

104TH CONGRESS
1ST SESSION

H. R. 675

To amend the Securities Exchange Act of 1934 to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1995

Mr. MINETA (for himself and Ms. ESHOO) introduced the following bill; which was referred to the Committee on Commerce and, in addition, to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Securities Exchange Act of 1934 to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Securities Litigation Equity Act of 1995”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Elimination of certain abusive practices.
- Sec. 3. Time limitation on private rights of action.
- Sec. 4. Plaintiff steering committees.
- Sec. 5. Requirements for securities fraud actions.
- Sec. 6. Proportionate liability and joint and several liability.
- Sec. 7. Safe harbor for forward-looking statements.
- Sec. 8. Fraud detection and disclosure.
- Sec. 9. Amendment to Racketeer Influenced and Corrupt Organizations Act.

1 **SEC. 2. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.**

2 (a) RECEIPT FOR REFERRAL FEES.—Section 15(c)
 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))
 4 is amended by adding at the end the following new para-
 5 graph:

6 “(7) RECEIPT OF REFERRAL FEES.—No broker
 7 or dealer, or person associated with a broker or deal-
 8 er, may solicit or accept remuneration for assisting
 9 an attorney in obtaining the representation of any
 10 customer in any implied private action arising under
 11 this title.”.

12 (b) PROHIBITION ON ATTORNEYS’ FEES PAID FROM
 13 COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of
 14 the Securities Exchange Act of 1934 (15 U.S.C. 78u(d))
 15 is amended by adding at the end the following new para-
 16 graph:

17 “(4) PROHIBITION ON ATTORNEYS’ FEES PAID
 18 FROM COMMISSION DISGORGEMENT FUNDS.—Except
 19 as otherwise ordered by the court, funds disgorged
 20 as the result of an action brought by the Commis-
 21 sion in Federal court, or of any Commission admin-

1 istrative action, shall not be distributed as payment
2 for attorneys' fees or expenses incurred by private
3 parties seeking distribution of the disgorged funds.”.

4 (c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS
5 ACTIONS.—Section 21 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78u) is amended by adding at the end
7 the following new subsections:

8 “(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS
9 ACTIONS.—In an implied private action arising under this
10 title that is certified as a class action pursuant to the Fed-
11 eral Rules of Civil Procedure, the share of any final judg-
12 ment or of any settlement that is awarded to class plain-
13 tiffs serving as the representative parties shall be cal-
14 culated in the same manner as the shares of the final judg-
15 ment or settlement awarded to all other members of the
16 class. Nothing in this subsection shall be construed to
17 limit the award to any representative parties of reasonable
18 compensation, costs, and expenses (including lost wages)
19 relating to the representation of the class.

20 “(j) CONFLICTS OF INTEREST.—In an implied pri-
21 vate action arising under this title that is certified as a
22 class action pursuant to the Federal Rules of Civil Proce-
23 dure, if a party is represented by an attorney who directly
24 owns or otherwise has a beneficial interest in the securities
25 that are the subject of the litigation, the court shall make

1 a determination of whether such interest constitutes a con-
2 flict of interest sufficient to disqualify the attorney from
3 representing the party.

4 “(k) RESTRICTIONS ON SETTLEMENTS UNDER
5 SEAL.—In an implied private action arising under this
6 title that is certified as a class action pursuant to the Fed-
7 eral Rules of Civil Procedure, the terms and provisions
8 of any settlement agreement between any of the parties
9 shall not be filed under seal, except that on motion of any
10 of the parties to the settlement, the court may order filing
11 under seal for those portions of a settlement agreement
12 as to which good cause is shown for such filing under seal.
13 Good cause shall only exist if publication of a term or pro-
14 vision of a settlement agreement would cause direct and
15 substantial harm to any person.

16 “(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS’
17 FEES FROM SETTLEMENT FUNDS.—In an implied private
18 action arising under this title that is certified as a class
19 action pursuant to the Federal Rules of Civil Procedure,
20 attorneys’ fees awarded by the court to counsel for the
21 class shall be determined as a percentage of the amount
22 of damages and prejudgment interest actually paid to the
23 class as a result of the attorneys’ efforts. In no event shall
24 the amount awarded to counsel for the class exceed a rea-

1 sonable percentage of the amount recovered by the class
2 plus reasonable expenses.

