the independence and objectivity of 'Wall Street' research reports and recommendations * * * could seriously harm the reputation of the entire investment profession."⁶⁴ He added, "Only if the invest-

⁶⁴ Bowman Testimony, March 20, 2002.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

Section 401. Disclosures in periodic reports

A public company in periodic reports filed with the SEC will present: (1) disclosures of financial information that reflect all material correcting adjustments that have been identified by the auditor in accordance with GAAP and (2) the material off-balance sheet transactions, arrangements, 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.

Issuers that disseminate “pro forma” financial information in their filings with the Sec, press releases or other public disclosures must present pro forma data in a manner that does not contain an untrue statement or omit to state a material fact necessary in order to make the information, in light of the circumstances under which it is presented, not misleading, and that reconciles it with the issuer’s financial condition under GAAP.

Section 402. Enhanced disclosures of loans

An issuer in its current reports must disclose within 7 days, or such other time period determined to be appropriate by the SEC: (A) all loans, except credit card loans, made by the issuer and its affiliates to any executive officer or director, specifying amounts paid and balances owed on such obligations and (B) any conflicts of interest as defined by the SEC.

Section 403. Disclosures of transactions involving management

Section 16(a) of the Exchange Act is amended to require directors, officers and 10% equity holders to report their purchases and sales of securities more promptly, by the end of the second day following the transaction or such other time established by the SEC in any case in which the two-day period is not feasible.

Section 404. Management assessment of internal controls

Annual reports filed with the SEC must be accompanied by a statement by the management of its responsibility for creating and maintaining adequate internal controls. Management must also present its assessment of the effectiveness of those controls. In addition, the company’s auditor must report on and attest to management’s assessment of the company’s internal controls. Such attestation shall not be the subject of a separate engagement.

Section 405. Exemption

Investment companies are exempted from the disclosure requirements of sections 401, 402, and 404.

Section 406. Code of ethics for senior financial officers

Issuers are required to disclose whether or not they have adopted a code of ethics for senior financial officers, and if not, the reason therefore.

SARBANES-OXLEY ACT OF 2002

JULY 24, 2002.—Ordered to be printed

MR. OXLEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3763]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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Sec. 105. Investigations and disciplinary proceedings.

Sec. 106. Foreign public accounting firms.

Sec. 107. Commission oversight of the Board.

Sec. 108. Accounting standards.

Sec. 109. Funding.

(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.

(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”:

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

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(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.

(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.

“(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

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 159d) 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.

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.

(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 therefore, 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.

(b) CHANGES IN CODE 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.

(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 government 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