

## 資料文件

# 《財務匯報局條例草案》委員會 國際經驗

## 引言

於二零零五年七月十九日首次會議上，法案委員會要求政府當局提供進一步資料介紹海外地區在會計專業監管制度方面的做法和法例，包括詳細比較擬設的財務匯報局與其他司法管轄區的類似組織。具體來說，有關比較應涵蓋以下幾方面：

- (a) 有關組織的權力和職能；
- (b) 有關組織是否獲賦權進行調查、提出檢控和施加制裁；如否，說明具有此等權力的其他組織的名稱和職能；
- (c) 監管制度的成效，包括能否有效遏止及發現不當行為；及
- (d) 從兩者的背景、宗旨和涵蓋範圍，比較《財務匯報局條例草案》(條例草案)所載建議與美國《沙賓法案》的有關條文。

2. 我們已應上述請求，進一步研究其他三個司法管轄區(即澳洲、英國和美國)的做法。本文件載述我們的研究所得和觀察。

## 監管制度

3. 正如我們在二零零五年七月十九日會議上所提及，有關的司法管轄區對會計專業實施的監管制度存有頗大差異。舉例來說，在澳洲和美國，任何人必須先在金融監管機構註冊，才可成為公司核數師或開設執業會計師事務所。而英國和香港則沒有這類要求(即先向金融監管機構註冊的規定)，而兩地的會計專業組織(例如香港會計師公會)在監管制度上則擔當相對上比較重要的角色，包括訂明成為會計師的要求和執行紀律處分。因此，雖然國際經驗有其參考價值，但必須按實際背景予以考慮。

## 權力／職能：有關組織是否獲賦權進行調查、提出檢控和施加制裁？

4. 根據條例草案，擬在本港設立的財務匯報局將會履行兩項主要職能。其中一項是透過審計調查委員會，就上市實體核數師的涉嫌不當行為進行調查，而此等行為是關乎該等實體的帳目的審計工作，或關乎擬備須列入招股章程／上市文件的任何匯報會計師報告。另一項主要職能是透過財務匯報檢討委員會，就上市實體的財務報告涉嫌不遵從有關法律、會計及監管上的規定的情況進行查訊。在審計調查委員會或財務匯報檢討委員會完成調查或查訊工作後，財務匯報局會考慮所得結果，及在適當情況下把有關結果轉交其他執法機構作進一步調查(例如把涉嫌刑事罪行的個案轉交警方處理)或作紀律處分(例如把香港會計師公會會員涉及不當行為的個案轉交該公會)。此外，對於財務匯報檢討委員會所處理的個案，財務匯報局可請求有關的上市實體自發修正有關的帳目，或向法庭申請頒令強制作出修正。

5. 澳洲、英國和美國都設有組織，以履行與擬設的財務匯報局類似的職責。不過，各個組織在多方面(例如組成及權力)都有差異。我們的研究所得載於下文第 6 至 12 段。

### 澳洲

6. 在澳洲，**公司核數師及清盤人紀律委員會(核委會)**和**財務匯報委員團**都是根據《澳洲證券及投資委員會法》成立的法定組織。核委會負責裁定某人是否未有履行核數師的職責或澳洲法例規定註冊公司核數師必須履行的任何職能，或該人在其他方面是否不適宜繼續獲註冊為核數師等。在運作方面，核委會會在澳洲證券及投資委員會或澳洲審慎監管局提出申請後，擔當類似「研訊法庭」的角色，召開聆訊，並讓有關方面提出證據，然後作出裁定。在制裁方面，核委會可施加罰則，例如譴責有關人士或撤銷／暫時吊銷某人作為核數師的註冊。

7. 至於在二零零五年成立中的財務匯報委員團<sup>1</sup>，其主要職能是研究上市公司的財務報告是否符合有關的財務匯報規定。若未

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<sup>1</sup> 澳洲財務匯報委員團根據在二零零四年修訂的《澳洲證券及投資委員會法》而成立，以解決澳洲證券及投資委員會與個別公司就該公司財務報告中的會計處理方式所產生的任何糾紛。據悉，財務匯報委員團正於二零零五年成立。

