

Calendar No. 128

104TH CONGRESS
1ST SESSION

S. 240

[Report No. 104-98]

A BILL

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

JUNE 19, 1995

Reported with an amendment

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1ST SESSION**S. 240****[Report No. 104-98]**

To amend the Securities Exchange Act of 1934 to establish a filing deadline and 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 SENATE OF THE UNITED STATES

JANUARY 18 (legislative day, JANUARY 10), 1995

Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, Mr. PELL, Mr. McCONNELL, Mr. DEWINE, Mr. BROWN, Mr. ROCKEFELLER, Mrs. KASSEBAUM, Mr. INHOFE, Mr. COCHRAN, Mr. LUGAR, Mr. COATS, Mr. SIMPSON, Mr. NICKLES, Mr. THURMOND, Mr. HATFIELD, Mr. KEMPTHORNE, Mr. SMITH, Mr. FRIST, Mr. GRAMS, Mr. GREGG, Mr. WARNER, Mr. CRAIG, Mr. HARKIN, Mr. GRASSLEY, Mr. MURKOWSKI, Mr. ABRAHAM, Mr. BINGAMAN, Mr. COHEN, Mr. BAUCUS, Mr. KERRY, Mr. D'AMATO, and Mr. FORD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

JUNE 19, 1995

Reported by Mr. D'AMATO, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Securities Exchange Act of 1934 to establish

a filing deadline and 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 “Private Securities Litigation Reform 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.

TITLE I—PRIVATE SECURITIES LITIGATION

Sec. 101. Elimination of certain abusive practices.

Sec. 102. Alternative dispute resolution procedure; time limitation on private rights of action.

Sec. 103. Plaintiff steering committees.

Sec. 104. Requirements for securities fraud actions.

Sec. 105. Amendment to Racketeer Influenced and Corrupt Organizations Act.

TITLE II—FINANCIAL DISCLOSURE

Sec. 201. Safe harbor for forward-looking statements.

Sec. 202. Fraud detection and disclosure.

Sec. 203. Proportionate liability and joint and several liability.

Sec. 204. Public Auditing Self-Disciplinary Board.

8 **TITLE I—PRIVATE SECURITIES**
 9 **LITIGATION**

10 **SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.**

11 (a) **RECEIPT FOR REFERRAL FEES.**—Section 15(c)
 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))
 13 is amended by adding at the end the following new para-
 14 graph:

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

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

12 ~~“(4) PROHIBITION ON ATTORNEYS’ FEES PAID~~
13 ~~FROM COMMISSION DISGORGEMENT FUNDS.—Except~~
14 ~~as otherwise ordered by the court, funds disgorged~~
15 ~~as the result of an action brought by the Commis-~~
16 ~~sion in Federal court, or of any Commission admin-~~
17 ~~istrative action, shall not be distributed as payment~~
18 ~~for attorneys’ fees or expenses incurred by private~~
19 ~~parties seeking distribution of the disgorged funds.”.~~

20 ~~(c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS~~
21 ~~ACTIONS.—Section 21 of the Securities Exchange Act of~~
22 ~~1934 (15 U.S.C. 78u) is amended by adding at the end~~
23 ~~the following new subsections:~~

24 ~~“(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS~~
25 ~~ACTIONS.—In an implied private action arising under this~~

1 title that is certified as a class action pursuant to the Fed-
2 eral Rules of Civil Procedure, the share of any final judg-
3 ment or of any settlement that is awarded to class plain-
4 tiffs serving as the representative parties shall be cal-
5 culated in the same manner as the shares of the final judg-
6 ment or settlement awarded to all other members of the
7 class. Nothing in this subsection shall be construed to
8 limit the award to any representative parties of reasonable
9 compensation, costs, and expenses (including lost wages)
10 relating to the representation of the class.

11 “(j) CONFLICTS OF INTEREST.—In an implied pri-
12 vate action arising under this title that is certified as a
13 class action pursuant to the Federal Rules of Civil Proce-
14 dure, if a party is represented by an attorney who directly
15 owns or otherwise has a beneficial interest in the securities
16 that are the subject of the litigation, the court shall make
17 a determination of whether such interest constitutes a con-
18 flict of interest sufficient to disqualify the attorney from
19 representing the party.

20 “(k) RESTRICTIONS ON SETTLEMENTS UNDER
21 SEAL.—In an implied private action arising under this
22 title that is certified as a class action pursuant to the Fed-
23 eral Rules of Civil Procedure, the terms and provisions
24 of any settlement agreement between any of the parties
25 shall not be filed under seal, except that on motion of any

1 of the parties to the settlement, the court may order filing
2 under seal for those portions of a settlement agreement
3 as to which good cause is shown for such filing under seal.
4 Good cause shall only exist if publication of a term or pro-
5 vision of a settlement agreement would cause direct and
6 substantial harm to any person.

7 “(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS’
8 FEES FROM SETTLEMENT FUNDS.—In an implied private
9 action arising under this title that is certified as a class
10 action pursuant to the Federal Rules of Civil Procedure,
11 attorneys’ fees awarded by the court to counsel for the
12 class shall be determined as a percentage of the amount
13 of damages and prejudgment interest actually paid to the
14 class as a result of the attorneys’ efforts. In no event shall
15 the amount awarded to counsel for the class exceed a rea-
16 sonable percentage of the amount recovered by the class
17 plus reasonable expenses.

18 “(m) DISCLOSURE OF SETTLEMENT TERMS TO
19 CLASS MEMBERS.—In an implied private action arising
20 under this title that is certified as a class action pursuant
21 to the Federal Rules of Civil Procedure, a proposed settle-
22 ment agreement that is published or otherwise dissemi-
23 nated to the class shall include the following statements,
24 which shall not be admissible for purposes of any Federal
25 or State judicial or administrative proceeding:

1 “(1) STATEMENT OF POTENTIAL OUTCOME OF
2 CASE.—

3 “(A) AGREEMENT ON AMOUNT OF DAM-
4 AGES AND LIKELIHOOD OF PREVAILING.—If the
5 settling parties 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 and the likelihood that the plaintiff
9 would prevail—

10 “(i) a statement concerning the
11 amount of such potential damages; and

12 “(ii) a statement concerning the prob-
13 ability that the plaintiff would prevail on
14 the claims alleged under this title and a
15 brief explanation of the reasons for that
16 conclusion.

17 “(B) DISAGREEMENT ON AMOUNT OF
18 DAMAGES OR LIKELIHOOD OF PREVAILING.—If
19 the parties do not agree on the amount of dam-
20 ages per share that would be recoverable if the
21 plaintiff prevailed on each claim alleged under
22 this title or on the likelihood that the plaintiff
23 would prevail on those claims, or both, a state-
24 ment from each settling party concerning the
25 issue or issues on which the parties disagree.

1 ~~“(C) INADMISSIBILITY FOR CERTAIN PUR-~~
2 ~~POSES.—~~Statements made in accordance with
3 ~~subparagraphs (A) and (B) shall not be admis-~~
4 ~~sible for purposes of any Federal or State judi-~~
5 ~~cial or administrative proceeding.~~

6 ~~“(2) STATEMENT OF ATTORNEYS’ FEES OR~~
7 ~~COSTS SOUGHT.—~~If any of the settling parties or
8 ~~their counsel intend to apply to the court for an~~
9 ~~award of attorneys’ fees or costs from any fund es-~~
10 ~~tablished as part of the settlement, a statement indi-~~
11 ~~cating which parties or counsel intend to make such~~
12 ~~an application, the amount of fees and costs that~~
13 ~~will be sought, and a brief explanation of the basis~~
14 ~~for the application.~~

15 ~~“(3) IDENTIFICATION OF REPRESENTATIVES.—~~
16 ~~The name, telephone number, and address of one or~~
17 ~~more representatives of counsel for the plaintiff class~~
18 ~~who will be reasonably available to answer questions~~
19 ~~from class members concerning any matter con-~~
20 ~~tained in any notice of settlement published or oth-~~
21 ~~erwise disseminated to class members.~~

22 ~~“(4) OTHER INFORMATION.—~~Such other infor-
23 ~~mation as may be required by the court, or by any~~
24 ~~guardian ad litem or plaintiff steering committee ap-~~
25 ~~pointed by the court pursuant to section 38.~~

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

8 “(o) NAMED PLAINTIFF THRESHOLD.—In an im-
 9 plied private action arising under this title, in order for
 10 a plaintiff or plaintiffs to obtain certification as represent-
 11 atives of a class of investors pursuant to the Federal Rules
 12 of Civil Procedure, the plaintiff or plaintiffs must show
 13 that they owned, in the aggregate, during the time period
 14 in which violations of this title are alleged to have oc-
 15 curred, not less than the lesser of—

16 “(1) 1 percent of the securities which are the
 17 subject of the litigation; or

18 “(2) \$10,000 (in market value) of such securi-
 19 ties.”.

20 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
 21 **DURE; TIME LIMITATION ON PRIVATE**
 22 **RIGHTS OF ACTION.**

23 “(a) RECOVERY OF COSTS AND ATTORNEYS’ FEES.—
 24 The Securities Exchange Act of 1934 (15 U.S.C. 78a et

1 seq.) is amended by adding at the end the following new
2 section:

3 **“SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
4 **DURE.**

5 “(a) IN GENERAL.—

6 “(1) OFFER TO PROCEED.—Except as provided
7 in paragraph (2), in an implied private action aris-
8 ing under this title, any party may, before the expi-
9 ration of the period permitted for answering the
10 complaint, deliver to all other parties an offer to
11 proceed pursuant to any voluntary, nonbinding alter-
12 native dispute resolution procedure established or
13 recognized under the rules of the court in which the
14 action is maintained.

15 “(2) PLAINTIFF CLASS ACTIONS.—In an im-
16 plied private action under this title which is brought
17 as a plaintiff class action, an offer under paragraph
18 (1) shall be made not later than 30 days after a
19 guardian ad litem or plaintiff steering committee is
20 appointed by the court in accordance with section
21 38.

22 “(3) RESPONSE.—The recipient of an offer
23 under paragraph (1) or (2) shall file a written notice
24 of acceptance or rejection of the offer with the court
25 not later than 10 days after receipt of the offer. The

1 court may, upon motion by any party made prior to
2 the expiration of such period, extend the period for
3 not more than 90 additional days, during which time
4 discovery may be permitted by the court.

5 ~~“(4) SELECTION OF TYPE OF ALTERNATIVE~~
6 ~~DISPUTE RESOLUTION.—For purposes of paragraphs~~
7 ~~(1) and (2), if the rules of the court establish or rec-~~
8 ~~ognize more than 1 type of alternative dispute reso-~~
9 ~~lution, the parties may stipulate as to the type of al-~~
10 ~~ternative dispute resolution to be applied. If the par-~~
11 ~~ties are unable to so stipulate, the court shall issue~~
12 ~~an order not later than 20 days after the date on~~
13 ~~which the parties agree to the use of alternative dis-~~
14 ~~pute resolution, specifying the type of alternative~~
15 ~~dispute resolution to be applied.~~

16 ~~“(5) SANCTIONS FOR DILATORY OR OBSTRUC-~~
17 ~~TIVE CONDUCT.—If the court finds that a party has~~
18 ~~engaged in dilatory or obstructive conduct in taking~~
19 ~~or opposing any discovery allowed during the re-~~
20 ~~sponse period described in paragraph (3), the court~~
21 ~~may—~~

22 ~~“(A) extend the period to permit further~~
23 ~~discovery from that party for a suitable period;~~
24 ~~and~~

1 ~~“(B) deny that party the opportunity to~~
2 ~~conduct further discovery prior to the expiration~~
3 ~~of the period.~~

4 ~~“(b) PENALTY FOR UNREASONABLE LITIGATION PO-~~
5 ~~SITION.—~~

6 ~~“(1) AWARD OF COSTS.—In an implied private~~
7 ~~action arising under this title, upon motion of the~~
8 ~~prevailing party made prior to final judgment, the~~
9 ~~court shall award costs, including reasonable attor-~~
10 ~~neys’ fees, against a party or parties or their attor-~~
11 ~~neys, if—~~

12 ~~“(A) the party unreasonably refuses to~~
13 ~~proceed pursuant to an alternative dispute reso-~~
14 ~~lution procedure, or refuses to accept the result~~
15 ~~of an alternative dispute resolution procedure;~~

16 ~~“(B) final judgment is entered against the~~
17 ~~party; and~~

18 ~~“(C) the party asserted a claim or defense~~
19 ~~in the action which was not substantially justi-~~
20 ~~fied.~~

21 ~~“(2) DETERMINATION OF JUSTIFICATION.—For~~
22 ~~purposes of paragraph (1)(C), whether a position is~~
23 ~~‘substantially justified’ shall be determined in the~~
24 ~~same manner as under section 2412(d)(1)(B) of title~~
25 ~~28, United States Code.~~

1 “(3) LIMITED USE.—Fees and costs awarded
2 under this paragraph shall not be applied to any
3 named plaintiff in any action certified as a class ac-
4 tion under the Federal Rules of Civil Procedure if
5 such plaintiff has never owned more than
6 \$1,000,000 of the securities which are the subject of
7 the litigation.”.

8 (b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE
9 RIGHTS OF ACTION.—The Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.) is amended by adding at
11 the end the following new section:

12 “**SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
13 **RIGHTS OF ACTION.**

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

17 “(1) 5 years after the date on which the alleged
18 violation occurred; or

19 “(2) 2 years after the date on which the alleged
20 violation was discovered or should have been discov-
21 ered through the exercise of reasonable diligence.

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

1 **SEC. 103. PLAINTIFF STEERING COMMITTEES.**

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

5 **“SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEER-**
6 **ING COMMITTEES.**

7 “(a) GUARDIAN AD LITEM.—Except as provided in
8 subsection (b), not later than 10 days after certifying a
9 plaintiff class in an implied private action brought under
10 this title, the court shall appoint a guardian ad litem for
11 the plaintiff class from a list or lists provided by the par-
12 ties or their counsel. The guardian ad litem shall direct
13 counsel for the class and perform such other functions as
14 the court may specify. The court shall apportion the rea-
15 sonable fees and expenses of the guardian ad litem among
16 the parties. Court appointment of a guardian ad litem
17 shall not be subject to interlocutory review.

18 “(b) CLASS ACTION STEERING COMMITTEE.—Sub-
19 section (a) shall not apply if, not later than 10 days after
20 certifying a plaintiff class, on its own motion or on motion
21 of a member of the class, the court appoints a committee
22 of class members to direct counsel for the class (hereafter
23 in this section referred to as the ‘plaintiff steering commit-
24 tee’) and to perform such other functions as the court may
25 specify. Court appointment of a plaintiff steering commit-
26 tee shall not be subject to interlocutory review.

1 ~~“(c) MEMBERSHIP OF PLAINTIFF STEERING COM-~~
2 ~~MITTEE.—~~

3 ~~“(1) QUALIFICATIONS.—~~

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

8 ~~“(B) OWNERSHIP INTERESTS.—Members~~
9 ~~of the plaintiff steering committee shall have~~
10 ~~cumulatively held during the class period not~~
11 ~~less than—~~

12 ~~“(i) the lesser of 5 percent of the se-~~
13 ~~curities which are the subject matter of the~~
14 ~~litigation or securities which are the sub-~~
15 ~~ject matter of the litigation with a market~~
16 ~~value of \$10,000,000; or~~

17 ~~“(ii) such smaller percentage or dollar~~
18 ~~amount as the court finds appropriate~~
19 ~~under the circumstances.~~

20 ~~“(2) NAMED PLAINTIFFS.—Class members who~~
21 ~~are named plaintiffs in the litigation may serve on~~
22 ~~the plaintiff steering committee, but shall not com-~~
23 ~~prise a majority of the committee.~~

24 ~~“(3) NONCOMPENSATION OF MEMBERS.—Mem-~~
25 ~~bers of the plaintiff steering committee shall serve~~

1 without compensation, except that any member may
2 apply to the court for reimbursement of reasonable
3 out-of-pocket expenses from any common fund es-
4 tablished for the class.

5 “(4) MEETINGS.—The plaintiff steering com-
6 mittee shall conduct its business at one or more pre-
7 viously scheduled meetings of the committee at
8 which a majority of its members are present in per-
9 son or by electronic communication. The plaintiff
10 steering committee shall decide all matters within its
11 authority by a majority vote of all members, except
12 that the committee may determine that decisions
13 other than to accept or reject a settlement offer or
14 to employ or dismiss counsel for the class may be
15 delegated to one or more members of the committee,
16 or may be voted upon by committee members seria-
17 tim, without a meeting.

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

23 “(d) FUNCTIONS OF GUARDIAN AD LITEM AND
24 PLAINTIFF STEERING COMMITTEE.—

1 “(1) ~~DIRECT COUNSEL.~~—The authority of the
2 guardian ad litem or the plaintiff steering committee
3 to direct counsel for the class shall include all pow-
4 ers normally permitted to an attorney’s client in liti-
5 gation, including the authority to retain or dismiss
6 counsel and to reject offers of settlement, and the
7 preliminary authority to accept an offer of settle-
8 ment, subject to the restrictions specified in para-
9 graph (2). Dismissal of counsel other than for cause
10 shall not limit the ability of counsel to enforce any
11 contractual fee agreement or to apply to the court
12 for a fee award from any common fund established
13 for the class.

14 “(2) ~~SETTLEMENT OFFERS.~~—If a guardian ad
15 litem or a plaintiff steering committee gives prelimi-
16 nary approval to an offer of settlement, the guardian
17 ad litem or the plaintiff steering committee may seek
18 approval of the offer by a majority of class members
19 if the committee determines that the benefit of seek-
20 ing such approval outweighs the cost of soliciting the
21 approval of class members.

22 “(e) ~~IMMUNITY FROM LIABILITY; REMOVAL.~~—Any
23 person serving as a guardian ad litem or as a member
24 of a plaintiff steering committee shall be immune from any
25 liability arising from such service. The court may remove

1 a guardian ad litem or a member of a plaintiff steering
2 committee for good cause shown.

3 ~~“(f) EFFECT ON OTHER LAW.—~~This section does not
4 affect any other provision of law concerning class actions
5 or the authority of the court to give final approval to any
6 offer of settlement.”.

7 **SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD AC-**
8 **TIONS.**

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

12 **“SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD AC-**
13 **TIONS.**

14 ~~“(a) INTENT.—~~In an implied private action arising
15 under this title in which the plaintiff may recover money
16 damages from a defendant only on proof that the defend-
17 ant acted with some level of intent, the plaintiff’s com-
18 plaint shall allege specific facts demonstrating the state
19 of mind of each defendant at the time the alleged violation
20 occurred.

