

–CITE–

15 USC CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND
CORPORATE RESPONSIBILITY 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

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CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
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15 USC Sec. 7201 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE

RESPONSIBILITY

–HEAD–

Sec. 7201. Definitions

–STATUTE–

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 7213 of this title, 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 7211 of this title.

(6) Commission

The term "Commission" means the Securities and Exchange
Commission.

(7) Issuer

The term "issuer" means an issuer (as defined in section 78c
of this title), the securities of which are registered under
section 78l of this title, or that is required to file reports
under section 78o(d) of this title, 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 (15 U.S.C.

77s(b)), or prescribed by the Commission under section 19(a)

of that Act (15 U.S.C. 77s(a)) or section 78m(b) of this

title; 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

7213(a) of this title, 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 7217 of this title),
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 78c(a)
of this title.

(15) Securities laws

The term "securities laws" means the provisions of law
referred to in section 78c(a)(47) of this title 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.

–SOURCE–

(Pub. L. 107–204, Sec. 2(a), July 30, 2002, 116 Stat. 746.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Securities Act of 1933, referred to in par. (7), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (Sec. 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

Title II, referred to in par. (10)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l and 78q of this title. For complete classification of title II to the Code, see Tables.

–MISC2–

SHORT TITLE

Pub. L. 107–204, Sec. 1(a), July 30, 2002, 116 Stat. 745, provided that: "This Act (see Tables for classification) may be cited as the 'Sarbanes–Oxley Act of 2002'."

GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS

Pub. L. 107–204, title VII, Sec. 701, July 30, 2002, 116 Stat.

797, provided that:

"(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 (July 30, 2002), 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."

–SECREf–

SARBANES–OXLEY ACT OF 2002 REFERRED TO IN OTHER SECTIONS

The Sarbanes–Oxley Act of 2002 (see Tables) is referred to in sections 78c, 7201, 7202, 7211, 7213, 7214, 7215, 7216, 7217, 7218, 7234 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78m, 78u–3 of this title.

–CITE–

15 USC Sec. 7202 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7202. Commission rules and enforcement

–STATUTE–

(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) to (4) Omitted

(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.

—SOURCE—

(Pub. L. 107–204, Sec. 3, July 30, 2002, 116 Stat. 749.)

—REFTEXT—

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002,

116 Stat. 745, known as the Sarbanes–Oxley Act of 2002. For

complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in subsec.

(b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended,

which is classified principally to chapter 2B (Sec. 78a et seq.) of

this title. For complete classification of this Act to the Code,

see section 78a of this title and Tables.

—COD—

CODIFICATION

Section is comprised of section 3 of Pub. L. 107–204. Subsec.

(b)(2)–(4) of section 3 of Pub. L. 107–204 amended sections 78l, 78u, and 78u–3 of this title.

–CITE–

15 USC SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT

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SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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15 USC Sec. 7211 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
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SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7211. Establishment; administrative provisions

–STATUTE–

(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 7217 of this title, 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 7212 of this title;
- (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 7213 of this title;

(3) conduct inspections of registered public accounting firms, in accordance with section 7214 of this title 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 7215 of this title;

(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 July 30, 2002, that the Board is so organized and has the capacity to carry out the requirements of this subchapter, and to enforce compliance with this subchapter 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 July 30, 2002, the Commission, after consultation with the Chairman of the Board of Governors 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 7217(d)(3) of this title, 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 7217 of this title –

(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 7219 of this title, for the Board, and other fees and charges imposed under this subchapter; and

(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 subchapter.

(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.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 101, July 30, 2002, 116 Stat. 750.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsecs. (b), (c)(5), (6), (f), and (g)(1), (4), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78j–1, 7201, 7212, 7213, 7219 of this title.

–CITE–

15 USC Sec. 7212 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE

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SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7212. Registration with the Board

–STATUTE–

(a) Mandatory registration

Beginning 180 days after the date of the determination of the Commission under section 7211(d) of this title, 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 subchapter (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

(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 7215(d) and

7217(c) of this title.

(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) of this section.

(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.

—SOURCE—

(Pub. L. 107–204, title I, Sec. 102, July 30, 2002, 116 Stat. 753.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7216, 7219 of this title.

–CITE–

15 USC Sec. 7213 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7213. Auditing, quality control, and independence standards and rules

–STATUTE–

(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 7262(b) of this title, 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) of this section.

(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 7217 of this title, 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 7211(d) of this title, and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 7217 of this title 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) of this section and advisory groups convened under subsection (a)(4) of this section in the examination of the need for changes in any standards subject to its authority under subsection (a) of this section, 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 7211(h) of this title 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) of this section, and its pending issues agenda for future standard setting projects.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 103, July 30, 2002, 116 Stat. 755.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley Act of 2002.