3 “(m) DISCLOSURE OF SETTLEMENT TERMS TO
4 CLASS MEMBERS.—In an implied private action arising
5 under this title that is certified as a class action pursuant
6 to the Federal Rules of Civil Procedure, a proposed settle-
7 ment agreement that is published or otherwise dissemi-
8 nated to the class shall include the following statements,
9 which shall not be admissible for purposes of any Federal
10 or State judicial or administrative proceeding:

11 “(1) STATEMENT OF POTENTIAL OUTCOME OF
12 CASE.—

13 “(A) AGREEMENT ON AMOUNT OF DAM-
14 AGES AND LIKELIHOOD OF PREVAILING.—If the
15 settling parties agree on the amount of dam-
16 ages per share that would be recoverable if the
17 plaintiff prevailed on each claim alleged under
18 this title and the likelihood that the plaintiff
19 would prevail—

20 “(i) a statement concerning the
21 amount of such potential damages; and

22 “(ii) a statement concerning the prob-
23 ability that the plaintiff would prevail on
24 the claims alleged under this title and a

1 brief explanation of the reasons for that
2 conclusion.

3 “(B) DISAGREEMENT ON AMOUNT OF
4 DAMAGES OR LIKELIHOOD OF PREVAILING.—If
5 the parties do not agree on the amount of dam-
6 ages per share that would be recoverable if the
7 plaintiff prevailed on each claim alleged under
8 this title or on the likelihood that the plaintiff
9 would prevail on those claims, or both, a state-
10 ment from each settling party concerning the
11 issue or issues on which the parties disagree.

12 “(C) INADMISSIBILITY FOR CERTAIN PUR-
13 POSES.—Statements made in accordance with
14 subparagraphs (A) and (B) shall not be admis-
15 sible for purposes of any Federal or State judi-
16 cial or administrative proceeding.

17 “(2) STATEMENT OF ATTORNEYS’ FEES OR
18 COSTS SOUGHT.—If any of the settling parties or
19 their counsel intend to apply to the court for an
20 award of attorneys’ fees or costs from any fund es-
21 tablished as part of the settlement, a statement indi-
22 cating which parties or counsel intend to make such
23 an application, the amount of fees and costs that
24 will be sought, and a brief explanation of the basis
25 for the application.

1 “(3) IDENTIFICATION OF REPRESENTATIVES.—
2 The name, telephone number, and address of one or
3 more representatives of counsel for the plaintiff class
4 who will be reasonably available to answer questions
5 from class members concerning any matter con-
6 tained in any notice of settlement published or oth-
7 erwise disseminated to class members.

8 “(4) OTHER INFORMATION.—Such other infor-
9 mation as may be required by the court, or by any
10 guardian ad litem or plaintiff steering committee ap-
11 pointed by the court pursuant to section 38.

12 “(n) SPECIAL VERDICTS.—In an implied private ac-
13 tion arising under this title in which the plaintiff may re-
14 cover money damages only on proof that a defendant acted
15 with a particular state of mind, the court shall, when re-
16 quested by a defendant, submit to the jury a written inter-
17 rogatory on the issue of each such defendant’s state of
18 mind at the time the alleged violation occurred.”.

19 **SEC. 3. TIME LIMITATION ON PRIVATE RIGHTS OF ACTION.**

20 The Securities Exchange Act of 1934 (15 U.S.C. 78a
21 et seq.) is amended by adding at the end the following
22 new section:

1 **“SEC. 36. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
2 **RIGHTS OF ACTION.**

3 “(a) IN GENERAL.—Except as otherwise provided in
4 this title, an implied private right of action arising under
5 this title shall be brought not later than the earlier of—

6 “(1) 5 years after the date on which the alleged
7 violation occurred; or

8 “(2) 2 years after the date on which the alleged
9 violation was discovered or should have been discov-
10 ered through the exercise of reasonable diligence.

11 “(b) EFFECTIVE DATE.—The limitations period pro-
12 vided by this section shall apply to all proceedings pending
13 on or commenced after the date of enactment of this sec-
14 tion.”.

15 **SEC. 4. PLAINTIFF STEERING COMMITTEES.**

16 The Securities Exchange Act of 1934 (15 U.S.C. 78a
17 et seq.) is amended by adding at the end the following
18 new section:

19 **“SEC. 37. GUARDIAN AD LITEM AND CLASS ACTION STEER-**
20 **ING COMMITTEES.**

21 “(a) GUARDIAN AD LITEM.—Except as provided in
22 subsection (b), not later than 10 days after certifying a
23 plaintiff class in an implied private action brought under
24 this title, the court shall appoint a guardian ad litem for
25 the plaintiff class from a list or lists provided by the par-
26 ties or their counsel. The guardian ad litem shall direct

1 counsel for the class and perform such other functions as
2 the court may specify. The court shall apportion the rea-
3 sonable fees and expenses of the guardian ad litem among
4 the parties. Court appointment of a guardian ad litem
5 shall not be subject to interlocutory review.