21 ~~“(b) MISLEADING STATEMENTS AND OMISSIONS.—~~
22 In an implied action arising under this title in which the
23 plaintiff alleges that the defendant—

24 ~~“(1) made an untrue statement of a material~~
25 ~~fact; or~~

1 “(2) omitted to state a material fact necessary
2 in order to make the statements made, in the light
3 of the circumstances in which they were made, not
4 misleading;

5 the plaintiff shall specify each statement alleged to have
6 been misleading, the reason or reasons why the statement
7 is misleading, and, if an allegation regarding the state-
8 ment or omission is made on information and belief, the
9 plaintiff shall set forth all information on which that belief
10 is formed.

11 “(c) BURDEN OF PROOF.—In an implied private ac-
12 tion arising under this title based on a material
13 misstatement or omission concerning a security, and in
14 which the plaintiff claims to have bought or sold the secu-
15 rity based on a reasonable belief that the market value
16 of the security reflected all publicly available information,
17 the plaintiff shall have the burden of proving that the
18 misstatement or omission caused any loss incurred by the
19 plaintiff.

20 “(d) DAMAGES.—In an implied private action arising
21 under this title based on a material misstatement or omis-
22 sion concerning a security, and in which the plaintiff
23 claims to have bought or sold the security based on a rea-
24 sonable belief that the market value of the security re-

1 flected all publicly available information, the plaintiff's
2 damages shall not exceed the lesser of—

3 “(1) the difference between the price paid by
4 the plaintiff for the security and the market value of
5 the security immediately after dissemination to the
6 market of information which corrects the
7 misstatement or omission; and

8 “(2) the difference between the price paid by
9 the plaintiff for the security and the price at which
10 the plaintiff sold the security after dissemination of
11 information correcting the misstatement or omis-
12 sion.”.

13 **SEC. 105. AMENDMENT TO RACKETEER INFLUENCED AND**
14 **CORRUPT ORGANIZATIONS ACT.**

15 Section 1964(c) of title 18, United States Code, is
16 amended by inserting “, except that no person may bring
17 an action under this provision if the racketeering activity,
18 as defined in section 1961(1)(D), involves fraud in the sale
19 of securities” before the period.

20 **TITLE II—FINANCIAL**
21 **DISCLOSURE**

22 **SEC. 201. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
23 **MENTS.**

24 (a) **CONSIDERATION OF REGULATORY OR LEGISLA-**
25 **TIVE CHANGES.**—In consultation with investors and issu-

1 ers of securities, the Securities and Exchange Commission
2 shall consider adopting or amending its rules and regula-
3 tions, or making legislative recommendations, concern-
4 ing—

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

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

17 (b) COMMISSION CONSIDERATIONS.—In developing
18 rules or legislative recommendations in accordance with
19 subsection (a), the Commission shall consider—

20 (1) appropriate limits to liability for forward-
21 looking statements;

22 (2) procedures for making a summary deter-
23 mination of the applicability of any Commission rule
24 for forward-looking statements early in a judicial

1 proceeding to limit protracted litigation and expan-
2 sive discovery;

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

6 (4) providing clear guidance to issuers of secu-
7 rities and the judiciary.

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

11 **“SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-**
12 **LOOKING STATEMENTS.**

13 “(a) IN GENERAL.—In any implied private action
14 arising under this title that alleges that a forward-looking
15 statement concerning the future economic performance of
16 an issuer registered under section 12 was materially false
17 or misleading, if a party making a motion in accordance
18 with subsection (b) requests a stay of discovery concerning
19 the claims or defenses of that party, the court shall grant
20 such a stay until it has ruled on any such motion.

21 “(b) SUMMARY JUDGMENT MOTIONS.—Subsection
22 (a) shall apply to any motion for summary judgment made
23 by a defendant asserting that the forward-looking state-
24 ment was within the coverage of any rule which the Com-
25 mission may have adopted concerning such predictive

1 statements, if such motion is made not less than 60 days
2 after the plaintiff commences discovery in the action.

3 ~~“(c) DILATORY CONDUCT; DUPLICATIVE DISCOV-~~
4 ~~ERY.—Notwithstanding subsection (a) or (b), the time~~
5 ~~permitted for a plaintiff to conduct discovery under sub-~~
6 ~~section (b) may be extended, or a stay of the proceedings~~
7 ~~may be denied, if the court finds that—~~

8 ~~“(1) the defendant making a motion described~~
9 ~~in subsection (b) engaged in dilatory or obstructive~~
10 ~~conduct in taking or opposing any discovery; or~~

11 ~~“(2) a stay of discovery pending a ruling on a~~
12 ~~motion under subsection (b) would be substantially~~
13 ~~unfair to the plaintiff or other parties to the ac-~~
14 ~~tion.”.~~

15 **SEC. 202. FRAUD DETECTION AND DISCLOSURE.**

16 (a) ~~IN GENERAL.—The Securities Exchange Act of~~
17 ~~1934 (15 U.S.C. 78a et seq.) is amended by inserting im-~~
18 ~~mediately after section 10 the following new section:~~

19 **“SEC. 10A. AUDIT REQUIREMENTS.**

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

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

5 “(2) procedures designed to identify related
6 party transactions which are material to the finan-
7 cial statements or otherwise require disclosure there-
8 in; and

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

12 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
13 ERIES.—

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

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

3 “(ii) if so, determine and consider the pos-
4 sible effect of the illegal act on the financial
5 statements of the issuer, including any contin-
6 gent monetary effects, such as fines, penalties,
7 and damages; and

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

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

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

3 “(B) the senior management has not
4 taken, and the board of directors has not
5 caused senior management to take, timely and
6 appropriate remedial actions with respect to the
7 illegal act; and

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

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

1 “(A) resign from the engagement; or

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

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

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

20 “~~(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-~~
21 ~~CEEDINGS.~~—If the Commission finds, after notice and op-
22 portunity for hearing in a proceeding instituted pursuant
23 to section 21C, that an independent public accountant has
24 willfully violated paragraph (3) or (4) of subsection (b),
25 the Commission may, in addition to entering an order

1 under section 21C, impose a civil penalty against the inde-
2 pendent public accountant and any other person that the
3 Commission finds was a cause of such violation. The deter-
4 mination to impose a civil penalty and the amount of the
5 penalty shall be governed by the standards set forth in
6 section 21B.

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

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

14 (b) EFFECTIVE DATES.—With respect to any reg-
15 istrant that is required to file selected quarterly financial
16 data pursuant to item 302(a) of Regulation S-K of the
17 Securities and Exchange Commission (17 CFR
18 229.302(a)), the amendments made by subsection (a) shall
19 apply to any annual report for any period beginning on
20 or after January 1, 1994. With respect to any other reg-
21 istrant, the amendment shall apply for any period begin-
22 ning on or after January 1, 1995.

1 **SEC. 203. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
 2 **ERAL LIABILITY.**

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

6 **“SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
 7 **ERAL LIABILITY IN IMPLIED ACTIONS.**

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

14 “(b) APPLICATION OF JOINT AND SEVERAL LIABIL-
 15 ITY.—

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

21 “(A) been a primary wrongdoer;

22 “(B) committed knowing securities fraud;

23 or

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

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

3 “(A) the term ‘primary wrongdoer’
4 means—

5 “(i) any—

6 “(I) issuer, registrant, purchaser,
7 seller, or underwriter of securities;

8 “(II) marketmaker or specialist
9 in securities; or

10 “(III) clearing agency, securities
11 information processor, or government
12 securities dealer;

13 if such person breached a direct statutory
14 or regulatory obligation or if such person
15 otherwise had a principal role in the con-
16 duct that is the basis for the implied right
17 of action; or

18 “(ii) any person who intentionally ren-
19 dered substantial assistance to the fraudu-
20 lent conduct of any person described in
21 clause (i), with actual knowledge of such
22 person’s fraudulent conduct or fraudulent
23 purpose, and with knowledge that such
24 conduct was wrongful; and

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

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

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

20 “(c) DETERMINATION OF RESPONSIBILITY.—In an
21 implied private action in which more than 1 person con-
22 tributed to a violation of this title, the court shall instruct
23 the jury to answer special interrogatories, or if there is
24 no jury, shall make findings, concerning the degree of re-
25 sponsibility of each person alleged to have caused or con-

1 tributed to the violation of this title, including persons who
2 have entered into settlements with the plaintiff. The inter-
3 rogatories or findings shall specify the amount of damages
4 the plaintiff is entitled to recover and the degree of respon-
5 sibility, measured as a percentage of the total fault of all
6 persons involved in the violation, of each person found to
7 have caused or contributed to the damages incurred by
8 the plaintiff or plaintiffs. In determining the degree of re-
9 sponsibility, the trier of fact shall consider—

10 “(1) the nature of the conduct of each person;

11 and

12 “(2) the nature and extent of the causal rela-
13 tionship between that conduct and the damage
14 claimed by the plaintiff.

15 “(d) APPLICATION OF PROPORTIONATE LIABILITY.—

16 Except as provided in subsection (b), the amount of liabil-
17 ity of a person who is, or may through right of contribu-
18 tion become, liable for damages based on an implied pri-
19 vate action arising under this title shall be determined as
20 follows:

21 “(1) DEGREE OF RESPONSIBILITY.—Except as
22 provided in paragraph (2), each liable party shall
23 only be liable for the portion of the judgment that
24 corresponds to that party’s degree of responsibility,
25 as determined under subsection (c).

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

6 “(A) the remaining defendants shall be
7 jointly and severally liable for the uncollectible
8 share if the plaintiff establishes that—

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

14 “(ii) the plaintiff’s net financial worth
15 is less than \$200,000; and

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

19 “(i) that remaining defendant’s per-
20 centage of fault for the uncollectible share;
21 or

22 “(ii) 5 times—

23 “(I) the amount which the de-
24 fendant gained from the conduct that
25 gave rise to its liability; or

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

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

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

20 “(5) RIGHT OF CONTRIBUTION.—To the extent
21 that a defendant is required to make an additional
22 payment pursuant to paragraph (2), that defendant
23 may recover contribution—

24 “(A) from the defendant originally liable to
25 make the payment;

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

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

8 ~~“(D) from any other person responsible for~~
9 ~~the conduct giving rise to the payment who~~
10 ~~would have been liable to make the same pay-~~
11 ~~ment.~~

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

17 ~~“(f) SETTLEMENT DISCHARGE.—~~

18 ~~“(1) IN GENERAL.—A defendant who settles an~~
19 ~~implied private action brought under this title at any~~
20 ~~time before verdict or judgment shall be discharged~~
21 ~~from all claims for contribution brought by other~~
22 ~~persons. Upon entry of the settlement by the court,~~
23 ~~the court shall enter a bar order constituting the~~
24 ~~final discharge of all obligations to the plaintiff of~~
25 ~~the settling defendant arising out of the action. The~~

1 order shall bar all future claims for contribution or
2 indemnity arising out of the action—

3 “(A) by nonsettling persons against the
4 settling defendant; and

5 “(B) by the settling defendant against any
6 nonsettling defendants.

7 “(2) REDUCTION.—If a person enters into a
8 settlement with the plaintiff prior to verdict or judg-
9 ment, the verdict or judgment shall be reduced by
10 the greater of—

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

13 “(B) the amount paid to the plaintiff by
14 that person.

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

23 “(h) STATUTE OF LIMITATIONS FOR CONTRIBU-
24 TION.—Once judgment has been entered in an implied pri-
25 vate action arising under this title determining liability,

1 an action for contribution must be brought not later than
2 6 months after the entry of a final, nonappealable judg-
3 ment in the action, except that an action for contribution
4 brought by a defendant who was required to make an ad-
5 ditional payment pursuant to subsection (d)(2) may be
6 brought not later than 6 months after the date on which
7 such payment was made.”.

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

12 **SEC. 204. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

13 The Securities Exchange Act of 1934 (15 U.S.C. 78a
14 et seq.) is amended by inserting immediately after section
15 13 the following new section:

16 **“SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

17 “(a) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 “(1) PUBLIC ACCOUNTING FIRM.—The term
20 ‘public accounting firm’ means a sole proprietorship,
21 unincorporated association, partnership, corporation,
22 or other legal entity that is engaged in the practice
23 of public accounting.

1 “(2) BOARD.—The term ‘Board’ means the
2 Public Auditing Self-Disciplinary Board designated
3 by the Commission pursuant to subsection (b).

4 “(3) ACCOUNTANT’S REPORT.—The term ‘ac-
5 countant’s report’ means a document in which a
6 public accounting firm identifies a financial state-
7 ment, report, or other document and sets forth the
8 firm’s opinion regarding such financial statement,
9 report, or other document, or an assertion that an
10 opinion cannot be expressed.

11 “(4) PERSON ASSOCIATED WITH A PUBLIC AC-
12 COUNTING FIRM.—The term ‘person associated with
13 a public accounting firm’ means a natural person
14 who—

15 “(A) is a partner, shareholder, employee,
16 or individual proprietor of a public accounting
17 firm, or who shares in the profits of a public
18 accounting firm; and

19 “(B) engages in any conduct or practice in
20 connection with the preparation of an account-
21 ant’s report on any financial statement, report,
22 or other document required to be filed with the
23 Commission under any securities law.

24 “(5) PROFESSIONAL STANDARDS.—The term
25 ‘professional standards’ means generally accepted

1 auditing standards, generally accepted accounting
2 principles, generally accepted standards for attesta-
3 tion engagements, and any other standards related
4 to the preparation of financial statements or ac-
5 countant's reports promulgated by the Commission
6 or a standard-setting body recognized by the Board.

7 ~~“(b) ESTABLISHMENT OF BOARD.—~~

8 ~~“(1) IN GENERAL.—~~Not later than 90 days
9 after the date of enactment of this section, the Com-
10 mission shall establish a Public Auditing Self-Dis-
11 ciplinary Board to perform the duties set forth in
12 this section. The Commission shall designate an en-
13 tity to serve as the Board if the Commission finds
14 that—

15 ~~“(A) such entity is sponsored by an exist-~~
16 ~~ing national organization of certified public ac-~~
17 ~~countants that—~~

18 ~~“(i) is most representative of certified~~
19 ~~public accountants covered by this title;~~
20 ~~and~~

21 ~~“(ii) has demonstrated its commit-~~
22 ~~ment to improving the quality of practice~~
23 ~~before the Commission; and~~

1 ~~“(B) control over such entity is vested in~~
2 ~~the members of the Board selected pursuant to~~
3 ~~subsection (c).~~

4 ~~“(2) ALTERNATIVE ELECTION OF MEMBERS.—~~

5 ~~If the Commission designates an entity to serve as~~
6 ~~the Board pursuant to paragraph (1), the entity~~
7 ~~shall conduct the election of initial Board members~~
8 ~~in accordance with subsection (c)(1)(B)(i).~~

9 ~~“(c) MEMBERSHIP OF BOARD.—~~

10 ~~“(1) IN GENERAL.—The Board shall be com-~~
11 ~~posed of 3 appointed members and 4 elected mem-~~
12 ~~bers, as follows:~~

13 ~~“(A) APPOINTED MEMBERS.—Three mem-~~
14 ~~bers of the Board shall be appointed in accord-~~
15 ~~ance with the following:~~

16 ~~“(i) INITIAL APPOINTMENTS.—The~~
17 ~~Chairman of the Commission shall make~~
18 ~~the initial appointments, in consultation~~
19 ~~with the other members of the Commis-~~
20 ~~sion, not later than 90 days after the date~~
21 ~~of enactment of this section.~~

22 ~~“(ii) SUBSEQUENT APPOINTMENTS.—~~
23 ~~After the initial appointments under clause~~
24 ~~(i), members of the Board appointed to fill~~
25 ~~vacancies of appointed members of the~~

1 Board shall be appointed in accordance
2 with the rules adopted pursuant to para-
3 graph (5). Such rules shall provide that
4 such members shall be appointed by the
5 Board, subject to the approval of the Com-
6 mission.

7 “(B) ELECTED MEMBERS.—Four mem-
8 bers, including the member who shall serve as
9 the chairperson of the Board, shall be elected in
10 accordance with the following:

11 “(i) INITIAL ELECTION.—Not later
12 than 120 days after the date on which the
13 Chairman of the Commission makes ap-
14 pointments under subparagraph (A)(i), an
15 entity designated by the Commission pur-
16 suant to subsection (b) shall conduct an
17 election of 4 initial elected members pursu-
18 ant to interim election rules proposed by
19 the entity and approved by the 3 interim
20 members of the Board and the Commis-
21 sion. If the Commission is unable to des-
22 ignate an entity meeting the criteria set
23 forth in subsection (b)(1), the members of
24 the Board appointed under subparagraph
25 (A)(i) shall adopt interim rules, subject to

1 approval by the Commission, providing for
2 the election of the 4 initial elected mem-
3 bers. Such rules shall provide that such
4 members of the Board shall be elected—

5 “(I) not later than 120 days
6 after the date on which members are
7 initially appointed under subpara-
8 graph (A)(i);

9 “(II) by persons who are associ-
10 ated with public accounting firms and
11 who are certified public accountants
12 under the laws of any State; and

13 “(III) subject to the approval of
14 the Commission.

15 “(ii) SUBSEQUENT ELECTIONS.—
16 After the initial elections under clause (i),
17 members of the Board elected to fill vacan-
18 cies of elected members of the Board shall
19 be elected in accordance with the rules
20 adopted pursuant to paragraph (5). Such
21 rules shall provide that such members of
22 the Board shall be elected—

23 “(I) by persons who are associ-
24 ated with public accounting firms and

1 who are certified public accountants
2 under the laws of any State; and

3 ~~“(II) subject to the approval of~~
4 ~~the Commission.~~

5 ~~“(2) QUALIFICATION.—Four members of the~~
6 ~~Board, including the chairperson of the Board, shall~~
7 ~~be persons who have not been associated with a pub-~~
8 ~~lic accounting firm during the 10-year period preced-~~
9 ~~ing appointment or election to the Board under~~
10 ~~paragraph (1). Three members of the Board who are~~
11 ~~elected shall be persons associated with a public ac-~~
12 ~~counting firm registered with the Board.~~

13 ~~“(3) FULL-TIME BASIS.—The chairperson of~~
14 ~~the Board shall serve on a full-time basis, severing~~
15 ~~all business ties with his or her former firms or em-~~
16 ~~ployers prior to beginning service on the Board.~~

17 ~~“(4) TERMS.—~~

18 ~~“(A) IN GENERAL.—Except as provided in~~
19 ~~subparagraph (B), each member of the Board~~
20 ~~shall hold office for a term of 4 years or until~~
21 ~~a successor is appointed, whichever is later, ex-~~
22 ~~cept that any member appointed to fill a va-~~
23 ~~cancy occurring prior to the expiration of the~~
24 ~~term for which such member’s predecessor was~~

1 appointed shall be appointed for the remainder
2 of such term.