符合規定，該委員團則會研究所需的修改，以確保有關規定獲遵從。

## 英國

8. 在英國，工業貿易署負責公司法例有關的工作。根據當地的公司法例，任何人必須成為認可專業組織的成員，並符合該組織的規則，方可以按有關規則獲委任為公司核數師。該等認可專業組織各有本身的會員要求和紀律處分程序。不過，有關監管及紀律處分會員的措施都受英國財務匯報局監察。在**英國財務匯報局**下設有數個組織，包括**會計界調查及紀律委員會(會委會)**及**財務匯報檢討委員團**。會委會負責訂定有關會計專業的獨立調查及紀律處分的制度(附加於認可專業組織原有的紀律處分程序上)<sup>2</sup>。在運作方面，調查工作一般由會委會的行政律師負責進行，而該行政律師會在紀律審裁小組進行聆訊時提交其調查結果。至於財務匯報檢討委員團的職能，則是致力確保由公眾公司和大型私人公司所提供的財務資料符合英國《公司法》的規定。

## 美國

9. 在美國，安然公司的倒閉促成《沙賓法案》在二零零二年八月成為法例。新的架構建基於證券及交易委員會於訂立公認會計準則及覆核向該委員會註冊的財務報表等方面的原有權力。

10. **公眾公司會計監督委員會(監委會)**亦根據《沙賓法案》而成立，並在二零零三年四月開始運作。任何執業會計師事務所均須先向監委會註冊，才可以證券及交易委員會註冊公司<sup>3</sup>的核數師身分行事。監委會的另一項職能，是制訂或採納與為公眾公司審核帳目有關的核數及質素監控準則和道德操守規則。此外，監委會亦會視察已向其註冊的執業會計師事務所，並有權要求有關公司在質素監控覆核及紀律處分程序方面予以合作。監委會並獲賦權向該等事務所或有聯繫的人(例如事務所的僱員)施加多類紀律制裁。在紀律聆訊進行期間，監委會會對有關的會計師事務所或有聯繫的人提出「具體指控」。監委會所制訂的規則及所作出的紀律處分決定，須經證券及交易委員會覆檢。

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<sup>2</sup> 一般而言，英國會委會僅須處理其認為涉及或看來涉及影響公眾利益的重大事宜所衍生的個案。

<sup>3</sup> 這包括為在紐約證券交易所上市的公司或附屬公司審計帳目的外國核數師事務所。

----- 11. 我們已從其組成、職能和權力等方面詳細比較有關的海外組織與香港擬設的財務匯報局。有關結果表列於**附件 A**<sup>4</sup>。

## 職能分工

12. 在美國，監委會大致上可說是把「調查」、「檢控」及「紀律處分」等職能集於一身。在英國，雖然這些職能在技術上亦全部由一個組織(即會委會)履行，但因為「調查」和「檢控」的職能是由行政律師負責，而「紀律處分」的職能則由會委會另設的紀律審裁小組負責，所以實際來說在某程度上職能是分掌的。澳洲的有關架構與我們建議的財務匯報局架構較為近似，同樣由不同組織分別負責調查及紀律處分的職能。一如在二零零五年五月六日向立法會財經事務委員會提交的文件所述及，我們擬設的財務匯報局(或審計調查委員會)的職能只限於調查，而不包括對核數師提出檢控及採取紀律處分，這與二零零三年年底進行公眾諮詢時所收到的大多數意見一致。就香港會計專業的監管制度而言，我們認為這建議較務實和恰當<sup>5</sup>。