6 “(b) CLASS ACTION STEERING COMMITTEE.—Sub-
7 section (a) shall not apply if, not later than 10 days after
8 certifying a plaintiff class, on its own motion or on motion
9 of a member of the class, the court appoints a committee
10 of class members to direct counsel for the class (hereafter
11 in this section referred to as the ‘plaintiff steering commit-
12 tee’) and to perform such other functions as the court may
13 specify. Court appointment of a plaintiff steering commit-
14 tee shall not be subject to interlocutory review.

15 “(c) MEMBERSHIP OF PLAINTIFF STEERING COM-
16 MITTEE.—

17 “(1) QUALIFICATIONS.—

18 “(A) NUMBER.—A plaintiff steering com-
19 mittee shall consist of not less than 5 class
20 members, willing to serve, who the court be-
21 lieves will fairly represent the class.

22 “(B) OWNERSHIP INTERESTS.—Members
23 of the plaintiff steering committee shall have
24 cumulatively held during the class period not
25 less than—

1 “(i) the lesser of 5 percent of the se-
2 curities which are the subject matter of the
3 litigation or securities which are the sub-
4 ject matter of the litigation with a market
5 value of \$10,000,000; or

6 “(ii) such smaller percentage or dollar
7 amount as the court finds appropriate
8 under the circumstances.

9 “(2) NAMED PLAINTIFFS.—Class members who
10 are named plaintiffs in the litigation may serve on
11 the plaintiff steering committee, but shall not com-
12 prise a majority of the committee.

13 “(3) NONCOMPENSATION OF MEMBERS.—Mem-
14 bers of the plaintiff steering committee shall serve
15 without compensation, except that any member may
16 apply to the court for reimbursement of reasonable
17 out-of-pocket expenses from any common fund es-
18 tablished for the class.

19 “(4) MEETINGS.—The plaintiff steering com-
20 mittee shall conduct its business at one or more pre-
21 viously scheduled meetings of the committee at
22 which a majority of its members are present in per-
23 son or by electronic communication. The plaintiff
24 steering committee shall decide all matters within its
25 authority by a majority vote of all members, except

1 that the committee may determine that decisions
2 other than to accept or reject a settlement offer or
3 to employ or dismiss counsel for the class may be
4 delegated to one or more members of the committee,
5 or may be voted upon by committee members seria-
6 tim, without a meeting.

7 “(5) RIGHT OF NONMEMBERS TO BE HEARD.—
8 A class member who is not a member of the plaintiff
9 steering committee may appear and be heard by the
10 court on any issue in the action, to the same extent
11 as any other party.

12 “(d) FUNCTIONS OF GUARDIAN AD LITEM AND
13 PLAINTIFF STEERING COMMITTEE.—

14 “(1) DIRECT COUNSEL.—The authority of the
15 guardian ad litem or the plaintiff steering committee
16 to direct counsel for the class shall include all pow-
17 ers normally permitted to an attorney’s client in liti-
18 gation, including the authority to retain or dismiss
19 counsel and to reject offers of settlement, and the
20 preliminary authority to accept an offer of settle-
21 ment, subject to the restrictions specified in para-
22 graph (2). Dismissal of counsel other than for cause
23 shall not limit the ability of counsel to enforce any
24 contractual fee agreement or to apply to the court

1 for a fee award from any common fund established
2 for the class.

3 “(2) SETTLEMENT OFFERS.—If a guardian ad
4 litem or a plaintiff steering committee gives prelimi-
5 nary approval to an offer of settlement, the guardian
6 ad litem or the plaintiff steering committee may seek
7 approval of the offer by a majority of class members
8 if the committee determines that the benefit of seek-
9 ing such approval outweighs the cost of soliciting the
10 approval of class members.

11 “(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any
12 person serving as a guardian ad litem or as a member
13 of a plaintiff steering committee shall be immune from any
14 liability arising from such service. The court may remove
15 a guardian ad litem or a member of a plaintiff steering
16 committee for good cause shown.