3 ~~“(B) INITIAL BOARD MEMBERS.—Begin-~~
4 ~~ning on the date on which all members of the~~
5 ~~Board have been selected in accordance with~~
6 ~~this subsection, the terms of office of the initial~~
7 ~~Board members shall expire, as determined by~~
8 ~~the Board, by lottery—~~

9 ~~“(i) for 1 member, 1 year after such~~
10 ~~date;~~

11 ~~“(ii) for 2 members, 2 years after~~
12 ~~such date;~~

13 ~~“(iii) for 2 members, 3 years after~~
14 ~~such date; and~~

15 ~~“(iv) for 2 members, 4 years after~~
16 ~~such date.~~

17 ~~“(5) RULES.—Following selection of the 7 ini-~~
18 ~~tial members of the Board in accordance with sub-~~
19 ~~paragraphs (A)(i) and (B)(i) of paragraph (1), the~~
20 ~~Board shall propose and adopt rules, which shall~~
21 ~~provide for—~~

22 ~~“(A) the operation and administration of~~
23 ~~the Board, including—~~

24 ~~“(i) the appointment of members in~~
25 ~~accordance with paragraph (1)(A)(ii);~~

1 ~~“(ii) the election of members in ac-~~
2 ~~cordance with paragraph (1)(B)(ii); and~~

3 ~~“(iii) the compensation of the mem-~~
4 ~~bers of the Board;~~

5 ~~“(B) the appointment and compensation of~~
6 ~~such employees, attorneys, and consultants as~~
7 ~~may be necessary or appropriate to carry out~~
8 ~~the Board’s functions under this title;~~

9 ~~“(C) the registration of public accounting~~
10 ~~firms with the Board pursuant to subsections~~
11 ~~(d) and (e); and~~

12 ~~“(D) the matters described in subsections~~
13 ~~(f) and (g).~~

14 ~~“(d) REGISTRATION AND ANNUAL FEES.—After the~~
15 ~~date on which all initial members of the Board have been~~
16 ~~selected in accordance with subsection (c), the Board shall~~
17 ~~assess and collect a registration fee and annual dues from~~
18 ~~each public accounting firm registered with the Board.~~
19 ~~Such fees and dues shall be assessed at a level sufficient~~
20 ~~to recover the costs and expenses of the Board and to per-~~
21 ~~mit the Board to operate on a self-financing basis. The~~
22 ~~amount of fees and dues for each public accounting firm~~
23 ~~shall be based upon—~~

24 ~~“(1) the annual revenues of such firm from ac-~~
25 ~~counting and auditing services;~~

1 ~~“(2) the number of persons associated with the~~
2 ~~public accounting firm;~~

3 ~~“(3) the number of clients for which such firm~~
4 ~~furnishes accountant’s reports on financial state-~~
5 ~~ments, reports, or other documents filed with the~~
6 ~~Commission; and~~

7 ~~“(4) such other criteria as the Board may es-~~
8 ~~tablish.~~

9 ~~“(e) REGISTRATION WITH BOARD.—~~

10 ~~“(1) REGISTRATION REQUIRED.—Beginning 1~~
11 ~~year after the date on which all initial members of~~
12 ~~the Board have been selected in accordance with~~
13 ~~subsection (c), it shall be unlawful for a public ac-~~
14 ~~counting firm to furnish an accountant’s report on~~
15 ~~any financial statement, report, or other document~~
16 ~~required to be filed with the Commission under any~~
17 ~~Federal securities law, unless such firm is registered~~
18 ~~with the Board.~~

19 ~~“(2) APPLICATION FOR REGISTRATION.—A~~
20 ~~public accounting firm may be registered under this~~
21 ~~subsection by filing with the Board an application~~
22 ~~for registration in such form and containing such in-~~
23 ~~formation as the Board, by rule, may prescribe.~~
24 ~~Each application shall include—~~

1 “(A) the names of all clients of the public
2 accounting firm for which the firm furnishes ac-
3 countant’s reports on financial statements, re-
4 ports, or other documents filed with the Com-
5 mission;

6 “(B) financial information of the public ac-
7 counting firm for its most recent fiscal year, in-
8 cluding its annual revenues from accounting
9 and auditing services, its assets and its liabil-
10 ities;

11 “(C) a statement of the public accounting
12 firm’s policies and procedures with respect to
13 quality control of its accounting and auditing
14 practice;

15 “(D) information relating to criminal, civil,
16 or administrative actions or formal disciplinary
17 proceedings pending against such firm, or any
18 person associated with such firm, in connection
19 with an accountant’s report furnished by such
20 firm;

21 “(E) a list of persons associated with the
22 public accounting firm who are certified public
23 accountants, including any State professional li-
24 cense or certification number for each such per-
25 son; and

1 “(F) such other information that is reason-
2 ably related to the Board’s responsibilities as
3 the Board considers necessary or appropriate.

4 “(3) PERIODIC REPORTS.—Once in each year,
5 or more frequently as the Board, by rule, may pre-
6 scribe, each public accounting firm registered with
7 the Board shall submit reports to the Board updat-
8 ing the information contained in its application for
9 registration and containing such additional informa-
10 tion that is reasonably related to the Board’s re-
11 sponsibilities as the Board, by rule, may prescribe.

12 “(4) EXEMPTIONS.—The Commission, by rule
13 or order, upon its own motion or upon application,
14 may conditionally or unconditionally exempt any
15 public accounting firm or any accountant’s report,
16 or any class of public accounting firms or any class
17 of accountant’s reports, from any provisions of this
18 section or the rules or regulations issued hereunder,
19 if the Commission finds that such exemption is con-
20 sistent with the public interest, the protection of in-
21 vestors, and the purposes of this section.

22 “(5) CONFIDENTIALITY.—The Board may, by
23 rule, designate portions of the filings required pursu-
24 ant to paragraphs (2) and (3) as privileged and con-
25 fidential.

1 “(f) DUTIES OF BOARD.—After the date on which all
2 initial members of the Board have been selected in accord-
3 ance with subsection (c), the Board shall have the follow-
4 ing duties and powers:

5 “(1) INVESTIGATIONS AND DISCIPLINARY PRO-
6 CEEDINGS.—The Board shall establish fair proce-
7 dures for investigating and disciplining public ac-
8 counting firms registered with the Board, and per-
9 sons associated with such firms, for violations of the
10 Federal securities laws, the rules or regulations is-
11 sued thereunder, the rules adopted by the Board, or
12 professional standards in connection with the prepa-
13 ration of an accountant’s report on a financial state-
14 ment, report, or other document filed with the Com-
15 mission.

16 “(2) INVESTIGATION PROCEDURES.—

17 “(A) IN GENERAL.—The Board may con-
18 duct an investigation of any act, practice, or
19 omission by a public accounting firm registered
20 with the Board, or by any person associated
21 with such firm, in connection with the prepara-
22 tion of an accountant’s report on a financial
23 statement, report, or other document filed with
24 the Commission that may violate any applicable
25 provision of the Federal securities laws, the

1 rules and regulations issued thereunder, the
2 rules adopted by the Board, or professional
3 standards, whether such act, practice, or omis-
4 sion is the subject of a criminal, civil, or admin-
5 istrative action, or a disciplinary proceeding, or
6 otherwise is brought to the attention of the
7 Board.

8 “(B) POWERS OF BOARD.—For purposes
9 of an investigation under this paragraph, the
10 Board may, in addition to such other actions as
11 the Board determines to be necessary or appro-
12 priate—

13 “(i) require the testimony of any per-
14 son associated with a public accounting
15 firm registered with the Board, with re-
16 spect to any matter which the Board con-
17 siders relevant or material to the investiga-
18 tion;

19 “(ii) require the production of audit
20 workpapers and any other document or in-
21 formation in the possession of a public ac-
22 counting firm registered with the Board, or
23 any person associated with such firm,
24 wherever domiciled, that the Board consid-
25 ers relevant or material to the investiga-

1 tion, and may examine the books and
2 records of such firm to verify the accuracy
3 of any documents or information so sup-
4 plied; and

5 “(iii) request the testimony of any
6 person and the production of any docu-
7 ment in the possession of any person, in-
8 cluding a client of a public accounting firm
9 registered with the Board, that the Board
10 considers relevant or material to the inves-
11 tigation.

12 “(C) SUSPENSION OR REVOCATION OF
13 REGISTRATION FOR NONCOMPLIANCE.—The re-
14 fusal of any person associated with a public ac-
15 counting firm registered with the Board to tes-
16 tify, or the refusal of any such person to
17 produce documents or otherwise cooperate with
18 the Board, in connection with an investigation
19 under this section, shall be cause for suspend-
20 ing or barring such person from associating
21 with a public accounting firm registered with
22 the Board, or such other appropriate sanction
23 as the Board shall determine. The refusal of
24 any public accounting firm registered with the
25 Board to produce documents or otherwise co-

1 operate with the Board, in connection with an
2 investigation under this section, shall be cause
3 for the suspension or revocation of the registra-
4 tion of such firm, or such other appropriate
5 sanction as the Board shall determine.

6 ~~“(D) REFERRAL TO COMMISSION.—~~

7 ~~“(i) IN GENERAL.—If the Board is~~
8 ~~unable to conduct or complete an inves-~~
9 ~~tigation under this section because of the~~
10 ~~refusal of any client of a public accounting~~
11 ~~firm registered with the Board, or any~~
12 ~~other person, to testify, produce docu-~~
13 ~~ments, or otherwise cooperate with the~~
14 ~~Board in connection with such investiga-~~
15 ~~tion, the Board shall report such refusal to~~
16 ~~the Commission.~~

17 ~~“(ii) INVESTIGATION.—The Commis-~~
18 ~~sion may designate the Board or one or~~
19 ~~more officers of the Board who shall be~~
20 ~~empowered, in accordance with such proce-~~
21 ~~dures as the Commission may adopt, to~~
22 ~~subpoena witnesses, compel their attend-~~
23 ~~ance, and require the production of any~~
24 ~~books, papers, correspondence, memo-~~
25 ~~randa, or other records relevant to any in-~~

1 vestigation by the Board. Attendance of
2 witnesses and the production of any
3 records may be required from any place in
4 the United States or any State at any des-
5 ignated place of hearing. Enforcement of a
6 subpoena issued by the Board, or an offi-
7 cer of the Board, pursuant to this subpara-
8 graph shall occur in the manner provided
9 for in section 21(c). Examination of wit-
10 nesses subpoenaed pursuant to this sub-
11 paragraph shall be conducted before an of-
12 ficer authorized to administer oaths by the
13 laws of the United States or of the place
14 where the examination is held.

15 “(iii) REFERRALS TO COMMISSION.—

16 The Board may refer any investigation to
17 the Commission, as the Board deems ap-
18 propriate.

19 “(E) IMMUNITY FROM CIVIL LIABILITY.—

20 An employee of the Board engaged in carrying
21 out an investigation or disciplinary proceeding
22 under this section shall be immune from any
23 civil liability arising out of such investigation or
24 disciplinary proceeding in the same manner and

1 to the same extent as an employee of the Fed-
2 eral Government in similar circumstances.

3 ~~“(3) DISCIPLINARY PROCEDURES.—~~

4 ~~“(A) DECISION TO DISCIPLINE.—In a pro-~~
5 ~~ceeding by the Board to determine whether a~~
6 ~~public accounting firm, or a person associated~~
7 ~~with such firm, should be disciplined, the Board~~
8 ~~shall bring specific charges, notify such firm or~~
9 ~~person of the charges, give such firm or person~~
10 ~~an opportunity to defend against such charges,~~
11 ~~and keep a record of such actions.~~

12 ~~“(B) SANCTIONS.—If the Board finds that~~
13 ~~a public accounting firm, or a person associated~~
14 ~~with such firm, has engaged in any act, prac-~~
15 ~~tice, or omission in violation of the Federal se-~~
16 ~~curities laws, the rules or regulations issued~~
17 ~~thereunder, the rules adopted by the Board, or~~
18 ~~professional standards, the Board may impose~~
19 ~~such disciplinary sanctions as it deems appro-~~
20 ~~priate, including—~~

21 ~~“(i) revocation or suspension of reg-~~
22 ~~istration under this section;~~

23 ~~“(ii) limitation of activities, functions,~~
24 ~~and operations;~~

25 ~~“(iii) fine;~~

1 ~~“(iv) censure;~~

2 ~~“(v) in the case of a person associated~~
3 ~~with a public accounting firm, suspension~~
4 ~~or bar from being associated with a public~~
5 ~~accounting firm registered with the Board;~~
6 ~~and~~

7 ~~“(vi) any other disciplinary sanction~~
8 ~~that the Board determines to be appro-~~
9 ~~priate.~~

10 ~~“(C) STATEMENT REQUIRED.—A deter-~~
11 ~~mination by the Board to impose a disciplinary~~
12 ~~sanction shall be supported by a written state-~~
13 ~~ment by the Board setting forth—~~

14 ~~“(i) any act or practice in which the~~
15 ~~public accounting firm or person associated~~
16 ~~with such firm has been found to have en-~~
17 ~~gaged, or which such firm or person has~~
18 ~~been found to have omitted;~~

19 ~~“(ii) the specific provision of the Fed-~~
20 ~~eral securities laws, the rules or regula-~~
21 ~~tions issued thereunder, the rules adopted~~
22 ~~by the Board, or professional standards~~
23 ~~which any such act, practice, or omission is~~
24 ~~deemed to violate; and~~

1 ~~“(iii) the sanction imposed and the~~
2 ~~reasons therefor.~~

3 ~~“(D) PROHIBITION ON ASSOCIATION.—It~~
4 ~~shall be unlawful—~~

5 ~~“(i) for any person as to whom a sus-~~
6 ~~pension or bar is in effect willfully to be or~~
7 ~~to become associated with a public ac-~~
8 ~~counting firm registered with the Board, in~~
9 ~~connection with the preparation of an ac-~~
10 ~~countant’s report on any financial state-~~
11 ~~ment, report, or other document filed with~~
12 ~~the Commission, without the consent of the~~
13 ~~Board or the Commission; and~~

14 ~~“(ii) for any public accounting firm~~
15 ~~registered with the Board to permit such a~~
16 ~~person to become, or remain, associated~~
17 ~~with such firm without the consent of the~~
18 ~~Board or the Commission, if such firm~~
19 ~~knew or, in the exercise of reasonable care~~
20 ~~should have known, of such suspension or~~
21 ~~bar.~~

22 ~~“(4) REPORTING OF SANCTIONS.—If the Board~~
23 ~~imposes a disciplinary sanction against a public ac-~~
24 ~~counting firm, or a person associated with such firm,~~
25 ~~the Board shall report such sanction to the Commis-~~

1 sion, to the appropriate State or foreign licensing
2 board or boards with which such firm or such person
3 is licensed or certified to practice public accounting,
4 and to the public. The information reported shall in-
5 clude—

6 “(A) the name of the public accounting
7 firm, or person associated with such firm,
8 against whom the sanction is imposed;

9 “(B) a description of the acts, practices, or
10 omissions upon which the sanction is based;

11 “(C) the nature of the sanction; and

12 “(D) such other information respecting the
13 circumstances of the disciplinary action (includ-
14 ing the name of any client of such firm affected
15 by such acts, practices, or omissions) as the
16 Board deems appropriate.

17 “(5) DISCOVERY AND ADMISSIBILITY OF BOARD
18 MATERIAL.—

19 “(A) DISCOVERABILITY.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in subparagraph (C), all reports,
22 memoranda, and other information pre-
23 pared, collected, or received by the Board,
24 and the deliberations and other proceed-
25 ings of the Board and its employees and

1 agents in connection with an investigation
2 or disciplinary proceeding under this sec-
3 tion shall not be subject to any form of
4 civil discovery, including demands for pro-
5 duction of documents and for testimony of
6 individuals, in connection with any pro-
7 ceeding in any State or Federal court, or
8 before any State or Federal administrative
9 agency. This subparagraph shall not apply
10 to any information provided to the Board
11 that would have been subject to discovery
12 from the person or entity that provided it
13 to the Board, but is no longer available
14 from that person or entity.

15 “(ii) EXEMPTION.—Submissions to
16 the Board by or on behalf of a public ac-
17 counting firm or person associated with
18 such a firm or on behalf of any other par-
19 ticipant in a Board proceeding, including
20 documents generated by the Board itself,
21 shall be exempt from discovery to the same
22 extent as the material described in clause
23 (i), whether in the possession of the Board
24 or any other person, if such submission—

1 “(I) is prepared specifically for
2 the purpose of the Board proceeding;
3 and

4 “(II) addresses the merits of the
5 issues under investigation by the
6 Board.

7 “(iii) CONSTRUCTION.—Nothing in
8 this subparagraph shall limit the authority
9 of the Board to provide appropriate public
10 access to disciplinary hearings of the
11 Board, or to reports or memoranda re-
12 ceived by the Board in connection with
13 such proceedings.

14 “(B) ADMISSIBILITY.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in subparagraph (C), all reports,
17 memoranda, and other information pre-
18 pared, collected, or received by the Board,
19 the deliberations and other proceedings of
20 the Board and its employees and agents in
21 connection with an investigation or discipli-
22 nary proceeding under this section, the
23 fact that an investigation or disciplinary
24 proceeding has been commenced, and the
25 Board’s determination with respect to any

1 investigation or disciplinary proceeding
2 shall be inadmissible in any proceeding in
3 any State or Federal court or before any
4 State or Federal administrative agency.

5 “(ii) TREATMENT OF CERTAIN DOCU-
6 MENTS.—Submissions to the Board by or
7 on behalf of a public accounting firm or
8 person associated with such a firm or on
9 behalf of any other participant in a Board
10 proceeding, including documents generated
11 by the Board itself, shall be inadmissible to
12 the same extent as the material described
13 in clause (i), if such submission—

14 “(I) is prepared specifically for
15 the purpose of the Board proceedings;
16 and

17 “(II) addresses the merits of the
18 issues under investigation by the
19 Board.

20 “(C) AVAILABILITY AND ADMISSIBILITY OF
21 INFORMATION.—

22 “(i) IN GENERAL.—All information
23 referred to in subparagraphs (A) and (B)
24 shall be—

1 “(I) available to the Commission
2 and to any other Federal department
3 or agency in connection with the exer-
4 cise of its regulatory authority to the
5 extent that such information would be
6 available to such agency from the
7 Commission as a result of a Commis-
8 sion enforcement investigation;

9 “(II) available to Federal and
10 State authorities in connection with
11 any criminal investigation or proceed-
12 ing;

13 “(III) admissible in any action
14 brought by the Commission or any
15 other Federal department or agency
16 pursuant to its regulatory authority,
17 to the extent that such information
18 would be available to such agency
19 from the Commission as a result of a
20 Commission enforcement investigation
21 and in any criminal action; and

22 “(IV) available to State licensing
23 boards to the extent authorized in
24 paragraph (6).