For complete classification of this Act to the Code, see Tables.

Title II of this Act, referred to in subsec. (b), is title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l, and 78q of this title. For complete classification of title II to the Code, see Tables.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7201, 7211, 7214, 7217 of this title.

–CITE–

15 USC Sec. 7214 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7214. Inspections of registered public accounting firms

–STATUTE–

(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 7213 of this title 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) of this section, 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 7215(b)(5)(A) of this title, 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) of this section, 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) of this section.

(2) Treatment of review

Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 78y of this title, or deemed to be "final agency action" for purposes of section 704 of title 5.

(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).

–SOURCE–

(Pub. L. 107–204, title I, Sec. 104, July 30, 2002, 116 Stat. 757.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (c), is Pub. L.

107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley

Act of 2002. For complete classification of this Act to the Code,

see Tables.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7215 of this title.

–CITE–

15 USC Sec. 7215 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE

RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7215. Investigations and disciplinary proceedings

–STATUTE–

(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.

(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 7217(c) of this title.

(4) Coordination and referral of investigations

(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 6809 of this title), 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 7214 of

this title 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), (FOOTNOTE 1) or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c) of this section.

(FOOTNOTE 1) See References in Text note below.

(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 6809 of this title), 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 subchapter;

(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.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 105, July 30, 2002, 116 Stat. 759.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(1), (5)(B)(ii), (6) and

(c)(3)(B), (4), (6)(A), is Pub. L. 107–204, July 30, 2002, 116

Stat. 745, known as the Sarbanes–Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Freedom of Information Act, referred to in subsec. (b)(5)(A), is section 552 of Title 5, Government Organization and Employees.

Section 552a of Title 5 is commonly known as the "Privacy Act".

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7212, 7214, 7217 of this title.

–CITE–

15 USC Sec. 7216 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7216. Foreign public accounting firms

–STATUTE–

(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 7212 of this title 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 subchapter.

(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.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 106, July 30, 2002, 116 Stat. 764.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

–CITE–

15 USC Sec. 7217 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7217. Commission oversight of the Board

–STATUTE–

(a) General oversight responsibility

The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 78q(a)(1) of this title, and of section 78q(b)(1) of this title shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 78q(a)(1) and 78q(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 7213(a)(3)(B) of this title 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 78s(b) of this title shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 78s(b), except that,

for purposes of this paragraph –

(A) the phrase "consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization" in section 78s(b)(2) of this title 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 chapter" in section 78s(b)(3)(C) of this title 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 78s(c) of this title 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 78s(c), except that the phrase "to conform its rules to the requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter" in section 78s(c) of this title 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 78s(d)(2) and 78s(e)(1) of this title shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 7215(b)(3) of this title 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 78s(d)(2) and 78s(e)(1), except that, for purposes of this paragraph –

(A) section 7215(e) of this title (rather than that section 78s(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 78s(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 chapter" in that section 78s(e)(1) shall be deemed to read "consistent with the purposes of this chapter and title I of the Sarbanes–Oxley Act of 2002";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 78s(e)(1) shall not apply; and

(E) the reference to section 78s(e)(2) of this title shall refer instead to section 7217(c)(3) of this title.

(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.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 107, July 30, 2002, 116 Stat. 765.)

–REFTEXT–

REFERENCES IN TEXT

This Act and the Sarbanes–Oxley Act of 2002, referred to in text, are Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Tables.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7201, 7211, 7212, 7213, 7215, 7231 of this title.

–CITE–

15 USC Sec. 7218 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7218. Accounting standards

–STATUTE–

(a) Omitted

(b) Commission authority

The Commission shall promulgate such rules and regulations to carry out section 77s(b) of this title as it deems necessary or appropriate in the public interest or for the protection of investors.

(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 July 30, 2002, 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.

–SOURCE–

(Pub. L. 107–204, title I, Sec. 108, July 30, 2002, 116 Stat. 768.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes–Oxley Act of 2002.

For complete classification of this Act to the Code, see Tables.

–COD–

CODIFICATION

Section is comprised of section 108 of Pub. L. 107–204. Subsec.

(a) of section 108 of Pub. L. 107–204 amended section 77s of this title.

–CITE–

15 USC Sec. 7219 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE

RESPONSIBILITY

SUBCHAPTER I – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

–HEAD–

Sec. 7219. Funding

–STATUTE–

(a) In general

The Board, and the standard setting body designated pursuant to section 77s(b) of this title, shall be funded as provided in this section.

(b) Annual budgets

The Board and the standard setting body referred to in subsection (a) of this section 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 7211(d) of this title.