17 “(f) EFFECT ON OTHER LAW.—This section does not
18 affect any other provision of law concerning class actions
19 or the authority of the court to give final approval to any
20 offer of settlement.”.

21 **SEC. 5. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.**

22 The Securities Exchange Act of 1934 (15 U.S.C. 78a
23 et seq.) is amended by adding at the end the following
24 new section:

1 **“SEC. 38. REQUIREMENTS FOR SECURITIES FRAUD AC-**
2 **TIONS.**

3 “(a) PLEADING WITH RESPECT TO SCIENTER.—

4 “(1) IN GENERAL.—In an implied private ac-
5 tion arising under this title in which the plaintiff
6 may recover money damages from a defendant only
7 on proof that the defendant acted with some level of
8 intent, the plaintiff’s complaint shall allege specific
9 facts demonstrating the state of mind of each de-
10 fendant at the time the alleged violation occurred.

11 “(2) MISLEADING STATEMENTS AND OMIS-
12 SIONS.—In an implied action arising under this title
13 in which the plaintiff alleges that the defendant—

14 “(A) made an untrue statement of a mate-
15 rial fact; or

16 “(B) omitted to state a material fact nec-
17 essary in order to make the statements made,
18 in the light of the circumstances in which they
19 were made, not misleading;

20 the plaintiff shall specify each statement alleged to
21 have been misleading, the reason or reasons why the
22 statement is misleading, and, if an allegation regard-
23 ing the statement or omission is made on informa-
24 tion and belief, the plaintiff shall set forth all infor-
25 mation on which that belief is formed.

26 “(3) MOTIONS TO DISMISS; DISCOVERY.—

1 “(A) Upon motion by a defendant to dis-
2 miss for failure to allege the facts required by
3 paragraph (1) or (2), the court shall stay dis-
4 covery until such motion is decided. In ruling
5 upon any such motion, the court may take judi-
6 cial notice of all information publicly available
7 in the market affecting the total mix of infor-
8 mation known to investors concerning the issuer
9 or the issuer’s securities.

10 “(B) If a complaint satisfies the require-
11 ments of paragraphs (1) and (2), the plaintiffs
12 shall be entitled to discovery limited to the facts
13 alleged concerning the misleading statement.
14 Upon completion of such discovery, that parties
15 may move for summary judgment.

16 “(C) If a complaint fails to satisfy the re-
17 quirements of paragraph (1) or (2), the court
18 in its discretion may permit a single amended
19 complaint to be filed, subject to the right of any
20 defendant thereafter to move to dismiss such
21 amended complaint without leave to amend.

22 “(b) PROOF OF SCIENTER.—

23 “(1) IN GENERAL.—In an action to which sub-
24 section (a)(2) applies, a defendant may not be held

1 liable for money damages unless the plaintiff
2 proves—

3 “(A) that the defendant directly or indi-
4 rectly made an untrue statement of a material
5 fact, or omitted to state a material fact nec-
6 essary in order to make the statements made,
7 in light of the circumstances in which they were
8 made, not misleading; and

9 “(B) that the defendant—

10 “(i) knew the statement was mislead-
11 ing at the time it was made, or inten-
12 tionally omitted to state a fact knowing
13 that such fact was necessary in order to
14 make the statements made, in light of the
15 circumstances in which they were made,
16 not misleading; or

17 “(ii) in making such statement or
18 omitting such fact, acted recklessly.

19 “(2) PROOF FOR INDIRECT STATEMENTS.—In
20 any such action, a defendant shall not be held to
21 have indirectly made a statement made by any per-
22 son that is not the issuer or an officer, director, or
23 employee of the issuer in a publicly disseminated
24 document, unless the plaintiff pleads and proves that
25 the facts or omissions alleged to have been mislead-

1 ing were attributed to such issuer, officer, director,
2 or employee.

3 “(c) BURDEN OF PROOF OF CAUSATION.—In an im-
4 plied private action arising under this title based on a ma-
5 terial misstatement or omission concerning a security, and
6 in which the plaintiff claims to have bought or sold the
7 security based on a reasonable belief that the market value
8 of the security reflected all publicly available information,
9 the plaintiff shall have the burden of proving that the
10 misstatement or omission caused any loss incurred by the
11 plaintiff.