1 “(ii) OTHER LIMITATIONS.—Any doc-
2 uments or other information provided to
3 the Commission or other authorities pursu-
4 ant to clause (i) shall be subject to the lim-
5 itations on discovery and admissibility set
6 forth in subparagraphs (A) and (B).

7 “(D) TITLE 5 TREATMENT.—This sub-
8 section shall be considered to be a statute de-
9 scribed in section 552(b)(3)(B) of title 5,
10 United States Code, for purposes of that sec-
11 tion 552.

12 “(6) PARTICIPATION BY STATE LICENSING
13 BOARDS.—

14 “(A) NOTICE.—When the Board institutes
15 an investigation pursuant to paragraph (2)(A),
16 it shall notify the State licensing boards in the
17 States in which the public accounting firm or
18 person associated with such firm engaged in the
19 act or failure to act alleged to have violated
20 professional standards, of the pendency of the
21 investigation, and shall invite the State licens-
22 ing boards to participate in the investigation.

23 “(B) ACCEPTANCE BY STATE BOARD.—

24 “(i) PARTICIPATION.—If a State li-
25 censing board elects to join in the inves-

1 tigation, its representatives shall partici-
2 pate, pursuant to rules established by the
3 Board, in investigating the matter and in
4 presenting the evidence justifying the
5 charges in any hearing pursuant to para-
6 graph (3)(A).

7 “(ii) REVIEW.—In the event that the
8 State licensing board disagrees with the
9 Board’s determination with respect to the
10 matter under investigation, it may seek re-
11 view of that determination by the Commis-
12 sion pursuant to procedures that the Com-
13 mission shall specify by regulation.

14 “(C) PROHIBITION ON CONCURRENT IN-
15 VESTIGATIONS.—A State licensing board shall
16 not institute its own proceeding with respect to
17 a matter referred to in subparagraph (A) until
18 after the Board’s determination has become
19 final, including completion of all review by the
20 Commission and the courts.

21 “(D) STATE SANCTIONS PERMITTED.—If
22 the Board or the Commission imposes a sanc-
23 tion upon a public accounting firm or person
24 associated with such a firm, and that deter-
25 mination either is not subjected to judicial re-

1 view or is upheld on judicial review, a State li-
2 censing board may impose a sanction on the
3 basis of the Board's report pursuant to para-
4 graph (4). Any sanction imposed by the State
5 licensing board under this clause shall be inad-
6 missible in any proceeding in any State or Fed-
7 eral court or before any State or Federal ad-
8 ministrative agency, except to the extent pro-
9 vided in paragraph (5)(D).

10 “(E) SANCTIONS NOT PERMITTED.—If a
11 sanction is not imposed on a public accounting
12 firm or person associated with such a firm,
13 and—

14 “(i) a State licensing board elected to
15 participate in an investigation referred to
16 in subparagraph (A), the State licensing
17 board may not impose a sanction with re-
18 spect to the matter; and

19 “(ii) a State licensing board elected
20 not to participate in an investigation re-
21 ferred to in subparagraph (A), subpara-
22 graphs (A) and (B) of paragraph (5) shall
23 apply with respect to any investigation or
24 proceeding subsequently instituted by the
25 State licensing board and, in particular,

1 the State licensing board shall not have ac-
2 cess to the record of the proceeding before
3 the Board and that record shall be inad-
4 missible in any proceeding before the State
5 licensing board.

6 ~~“(g) ADDITIONAL DUTIES REGARDING QUALITY~~
7 ~~CONTROL.—~~After the date on which all initial members
8 of the Board have been selected in accordance with sub-
9 section (c), the Board shall have the following duties and
10 powers in addition to those set forth in subsection (f):

11 ~~“(1) IN GENERAL.—~~The Board shall seek to
12 promote a high level of professional conduct among
13 public accounting firms registered with the Board,
14 to improve the quality of audit services provided by
15 such firms, and, in general, to protect investors and
16 promote the public interest.

17 ~~“(2) PROFESSIONAL PEER REVIEW ORGANIZA-~~
18 ~~TIONS.—~~

19 ~~“(A) MEMBERSHIP REQUIREMENT.—~~The
20 Board shall require each public accounting firm
21 subject to the disciplinary authority of the
22 Board to be a member of a professional peer re-
23 view organization certified by the Board pursu-
24 ant to subparagraph (B).

1 “(B) CRITERIA FOR CERTIFICATION.—The
2 Board shall, by rule, establish general criteria
3 for the certification of peer review organizations
4 and shall certify organizations that satisfy those
5 criteria, or such amended criteria as the Board
6 may adopt. To be certified, a peer review orga-
7 nization shall, at a minimum—

8 “(i) require a member public account-
9 ing firm to undergo peer review not less
10 than once every 3 years and publish the re-
11 sults of the peer review; and

12 “(ii) adopt standards that are accept-
13 able to the Board relating to audit service
14 quality control.

15 “(C) PENALTIES.—Violation by a public
16 accounting firm or a person associated with
17 such a firm of a rule of the peer review organi-
18 zation to which the firm belongs shall constitute
19 grounds for—

20 “(i) the imposition of disciplinary
21 sanctions by the Board pursuant to sub-
22 section (f); and

23 “(ii) denial to the public accounting
24 firm or person associated with such firm of

1 the privilege of appearing or practicing be-
2 fore the Commission.

3 ~~“(3) CONFIDENTIALITY.—Except as otherwise~~
4 provided by this section, all reports, memoranda,
5 and other information provided to the Board solely
6 for purposes of paragraph (2), or to a peer review
7 organization certified by the Board, shall be con-
8 fidential and privileged, unless such confidentiality
9 and privilege are expressly waived by the person or
10 entity that created or provided the information.

11 ~~“(h) COMMISSION OVERSIGHT OF THE BOARD.—~~

12 ~~“(1) PROPOSED RULE CHANGES.—~~

13 ~~“(A) IN GENERAL.—The Board shall file~~
14 with the Commission, in accordance with such
15 rules as the Commission may prescribe, copies
16 of any proposed rule or any proposed change in,
17 addition to, or deletion from the rules of the
18 Board (hereafter in this subsection collectively
19 referred to as a ‘proposed rule change’) accom-
20 panied by a concise general statement of the
21 basis and purpose of such proposed rule
22 change. The Commission shall, upon the filing
23 of any proposed rule change, publish notice
24 thereof together with the terms of substance of
25 the proposed rule change or a description of the

1 subjects and issues involved. The Commission
2 shall give interested persons an opportunity to
3 submit written data, views, and arguments con-
4 cerning the proposed rule change. No proposed
5 rule change shall take effect unless approved by
6 the Commission or otherwise permitted in ac-
7 cordance with this subsection.

8 ~~“(B) APPROVAL OR DISAPPROVAL.—~~

9 ~~“(i) IN GENERAL.—Not later than 35~~
10 ~~days after the date on which notice of the~~
11 ~~filing of a proposed rule change is pub-~~
12 ~~lished in accordance with subparagraph~~
13 ~~(A), or such longer period as the Commis-~~
14 ~~sion may designate (not to exceed 90 days~~
15 ~~after such date, if it finds such longer pe-~~
16 ~~riod to be appropriate and publishes its~~
17 ~~reasons for such finding or as to which the~~
18 ~~Board consents) the Commission shall—~~

19 ~~“(I) by order approve such pro-~~
20 ~~posed rule change; or~~

21 ~~“(II) institute proceedings to de-~~
22 ~~termine whether the proposed rule~~
23 ~~change should be disapproved.~~

24 ~~“(ii) DISAPPROVAL PROCEEDINGS.—~~

25 ~~Proceedings for disapproval shall include~~

1 notice of the grounds for disapproval under
2 consideration and opportunity for hearing
3 and shall be concluded not later than 180
4 days after the date of publication of notice
5 of the filing of the proposed rule change.
6 At the conclusion of the proceedings for
7 disapproval, the Commission, by order,
8 shall approve or disapprove such proposed
9 rule change. The Commission may extend
10 the time for conclusion of such proceedings
11 for—

12 “(I) not more than 60 days, if
13 the Commission finds good cause for
14 such extension and publishes its rea-
15 sons for such finding; or

16 “(II) such longer period to which
17 the Board consents.

18 “(iii) APPROVAL.—The Commission
19 shall approve a proposed rule change if it
20 finds that such proposed rule change is
21 consistent with the requirements of the
22 Federal securities laws, and the rules and
23 regulations issued thereunder, applicable to
24 the Board. The Commission shall dis-
25 approve a proposed rule change if it does

1 not make such finding. The Commission
2 shall not approve any proposed rule change
3 prior to the expiration of the 30-day period
4 beginning on the date on which notice of
5 the filing of a proposed rule change is pub-
6 lished in accordance with this subpara-
7 graph, unless the Commission finds good
8 cause to do so and publishes its reasons
9 for such finding.

10 “(C) EFFECT OF PROPOSED RULE
11 CHANGE.—

12 “(i) EFFECTIVE DATE.—Notwith-
13 standing subparagraph (B), a proposed
14 rule change may take effect upon filing
15 with the Commission if designated by the
16 Board as—

17 “(I) constituting a stated policy,
18 practice, or interpretation with respect
19 to the meaning, administration, or en-
20 forcement of an existing rule of the
21 Board;

22 “(II) establishing or changing a
23 due, fee, or other charge imposed by
24 the Board; or

1 “(III) concerned solely with the
2 administration of the Board or other
3 matters which the Commission, by
4 rule, consistent with the public inter-
5 est and the purposes of this sub-
6 section, may specify.

7 “(ii) SUMMARY EFFECT.—Notwith-
8 standing any other provision of this sub-
9 section, a proposed rule change may be put
10 into effect summarily if it appears to the
11 Commission that such action is necessary
12 for the protection of investors. Any pro-
13 posed rule change put into effect sum-
14 marily shall be filed promptly thereafter in
15 accordance with this paragraph.

16 “(iii) ENFORCEMENT.—Any proposed
17 rule change which has taken effect pursu-
18 ant to clause (i) or (ii) may be enforced by
19 the Board to the extent that it is not in-
20 consistent with the Federal securities laws,
21 the rules and regulations issued there-
22 under, and applicable Federal and State
23 law. During the 60-day period beginning
24 on the date on which notice of the filing of
25 a proposed rule change if filed in accord-

1 ance with this paragraph, the Commission
2 may summarily abrogate the change in the
3 rules of the Board made thereby and re-
4 quire that the proposed rule change be
5 refiled in accordance with subparagraph
6 (A) and reviewed in accordance with sub-
7 paragraph (B); if it appears to the Com-
8 mission that such action is necessary or
9 appropriate in the public interest, for the
10 protection of investors, or otherwise in fur-
11 therance of the purposes of the Federal se-
12 curities laws. Commission action pursuant
13 to the preceding sentence shall not affect
14 the validity or force of the rule change dur-
15 ing the period it was in effect and shall not
16 be reviewable under section 25 of this Act
17 nor deemed to be 'final agency action' for
18 purposes of section 704 of title 5, United
19 States Code.

20 ~~“(2)~~ AMENDMENT BY COMMISSION OF RULES
21 OF THE BOARD.—The Commission, by rule, may ab-
22 rogate, add to, and delete from (hereafter in this
23 subsection collectively referred to as 'amend') the
24 rules of the Board as the Commission deems nec-
25 essary or appropriate to ensure the fair administra-

1 tion of the Board, to conform its rules to require-
2 ments of the Federal securities laws, and the rules
3 and regulations issued thereunder applicable to the
4 Board, or otherwise in furtherance of the purposes
5 of the Federal securities laws, in the following
6 manner:

7 “(A) PUBLICATION OF NOTICE.—The
8 Commission shall notify the Board and publish
9 notice of the proposed rulemaking in the Fed-
10 eral Register. The notice shall include the text
11 of the proposed amendment to the rules of the
12 Board and a statement of the Commission’s
13 reasons, including any pertinent facts, for com-
14 mencing such proposed rulemaking.

15 “(B) COMMENTS.—The Commission shall
16 give interested persons an opportunity for the
17 oral presentation of data, views, and arguments,
18 in addition to an opportunity to make written
19 submissions. A transcript shall be kept of any
20 oral presentation.

21 “(C) INCORPORATION.—A rule adopted
22 pursuant to this subsection shall incorporate
23 the text of the amendment to the rules of the
24 Board and a statement of the Commission’s
25 basis for and purpose in so amending such

1 rules. Such statement shall include an identi-
2 fication of any facts on which the Commission
3 considers its determination to so amend the
4 rules of the Board to be based, including the
5 reasons for the Commission's conclusions as to
6 any of the facts that were disputed in the rule-
7 making.

8 “(D) REGULATIONS.—

9 “(i) TITLE 5 APPLICABILITY.—Except
10 as otherwise provided in this paragraph,
11 rulemaking under this paragraph shall be
12 in accordance with the procedures specified
13 in section 553 of title 5, United States
14 Code, for rulemaking not on the record.

15 “(ii) CONSTRUCTION.—Nothing in
16 this subsection shall be construed to impair
17 or limit the Commission's power to make,
18 modify, or alter the procedures the Com-
19 mission may follow in making rules and
20 regulations pursuant to any other author-
21 ity under the Federal securities laws.

22 “(iii) INCORPORATION OF AMEND-
23 MENTS.—Any amendment to the rules of
24 the Board made by the Commission pursu-
25 ant to this subsection shall be considered

1 for purposes of the Federal securities laws
2 to be part of the rules of the Board and
3 shall not be considered to be a rule of the
4 Commission.

5 ~~“(3) NOTICE OF DISCIPLINARY ACTION TAKEN~~
6 ~~BY THE BOARD; REVIEW OF ACTION BY THE COM-~~
7 ~~MISSION.—~~

8 ~~“(A) NOTICE REQUIRED.—~~If the Board
9 imposes a final disciplinary sanction on a public
10 accounting firm registered with the Board or on
11 any person associated with such a firm, the
12 Board shall promptly file notice thereof with
13 the Commission. The notice shall be in such
14 form and contain such information as the Com-
15 mission, by rule, may prescribe as necessary or
16 appropriate in furtherance of the purposes of
17 the Federal securities laws.

18 ~~“(B) REVIEW.—~~An action with respect to
19 which the Board is required by subparagraph
20 (A) to file notice shall be subject to review by
21 the Commission, on its own motion, or upon ap-
22 plication by any person aggrieved thereby, filed
23 not later than 30 days after the date on which
24 such notice is filed with the Commission and re-
25 ceived by such aggrieved person, or within such

1 longer period as the Commission may deter-
2 mine. Application to the Commission for review,
3 or the institution of review by the Commission
4 on its own motion, shall not operate as a stay
5 of such action unless the Commission otherwise
6 orders, summarily or after notice and oppor-
7 tunity for hearing on the question of a stay
8 (which hearing may consist solely of the sub-
9 mission of affidavits or presentation of oral ar-
10 guments). The Commission shall establish for
11 appropriate cases an expedited procedure for
12 consideration and determination of the question
13 of a stay.

14 ~~“(4) DISPOSITION OF REVIEW; CANCELLATION,
15 REDUCTION, OR REMISSION OF SANCTION.—~~

16 ~~“(A) IN GENERAL.—In any proceeding to
17 review a final disciplinary sanction imposed by
18 the Board on a public accounting firm reg-
19 istered with the Board or a person associated
20 with such a firm, after notice and opportunity
21 for hearing (which hearing may consist solely of
22 consideration of the record before the Board
23 and opportunity for the presentation of sup-
24 porting reasons to affirm, modify, or set aside
25 the sanction)—~~

1 “(i) if the Commission finds that—

2 “(I) such firm or person associ-
3 ated with such a firm has engaged in
4 such acts or practices, or has omitted
5 such acts, as the Board has found
6 them to have engaged in or omitted;

7 “(II) such acts, practices, or
8 omissions, are in violation of such
9 provisions of the Federal securities
10 laws, the rules or regulations issued
11 thereunder, the rules adopted by the
12 Board, or professional standards as
13 have been specified in the determina-
14 tion of the Board; and

15 “(III) such provisions were ap-
16 plied in a manner consistent with the
17 purposes of the Federal securities
18 laws;

19 the Commission, by order, shall so declare
20 and, as appropriate, affirm the sanction
21 imposed by the Board, modify the sanction
22 in accordance with paragraph (2), or re-
23 mand to the Board for further proceed-
24 ings; or

1 “(ii) if the Commission does not make
2 the findings under clause (i), it shall, by
3 order, set aside the sanction imposed by
4 the Board and, if appropriate, remand to
5 the Board for further proceedings.

6 ~~“(B) CANCELLATION, REDUCTION, OR RE-~~
7 ~~MISSION OF SANCTION.—~~If the Commission,
8 having due regard for the public interest and
9 the protection of investors, finds after a pro-
10 ceeding in accordance with subparagraph (A)
11 that a sanction imposed by the Board upon a
12 firm or person associated with a firm imposes
13 any burden on competition not necessary or ap-
14 propriate in furtherance of the purposes of the
15 Federal securities laws or is excessive or op-
16 pressive, the Commission may cancel, reduce, or
17 require the remission of such sanction.

18 ~~“(5) COMPLIANCE WITH RULES AND REGULA-~~
19 ~~TIONS.—~~

20 ~~“(A) DUTIES OF BOARD.—~~The Board
21 shall—

22 “(i) comply with the Federal securi-
23 ties laws, the rules and regulations issued
24 thereunder, and its own rules; and

1 “(ii) subject to subparagraph (B) and
2 the rules thereunder, absent reasonable
3 justification or excuse, enforce compliance
4 with such provisions and with professional
5 standards by public accounting firms reg-
6 istered with the Board and persons associ-
7 ated with such firms.

8 “(B) RELIEF BY COMMISSION.—The Com-
9 mission, by rule, consistent with the public in-
10 terest, the protection of investors, and the other
11 purposes of the Federal securities laws, may re-
12 lieve the Board of any responsibility under this
13 section to enforce compliance with any specified
14 provision of the Federal securities laws, the
15 rules or regulations issued thereunder, or pro-
16 fessional standards by any public accounting
17 firm registered with the Board or person associ-
18 ated with such a firm, or any class of such
19 firms or persons associated with such a firm.

20 “(6) CENSURE; OTHER SANCTIONS.—

21 “(A) IN GENERAL.—The Commission is
22 authorized, by order, if in its opinion such ac-
23 tion is necessary or appropriate in the public in-
24 terest, for the protection of investors, or other-
25 wise in furtherance of the purposes of the Fed-

1 eral securities laws, to censure or impose limita-
2 tions upon the activities, functions, and oper-
3 ations of the Board, if the Commission finds,
4 on the record after notice and opportunity for
5 hearing, that the Board has—

6 “(i) violated or is unable to comply
7 with any provision of the Federal securities
8 laws, the rules or regulations issued there-
9 under, or its own rules; or

10 “(ii) without reasonable justification
11 or excuse, has failed to enforce compliance
12 with any such provision or any professional
13 standard by a public accounting firm reg-
14 istered with the Board or a person associ-
15 ated with such a firm.