## 監管制度的「成效」

13. 鑑於有關的司法管轄區各有不同的法律制度、商業運作和社會背景，我們難以適切地比較各種監管制度的「成效」。不過，委員可留意以下幾點：

- (a) 就調查核數師的不當行為方面來說，英國並非採取法定方式的做法，即英國財務匯報局轄下會委會的有關權力並非法定權力。會委會對某會計師所施加的規定，是根據會委會與該會計師所屬的專業團體議定的行政安排<sup>6</sup>而行。另一方面，美國的監委會和澳洲的核委會則獲授

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<sup>4</sup> **附件 A** 的列表是基於我們於二零零五年七月十五日發出予委員的題為「條例草案據以為藍本的海外地區法例的文本」的文件(立法會 CB(1)2050/04-05(02)號文件)的附件再行修訂的詳細版本。

<sup>5</sup> 我們在這方面所提出的理據，詳載於發出予委員題為「財務匯報局的職能」的文件。

<sup>6</sup> 有關專業組織已參與會委會所訂的行政安排，有關安排涵蓋可予調查及紀律處分的理由及這些組織的會員／會員公司的責任(例如就會委會的調查與該會合作)等事宜。

法定權力去履行有關職能，這與香港擬設的財務匯報局採用的做法相同；

- (b) 然而，美國的監委會與澳洲的核委會和香港擬設的財務匯報局在組織／法律地位方面則有分別。美國的監委會隸屬美國證券及交易委員會，前者的規則和決定須經後者覆核；而澳洲的核委會和香港擬設的財務匯報局則同屬獨立法定組織；
- (c) 此外，英國會委會和美國監委會的調查權力<sup>7</sup>一般只適用於會計師或有聯繫的人<sup>8</sup>。如不遵從該兩個組織的要求，有關的會計師或有聯繫的人可能會受到制裁，例如被撤銷認可專業組織的會員資格或被取消所屬的執業會計師事務所的註冊，但無須負上刑事責任。相對而言，澳洲的核委會卻可傳召任何人出席聆訊作供及交出與聆訊事宜有關的文件／紀錄；如不應訊而又沒有合理辯解，即屬犯罪。

跟澳洲的核委會的情況一樣，在香港擬設的財務匯報局亦會獲賦權要求有關核數師／會計師以外的人士在調查有關不當行為的過程中提供合理協助，但須符合條例草案所載的有關準則／條件<sup>9</sup>。如不遵從財務匯報局的規定而又沒有合理辯解，即屬犯罪；及

- (d) 至於條例草案下的財務匯報檢討委員會，其職能、權力和組成大體上以英國的類似制度為藍本。澳洲的財務匯報委員團執行類似的職能，即審視上市公司的財務報告是否符合有關的財務匯報規定。實際上啟動澳洲財務匯報委員團機制的原因，通常是由於澳洲證券及投資委員會與上市公司就該公司財務報告內的會計處理方式產生

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<sup>7</sup> 有關權力例如包括要求提交文件或出席聆訊答問的權力。

<sup>8</sup> 這些人士包括執業會計師事務所的僱員及獨立承辦商。以英國為例，會委會雖可要求任何人提供資料，但沒有權力對不遵從要求的人施加制裁。同樣，美國的監委會雖可根據《沙賓法案》要求證券及交易委員會發出傳召出庭令，飭令任何人作供及出示其管有的任何文件，但監委會本身沒有權力施加制裁。

<sup>9</sup> 舉例來說，財務匯報局必須有合理理由相信某人管有載有或相當可能載有攸關不當行為的資料的紀錄或文件，方可要求該人(有關的核數師或匯報會計師以外人士)在調查過程中提供合理協助。

糾紛。美國則沒有另設一個組織去查核上市公司的企業報告，這項監察職能仍然由證券及交易委員會履行。

## 條例草案的建議及美國《沙賓法案》的條文

14. 一如我們在二零零五年七月十九日法案委員會會議上所指出，美國《沙賓法案》除涵蓋調查／監管核數師的事宜外，還包括有關披露企業資料、董事責任、企業詐騙、白領罪行罰則和分析員的利益衝突等方面事宜，而這些事宜都不屬條例草案的範圍。因此，把條例草案與整條《沙賓法案》作直接比較，並不適當。