12 “(d) DAMAGES.—In an implied private action arising
13 under this title based on a material misstatement or omis-
14 sion concerning a security, and in which the plaintiff
15 claims to have bought or sold the security based on a rea-
16 sonable belief that the market value of the security re-
17 flected all publicly available information, the plaintiff’s
18 damages shall not exceed the lesser of—

19 “(1) the difference between the price paid by
20 the plaintiff for the security and the market value of
21 the security immediately after dissemination to the
22 market of information which corrects the
23 misstatement or omission; and

24 “(2) the difference between the price paid by
25 the plaintiff for the security and the price at which

1 the plaintiff sold the security after dissemination of
2 information correcting the misstatement or omis-
3 sion.”.

4 **SEC. 6. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
5 **ERAL LIABILITY.**

6 (a) SECURITIES ACT AMENDMENT.—The Securities
7 and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
8 amended by adding at the end the following new section:

9 **“SEC. 40. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
10 **ERAL LIABILITY IN IMPLIED ACTIONS.**

11 “(a) APPLICABILITY.—This section shall apply only
12 to the allocation of damages among persons who are, or
13 who may become, liable for damages in an implied private
14 action arising under this title. Nothing in this section shall
15 affect the standards for liability associated with an implied
16 private action arising under this title.

17 “(b) APPLICATION OF JOINT AND SEVERAL LIABIL-
18 ITY.—

19 “(1) IN GENERAL.—A person against whom a
20 judgment is entered in an implied private action
21 arising under this title shall be liable jointly and sev-
22 erally for any recoverable damages on such judg-
23 ment if the person is found to have—

24 “(A) been a primary wrongdoer;

1 “(B) committed knowing securities fraud;

2 or

3 “(C) controlled any primary wrongdoer or
4 person who committed knowing securities fraud.

5 “(2) PRIMARY WRONGDOER.—As used in this
6 subsection—

7 “(A) the term ‘primary wrongdoer’
8 means—

9 “(i) any—

10 “(I) issuer, registrant, purchaser,
11 seller, or underwriter of securities;

12 “(II) marketmaker or specialist
13 in securities; or

14 “(III) clearing agency, securities
15 information processor, or government
16 securities dealer;

17 if such person breached a direct statutory
18 or regulatory obligation or if such person
19 otherwise had a principal role in the con-
20 duct that is the basis for the implied right
21 of action; or

22 “(ii) any person who intentionally ren-
23 dered substantial assistance to the fraudu-
24 lent conduct of any person described in
25 clause (i), with actual knowledge of such

1 person's fraudulent conduct or fraudulent
2 purpose, and with knowledge that such
3 conduct was wrongful; and

4 “(B) a defendant engages in ‘knowing se-
5 curities fraud’ if such defendant—

6 “(i) makes a material representation
7 with actual knowledge that the representa-
8 tion is false, or omits to make a statement
9 with actual knowledge that, as a result of
10 the omission, one of the defendant's mate-
11 rial representations is false and knows that
12 other persons are likely to rely on that
13 misrepresentation or omission, except that
14 reckless conduct by the defendant shall not
15 be construed to constitute ‘knowing securi-
16 ties fraud’; or

17 “(ii) intentionally rendered substantial
18 assistance to the fraudulent conduct of any
19 person described in clause (i), with actual
20 knowledge of such person's fraudulent con-
21 duct or fraudulent purpose, and with
22 knowledge that such conduct was wrongful.

23 “(c) DETERMINATION OF RESPONSIBILITY.—In an
24 implied private action in which more than 1 person con-
25 tributed to a violation of this title, the court shall instruct

1 the jury to answer special interrogatories, or if there is
2 no jury, shall make findings, concerning the degree of re-
3 sponsibility of each person alleged to have caused or con-
4 tributed to the violation of this title, including persons who
5 have entered into settlements with the plaintiff. The inter-
6 rogatories or findings shall specify the amount of damages
7 the plaintiff is entitled to recover and the degree of respon-
8 sibility, measured as a percentage of the total fault of all
9 persons involved in the violation, of each person found to
10 have caused or contributed to the damages incurred by
11 the plaintiff or plaintiffs. In determining the degree of re-
12 sponsibility, the trier of fact shall consider—

13 “(1) the nature of the conduct of each person;
14 and

15 “(2) the nature and extent of the causal rela-
16 tionship between that conduct and the damage
17 claimed by the plaintiff.