16 “(B) REMOVAL FROM OFFICE.—The Com-
17 mission is authorized, by order, if in its opinion
18 such action is necessary or appropriate, in the
19 public interest for the protection of investors, or
20 otherwise in furtherance of the purposes of the
21 Federal securities laws, to remove from office or
22 censure any member of the Board, if the Com-
23 mission finds, on the record after notice and op-
24 portunity for hearing, that such member has—

1 “(i) willfully violated any provision of
2 the Federal securities laws, the rules or
3 regulations issued thereunder, or the rules
4 of the Board;

5 “(ii) willfully abused such member’s
6 authority; or

7 “(iii) without reasonable justification
8 or excuse, failed to enforce compliance with
9 any such provision or any professional
10 standard by any public accounting firm
11 registered with the Board or any person
12 associated with such a firm.

13 “(i) FOREIGN ACCOUNTING FIRMS.—A foreign public
14 accounting firm that furnishes accountant’s reports on
15 any financial statement, report, or other document re-
16 quired to be filed with the Commission under any Federal
17 securities law shall, with respect to those reports, be sub-
18 ject to the provisions of this section in the same manner
19 and to the same extent as a domestic public accounting
20 firm. The Commission may, by rule, regulation, or order
21 and as it deems consistent with the public interest and
22 the protection of investors, either unconditionally or upon
23 specified terms and conditions, exempt from one or more
24 provisions of this section any foreign public accounting
25 firm. Registration pursuant to this subsection shall not,

1 by itself, provide a basis for subjecting foreign accounting
2 firms to the jurisdiction of the Federal or State courts.

3 “(j) RELATIONSHIP WITH ANTITRUST LAWS.—

4 “(1) TREATMENT UNDER ANTITRUST LAWS.—

5 In no case shall the Board, any member thereof, any
6 public accounting firm registered with the Board, or
7 any person associated with such a firm be subject to
8 liability under any antitrust law for any act of the
9 Board or any failure to act by the Board.

10 “(2) DEFINITION.—For purposes of this sub-

11 section, the term ‘antitrust law’ means the Federal
12 Trade Commission Act and each statute defined by
13 section 4 thereof as ‘Antitrust Acts’ and all amend-
14 ments to such Act and such statutes and any other
15 Federal Acts or State laws in pari materia.

16 “(k) APPLICABILITY OF AUDITING PRINCIPLES.—

17 Each audit required pursuant to this title of an issuer’s
18 financial statements by an independent public accountant
19 shall be conducted in accordance with generally accepted
20 auditing standards, as may be modified or supplemented
21 from time to time by the Commission. The Commission
22 may defer to professional standards promulgated by pri-
23 vate organizations that are generally accepted by the ac-
24 counting or auditing profession.

1 ~~“(1) COMMISSION AUTHORITY NOT IMPAIRED.—~~

2 Nothing in this section shall be construed to impair or

3 limit the Commission’s authority—

4 ~~“(1) over the accounting profession, accounting~~
5 firms, or any persons associated with such firms;

6 ~~“(2) to set standards for accounting practices,~~
7 derived from other provisions of the Federal securi-
8 ties laws or the rules or regulations issued there-
9 under; or

10 ~~“(3) to take, on its own initiative, legal, admin-~~
11 istrative, or disciplinary action against any public
12 accounting firm registered with the Board or any
13 person associated with such a firm.”.

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

15 (a) *SHORT TITLE.*—This Act may be cited as the
16 “Private Securities Litigation Reform Act of 1995”.

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

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

Sec. 101. Elimination of certain abusive practices.

Sec. 102. Securities class action reform.

Sec. 103. Sanctions for abusive litigation.

Sec. 104. Requirements for securities fraud actions.

Sec. 105. Safe harbor for forward-looking statements.

Sec. 106. Written interrogatories.

Sec. 107. Amendment to Racketeer Influenced and Corrupt Organizations Act.

Sec. 108. Authority of Commission to prosecute aiding and abetting.

Sec. 109. Loss causation.

Sec. 110. Applicability.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

Sec. 201. Limitation on damages.

Sec. 202. Proportionate liability.

Sec. 203. Applicability.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

Sec. 301. Fraud detection and disclosure.

1 **TITLE I—REDUCTION OF**
 2 **ABUSIVE LITIGATION**

3 **SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.**

4 (a) *PROHIBITION OF REFERRAL FEES.*—Section 15(c)
 5 *of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))*
 6 *is amended by adding at the end the following new para-*
 7 *graph:*

8 “(8) *PROHIBITION OF REFERRAL FEES.*—No
 9 *broker or dealer, or person associated with a broker*
 10 *or dealer, may solicit or accept, directly or indirectly,*
 11 *remuneration for assisting an attorney in obtaining*
 12 *the representation of any person in any private ac-*
 13 *tion arising under this title or under the Securities*
 14 *Act of 1933.”.*

15 (b) *ATTORNEY CONFLICT OF INTEREST.*—

16 (1) *SECURITIES ACT OF 1933.*—Section 20 of the
 17 *Securities Act of 1933 (15 U.S.C. 77t) is amended by*
 18 *adding at the end the following new subsection:*

19 “(f) *ATTORNEY CONFLICT OF INTEREST.*—In any pri-
 20 *vate action arising under this title, if a plaintiff is rep-*
 21 *resented by an attorney who directly owns or otherwise has*

1 *a beneficial interest in the securities that are the subject*
 2 *of the litigation, the court shall make a determination of*
 3 *whether such ownership or other interest constitutes a con-*
 4 *flict of interest sufficient to disqualify the attorney from*
 5 *representing the party.”.*

6 (2) *SECURITIES EXCHANGE ACT OF 1934.—Sec-*
 7 *tion 21 of the Securities Exchange Act of 1934 (15*
 8 *U.S.C. 78u) is amended by adding at the end the fol-*
 9 *lowing new subsection:*

10 “(i) *ATTORNEY CONFLICT OF INTEREST.—In any pri-*
 11 *vate action arising under this title, if a plaintiff is rep-*
 12 *resented by an attorney who directly owns or otherwise has*
 13 *a beneficial interest in the securities that are the subject*
 14 *of the litigation, the court shall make a determination of*
 15 *whether such ownership or other interest constitutes a con-*
 16 *flict of interest sufficient to disqualify the attorney from*
 17 *representing the party.”.*

18 (c) *PROHIBITION OF ATTORNEYS’ FEES PAID FROM*
 19 *COMMISSION DISGORGEMENT FUNDS.—*

20 (1) *SECURITIES ACT OF 1933.—Section 20 of the*
 21 *Securities Act of 1933 (15 U.S.C. 77t) is amended by*
 22 *adding at the end the following new subsection:*

23 “(g) *PROHIBITION OF ATTORNEYS’ FEES PAID FROM*
 24 *COMMISSION DISGORGEMENT FUNDS.—Except as otherwise*
 25 *ordered by the court upon motion by the Commission, or,*

1 *in the case of an administrative action, as otherwise ordered*
2 *by the Commission, funds disgorged as the result of an ac-*
3 *tion brought by the Commission in Federal court, or as a*
4 *result of any Commission administrative action, shall not*
5 *be distributed as payment for attorneys' fees or expenses*
6 *incurred by private parties seeking distribution of the dis-*
7 *gorged funds."*

8 (2) *SECURITIES EXCHANGE ACT OF 1934.—Sec-*
9 *tion 21(d) of the Securities Exchange Act of 1934 (15*
10 *U.S.C. 78u(d)) is amended by adding at the end the*
11 *following new paragraph:*

12 “(4) *PROHIBITION OF ATTORNEYS' FEES PAID*
13 *FROM COMMISSION DISGORGEMENT FUNDS.—Except*
14 *as otherwise ordered by the court upon motion by the*
15 *Commission, or, in the case of an administrative ac-*
16 *tion, as otherwise ordered by the Commission, funds*
17 *disgorged as the result of an action brought by the*
18 *Commission in Federal court, or as a result of any*
19 *Commission administrative action, shall not be dis-*
20 *tributed as payment for attorneys' fees or expenses in-*
21 *curring by private parties seeking distribution of the*
22 *disgorged funds."*

23 **SEC. 102. SECURITIES CLASS ACTION REFORM.**

24 (a) *RECOVERY RULES.—*

1 (1) *SECURITIES ACT OF 1933.*—Section 20 of the
2 *Securities Act of 1933 (15 U.S.C. 77t)* is amended by
3 adding at the end the following new subsection:

4 “(h) *RECOVERY RULES FOR PRIVATE CLASS AC-*
5 *TIONS.*—

6 “(1) *IN GENERAL.*—The rules contained in this
7 subsection shall apply in each private action arising
8 under this title that is brought as a plaintiff class ac-
9 tion pursuant to the Federal Rules of Civil Procedure.

10 “(2) *CERTIFICATION FILED WITH COMPLAINTS.*—

11 “(A) *IN GENERAL.*—Each plaintiff seeking
12 to serve as a representative party on behalf of a
13 class shall provide a sworn certification, which
14 shall be personally signed by such plaintiff and
15 filed with the complaint, that—

16 “(i) states that the plaintiff has re-
17 viewed the complaint and authorized its fil-
18 ing;

19 “(ii) states that the plaintiff did not
20 purchase the security that is the subject of
21 the complaint at the direction of plaintiff’s
22 counsel or in order to participate in any
23 private action arising under this title;

24 “(iii) states that the plaintiff is willing
25 to serve as a representative party on behalf

1 *of a class, including providing testimony at*
2 *deposition and trial, if necessary;*

3 “(iv) *sets forth all of the transactions*
4 *of the plaintiff in the security that is the*
5 *subject of the complaint during the class pe-*
6 *riod specified in the complaint;*

7 “(v) *identifies any action under this*
8 *title, filed during the 3-year period preced-*
9 *ing the date on which the certification is*
10 *signed by the plaintiff, in which the plain-*
11 *tiff has sought to serve as a representative*
12 *party on behalf of a class; and*

13 “(vi) *states that the plaintiff will not*
14 *accept any payment for serving as a rep-*
15 *resentative party on behalf of a class beyond*
16 *the plaintiff’s pro rata share of any recov-*
17 *ery, except as ordered or approved by the*
18 *court in accordance with paragraph (3).*

19 “(B) *NONWAIVER OF ATTORNEY-CLIENT*
20 *PRIVILEGE.—The certification filed pursuant to*
21 *subparagraph (A) shall not be construed to be a*
22 *waiver of the attorney-client privilege.*

23 “(3) *RECOVERY BY PLAINTIFFS.—The share of*
24 *any final judgment or of any settlement that is*
25 *awarded to a representative party serving on behalf*

1 *of a class shall be calculated in the same manner as*
2 *the shares of the final judgment or settlement awarded*
3 *to all other members of the class. Nothing in this*
4 *paragraph shall be construed to limit the award of*
5 *reasonable costs and expenses (including lost wages)*
6 *directly relating to the representation of the class to*
7 *any representative party serving on behalf of the*
8 *class.*

9 “(4) *RESTRICTIONS ON SETTLEMENTS UNDER*
10 *SEAL.—The terms and provisions of any settlement*
11 *agreement of a class action shall not be filed under*
12 *seal, except that on motion of any party to the settle-*
13 *ment, the court may order filing under seal for those*
14 *portions of a settlement agreement as to which good*
15 *cause is shown for such filing under seal. For pur-*
16 *poses of this paragraph, good cause shall exist only if*
17 *publication of a term or provision of a settlement*
18 *agreement would cause direct and substantial harm to*
19 *any party.*

20 “(5) *RESTRICTIONS ON PAYMENT OF ATTORNEYS’*
21 *FEES AND EXPENSES.—Total attorneys’ fees and ex-*
22 *penditures awarded by the court to counsel for the plain-*
23 *tiff class shall not exceed a reasonable percentage of*
24 *the amount of damages and prejudgment interest*
25 *awarded to the class.*

1 “(6) *DISCLOSURE OF SETTLEMENT TERMS TO*
2 *CLASS MEMBERS.*—Any proposed or final settlement
3 agreement that is published or otherwise disseminated
4 to the class shall include each of the following state-
5 ments, along with a cover page summarizing the in-
6 formation contained in such statements:

7 “(A) *STATEMENT OF PLAINTIFF RECOV-*
8 *ERY.*—The amount of the settlement proposed to
9 be distributed to the parties to the action, deter-
10 mined in the aggregate and on an average per
11 share basis.

12 “(B) *STATEMENT OF POTENTIAL OUTCOME*
13 *OF CASE.*—

14 “(i) *AGREEMENT ON AMOUNT OF DAM-*
15 *AGES.*—If the settling parties agree on the
16 average amount of damages per share that
17 would be recoverable if the plaintiff pre-
18 vailed on each claim alleged under this title,
19 a statement concerning the average amount
20 of such potential damages per share.

21 “(ii) *DISAGREEMENT ON AMOUNT OF*
22 *DAMAGES.*—If the parties do not agree on
23 the average amount of damages per share
24 that would be recoverable if the plaintiff
25 prevailed on each claim alleged under this

1 *title, a statement from each settling party*
2 *concerning the issue or issues on which the*
3 *parties disagree.*

4 “(iii) *INADMISSIBILITY FOR CERTAIN*
5 *PURPOSES.—A statement made in accord-*
6 *ance with clause (i) or (ii) concerning the*
7 *amount of damages shall not be admissible*
8 *in any Federal or State judicial action or*
9 *administrative proceeding, other than an*
10 *action or proceeding arising out of such*
11 *statement.*

12 “(C) *STATEMENT OF ATTORNEYS’ FEES OR*
13 *COSTS SOUGHT.—If any of the settling parties or*
14 *their counsel intend to apply to the court for an*
15 *award of attorneys’ fees or costs from any fund*
16 *established as part of the settlement, a statement*
17 *indicating which parties or counsel intend to*
18 *make such an application, the amount of fees*
19 *and costs that will be sought (including the*
20 *amount of such fees and costs determined on an*
21 *average per share basis), and a brief explanation*
22 *supporting the fees and costs sought.*

23 “(D) *IDENTIFICATION OF LAWYERS’ REP-*
24 *RESENTATIVES.—The name, telephone number,*
25 *and address of one or more representatives of*

1 *counsel for the plaintiff class who will be reason-*
2 *ably available to answer questions from class*
3 *members concerning any matter contained in*
4 *any notice of settlement published or otherwise*
5 *disseminated to the class.*

6 “(E) *REASONS FOR SETTLEMENT.*—A brief
7 *statement explaining the reasons why the parties*
8 *are proposing the settlement.*

9 “(F) *OTHER INFORMATION.*—Such other in-
10 *formation as may be required by the court.”*

11 (2) *SECURITIES EXCHANGE ACT OF 1934.*—Sec-
12 *tion 21 of the Securities Exchange Act of 1934 (15*
13 *U.S.C. 78u) is amended by adding at the end the fol-*
14 *lowing new subsection:*

15 “(j) *RECOVERY RULES FOR PRIVATE CLASS AC-*
16 *TIONS.*—

17 “(1) *IN GENERAL.*—The rules contained in this
18 *subsection shall apply in each private action arising*
19 *under this title that is brought as a plaintiff class ac-*
20 *tion pursuant to the Federal Rules of Civil Procedure.*

21 “(2) *CERTIFICATION FILED WITH COMPLAINTS.*—

22 “(A) *IN GENERAL.*—Each plaintiff seeking
23 *to serve as a representative party on behalf of a*
24 *class shall provide a sworn certification, which*

1 *shall be personally signed by such plaintiff and*
2 *filed with the complaint, that—*

3 “(i) *states that the plaintiff has re-*
4 *viewed the complaint and authorized its fil-*
5 *ing;*

6 “(ii) *states that the plaintiff did not*
7 *purchase the security that is the subject of*
8 *the complaint at the direction of plaintiff’s*
9 *counsel or in order to participate in any*
10 *private action arising under this title;*

11 “(iii) *states that the plaintiff is willing*
12 *to serve as a representative party on behalf*
13 *of a class, including providing testimony at*
14 *deposition and trial, if necessary;*

15 “(iv) *sets forth all of the transactions*
16 *of the plaintiff in the security that is the*
17 *subject of the complaint during the class pe-*
18 *riod specified in the complaint;*

19 “(v) *identifies any action under this*
20 *title, filed during the 3-year period preced-*
21 *ing the date on which the certification is*
22 *signed by the plaintiff, in which the plain-*
23 *tiff has sought to serve as a representative*
24 *party on behalf of a class; and*

1 “(vi) states that the plaintiff will not
2 accept any payment for serving as a rep-
3 resentative party on behalf of a class beyond
4 the plaintiff’s pro rata share of any recov-
5 ery, except as ordered or approved by the
6 court in accordance with paragraph (3).

7 “(B) NONWAIVER OF ATTORNEY-CLIENT
8 PRIVILEGE.—The certification filed pursuant to
9 subparagraph (A) shall not be construed to be a
10 waiver of the attorney-client privilege.

11 “(3) RECOVERY BY PLAINTIFFS.—The share of
12 any final judgment or of any settlement that is
13 awarded to a representative party serving on behalf
14 of a class shall be calculated in the same manner as
15 the shares of the final judgment or settlement awarded
16 to all other members of the class. Nothing in this
17 paragraph shall be construed to limit the award to
18 any representative party serving on behalf of a class
19 of reasonable costs and expenses (including lost
20 wages) directly relating to the representation of the
21 class.