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----- 15. 至於該法案中可能與現時立法工作有關的部分(即**附件 B** 所載有關美國的監委會的條文)，已納入**附件 A** 的比較表內。我們在這方面的觀察所得，則已載述於上文第 13 段。

財經事務及庫務局  
二零零五年九月

香港擬設的財務匯務局與其他司法管轄區的類似組織的比較(詳細版本)<sup>1</sup>

	香港	英國	澳洲	美國
<b>會計專業的監管制度</b>	<ul style="list-style-type: none"> <li>會計專業主要由香港會計師公會(會計師公會)自我監管。</li> <li>任何人必須成為會計師公會的會員並持有執業證書或是執業法團，方可獲委任為公司核數師。</li> </ul>	<ul style="list-style-type: none"> <li>會計專業主要由六個認可專業會計組織<sup>2</sup>自我監管。</li> <li>任何人必須成為認可專業組織的成員，並符合該組織的有關規定，方可獲委任為公司核數師。</li> </ul>	<ul style="list-style-type: none"> <li>有數個會計專業組織，例如澳洲會計師公會、澳洲特許會計師公會和國家會計師學會。</li> <li>為公司審核帳目的會計師一律須在澳洲證券及投資委員會(類似香港的證監會)登記為註冊公司核數師。該委員會可撤銷或暫時吊銷註冊公司核數師的註冊。</li> </ul>	<ul style="list-style-type: none"> <li>會計專業由所屬州份監管，而美國會計師公會是全國自願性的會計專業組織。</li> <li>執業會計師事務所一律須在由證券及交易委員會委任成立的公眾公司會計監督委員會(監委會)登記為註冊執業會計師事務所，方可為在證券及交易委員會註冊的公司擬備或發出審計報告。</li> </ul>

<sup>1</sup> 資料來源：海外相關的法例和有關組織的網站。

<sup>2</sup> 這些組織是英格蘭及威爾斯特許會計師公會、蘇格蘭特許會計師公會、愛爾蘭特許會計師公會、特許公認會計師公會、特許管理會計師公會和特許公共財政會計師公會。

	香港	英國	澳洲	美國
<b>會計專業的監管制度（續）</b>	<ul style="list-style-type: none"> <li>會計師公會訂有會員規則和專業操守守則。《專業會計師條例》（第50章）賦權會計師公會理事會所成立的調查委員會和紀律委員會就會計師及執業單位<sup>3</sup>的任何不當行為進行調查和紀律處分程序。</li> </ul>	<ul style="list-style-type: none"> <li>認可專業組織各有本身的會員規則、專業操守守則，以及開除會籍和紀律處分程序。有關監管及紀律處分會員的措施，受英國財務匯報局轄下的會計專業監察委員會監察。</li> </ul>	<ul style="list-style-type: none"> <li>有關專業組織各有會員規則、操守守則，以及開除會籍和紀律處分程序。有關監管及紀律處分會員的措施，受財務匯報局監察<sup>4</sup>。</li> </ul>	<ul style="list-style-type: none"> <li>雖然遭美國會計師公會開除會籍在某程度上並不光彩，但並不妨礙有關的會計師繼續執業。</li> </ul>
<b>財務匯報局或類似的組織</b>	<ul style="list-style-type: none"> <li>財務匯報局</li> </ul>	<ul style="list-style-type: none"> <li>英國財務匯報局</li> </ul>	<ul style="list-style-type: none"> <li>公司核數師及清盤人紀律委員會（核委會）</li> <li>財務匯報委員會團（於2005年成立）<sup>5</sup>。</li> </ul>	<ul style="list-style-type: none"> <li>公眾公司會計監督委員會（監委會）</li> </ul>