18 “(d) APPLICATION OF PROPORTIONATE LIABILITY.—
19 Except as provided in subsection (b), the amount of liabil-
20 ity of a person who is, or may through right of contribu-
21 tion become, liable for damages based on an implied pri-
22 vate action arising under this title shall be determined as
23 follows:

24 “(1) DEGREE OF RESPONSIBILITY.—Except as
25 provided in paragraph (2), each liable party shall

1 only be liable for the portion of the judgment that
2 corresponds to that party's degree of responsibility,
3 as determined under subsection (c).

4 “(2) UNCOLLECTIBLE SHARES.—If, upon mo-
5 tion made not later than 6 months after a final
6 judgment is entered, the court determines that all or
7 part of a defendant's share of the obligation is
8 uncollectible—

9 “(A) the remaining defendants shall be
10 jointly and severally liable for the uncollectible
11 share if the plaintiff establishes that—

12 “(i) the plaintiff is an individual
13 whose recoverable damages under a final
14 judgment are equal to more than 10 per-
15 cent of the plaintiff's net financial worth;
16 and

17 “(ii) the plaintiff's net financial worth
18 is less than \$200,000; and

19 “(B) the amount paid by each of the re-
20 maining defendants to all other plaintiffs shall
21 be, in total, not more than the greater of—

22 “(i) that remaining defendant's per-
23 centage of fault for the uncollectible share;
24 or

25 “(ii) 5 times—

1 “(I) the amount which the de-
2 fendant gained from the conduct that
3 gave rise to its liability; or

4 “(II) if a defendant did not ob-
5 tain a direct financial gain from the
6 conduct that gave rise to the liability
7 and the conduct consisted of the pro-
8 vision of deficient services to an entity
9 involved in the violation, the defend-
10 ant’s gross revenues received for the
11 provision of all services to the other
12 entity involved in the violation during
13 the calendar years in which deficient
14 services were provided.

15 “(3) OVERALL LIMIT.—In no event shall the
16 total payments required pursuant to paragraph (2)
17 exceed the amount of the uncollectible share.

18 “(4) DEFENDANTS SUBJECT TO CONTRIBU-
19 TION.—A defendant whose liability is reallocated
20 pursuant to paragraph (2) shall be subject to con-
21 tribution and to any continuing liability to the plain-
22 tiff on the judgment.

23 “(5) RIGHT OF CONTRIBUTION.—To the extent
24 that a defendant is required to make an additional

1 payment pursuant to paragraph (2), that defendant
2 may recover contribution—

3 “(A) from the defendant originally liable to
4 make the payment;

5 “(B) from any defendant liable jointly and
6 severally pursuant to subsection (b)(1);

7 “(C) from any defendant held proportion-
8 ately liable pursuant to this subsection who is
9 liable to make the same payment and has paid
10 less than his or her proportionate share of that
11 payment; or

12 “(D) from any other person responsible for
13 the conduct giving rise to the payment who
14 would have been liable to make the same pay-
15 ment.

16 “(e) NONDISCLOSURE TO JURY.—The standard for
17 allocation of damages under subsections (b)(1) and (c)
18 and the procedure for reallocation of uncollectible shares
19 under subsection (d)(2) shall not be disclosed to members
20 of the jury.

21 “(f) SETTLEMENT DISCHARGE.—

22 “(1) IN GENERAL.—A defendant who settles an
23 implied private action brought under this title at any
24 time before verdict or judgment shall be discharged
25 from all claims for contribution brought by other

1 persons. Upon entry of the settlement by the court,
2 the court shall enter a bar order constituting the
3 final discharge of all obligations to the plaintiff of
4 the settling defendant arising out of the action. The
5 order shall bar all future claims for contribution or
6 indemnity arising out of the action—

7 “(A) by nonsettling persons against the
8 settling defendant; and

9 “(B) by the settling defendant against any
10 nonsettling defendants.

11 “(2) REDUCTION.—If a person enters into a
12 settlement with the plaintiff prior to verdict or judg-
13 ment, the verdict or judgment shall be reduced by
14 the greater of—

15 “(A) an amount that corresponds to the
16 degree of responsibility of that person; or

17 “(B) the amount paid to the plaintiff by
18 that person.

19 “(g) CONTRIBUTION.—A person who becomes liable
20 for damages in an implied private action arising under this
21 title may recover contribution from any other person who,
22 if joined in the original suit, would have been liable for
23 the same damages. A claim for contribution shall be deter-
24 mined based on the degree of responsibility of the claimant

1 and of each person against whom a claim for contribution
2 is made.