22 “(4) RESTRICTIONS ON SETTLEMENTS UNDER
23 SEAL.—The terms and provisions of any settlement
24 agreement of a class action shall not be filed under
25 seal, except that on motion of any party to the settle-

1 *ment, the court may order filing under seal for those*
2 *portions of a settlement agreement as to which good*
3 *cause is shown for such filing under seal. For pur-*
4 *poses of this paragraph, good cause shall exist only if*
5 *publication of a term or provision of a settlement*
6 *agreement would cause direct and substantial harm to*
7 *any party.*

8 *“(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS’*
9 *FEES AND EXPENSES.—Total attorneys’ fees and ex-*
10 *penses awarded by the court to counsel for the plain-*
11 *tiff class shall not exceed a reasonable percentage of*
12 *the amount of damages and prejudgment interest*
13 *awarded to the class.*

14 *“(6) DISCLOSURE OF SETTLEMENT TERMS TO*
15 *CLASS MEMBERS.—Any proposed or final settlement*
16 *agreement that is published or otherwise disseminated*
17 *to the class shall include each of the following state-*
18 *ments, along with a cover page summarizing the in-*
19 *formation contained in such statements:*

20 *“(A) STATEMENT OF PLAINTIFF RECOV-*
21 *ERY.—The amount of the settlement proposed to*
22 *be distributed to the parties to the action, deter-*
23 *mined in the aggregate and on an average per*
24 *share basis.*

1 “(B) *STATEMENT OF POTENTIAL OUTCOME*
2 *OF CASE.*—

3 “(i) *AGREEMENT ON AMOUNT OF DAM-*
4 *AGES.*—*If the settling parties agree on the*
5 *average amount of damages per share that*
6 *would be recoverable if the plaintiff pre-*
7 *vailed on each claim alleged under this title,*
8 *a statement concerning the average amount*
9 *of such potential damages per share.*

10 “(ii) *DISAGREEMENT ON AMOUNT OF*
11 *DAMAGES.*—*If the parties do not agree on*
12 *the average amount of damages per share*
13 *that would be recoverable if the plaintiff*
14 *prevailed on each claim alleged under this*
15 *title, a statement from each settling party*
16 *concerning the issue or issues on which the*
17 *parties disagree.*

18 “(iii) *INADMISSIBILITY FOR CERTAIN*
19 *PURPOSES.*—*A statement made in accord-*
20 *ance with clause (i) or (ii) concerning the*
21 *amount of damages shall not be admissible*
22 *in any Federal or State judicial action or*
23 *administrative proceeding, other than an*
24 *action or proceeding arising out of such*
25 *statement.*

1 “(C) *STATEMENT OF ATTORNEYS’ FEES OR*
2 *COSTS SOUGHT.*—*If any of the settling parties or*
3 *their counsel intend to apply to the court for an*
4 *award of attorneys’ fees or costs from any fund*
5 *established as part of the settlement, a statement*
6 *indicating which parties or counsel intend to*
7 *make such an application, the amount of fees*
8 *and costs that will be sought (including the*
9 *amount of such fees and costs determined on an*
10 *average per share basis), and a brief explanation*
11 *supporting the fees and costs sought.*

12 “(D) *IDENTIFICATION OF LAWYERS’ REP-*
13 *RESENTATIVES.*—*The name, telephone number,*
14 *and address of one or more representatives of*
15 *counsel for the plaintiff class who will be reason-*
16 *ably available to answer questions from class*
17 *members concerning any matter contained in*
18 *any notice of settlement published or otherwise*
19 *disseminated to the class.*

20 “(E) *REASONS FOR SETTLEMENT.*—*A brief*
21 *statement explaining the reasons why the parties*
22 *are proposing the settlement.*

23 “(F) *OTHER INFORMATION.*—*Such other in-*
24 *formation as may be required by the court.”.*

25 (b) *APPOINTMENT OF LEAD PLAINTIFF.*—

1 (1) *SECURITIES ACT OF 1933.*—Section 20 of the
2 *Securities Act of 1933 (15 U.S.C. 77t)* is amended by
3 adding at the end the following new subsection:

4 “(i) *PROCEDURES GOVERNING APPOINTMENT OF LEAD*
5 *PLAINTIFF IN CLASS ACTIONS.*—

6 “(1) *EARLY NOTICE TO CLASS MEMBERS.*—

7 “(A) *IN GENERAL.*—In any private action
8 arising under this title that is brought on behalf
9 of a class, not later than 20 days after the date
10 on which the complaint is filed, the plaintiff or
11 plaintiffs shall cause to be published, in a widely
12 circulated national business-oriented publication
13 or wire service, a notice advising members of the
14 purported plaintiff class—

15 “(i) of the pendency of the action, the
16 claims asserted therein, and the purported
17 class period; and

18 “(ii) that, not later than 60 days after
19 the date on which the notice is published,
20 any member of the purported class may
21 move the court to serve as lead plaintiff of
22 the purported class.

23 “(B) *ADDITIONAL NOTICES MAY BE RE-*
24 *QUIRED UNDER FEDERAL RULES.*—Notice re-
25 quired under subparagraph (A) shall be in addi-

1 *tion to any notice required pursuant to the Fed-*
2 *eral Rules of Civil Procedure.*

3 *“(2) APPOINTMENT OF LEAD PLAINTIFF.—*

4 *“(A) IN GENERAL.—Not later than 90 days*
5 *after the date on which a notice is published*
6 *under paragraph (1)(A), the court shall consider*
7 *any motion made by a purported class member*
8 *in response to the notice, and shall appoint as*
9 *lead plaintiff the member or members of the pur-*
10 *ported plaintiff class that the court determines to*
11 *be most capable of adequately representing the*
12 *interests of class members (hereafter in this sub-*
13 *section referred to as the ‘most adequate plain-*
14 *tiff’) in accordance with this paragraph.*

15 *“(B) CONSOLIDATED ACTIONS.—If more*
16 *than one action on behalf of a class asserting*
17 *substantially the same claim or claims arising*
18 *under this title has been filed, and any party has*
19 *sought to consolidate those actions for pretrial*
20 *purposes or for trial, the court shall not make the*
21 *determination required by subparagraph (A)*
22 *until after the decision on the motion to consoli-*
23 *date is rendered. As soon as practicable after*
24 *such decision is rendered, the court shall appoint*
25 *the most adequate plaintiff as lead plaintiff for*

1 *the consolidated actions in accordance with this*
2 *paragraph.*

3 “(C) *REBUTTABLE PRESUMPTION.*—

4 “(i) *IN GENERAL.*—*Subject to clause*
5 *(ii), for purposes of subparagraph (A), the*
6 *court shall adopt a presumption that the*
7 *most adequate plaintiff in any private ac-*
8 *tion arising under this title is the person or*
9 *group of persons that—*

10 “(I) *has either filed the complaint*
11 *or made a motion in response to a no-*
12 *tice under paragraph (1)(A);*

13 “(II) *in the determination of the*
14 *court, has the largest financial interest*
15 *in the relief sought by the class; and*

16 “(III) *otherwise satisfies the re-*
17 *quirements of Rule 23 of the Federal*
18 *Rules of Civil Procedure.*

19 “(ii) *REBUTTAL EVIDENCE.*—*The pre-*
20 *sumption described in clause (i) may be re-*
21 *butted only upon proof by a member of the*
22 *purported plaintiff class that the presump-*
23 *tively most adequate plaintiff—*

1 “(I) will not fairly and ade-
2 quately protect the interests of the
3 class; or

4 “(II) is subject to unique defenses
5 that render such plaintiff incapable of
6 adequately representing the class.

7 “(iii) *DISCOVERY*.—For purposes of
8 clause (ii), discovery relating to whether a
9 member or members of the purported plain-
10 tiff class is the most adequate plaintiff—

11 “(I) may not be conducted by any
12 defendant; and

13 “(II) may be conducted by a
14 plaintiff only if the plaintiff first dem-
15 onstrates a reasonable basis for a find-
16 ing that the presumptively most ade-
17 quate plaintiff is incapable of ade-
18 quately representing the class.

19 “(D) *SELECTION OF LEAD COUNSEL*.—The
20 most adequate plaintiff shall, subject to the ap-
21 proval of the court, select and retain counsel to
22 represent the class.”.

23 (2) *SECURITIES EXCHANGE ACT OF 1934*.—Sec-
24 tion 21 of the Securities Exchange Act of 1934 (15

1 *U.S.C. 78a et seq.) is amended by adding at the end*
2 *the following new subsection:*

3 “(k) *PROCEDURES GOVERNING APPOINTMENT OF*
4 *LEAD PLAINTIFF IN CLASS ACTIONS.—*

5 “(1) *EARLY NOTICE TO CLASS MEMBERS.—*

6 “(A) *IN GENERAL.—In any private action*
7 *arising under this title that is brought on behalf*
8 *of a class, not later than 20 days after the date*
9 *on which the complaint is filed, the plaintiff or*
10 *plaintiffs shall cause to be published, in a widely*
11 *circulated national business-oriented publication*
12 *or wire service, a notice advising members of the*
13 *purported plaintiff class—*

14 “(i) *of the pendency of the action, the*
15 *claims asserted therein, and the purported*
16 *class period; and*

17 “(ii) *that, not later than 60 days after*
18 *the date on which the notice is published,*
19 *any member of the purported class may*
20 *move the court to serve as lead plaintiff of*
21 *the purported class.*

22 “(B) *ADDITIONAL NOTICES MAY BE RE-*
23 *QUIRED UNDER FEDERAL RULES.—Notice re-*
24 *quired under subparagraph (A) shall be in addi-*

1 *tion to any notice required pursuant to the Fed-*
2 *eral Rules of Civil Procedure.*

3 *“(2) APPOINTMENT OF LEAD PLAINTIFF.—*

4 *“(A) IN GENERAL.—Not later than 90 days*
5 *after the date on which a notice is published*
6 *under paragraph (1)(A), the court shall consider*
7 *any motion made by a purported class member*
8 *in response to the notice, and shall appoint as*
9 *lead plaintiff the member or members of the pur-*
10 *ported plaintiff class that the court determines to*
11 *be most capable of adequately representing the*
12 *interests of class members (hereafter in this sub-*
13 *section referred to as the ‘most adequate plain-*
14 *tiff’) in accordance with this paragraph.*

15 *“(B) CONSOLIDATED ACTIONS.—If more*
16 *than one action on behalf of a class asserting*
17 *substantially the same claim or claims arising*
18 *under this title has been filed, and any party has*
19 *sought to consolidate those actions for pretrial*
20 *purposes or for trial, the court shall not make the*
21 *determination required by subparagraph (A)*
22 *until after the decision on the motion to consoli-*
23 *date is rendered. As soon as practicable after*
24 *such decision is rendered, the court shall appoint*
25 *the most adequate plaintiff as lead plaintiff for*

1 *the consolidated actions in accordance with this*
2 *paragraph.*

3 “(C) *REBUTTABLE PRESUMPTION.*—

4 “(i) *IN GENERAL.*—*Subject to clause*
5 *(ii), for purposes of subparagraph (A), the*
6 *court shall adopt a presumption that the*
7 *most adequate plaintiff in any private ac-*
8 *tion arising under this title is the person or*
9 *group of persons that—*

10 “(I) *has either filed the complaint*
11 *or made a motion in response to a no-*
12 *tice under paragraph (1)(A);*

13 “(II) *in the determination of the*
14 *court, has the largest financial interest*
15 *in the relief sought by the class; and*

16 “(III) *otherwise satisfies the re-*
17 *quirements of Rule 23 of the Federal*
18 *Rules of Civil Procedure.*

19 “(ii) *REBUTTAL EVIDENCE.*—*The pre-*
20 *sumption described in clause (i) may be re-*
21 *butted only upon proof by a member of the*
22 *purported plaintiff class that the presump-*
23 *tively most adequate plaintiff—*

1 “(I) will not fairly and ade-
2 quately protect the interests of the
3 class; or

4 “(II) is subject to unique defenses
5 that render such plaintiff incapable of
6 adequately representing the class.

7 “(iii) *DISCOVERY.*—For purposes of
8 clause (ii), discovery relating to whether a
9 member or members of the purported plain-
10 tiff class is the most adequate plaintiff—

11 “(I) may not be conducted by any
12 defendant; and

13 “(II) may be conducted by a
14 plaintiff only if the plaintiff first dem-
15 onstrates a reasonable basis for a find-
16 ing that the presumptively most ade-
17 quate plaintiff is incapable of ade-
18 quately representing the class.

19 “(D) *SELECTION OF LEAD COUNSEL.*—The
20 most adequate plaintiff shall, subject to the ap-
21 proval of the court, select and retain counsel to
22 represent the class.”.

1 **SEC. 103. SANCTIONS FOR ABUSIVE LITIGATION.**

2 (a) *SECURITIES ACT OF 1933.*—Section 20 of the Se-
3 curities Act of 1933 (15 U.S.C. 77t) is amended by adding
4 at the end the following new subsection:

5 “(j) *SANCTIONS FOR ABUSIVE LITIGATION.*—

6 “(1) *MANDATORY REVIEW BY COURT.*—In any
7 private action arising under this title, upon final ad-
8 judication of the action, the court shall include in the
9 record specific findings regarding compliance by each
10 party and each attorney representing any party with
11 each requirement of Rule 11(b) of the Federal Rules
12 of Civil Procedure.

13 “(2) *MANDATORY SANCTIONS.*—If the court
14 makes a finding under paragraph (1) that a party or
15 attorney violated any requirement of Rule 11(b) of the
16 Federal Rules of Civil Procedure, the court shall im-
17 pose sanctions on such party or attorney in accord-
18 ance with Rule 11 of the Federal Rules of Civil Proce-
19 dure.

20 “(3) *PRESUMPTION IN FAVOR OF ATTORNEYS’*
21 *FEES AND COSTS.*—

22 “(A) *IN GENERAL.*—Subject to subpara-
23 graphs (B) and (C), for purposes of paragraph
24 (2), the court shall adopt a presumption that the
25 appropriate sanction for failure of the complaint
26 to comply with any requirement of Rule 11(b) of

1 *the Federal Rules of Civil Procedure is an award*
2 *to the opposing party of all of the reasonable at-*
3 *torneys' fees and other expenses incurred as a di-*
4 *rect result of the violation.*

5 “(B) *REBUTTAL EVIDENCE.*—*The presump-*
6 *tion described in subparagraph (A) may be re-*
7 *butted only upon proof by the party or attorney*
8 *against whom sanctions are to be imposed*
9 *that—*

10 “(i) *the award of attorneys' fees and*
11 *other expenses will impose an undue burden*
12 *on that party or attorney; or*

13 “(ii) *the violation of Rule 11(b) of the*
14 *Federal Rules of Civil Procedure was de*
15 *minimis.*

16 “(C) *SANCTIONS.*—*If the party or attorney*
17 *against whom sanctions are to be imposed meets*
18 *its burden under subparagraph (B), the court*
19 *shall award the sanctions that the court deems*
20 *appropriate pursuant to Rule 11 of the Federal*
21 *Rules of Civil Procedure.”.*

22 (b) *SECURITIES EXCHANGE ACT OF 1934.*—*Section 21*
23 *of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is*
24 *amended by adding at the end the following new subsection:*

25 “(l) *SANCTIONS FOR ABUSIVE LITIGATION.*—

1 “(1) *MANDATORY REVIEW BY COURT.*—*In any*
2 *private action arising under this title, upon final ad-*
3 *judication of the action, the court shall include in the*
4 *record specific findings regarding compliance by each*
5 *party and each attorney representing any party with*
6 *each requirement of Rule 11(b) of the Federal Rules*
7 *of Civil Procedure.*

8 “(2) *MANDATORY SANCTIONS.*—*If the court*
9 *makes a finding under paragraph (1) that a party or*
10 *attorney violated any requirement of Rule 11(b) of the*
11 *Federal Rules of Civil Procedure, the court shall im-*
12 *pose sanctions in accordance with Rule 11 of the Fed-*
13 *eral Rules of Civil Procedure on such party or attor-*
14 *ney.*

15 “(3) *PRESUMPTION IN FAVOR OF ATTORNEYS’*
16 *FEES AND COSTS.*—

17 “(A) *IN GENERAL.*—*Subject to subpara-*
18 *graphs (B) and (C), for purposes of paragraph*
19 *(2), the court shall adopt a presumption that the*
20 *appropriate sanction for failure of the complaint*
21 *to comply with any requirement of Rule 11(b) of*
22 *the Federal Rules of Civil Procedure is an award*
23 *to the opposing party of all of the reasonable at-*
24 *torneys’ fees and other expenses incurred as a di-*
25 *rect result of the violation.*

1 “(B) *REBUTTAL EVIDENCE.*—*The presump-*
 2 *tion described in subparagraph (A) may be re-*
 3 *butted only upon proof by the party or attorney*
 4 *against whom sanctions are to be imposed*
 5 *that—*

6 “(i) *the award of attorneys’ fees and*
 7 *other expenses will impose an undue burden*
 8 *on that party or attorney; or*

9 “(ii) *the violation of Rule 11(b) of the*
 10 *Federal Rules of Civil Procedure was de*
 11 *minimis.*

12 “(C) *SANCTIONS.*—*If the party or attorney*
 13 *against whom sanctions are to be imposed meets*
 14 *its burden under subparagraph (B), the court*
 15 *shall award the sanctions that the court deems*
 16 *appropriate pursuant to Rule 11 of the Federal*
 17 *Rules of Civil Procedure.”.*

18 **SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD AC-**
 19 **TIONS.**

20 (a) *SECURITIES ACT OF 1933.*—

21 (1) *STAY OF DISCOVERY.*—*Section 20 of the Se-*
 22 *curities Act of 1933 (15 U.S.C. 77t) is amended by*
 23 *adding at the end the following new subsection:*

24 “(k) *STAY OF DISCOVERY.*—*In any private action*
 25 *arising under this title, during the pendency of any motion*

1 *to dismiss, all discovery and other proceedings shall be*
2 *stayed unless the court finds, upon the motion of any party,*
3 *that particularized discovery is necessary to preserve evi-*
4 *dence or to prevent undue prejudice to that party.”.*

5 (2) *PRESERVATION OF EVIDENCE.—Section 20 of*
6 *the Securities Act of 1933 (15 U.S.C. 77t) is amended*
7 *by adding at the end the following new subsection:*

8 “(1) *PRESERVATION OF EVIDENCE.—It shall be unlaw-*
9 *ful for any person, upon receiving actual notice that a com-*
10 *plaint has been filed in a private action arising under this*
11 *title naming that person as a defendant and that describes*
12 *the allegations contained in the complaint, to willfully de-*
13 *stroy or otherwise alter any document, data compilation*
14 *(including any electronically recorded or stored data), or*
15 *tangible object that is in the custody or control of that per-*
16 *son and that is relevant to the allegations.”.*

17 (b) *SECURITIES EXCHANGE ACT OF 1934.—Title I of*
18 *the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)*
19 *is amended by adding at the end the following new section:*

20 **“SEC. 36. REQUIREMENTS FOR SECURITIES FRAUD AC-**
21 **TIONS.**

22 “(a) *MISLEADING STATEMENTS AND OMISSIONS.—In*
23 *any private action arising under this title in which the*
24 *plaintiff alleges that the defendant—*

1 “(1) *made an untrue statement of a material*
2 *fact; or*

3 “(2) *omitted to state a material fact necessary in*
4 *order to make the statements made, in the light of the*
5 *circumstances in which they were made, not mislead-*
6 *ing;*

7 *the complaint shall specify each statement alleged to have*
8 *been misleading, the reason or reasons why the statement*
9 *is misleading, and, if an allegation regarding the statement*
10 *or omission is made on information and belief, the plaintiff*
11 *shall set forth all information on which that belief is formed.*

12 “(b) *REQUIRED STATE OF MIND.—In any private ac-*
13 *tion arising under this title in which the plaintiff may re-*
14 *cover money damages only on proof that the defendant acted*
15 *with a particular state of mind, the plaintiff’s complaint*
16 *shall, with respect to each act or omission alleged to violate*
17 *this title, specifically allege facts giving rise to a strong in-*
18 *ference that the defendant acted with the required state of*
19 *mind.*

20 “(c) *MOTION TO DISMISS; STAY OF DISCOVERY.—*

21 “(1) *DISMISSAL FOR FAILURE TO MEET PLEAD-*
22 *ING REQUIREMENTS.—In any private action arising*
23 *under this title, the court shall, on the motion of any*
24 *defendant, dismiss the complaint if the requirements*
25 *of subsections (a) and (b) are not met.*

1 “(2) *STAY OF DISCOVERY.*—In any private ac-
2 tion arising under this title, during the pendency of
3 any motion to dismiss, all discovery and other pro-
4 ceedings shall be stayed unless the court finds upon
5 the motion of any party that particularized discovery
6 is necessary to preserve evidence or to prevent undue
7 prejudice to that party.

