

>> Selected Sections of the Sarbanes-Oxley Act of 2002

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Sec. 101. Establishment; Administrative Provisions.

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

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

- (1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;
- (2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;
- (3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;
- (4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105;
- (5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

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

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

(b) *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.

Sec. 107. Commission Oversight of The Board.

(a) *General Oversight Responsibility.*—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. . . .

TITLE II—AUDITOR INDEPENDENCE

Sec. 203. Audit Partner Rotation.

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

Sec. 204. Auditor Reports to Audit Committees.

(k) *Reports to Audit Committees.*—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

- (1) all critical accounting policies and practices to be used;
- (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the

issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

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

TITLE III—CORPORATE RESPONSIBILITY

Sec. 302. Corporate Responsibility for Financial Reports.

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

- (1) the signing officer has reviewed the report;
- (2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- (3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;
- (4) the signing officers—

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

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

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

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

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

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

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

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

(b) *Foreign Reincorporations Have No Effect.*—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

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

Sec. 303. Improper Influence on Conduct of Audits.

(a) *Rules To Prohibit.*—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

Sec. 304. Forfeiture of Certain Bonuses and Profits.

(a) *Additional Compensation Prior to Noncompliance With Commission Financial Reporting Requirements.*—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with

any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and (2) any profits realized from the sale of securities of the issuer during that 12-month period.

Sec. 306. Insider Trades During Pension Fund Blackout Periods.

(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) **CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.**—(7) The Secretary may assess a civil penalty against a plan administrator of up to \$100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in

accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

Sec. 404. Management Assessment of Internal Controls.

(a) **Rules Required.**—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) **Internal Control Evaluation and Reporting.**—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

Sec. 407. Disclosure of Audit Committee Financial Expert.

(a) **Rules Defining “Financial Expert”.**—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) **Considerations.**—In defining the term “financial expert” for purposes of subsection (a), the Commission shall consider whether a person has, through

education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

Sec. 801. Short Title. This title may be cited as the “Corporate and Criminal Fraud Accountability Act of 2002”.

Sec. 804. Statute of Limitations for Securities Fraud. . . . [A] private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws . . . may be brought not later than the earlier of—

(1) 2 years after the discovery of the facts constituting the violation; or

(2) 5 years after such violation.

Sec. 806. Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud.

(a) **Whistleblower Protection for Employees of Publicly Traded Companies.**—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under . . . the Securities Exchange Act of 1934 or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably

believes constitutes a violation of . . . any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of . . . any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

Sec. 807. Criminal Penalties for Defrauding Shareholders of Publicly Traded Companies.

(a) **In General.**—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“ §1348. Securities fraud

“Whoever knowingly executes, or attempts to execute, a scheme or artifice—

“(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934; or

“(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 shall be fined under this title, or imprisoned not more than 25 years, or both.”

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

Sec. 903. Criminal Penalties for Mail and Wire Fraud.

(a) **Mail Fraud.**—Section 1341 of title 18, United States Code, is amended by striking “five” and inserting “20”.

(b) **Wire Fraud.**—Section 1343 of title 18, United States Code, is amended by striking “five” and inserting “20”.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

Sec. 1106. Increased Criminal Penalties Under Securities Exchange Act of 1934. Section 32(a) of the Securities Exchange Act of 1934 is amended—

- (1) by striking “\$1,000,000, or imprisoned not more than 10 years” and inserting “\$5,000,000, or imprisoned not more than 20 years”; and
- (2) by striking “\$2,500,000” and inserting “\$25,000,000”.

Sec. 1107. Retaliation Against Informants.

(a) In General.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

“(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.”