(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 7212(e) of this title 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) of this section, 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) of this section. 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) of this section, 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) of this section, 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) of this section –

(1) shall be allocated in accordance with subsection (g) of this section, 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) of this section.

(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) of this section 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) Omitted

(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) of this section, 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).

–SOURCE–

(Pub. L. 107–204, title I, Sec. 109, July 30, 2002, 116 Stat. 769.)

–COD–

CODIFICATION

Section is comprised of section 109 of Pub. L. 107–204. Subsec. (h) of section 109 of Pub. L. 107–204 amended section 78m of this title.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77s, 78m, 7211 of this title.

–CITE–

15 USC SUBCHAPTER II – AUDITOR INDEPENDENCE 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER II – AUDITOR INDEPENDENCE

.

–HEAD–

SUBCHAPTER II – AUDITOR INDEPENDENCE

–CITE–

15 USC Sec. 7231 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER II – AUDITOR INDEPENDENCE

–HEAD–

Sec. 7231. Exemption authority

–STATUTE–

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 78j–1(g) of this title, 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 7217 of this title.

–SOURCE–

(Pub. L. 107–204, title II, Sec. 201(b), July 30, 2002, 116 Stat.

772.)

–CITE–

15 USC Sec. 7232 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER II – AUDITOR INDEPENDENCE

–HEAD–

Sec. 7232. Study of mandatory rotation of registered public
accounting firms

–STATUTE–

(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 July 30, 2002, 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.

(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.

–SOURCE–

(Pub. L. 107–204, title II, Sec. 207, July 30, 2002, 116 Stat.
775.)

–CITE–

15 USC Sec. 7233 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER II – AUDITOR INDEPENDENCE

–HEAD–

Sec. 7233. Commission authority

–STATUTE–

(a) Commission regulations

Not later than 180 days after July 30, 2002, the Commission shall
issue final regulations to carry out each of subsections (g)
through (l) of section 78j–1 of this title.

(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
78j–1 of this title or any rule or regulation of the Commission or
of the Board issued thereunder.

–SOURCE–

(Pub. L. 107–204, title II, Sec. 208, July 30, 2002, 116 Stat.
775.)

–CITE–

15 USC Sec. 7234 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER II – AUDITOR INDEPENDENCE

–HEAD–

Sec. 7234. Considerations by appropriate State regulatory
authorities

–STATUTE–

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.

–SOURCE–

(Pub. L. 107–204, title II, Sec. 209, July 30, 2002, 116 Stat.
775.)

–REFTEXT–

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002,
116 Stat. 745, known as the Sarbanes–Oxley Act of 2002. For
complete classification of this Act to the Code, see Tables.

–CITE–

15 USC SUBCHAPTER III – CORPORATE RESPONSIBILITY 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

.

–HEAD–

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–CITE–

15 USC Sec. 7241 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7241. Corporate responsibility for financial reports

–STATUTE–

(a) Regulations required

The Commission shall, by rule, require, for each company filing periodic reports under section 78m(a) or 78o(d) of this title, 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 this title 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 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section, 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) of this section shall be effective not later than 30 days after July 30, 2002.

—SOURCE—

(Pub. L. 107–204, title III, Sec. 302, July 30, 2002, 116 Stat.

777.)

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 781 of this title.

–CITE–

15 USC Sec. 7242 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7242. Improper influence on conduct of audits

–STATUTE–

(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) of this section 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 July 30, 2002; and

(2) issue final rules or regulations required by this section, not later than 270 days after July 30, 2002.

–SOURCE–

(Pub. L. 107–204, title III, Sec. 303, July 30, 2002, 116 Stat. 778.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78l of this title.

–CITE–

15 USC Sec. 7243 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7243. Forfeiture of certain bonuses and profits

–STATUTE–

(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) of this section, as it deems necessary and appropriate.

–SOURCE–

(Pub. L. 107–204, title III, Sec. 304, July 30, 2002, 116 Stat. 778.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78l of this title.

–CITE–

15 USC Sec. 7244 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7244. Insider trades during pension fund blackout periods

–STATUTE–

(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 title 26 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 1002(34) of title 29, except that such term shall not include a one-participant retirement plan (within the meaning of section 1021(i)(8)(B) of title 29).

(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) Omitted

(2) Issuance of initial guidance and model notice

The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 1021(i)(6) of title 29 not later than January 1, 2003. Not later than 75 days after July 30, 2002, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(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 July 30, 2002. 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.

–SOURCE–

(Pub. L. 107–204, title III, Sec. 306, July 30, 2002, 116 Stat.

779.)

–REFTEXT–

REFERENCES IN TEXT

For amendments made by this subsection and this section, referred to in subsecs. (b) and (c), see Codification note below.