8 “(3) *PRESERVATION OF EVIDENCE.*—It shall be
9 unlawful for any person, upon receiving actual notice
10 that a complaint has been filed in a private action
11 arising under this title naming that person as a de-
12 fendant and that describes the allegations contained
13 in the complaint, to willfully destroy or otherwise
14 alter any document, data compilation (including any
15 electronically recorded or stored data), or tangible ob-
16 ject that is in the custody or control of that person
17 and that is relevant to the allegations.

18 “(d) *LOSS CAUSATION.*—In any private action arising
19 under this title, the plaintiff shall have the burden of prov-
20 ing that the act or omission alleged to violate this title
21 caused any loss incurred by the plaintiff. Damages arising
22 from such loss may be mitigated upon a showing by the
23 defendant that factors unrelated to such act or omission
24 contributed to the loss.”.

1 **SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
2 **MENTS.**

3 (a) *SECURITIES ACT OF 1933.*—Title I of the *Securi-*
4 *ties Act of 1933 (15 U.S.C. 77a et seq.)* is amended by in-
5 *serting after section 13 the following new section:*

6 **“SEC. 13A. APPLICATION OF SAFE HARBOR FOR FORWARD-**
7 **LOOKING STATEMENTS.**

8 “(a) *SAFE HARBOR.*—

9 “(1) *IN GENERAL.*—In any private action aris-
10 *ing under this title that is based on a fraudulent*
11 *statement, an issuer that is subject to the reporting*
12 *requirements of section 13(a) or section 15(d) of the*
13 *Securities Exchange Act of 1934, a person acting on*
14 *behalf of such issuer, or an outside reviewer retained*
15 *by such issuer, shall not be liable with respect to any*
16 *forward-looking statement, whether written or oral, if*
17 *and to the extent that the statement—*

18 “(A) *projects, estimates, or describes future*
19 *events; and*

20 “(B) *refers clearly (and, except as otherwise*
21 *provided by rule or regulation, proximately)*
22 *to—*

23 “(i) *such projections, estimates, or de-*
24 *scriptions as forward-looking statements;*
25 *and*

1 “(ii) the risk that actual results may
2 differ materially from such projections, esti-
3 mates, or descriptions.

4 “(2) EFFECT ON OTHER SAFE HARBORS.—The
5 exemption from liability provided for in paragraph
6 (1) shall be in addition to any exemption that the
7 Commission may establish by rule or regulation
8 under subsection (e).

9 “(b) DEFINITION OF FORWARD-LOOKING STATE-
10 MENT.—For purposes of this section, the term ‘forward-look-
11 ing statement’ means—

12 “(1) a statement containing a projection of reve-
13 nues, income (including income loss), earnings (in-
14 cluding earnings loss) per share, capital expenditures,
15 dividends, capital structure, or other financial items;

16 “(2) a statement of the plans and objectives of
17 management for future operations;

18 “(3) a statement of future economic performance
19 contained in a discussion and analysis of financial
20 condition by the management or in the results of op-
21 erations included pursuant to the rules and regula-
22 tions of the Commission;

23 “(4) any disclosed statement of the assumptions
24 underlying or relating to any statement described in
25 paragraph (1), (2), or (3); or

1 “(5) a statement containing a projection or esti-
2 mate of such other items as may be specified by rule
3 or regulation of the Commission.

4 “(c) *EXCLUSIONS.*—The exemption from liability pro-
5 vided for in subsection (a) does not apply to a forward-
6 looking statement that is—

7 “(1) knowingly made with the expectation, pur-
8 pose, and actual intent of misleading investors;

9 “(2) except to the extent otherwise specifically
10 provided by rule, regulation, or order of the Commis-
11 sion, made with respect to the business or operations
12 of the issuer, if the issuer—

13 “(A) has been, during the 3-year period pre-
14 ceding the date on which the statement was first
15 made, convicted of any felony or misdemeanor
16 described in clauses (i) through (iv) of section
17 15(b)(4)(B), or has been made the subject of a ju-
18 dicial or administrative decree or order arising
19 out of a governmental action that—

20 “(i) prohibits future violations of the
21 anti-fraud provisions of the securities laws,
22 as that term is defined in section 3 of the
23 Securities Exchange Act of 1934;

1 “(ii) requires that the issuer cease and
2 desist from violating the anti-fraud provi-
3 sions of the securities laws; or

4 “(iii) determines that the issuer vio-
5 lated the anti-fraud provisions of the securi-
6 ties laws;

7 “(B) makes the forward-looking statement
8 in connection with an offering of securities by a
9 blank check company, as that term is defined
10 under the rules or regulations of the Commission;

11 “(C) issues penny stock, as that term is de-
12 fined in section 3(a)(51) of the Securities Ex-
13 change Act of 1934, and the rules, regulations, or
14 orders issued pursuant to that section;

15 “(D) makes the forward-looking statement
16 in connection with a rollup transaction, as that
17 term is defined under the rules or regulations of
18 the Commission; or

19 “(E) makes the forward-looking statement
20 in connection with a going private transaction,
21 as that term is defined under the rules or regula-
22 tions of the Commission issued pursuant to sec-
23 tion 13(e) of the Securities Exchange Act of
24 1934; or

1 “(3) *except to the extent otherwise specifically*
2 *provided by rule or regulation of the Commission—*

3 “(A) *included in a financial statement pre-*
4 *pared in accordance with generally accepted ac-*
5 *counting principles;*

6 “(B) *contained in a registration statement*
7 *of, or otherwise issued by, an investment com-*
8 *pany, as that term is defined in section 3(a) of*
9 *the Investment Company Act of 1940;*

10 “(C) *made in connection with a tender*
11 *offer;*

12 “(D) *made by or in connection with an of-*
13 *fering by a partnership, limited liability cor-*
14 *poration, or a direct participation investment*
15 *program, as those terms are defined by rule or*
16 *regulation of the Commission; or*

17 “(E) *made in a disclosure of beneficial own-*
18 *ership in a report required to be filed with the*
19 *Commission pursuant to section 13(d) of the Se-*
20 *curities Exchange Act of 1934.*

21 “(d) *STAY PENDING DECISION ON MOTION.—In any*
22 *private action arising under this title, the court shall stay*
23 *discovery during the pendency of any motion by a defend-*
24 *ant (other than discovery that is specifically directed to the*

1 *applicability of the exemption provided for in this section)*
2 *for summary judgment that is based on the grounds that—*

3 “(1) *the statement or omission upon which the*
4 *complaint is based is a forward-looking statement*
5 *within the meaning of this section; and*

6 “(2) *the exemption provided for in this section*
7 *precludes a claim for relief.*

8 “(e) *AUTHORITY.—In addition to the exemption pro-*
9 *vided for in this section, the Commission may, by rule or*
10 *regulation, provide exemptions from liability under any*
11 *provision of this title, or of any rule or regulation issued*
12 *under this title, that is based on a statement that includes*
13 *or that is based on projections or other forward-looking in-*
14 *formation, if and to the extent that any such exemption*
15 *is, as determined by the Commission, consistent with the*
16 *public interest and the protection of investors.*

17 “(f) *COMMISSION DISGORGEMENT ACTIONS.—*

18 “(1) *IN GENERAL.—If the Commission, in any*
19 *proceeding, orders or obtains (by settlement, court*
20 *order, or otherwise) a payment of funds from a per-*
21 *son who has violated this title through means that in-*
22 *cluded the utilization of a forward-looking statement,*
23 *and if any portion of such funds is set aside or other-*
24 *wise held for or available to persons who suffered*
25 *losses in connection with such violation, no person*

1 *shall be precluded from participating in the distribu-*
2 *tion of, or otherwise receiving, a portion of such funds*
3 *by reason of the application of this section.*

4 “(2) *JUDGMENT FOR LOSSES SUFFERED.—In*
5 *any action by the Commission alleging a violation of*
6 *this title in which the defendant or respondent is al-*
7 *leged to have utilized a forward-looking statement in*
8 *furtherance of such violation, the Commission may,*
9 *upon a sufficient showing, in addition to all other*
10 *remedies available to the Commission, obtain a judg-*
11 *ment for the payment of an amount equal to all losses*
12 *suffered by reason of the utilization of the forward-*
13 *looking statement.*

14 “(g) *EFFECT ON OTHER AUTHORITY OF COMMIS-*
15 *SION.—Nothing in this section limits, either expressly or*
16 *by implication, the authority of the Commission to exercise*
17 *similar authority or to adopt similar rules and regulations*
18 *with respect to forward-looking statements under any other*
19 *statute under which the Commission exercises rulemaking*
20 *authority.”.*

21 “(b) *SECURITIES EXCHANGE ACT OF 1934.—Title I of*
22 *the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)*
23 *is amended by adding at the end the following new section:*

1 **“SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-**
2 **LOOKING STATEMENTS.**

3 “(a) *SAFE HARBOR.*—

4 “(1) *IN GENERAL.*—In any private action arising
5 under this title that is based on a fraudulent
6 statement, an issuer that is subject to the reporting
7 requirements of section 13(a) or section 15(d) of the
8 Securities Exchange Act of 1934, a person acting on
9 behalf of such issuer, or an outside reviewer retained
10 by such issuer, shall not be liable with respect to any
11 forward-looking statement, whether written or oral, if
12 and to the extent that the statement—

13 “(A) projects, estimates, or describes future
14 events; and

15 “(B) refers clearly (and, except as otherwise
16 provided by rule or regulation, proximately)
17 to—

18 “(i) such projections, estimates, or de-
19 scriptions as forward-looking statements;
20 and

21 “(ii) the risk that actual results may
22 differ materially from such projections, esti-
23 mates, or descriptions.

24 “(2) *EFFECT ON OTHER SAFE HARBORS.*—The
25 exemption from liability provided for in paragraph
26 (1) shall be in addition to any exemption that the

1 *Commission may establish by rule or regulation*
2 *under subsection (e).*

3 “(b) *DEFINITION OF FORWARD-LOOKING STATE-*
4 *MENT.—For purposes of this section, the term ‘forward-look-*
5 *ing statement’ means—*

6 “(1) *a statement containing a projection of reve-*
7 *nues, income (including income loss), earnings (in-*
8 *cluding earnings loss) per share, capital expenditures,*
9 *dividends, capital structure, or other financial items;*

10 “(2) *a statement of the plans and objectives of*
11 *management for future operations;*

12 “(3) *a statement of future economic performance*
13 *contained in a discussion and analysis of financial*
14 *condition by the management or in the results of op-*
15 *erations included pursuant to the rules and regula-*
16 *tions of the Commission;*

17 “(4) *any disclosed statement of the assumptions*
18 *underlying or relating to any statement described in*
19 *paragraph (1), (2), or (3); or*

20 “(5) *a statement containing a projection or esti-*
21 *mate of such other items as may be specified by rule*
22 *or regulation of the Commission.*

23 “(c) *EXCLUSIONS.—The exemption from liability pro-*
24 *vided for in subsection (a) does not apply to a forward-*
25 *looking statement that is—*

1 “(1) knowingly made with the expectation, pur-
2 pose, and actual intent of misleading investors;

3 “(2) except to the extent otherwise specifically
4 provided by rule, regulation, or order of the Commis-
5 sion, made with respect to the business or operations
6 of the issuer, if the issuer—

7 “(A) has been, during the 3-year period pre-
8 ceding the date on which the statement was first
9 made, convicted of any felony or misdemeanor
10 described in clauses (i) through (iv) of section
11 15(b)(4)(B), or has been made the subject of a ju-
12 dicial or administrative decree or order arising
13 out of a governmental action that—

14 “(i) prohibits future violations of the
15 anti-fraud provisions of the securities laws;

16 “(ii) requires that the issuer cease and
17 desist from violating the anti-fraud provi-
18 sions of the securities laws; or

19 “(iii) determines that the issuer vio-
20 lated the anti-fraud provisions of the securi-
21 ties laws;

22 “(B) makes the forward-looking statement
23 in connection with an offering of securities by a
24 blank check company, as that term is defined
25 under the rules or regulations of the Commission;

1 “(C) issues penny stock;

2 “(D) makes the forward-looking statement
3 in connection with a rollup transaction, as that
4 term is defined under the rules or regulations of
5 the Commission; or

6 “(E) makes the forward-looking statement
7 in connection with a going private transaction,
8 as that term is defined under the rules or regula-
9 tions of the Commission issued pursuant to sec-
10 tion 13(e); or

11 “(3) except to the extent otherwise specifically
12 provided by rule or regulation of the Commission—

13 “(A) included in financial statements pre-
14 pared in accordance with generally accepted ac-
15 counting principles;

16 “(B) contained in a registration statement
17 of, or otherwise issued by, an investment com-
18 pany;

19 “(C) made in connection with a tender
20 offer;

21 “(D) made by or in connection with an of-
22 fering by a partnership, limited liability cor-
23 poration, or a direct participation investment
24 program, as those terms are defined by rule or
25 regulation of the Commission; or

1 “(E) made in a disclosure of beneficial own-
2 ership in a report required to be filed with the
3 Commission pursuant to section 13(d).

4 “(d) *STAY PENDING DECISION ON MOTION.*—In any
5 private action arising under this title, the court shall stay
6 discovery during the pendency of any motion by a defend-
7 ant (other than discovery that is specifically directed to the
8 applicability of the exemption provided for in this section)
9 for summary judgment that is based on the grounds that—

10 “(1) the statement or omission upon which the
11 complaint is based is a forward-looking statement
12 within the meaning of this section; and

13 “(2) the exemption provided for in this section
14 precludes a claim for relief.

15 “(e) *AUTHORITY.*—In addition to the exemption pro-
16 vided for in this section, the Commission may, by rule or
17 regulation, provide exemptions from liability under any
18 provision of this title, or of any rule or regulation issued
19 under this title, that is based on a statement that includes
20 or that is based on projections or other forward-looking in-
21 formation, if and to the extent that any such exemption
22 is, as determined by the Commission, consistent with the
23 public interest and the protection of investors.

24 “(f) *COMMISSION DISGORGEMENT ACTIONS.*—

1 “(1) *IN GENERAL.*—If the Commission, in any
2 *proceeding, orders or obtains (by settlement, court*
3 *order, or otherwise) a payment of funds from a per-*
4 *son who has violated this title through means that in-*
5 *cluded the utilization of a forward-looking statement,*
6 *and if any portion of such funds is set aside or other-*
7 *wise held for or available to persons who suffered*
8 *losses in connection with such violation, no person*
9 *shall be precluded from participating in the distribu-*
10 *tion of, or otherwise receiving, a portion of such funds*
11 *by reason of the application of this section.*

12 “(2) *JUDGMENT FOR LOSSES SUFFERED.*—In
13 *any action by the Commission alleging a violation of*
14 *this title in which the defendant or respondent is al-*
15 *leged to have utilized a forward-looking statement in*
16 *furtherance of such violation, the Commission may,*
17 *upon a sufficient showing, in addition to all other*
18 *remedies available to the Commission, obtain a judg-*
19 *ment for the payment of an amount equal to all losses*
20 *suffered by reason of the utilization of the forward-*
21 *looking statement.*

22 “(g) *EFFECT ON OTHER AUTHORITY OF COMMIS-*
23 *SION.*—Nothing in this section limits, either expressly or
24 *by implication, the authority of the Commission to exercise*
25 *similar authority or to adopt similar rules and regulations*

1 *with respect to forward-looking statements under any other*
2 *statute under which the Commission exercises rulemaking*
3 *authority.”.*

4 *(c) INVESTMENT COMPANY ACT OF 1940.—Section 24*
5 *of the Investment Company Act of 1940 (15 U.S.C. 80a-*
6 *24) is amended by adding at the end the following new sub-*
7 *section:*

8 *“(g) REGULATORY AUTHORITY FOR FORWARD-LOOK-*
9 *ING STATEMENTS.—*

10 *“(1) IN GENERAL.—The Commission shall review*
11 *and, if necessary to carry out the purposes of this*
12 *title, promulgate such rules and regulations as may*
13 *be necessary to describe conduct with respect to the*
14 *making of forward-looking statements that the Com-*
15 *mission deems does not provide a basis for liability*
16 *in any private action arising under this title.*

17 *“(2) REQUIREMENTS.—A rule or regulation pro-*
18 *mulgated under paragraph (1) shall—*

19 *“(A) include clear and objective guidance*
20 *that the Commission finds sufficient for the pro-*
21 *tection of investors;*

22 *“(B) prescribe such guidance with sufficient*
23 *particularity that compliance shall be readily*
24 *ascertainable by issuers prior to issuance of secu-*
25 *rities; and*

1 “(C) provide that forward-looking state-
2 ments that are in compliance with such guidance
3 and that concern the future economic perform-
4 ance of an issuer of securities registered under
5 section 12 shall be deemed not to be in violation
6 of this title.

7 “(3) EFFECT ON OTHER AUTHORITY OF COMMIS-
8 SION.—Nothing in this subsection limits, either ex-
9 pressly or by implication, the authority of the Com-
10 mission to exercise similar authority or to adopt
11 similar rules and regulations with respect to forward-
12 looking statements under any other statute under
13 which the Commission exercises rulemaking author-
14 ity.”.