<sup>3</sup> 「執業單位」指（a）依據《專業會計師條例》（第50章）從事會計執業的執業師事務所；（b）依據該條例獨自從事會計執業的執業會計師；（c）在會計師公會註冊的執業法團。

<sup>4</sup> 澳洲的財務匯報局是法定組織，負責監管制訂會計準則和核數準則的過程，及監管有關核數師獨立性要求的效驗情況。

<sup>5</sup> 財務匯報委員會團是根據在2004年修訂的《澳洲證券及投資委員會法》成立，負責解決澳洲證券及投資委員會與任何公司就公司財務報告的會計處理方式所產生的糾紛。據悉，財務匯報委員會團正於2005年成立。



	香港	英國	澳洲	美國
組成	<ul style="list-style-type: none"> <li>財務匯報局會由不多於11名成員組成，包括主席和行政總裁。</li> <li>除來自政府當局的當然成員及行政總裁外，所有其他成員都會由行政長官以下述方式委任。</li> <li>行政長官會委任三名分別由證監會、港交所和會計師公會提名的人士以個人身分出任成員，並委任四至六名其他成員和行政總裁。</li> </ul>	<ul style="list-style-type: none"> <li>英國財務匯報局由多達30名成員組成(包括五名董事)，其中約半數是商界、擬備帳目人士、帳目使用者和投資者的代表，並有一些來自關注企業匯報及管治的其他組織的觀察員。</li> <li>英國財務匯報局五名董事(包括主席及副主席)全由貿易工業大臣委任。</li> <li>其他成員則由董事委任。</li> </ul>	<ul style="list-style-type: none"> <li>核委會由14名成員組成，包括由部長委任的一名主席和一名副主席。至於其他成員，部長會從兩個會計組織提名的兩組人選中選出六名成員，另會委任六名成員作為商界的代表。</li> <li>財務匯報委員會由不少於五名成員(包括主席)組成，全部由部長委任。</li> </ul>	<ul style="list-style-type: none"> <li>監委會由五名獨立成員組成，當中會計師不多於兩名。</li> <li>監委會的成員由證券及交易委員會經諮詢聯邦儲備委員會主席和財政部長後委任。</li> </ul>

	香港	英國	澳洲	美國
<b>組織架構</b>	<ul style="list-style-type: none"> <li>法定組織</li> <li>財務匯報局負責監督審計調查委員會和財務匯報檢討委員會。</li> </ul>	<ul style="list-style-type: none"> <li>擔保有限公司</li> <li>英國財務匯報局負責監督以下監管組織：會計專業監察委員會、財務匯報檢討委員會、會計界調查及紀律委員會（會委會）、審計實務委員會和會計準則委員會<sup>6</sup>。</li> </ul>	<ul style="list-style-type: none"> <li>核委會和財務匯報委員會團都是根據《澳洲證券及投資委員會法》成立的法定組織。</li> </ul>	<ul style="list-style-type: none"> <li>根據《沙賓法案》成立的法定組織。</li> <li>獨立於聯邦政府。</li> </ul>
<b>經費</b>	<ul style="list-style-type: none"> <li>經費由證監會、港交所、會計師公會和公司註冊處營運基金平均分擔。</li> </ul>	<ul style="list-style-type: none"> <li>經費由會計專業(上述六個專業組織)、商界(主要是上市英國公司)和政府平均分擔。</li> </ul>	<ul style="list-style-type: none"> <li>核委會和財務匯報委員會團的經費都由政府提供。</li> </ul>	<ul style="list-style-type: none"> <li>監委會的經費來自向在證券及交易委員會註冊的公司所徵收的每年會計支援費用。</li> </ul>

<sup>6</sup> 財務匯報檢討委員會團負責致力確保由公眾公司和大型私人公司所提供的財務資料符合《公司法》規定；會計界調查及紀律委員會負責就涉及影響公眾利益的重大事宜向會計專業進行獨立調查及紀律處分；審計實務委員會負責制訂核數準則；會計準則委員會負責制訂會計準則；會計專業監察委員會負責監察審計及會計專業的監管工作。