–COD–

CODIFICATION

Section is comprised of section 306 of Pub. L. 107–204. Subsec.

(b)(1) of section 306 of Pub. L. 107–204 amended section 1021 of Title 29, Labor, and another par. (3) of subsec. (b) amended section 1132 of Title 29.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 781 of this title.

–CITE–

15 USC Sec. 7245 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7245. Rules of professional responsibility for attorneys

–STATUTE–

Not later than 180 days after July 30, 2002, 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.

–SOURCE–

(Pub. L. 107–204, title III, Sec. 307, July 30, 2002, 116 Stat. 784.)

–CITE–

15 USC Sec. 7246 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER III – CORPORATE RESPONSIBILITY

–HEAD–

Sec. 7246. Fair funds for investors

–STATUTE–

(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 78c(a)(47) of this title) 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) of this section. 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) of this section.

(c) Study required

(1) Subject of study

The Commission shall review and analyze –

(A) enforcement actions by the Commission over the five years preceding July 30, 2002, 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 (FOOTNOTE 1) July 30, 2002, 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.

(FOOTNOTE 1) So in original. The word "of" probably should not appear.

(d) Omitted

(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) of this section.

—SOURCE—

(Pub. L. 107–204, title III, Sec. 308, July 30, 2002, 116 Stat. 784.)

—COD—

CODIFICATION

Section is comprised of section 308 of Pub. L. 107–204. Subsec.

(d) of section 308 of Pub. L. 107–204 amended sections 77t, 78u, 78u–1, 80a–41, and 80b–9 of this title.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77t, 78u, 78u–1, 80a–41, 80b–9 of this title.

–CITE–

15 USC SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

.

–HEAD–

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–CITE–

15 USC Sec. 7261 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7261. Disclosures in periodic reports

–STATUTE–

(a) Omitted

(b) Commission rules on pro forma figures

Not later than 180 days after July 30, 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

(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 78m(j) of this title, 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.

(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 78m or 78o of this title;

(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.

–SOURCE–

(Pub. L. 107–204, title IV, Sec. 401, July 30, 2002, 116 Stat. 785.)

–COD–

CODIFICATION

Section is comprised of section 401 of Pub. L. 107–204. Subsec.

(a) of section 401 of Pub. L. 107–204 amended section 78m of this title.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78l of this title.

–CITE–

15 USC Sec. 7262 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7262. Management assessment of internal controls

–STATUTE–

(a) Rules required

The Commission shall prescribe rules requiring each annual report required by section 78m(a) or 78o(d) of this title 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) of this section, 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.

–SOURCE–

(Pub. L. 107–204, title IV, Sec. 404, July 30, 2002, 116 Stat. 789.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78l, 7213 of this title.

–CITE–

15 USC Sec. 7263 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7263. Exemption

–STATUTE–

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 80a–8 of this title.

–SOURCE–

(Pub. L. 107–204, title IV, Sec. 405, July 30, 2002, 116 Stat. 789.)

–REFTEXT–

REFERENCES IN TEXT

Sections 401, 402, and 404, referred to in text, mean sections 401, 402, and 404 of Pub. L. 107–204. Section 401 enacted section 7261 of this title and amended section 78m of this title. Section 402 amended section 78m of this title. Section 404 enacted section 7262 of this title.

–CITE–

15 USC Sec. 7264 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE
RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7264. Code of ethics for senior financial officers

–STATUTE–

(a) Code of ethics disclosure

The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 78m(a) or 78o(d) of this title, 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.

(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.

(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 July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

–SOURCE–

(Pub. L. 107–204, title IV, Sec. 406, July 30, 2002, 116 Stat. 789.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78l of this title.

–CITE–

15 USC Sec. 7265 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7265. Disclosure of audit committee financial expert

–STATUTE–

(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 78m(a) and 78o(d) of this title, 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) of this section, 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 July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

–SOURCE–

(Pub. L. 107–204, title IV, Sec. 407, July 30, 2002, 116 Stat. 790.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78l of this title.

–CITE–

15 USC Sec. 7266 01/06/03

–EXPCITE–

TITLE 15 – COMMERCE AND TRADE

CHAPTER 98 – PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

SUBCHAPTER IV – ENHANCED FINANCIAL DISCLOSURES

–HEAD–

Sec. 7266. Enhanced review of periodic disclosures by issuers

–STATUTE–

(a) Regular and systematic review

The Commission shall review disclosures made by issuers reporting under section 78m(a) of this title (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) of this section, 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 78m(a) or 78o(d) of this title be reviewed under this section less frequently than once every 3 years.

—SOURCE—

(Pub. L. 107–204, title IV, Sec. 408, July 30, 2002, 116 Stat. 790.)

—CITE—