3 “(h) STATUTE OF LIMITATIONS FOR CONTRIBU-
4 TION.—Once judgment has been entered in an implied pri-
5 vate action arising under this title determining liability,
6 an action for contribution must be brought not later than
7 6 months after the entry of a final, nonappealable judg-
8 ment in the action, except that an action for contribution
9 brought by a defendant who was required to make an ad-
10 ditional payment pursuant to subsection (d)(2) may be
11 brought not later than 6 months after the date on which
12 such payment was made.”.

13 (b) EFFECTIVE DATE.—Section 41 of the Securities
14 Exchange Act of 1934, as added by subsection (a), shall
15 only apply to implied private actions commenced after the
16 date of enactment of this Act.

17 **SEC. 7. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
18 **MENTS.**

19 (a) CONSIDERATION OF REGULATORY OR LEGISLA-
20 TIVE CHANGES.—In consultation with investors and issu-
21 ers of securities, the Securities and Exchange Commission
22 shall consider adopting or amending its rules and regula-
23 tions, or making legislative recommendations, concern-
24 ing—

1 (1) criteria that the Commission finds appro-
2 priate for the protection of investors by which for-
3 ward-looking statements concerning the future eco-
4 nomic performance of an issuer of securities reg-
5 istered under section 12 of the Securities Exchange
6 Act of 1934 will be deemed not to be in violation of
7 section 10(b) of that Act; and

8 (2) procedures by which courts shall timely dis-
9 miss claims against such issuers of securities based
10 on such forward-looking statements if such state-
11 ments are in accordance with any criteria under
12 paragraph (1).

13 (b) COMMISSION CONSIDERATIONS.—In developing
14 rules or legislative recommendations in accordance with
15 subsection (a), the Commission shall consider—

16 (1) appropriate limits to liability for forward-
17 looking statements;

18 (2) procedures for making a summary deter-
19 mination of the applicability of any Commission rule
20 for forward-looking statements early in a judicial
21 proceeding to limit protracted litigation and expan-
22 sive discovery;

23 (3) incorporating and reflecting the scienter re-
24 quirements applicable to implied private actions
25 under section 10(b); and

1 section (b) may be extended, or a stay of the proceedings
2 may be denied, if the court finds that—

3 “(1) the defendant making a motion described
4 in subsection (b) engaged in dilatory or obstructive
5 conduct in taking or opposing any discovery; or

6 “(2) a stay of discovery pending a ruling on a
7 motion under subsection (b) would be substantially
8 unfair to the plaintiff or other parties to the ac-
9 tion.”.

10 **SEC. 8. FRAUD DETECTION AND DISCLOSURE.**

11 (a) IN GENERAL.—The Securities Exchange Act of
12 1934 (15 U.S.C. 78a et seq.) is amended by inserting im-
13 mediately after section 10 the following new section:

14 **“SEC. 10A. AUDIT REQUIREMENTS.**

15 “(a) IN GENERAL.—Each audit required pursuant to
16 this title of an issuer’s financial statements by an inde-
17 pendent public accountant shall include, in accordance
18 with generally accepted auditing standards, as may be
19 modified or supplemented from time to time by the Com-
20 mission—

21 “(1) procedures designed to provide reasonable
22 assurance of detecting illegal acts that would have a
23 direct and material effect on the determination of fi-
24 nancial statement amounts;

1 “(2) procedures designed to identify related
2 party transactions which are material to the finan-
3 cial statements or otherwise require disclosure there-
4 in; and

5 “(3) an evaluation of whether there is substan-
6 tial doubt about the issuer’s ability to continue as a
7 going concern during the ensuing fiscal year.

8 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
9 ERIES.—

10 “(1) INVESTIGATION AND REPORT TO MANAGE-
11 MENT.—If, in the course of conducting an audit pur-
12 suant to this title to which subsection (a) applies,
13 the independent public accountant detects or other-
14 wise becomes aware of information indicating that
15 an illegal act (whether or not perceived to have a
16 material effect on the issuer’s financial statements)
17 has or may have occurred, the accountant shall, in
18 accordance with generally accepted auditing stand-
19 ards, as may be modified or supplemented from time
20 to time by the Commission—

21 “(A)(i) determine whether it is likely that
22 an illegal act has occurred; and

23 “(ii) if so, determine and consider the pos-
24 sible effect of the illegal act on the financial
25 statements of the issuer, including any contin-

1 gent monetary effects, such as fines, penalties,
2 and damages; and

3 “(B) as soon as practicable, inform the ap-
4 propriate level of the issuer’s management and
5 assure that the issuer’s audit committee, or the
6 issuer’s board of directors in the absence of
7 such a committee, is adequately informed with
8 respect to illegal acts that have been detected or
9 have otherwise come to the attention of such
10 accountant in the course of the audit, unless
11 the illegal act is clearly inconsequential.