15 **SEC. 106. WRITTEN INTERROGATORIES.**

16 (a) SECURITIES ACT OF 1933.—Section 20 of the Se-
17 curities Act of 1933 (15 U.S.C. 77t) is amended by adding
18 at the end the following new subsection:

19 “(m) DEFENDANT’S RIGHT TO WRITTEN INTERROG-
20 ATORIES.—In any private action arising under this title
21 in which the plaintiff may recover money damages only on
22 proof that a defendant acted with a particular state of
23 mind, the court shall, when requested by a defendant, sub-
24 mit to the jury a written interrogatory on the issue of each

1 *such defendant's state of mind at the time the alleged viola-*
2 *tion occurred."*

3 (b) *SECURITIES EXCHANGE ACT OF 1934.—Section 21*
4 *of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is*
5 *amended by adding at the end the following new subsection:*

6 “(m) *DEFENDANT'S RIGHT TO WRITTEN INTERROG-*
7 *ATORIES.—In any private action arising under this title*
8 *in which the plaintiff may recover money damages, the*
9 *court shall, when requested by a defendant, submit to the*
10 *jury a written interrogatory on the issue of each such de-*
11 *fendant's state of mind at the time the alleged violation oc-*
12 *curred."*

13 **SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND**
14 **CORRUPT ORGANIZATIONS ACT.**

15 *Section 1964(c) of title 18, United States Code, is*
16 *amended by inserting before the period “, except that no*
17 *person may rely upon conduct that would have been action-*
18 *able as fraud in the purchase or sale of securities to estab-*
19 *lish a violation of section 1962”.*

20 **SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AID-**
21 **ING AND ABETTING.**

22 *Section 20 of the Securities Exchange Act of 1934 (15*
23 *U.S.C. 78t) is amended—*

24 (1) *by striking the section heading and inserting*
25 *the following:*

1 “LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO
2 AID AND ABET VIOLATIONS”; AND

3 (2) by adding at the end the following new sub-
4 section:

5 “(e) PROSECUTION OF PERSONS WHO AID AND ABET
6 VIOLATIONS.—For purposes of any action brought by the
7 Commission under paragraph (1) or (3) of section 21(d),
8 any person that knowingly provides substantial assistance
9 to another person in the violation of a provision of this
10 title, or of any rule or regulation issued under this title,
11 shall be—

12 “(1) deemed to be in violation of such provision;
13 and

14 “(2) liable to the same extent as the person to
15 whom such assistance is provided.”.

16 **SEC. 109. LOSS CAUSATION.**

17 Section 12 of the Securities Act of 1933 (15 U.S.C.
18 77l) is amended—

19 (1) by inserting “(a) IN GENERAL.—” before
20 “Any person”;

21 (2) by inserting “, subject to subsection (b),”
22 after “shall be liable”; and

23 (3) by adding at the end the following:

24 “(b) LOSS CAUSATION.—In an action described in sub-
25 section (a)(2), the liability of the person who offers or sells

1 *such security shall be limited to damages if that person*
 2 *proves that any portion or all of the amount recoverable*
 3 *under subsection (a)(2) represents other than the deprecia-*
 4 *tion in value of the subject security resulting from such part*
 5 *of the prospectus or oral communication, with respect to*
 6 *which the liability of that person is asserted, not being true*
 7 *or omitting to state a material fact required to be stated*
 8 *therein or necessary to make the statement not misleading,*
 9 *and such portion or all of such amount shall not be recover-*
 10 *able.”.*

11 **SEC. 110. APPLICABILITY.**

12 *The amendments made by this title shall not affect or*
 13 *apply to any private action arising under title I of the Se-*
 14 *curities Exchange Act of 1934 or title I of the Securities*
 15 *Act of 1933 commenced before the date of enactment of this*
 16 *Act.*

17 **TITLE II—REDUCTION OF**
 18 **COERCIVE SETTLEMENTS**

19 **SEC. 201. LIMITATION ON DAMAGES.**

20 *Section 36 of the Securities Exchange Act of 1934, as*
 21 *added by section 104 of this Act, is amended by adding*
 22 *at the end the following new subsection:*

23 *“(e) LIMITATION ON DAMAGES.—*

24 *“(1) IN GENERAL.—Except as provided in para-*
 25 *graph (2), in any private action arising under this*

1 *title, the plaintiff's damages shall not exceed the dif-*
2 *ference between the purchase or sale price paid or re-*
3 *ceived, as appropriate, by the plaintiff for the subject*
4 *security and the value of that security, as measured*
5 *by the median trading price of that security, during*
6 *the 90-day period beginning on the date on which the*
7 *information correcting the misstatement or omission*
8 *is disseminated to the market.*

9 *“(2) EXCEPTION.—In any private action arising*
10 *under this title in which damages are sought, if the*
11 *plaintiff sells or repurchases the subject security prior*
12 *to the expiration of the 90-day period described in*
13 *paragraph (1), the plaintiff's damages shall not ex-*
14 *ceed the difference between the purchase or sale price*
15 *paid or received, as appropriate, by the plaintiff for*
16 *the security and the median market value of the secu-*
17 *rity during the period beginning immediately after*
18 *dissemination of information correcting the*
19 *misstatement or omission and ending on the date on*
20 *which the plaintiff sells or repurchases the security.”.*

21 **SEC. 202. PROPORTIONATE LIABILITY.**

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

1 **“SEC. 38. PROPORTIONATE LIABILITY.**

2 “(a) *APPLICABILITY.*—*This section shall apply only to*
3 *the allocation of damages among persons who are, or who*
4 *may become, liable for damages in any private action aris-*
5 *ing under this title. Nothing in this section shall affect the*
6 *standards for liability associated with any private action*
7 *arising under this title.*

8 “(b) *LIABILITY FOR DAMAGES.*—

9 “(1) *JOINT AND SEVERAL LIABILITY.*—*A person*
10 *against whom a judgment is entered in any private*
11 *action arising under this title shall be liable for dam-*
12 *ages jointly and severally only if the trier of fact spe-*
13 *cifically determines that such person committed know-*
14 *ing securities fraud.*

15 “(2) *PROPORTIONATE LIABILITY.*—*Except as*
16 *provided in paragraph (1), a person against whom a*
17 *judgment is entered in any private action arising*
18 *under this title shall be liable solely for the portion*
19 *of the judgment that corresponds to that person’s de-*
20 *gree of responsibility, as determined under subsection*
21 *(c).*

22 “(3) *KNOWING SECURITIES FRAUD.*—*For pur-*
23 *poses of this section—*

24 “(A) *a defendant engages in ‘knowing secu-*
25 *rities fraud’ if that defendant—*

1 “(i) makes a material representation
2 with actual knowledge that the representa-
3 tion is false, or omits to make a statement
4 with actual knowledge that, as a result of
5 the omission, one of the material representa-
6 tions of the defendant is false; and

7 “(ii) actually knows that persons are
8 likely to rely on that misrepresentation or
9 omission; and

10 “(B) reckless conduct by the defendant shall
11 not be construed to constitute knowing securities
12 fraud.

13 “(c) DETERMINATION OF RESPONSIBILITY.—

14 “(1) IN GENERAL.—In any private action aris-
15 ing under this title in which more than 1 person is
16 alleged to have violated a provision of this title, the
17 court shall instruct the jury to answer special inter-
18 rogatories, or if there is no jury, shall make findings,
19 concerning—

20 “(A) the percentage of responsibility of each
21 of the defendants and of each of the other persons
22 alleged by any of the parties to have caused or
23 contributed to the violation, including persons
24 who have entered into settlements with the plain-
25 tiff or plaintiffs, measured as a percentage of the

1 *total fault of all persons who caused or contrib-*
2 *uted to the violation; and*

3 “(B) *whether such defendant committed*
4 *knowing securities fraud.*

5 “(2) *CONTENTS OF SPECIAL INTERROGATORIES*
6 *OR FINDINGS.—The responses to interrogatories, or*
7 *findings, as appropriate, under paragraph (1) shall*
8 *specify the total amount of damages that the plaintiff*
9 *is entitled to recover and the percentage of respon-*
10 *sibility of each person found to have caused or con-*
11 *tributed to the damages sustained by the plaintiff or*
12 *plaintiffs.*

13 “(3) *FACTORS FOR CONSIDERATION.—In deter-*
14 *mining the percentage of responsibility under this*
15 *subsection, the trier of fact shall consider—*

16 “(A) *the nature of the conduct of each per-*
17 *son; and*

18 “(B) *the nature and extent of the causal re-*
19 *lationship between that conduct and the damages*
20 *incurred by the plaintiff or plaintiffs.*

21 “(d) *UNCOLLECTIBLE SHARE.—*

22 “(1) *IN GENERAL.—Notwithstanding subsection*
23 *(b)(2), in any private action arising under this title,*
24 *if, upon motion made not later than 6 months after*
25 *a final judgment is entered, the court determines that*

1 *all or part of a defendant's share of the judgment is*
2 *not collectible against that defendant or against a de-*
3 *fendant described in subsection (b)(1), each defendant*
4 *described in subsection (b)(2) shall be liable for the*
5 *uncollectible share as follows:*

6 “(A) *PERCENTAGE OF NET WORTH.*—*Each*
7 *defendant shall be jointly and severally liable for*
8 *the uncollectible share if the plaintiff establishes*
9 *that—*

10 “(i) *the plaintiff is an individual*
11 *whose recoverable damages under the final*
12 *judgment are equal to more than 10 percent*
13 *of the net financial worth of the plaintiff;*
14 *and*

15 “(ii) *the net financial worth of the*
16 *plaintiff is equal to less than \$200,000.*

17 “(B) *OTHER PLAINTIFFS.*—*With respect to*
18 *any plaintiff not described in subparagraph (A),*
19 *each defendant shall be liable for the uncollectible*
20 *share in proportion to the percentage of respon-*
21 *sibility of that defendant, except that the total li-*
22 *ability under this subparagraph may not exceed*
23 *50 percent of the proportionate share of that de-*
24 *fendant, as determined under subsection (c)(2).*

1 “(2) *OVERALL LIMIT.*—*In no case shall the total*
2 *payments required pursuant to paragraph (1) exceed*
3 *the amount of the uncollectible share.*

4 “(3) *DEFENDANTS SUBJECT TO CONTRIBU-*
5 *TION.*—*A defendant against whom judgment is not*
6 *collectible shall be subject to contribution and to any*
7 *continuing liability to the plaintiff on the judgment.*

8 “(e) *RIGHT OF CONTRIBUTION.*—*To the extent that a*
9 *defendant is required to make an additional payment pur-*
10 *suant to subsection (d), that defendant may recover con-*
11 *tribution—*

12 “(1) *from the defendant originally liable to make*
13 *the payment;*

14 “(2) *from any defendant liable jointly and sever-*
15 *ally pursuant to subsection (b)(1);*

16 “(3) *from any defendant held proportionately*
17 *liable pursuant to this subsection who is liable to*
18 *make the same payment and has paid less than his*
19 *or her proportionate share of that payment; or*

20 “(4) *from any other person responsible for the*
21 *conduct giving rise to the payment that would have*
22 *been liable to make the same payment.*

23 “(f) *NONDISCLOSURE TO JURY.*—*The standard for al-*
24 *location of damages under subsections (b) and (c) and the*

1 *procedure for reallocation of uncollectible shares under sub-*
2 *section (d) shall not be disclosed to members of the jury.*

3 *“(g) SETTLEMENT DISCHARGE.—*

4 *“(1) IN GENERAL.—A defendant who settles any*
5 *private action arising under this title at any time be-*
6 *fore final verdict or judgment shall be discharged*
7 *from all claims for contribution brought by other per-*
8 *sons. Upon entry of the settlement by the court, the*
9 *court shall enter a bar order constituting the final*
10 *discharge of all obligations to the plaintiff of the set-*
11 *tling defendant arising out of the action. The order*
12 *shall bar all future claims for contribution arising*
13 *out of the action—*

14 *“(A) by any person against the settling de-*
15 *fendant; and*

16 *“(B) by the settling defendant against any*
17 *person, other than a person whose liability has*
18 *been extinguished by the settlement of the settling*
19 *defendant.*

20 *“(2) REDUCTION.—If a person enters into a set-*
21 *tlement with the plaintiff prior to final verdict or*
22 *judgment, the verdict or judgment shall be reduced by*
23 *the greater of—*

24 *“(A) an amount that corresponds to the per-*
25 *centage of responsibility of that person; or*

1 “(B) the amount paid to the plaintiff by
2 that person.

3 “(h) CONTRIBUTION.—A person who becomes liable for
4 damages in any private action arising under this title may
5 recover contribution from any other person who, if joined
6 in the original action, would have been liable for the same
7 damages. A claim for contribution shall be determined
8 based on the percentage of responsibility of the claimant
9 and of each person against whom a claim for contribution
10 is made.

11 “(i) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—
12 Once judgment has been entered in any private action arising
13 under this title determining liability, an action for contribution
14 shall be brought not later than 6 months after the
15 entry of a final, nonappealable judgment in the action, except
16 that an action for contribution brought by a defendant
17 who was required to make an additional payment pursuant
18 to subsection (d) may be brought not later than 6 months
19 after the date on which such payment was made.”.

20 **SEC. 203. APPLICABILITY.**

21 The amendments made by this title shall not affect or
22 apply to any private action arising under title I of the Securities
23 Exchange Act of 1934 commenced before the date
24 of enactment of this Act.

1 **TITLE III—AUDITOR DISCLO-**
2 **SURE OF CORPORATE FRAUD**

3 **SEC. 301. FRAUD DETECTION AND DISCLOSURE.**

4 (a) *IN GENERAL.*—The Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.) is amended by inserting imme-
6 diately after section 10 the following new section:

7 **“SEC. 10A. AUDIT REQUIREMENTS.**

8 “(a) *IN GENERAL.*—Each audit required pursuant to
9 this title of the financial statements of an issuer by an inde-
10 pendent public accountant shall include, in accordance with
11 generally accepted auditing standards, as may be modified
12 or supplemented from time to time by the Commission—

13 “(1) *procedures designed to provide reasonable*
14 *assurance of detecting illegal acts that would have a*
15 *direct and material effect on the determination of fi-*
16 *nancial statement amounts;*

17 “(2) *procedures designed to identify related*
18 *party transactions that are material to the financial*
19 *statements or otherwise require disclosure therein; and*

20 “(3) *an evaluation of whether there is substan-*
21 *tial doubt about the ability of the issuer to continue*
22 *as a going concern during the ensuing fiscal year.*

23 “(b) *REQUIRED RESPONSE TO AUDIT DISCOVERIES.*—

24 “(1) *INVESTIGATION AND REPORT TO MANAGE-*
25 *MENT.*—*If, in the course of conducting an audit pur-*

1 *suant to this title to which subsection (a) applies, the*
2 *independent public accountant detects or otherwise be-*
3 *comes aware of information indicating that an illegal*
4 *act (whether or not perceived to have a material effect*
5 *on the financial statements of the issuer) has or may*
6 *have occurred, the accountant shall, in accordance*
7 *with generally accepted auditing standards, as may*
8 *be modified or supplemented from time to time by the*
9 *Commission—*

10 *“(A)(i) determine whether it is likely that*
11 *an illegal act has occurred; and*

12 *“(ii) if so, determine and consider the pos-*
13 *sible effect of the illegal act on the financial*
14 *statements of the issuer, including any contin-*
15 *gent monetary effects, such as fines, penalties,*
16 *and damages; and*

17 *“(B) as soon as practicable, inform the ap-*
18 *propriate level of the management of the issuer*
19 *and assure that the audit committee of the is-*
20 *ssuer, or the board of directors of the issuer in the*
21 *absence of such a committee, is adequately in-*
22 *formed with respect to illegal acts that have been*
23 *detected or have otherwise come to the attention*
24 *of such accountant in the course of the audit, un-*
25 *less the illegal act is clearly inconsequential.*

1 “(2) *RESPONSE TO FAILURE TO TAKE REMEDIAL*
2 *ACTION.—If, after determining that the audit commit-*
3 *tee of the board of directors of the issuer, or the board*
4 *of directors of the issuer in the absence of an audit*
5 *committee, is adequately informed with respect to ille-*
6 *gal acts that have been detected or have otherwise*
7 *come to the attention of the accountant in the course*
8 *of the audit of such accountant, the independent pub-*
9 *lic accountant concludes that—*

10 “(A) *the illegal act has a material effect on*
11 *the financial statements of the issuer;*

12 “(B) *the senior management has not taken,*
13 *and the board of directors has not caused senior*
14 *management to take, timely and appropriate re-*
15 *medial actions with respect to the illegal act;*
16 *and*

17 “(C) *the failure to take remedial action is*
18 *reasonably expected to warrant departure from a*
19 *standard report of the auditor, when made, or*
20 *warrant resignation from the audit engagement;*
21 *the independent public accountant shall, as soon as*
22 *practicable, directly report its conclusions to the*
23 *board of directors.*

24 “(3) *NOTICE TO COMMISSION; RESPONSE TO*
25 *FAILURE TO NOTIFY.—An issuer whose board of direc-*

1 *tors receives a report under paragraph (2) shall in-*
2 *form the Commission by notice not later than 1 busi-*
3 *ness day after the receipt of such report and shall fur-*
4 *nish the independent public accountant making such*
5 *report with a copy of the notice furnished to the Com-*
6 *mission. If the independent public accountant fails to*
7 *receive a copy of the notice before the expiration of the*
8 *required 1-business-day period, the independent pub-*
9 *lic accountant shall—*

10 *“(A) resign from the engagement; or*

11 *“(B) furnish to the Commission a copy of*
12 *its report (or the documentation of any oral re-*
13 *port given) not later than 1 business day follow-*
14 *ing such failure to receive notice.*

15 *“(4) REPORT AFTER RESIGNATION.—If an inde-*
16 *pendent public accountant resigns from an engage-*
17 *ment under paragraph (3)(A), the accountant shall,*
18 *not later than 1 business day following the failure by*
19 *the issuer to notify the Commission under paragraph*
20 *(3), furnish to the Commission a copy of the account-*
21 *ant’s report (or the documentation of any oral report*
22 *given).*

23 *“(c) AUDITOR LIABILITY LIMITATION.—No independ-*
24 *ent public accountant shall be liable in a private action*
25 *for any finding, conclusion, or statement expressed in a re-*

1 port made pursuant to paragraph (3) or (4) of subsection
2 (b), including any rule promulgated pursuant thereto.

3 “(d) *CIVIL PENALTIES IN CEASE-AND-DESIST PRO-*
4 *CEEDINGS.*—If the Commission finds, after notice and op-
5 portunity for hearing in a proceeding instituted pursuant
6 to section 21C, that an independent public accountant has
7 willfully violated paragraph (3) or (4) of subsection (b), the
8 Commission may, in addition to entering an order under
9 section 21C, impose a civil penalty against the independent
10 public accountant and any other person that the Commis-
11 sion finds was a cause of such violation. The determination
12 to impose a civil penalty and the amount of the penalty
13 shall be governed by the standards set forth in section 21B.

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

18 “(f) *DEFINITION.*—As used in this section, the term ‘il-
19 legal act’ means an act or omission that violates any law,
20 or any rule or regulation having the force of law.”.

21 (b) *EFFECTIVE DATES.*—The amendment made by
22 subsection (a) shall apply to each annual report—

23 (1) for any period beginning on or after Janu-
24 ary 1, 1996, with respect to any registrant that is re-
25 quired to file selected quarterly financial data pursu-

1 *ant to the rules or regulations of the Securities and*
2 *Exchange Commission; and*

3 *(2) for any period beginning on or after Janu-*
4 *ary 1, 1997, with respect to any other registrant.*

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