12 “(2) RESPONSE TO FAILURE TO TAKE REME-
13 DIAL ACTION.—If, having first assured itself that
14 the audit committee of the board of directors of the
15 issuer or the board (in the absence of an audit com-
16 mittee) is adequately informed with respect to illegal
17 acts that have been detected or have otherwise come
18 to the accountant’s attention in the course of such
19 accountant’s audit, the independent public account-
20 ant concludes that—

21 “(A) the illegal act has a material effect on
22 the financial statements of the issuer;

23 “(B) the senior management has not
24 taken, and the board of directors has not
25 caused senior management to take, timely and

1 appropriate remedial actions with respect to the
2 illegal act; and

3 “(C) the failure to take remedial action is
4 reasonably expected to warrant departure from
5 a standard auditor’s report, when made, or
6 warrant resignation from the audit engagement;
7 the independent public accountant shall, as soon as
8 practicable, directly report its conclusions to the
9 board of directors.

10 “(3) NOTICE TO COMMISSION; RESPONSE TO
11 FAILURE TO NOTIFY.—An issuer whose board of di-
12 rectors receives a report under paragraph (2) shall
13 inform the Commission by notice not later than 1
14 business day after the receipt of such report and
15 shall furnish the independent public accountant
16 making such report with a copy of the notice fur-
17 nished to the Commission. If the independent public
18 accountant fails to receive a copy of the notice be-
19 fore the expiration of the required 1-business-day pe-
20 riod, the independent public accountant shall—

21 “(A) resign from the engagement; or

22 “(B) furnish to the Commission a copy of
23 its report (or the documentation of any oral re-
24 port given) not later than 1 business day follow-
25 ing such failure to receive notice.

1 “(4) REPORT AFTER RESIGNATION.—If an
2 independent public accountant resigns from an en-
3 gagement under paragraph (3)(A), the accountant
4 shall, not later than 1 business day following the
5 failure by the issuer to notify the Commission under
6 paragraph (3), furnish to the Commission a copy of
7 the accountant’s report (or the documentation of
8 any oral report given).

9 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
10 pendent public accountant shall be liable in a private ac-
11 tion for any finding, conclusion, or statement expressed
12 in a report made pursuant to paragraph (3) or (4) of sub-
13 section (b), including any rules promulgated pursuant
14 thereto.

15 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
16 CEEDINGS.—If the Commission finds, after notice and op-
17 portunity for hearing in a proceeding instituted pursuant
18 to section 21C, that an independent public accountant has
19 willfully violated paragraph (3) or (4) of subsection (b),
20 the Commission may, in addition to entering an order
21 under section 21C, impose a civil penalty against the inde-
22 pendent public accountant and any other person that the
23 Commission finds was a cause of such violation. The deter-
24 mination to impose a civil penalty and the amount of the

1 penalty shall be governed by the standards set forth in
2 section 21B.

3 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
4 cept as provided in subsection (d), nothing in this section
5 shall be held to limit or otherwise affect the authority of
6 the Commission under this title.

7 “(f) DEFINITION.—As used in this section, the term
8 ‘illegal act’ means an act or omission that violates any law,
9 or any rule or regulation having the force of law.”.

10 (b) EFFECTIVE DATES.—With respect to any reg-
11 istrant that is required to file selected quarterly financial
12 data pursuant to item 302(a) of Regulation S-K of the
13 Securities and Exchange Commission (17 CFR
14 229.302(a)), the amendments made by subsection (a) shall
15 apply to any annual report for any period beginning on
16 or after January 1, 1995. With respect to any other reg-
17 istrant, the amendment shall apply for any period begin-
18 ning on or after January 1, 1996.

19 **SEC. 9. AMENDMENT TO RACKETEER INFLUENCED AND**
20 **CORRUPT ORGANIZATIONS ACT.**

21 Section 1964(c) of title 18, United States Code, is
22 amended by inserting “, except that no person may bring
23 an action under this provision if the racketeering activity,

1 as defined in section 1961(1)(D), involves fraud in the sale
2 of securities” before the period.

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