	香港	英國	澳洲	美國
問責措施	<ul style="list-style-type: none"> <li>行政長官可就財務匯報局任何職能的執行，向該局發出他認為合適的書面指示。</li> <li>財務匯報局須向財經事務及庫務局局長呈交年報，並按局長的要求提交資料。</li> <li>財務匯報局的財政預算須經財經事務及庫務局局長批核，其帳目則須由審計署署長審計、須作公布和提交立法會省覽。</li> </ul>	<ul style="list-style-type: none"> <li>財務匯報局會公布其周年計劃、財政預算和工作情況的最新資料，包括其董事會、匯報局本身和其轄下組織的會議紀錄。</li> <li>財務匯報局亦須受外聘核數師、國會、利益相關者和公眾(透過周年公開會議)監察。</li> </ul>	<ul style="list-style-type: none"> <li>核委會及財務匯報委員會團均獨立於澳洲證券及投資委員會。</li> <li>核委會及財務匯報委員會團均須向部長呈交工作報告，而報告會提交國會兩個議院省覽。</li> </ul>	<ul style="list-style-type: none"> <li>證券及交易委員會有監督監委會的權力，並負責批核監委會的財政預算和規則。</li> <li>監委會須向證券及交易委員會呈交年報，並由後者把年報轉呈參議院的銀行、房屋及市政事務委員會和眾議院的財經事務委員會省覽。</li> </ul>

	香港	英國	澳洲	美國
審計專業的監督	<ul style="list-style-type: none"> <li>審計調查委員會負責就上市實體核數師的涉嫌不當行為進行調查。</li> <li>審計調查委員會由財務匯報局的行政總裁及其他由財務匯報局委任的成員組成。</li> </ul>	<ul style="list-style-type: none"> <li>會委會負責調查涉及或看來涉及影響公眾利益的重大事宜，以決定有關的會計師是否涉及任何不當行為。</li> <li>會委會由八名成員組成，其中大部分並非會計師。會委會的調查工作及紀律處分程序實際上分別由行政律師及獨立的紀律審裁小組(成員由一組人選中選出)負責進行。</li> </ul>	<ul style="list-style-type: none"> <li>核委會負責裁定某人是否未有充分及適當地履行核數師的職責或澳洲法例規定註冊公司核數師所須履行的任何職能，或該人在其他方面是否不適宜繼續獲註冊為核數師等。</li> <li>核委會由14名成員組成，包括一名主席及一名副主席。</li> </ul>	<ul style="list-style-type: none"> <li>監委會負責監督公眾公司的核數師，其權力包括調查會計師事務所是否遵守《沙賓法案》的條文、監委會和證券及交易委員會所定規則，並進行紀律處分程序。</li> <li>監委會由五名獨立成員組成，當中專業會計師不多於兩名。</li> </ul>

	香港	英國	澳洲	美國
<b>調查權力</b>	<ul style="list-style-type: none"> <li>調查權力的架構<sup>7</sup>是以《證券及期貨條例》（第571章）第179及183條下的證監會權力為藍本。審計調查委員會可要求核數師或其他人士出示有關紀錄，並可要求他們解釋紀錄中的任何記項或遺漏。審計調查委員會亦獲賦權要求某人在委員會席前回答問題及就調查工作向委員會提供一切合理協助。</li> </ul>	<ul style="list-style-type: none"> <li>會委會的行政律師<sup>8</sup>可要求會計師事務所提供他認為調查所需的資料及就調查工作充分合作，例如作供及准許查閱該事務所管有或控制的簿冊及紀錄。</li> </ul>	<ul style="list-style-type: none"> <li>核委會<sup>9</sup>可傳召某人出席聆訊作供及交出傳票所提述與聆訊事項有關的文件。在聆訊中，核委會可接受宣誓所作的證供。</li> </ul>	<ul style="list-style-type: none"> <li>監委會可調查註冊執業會計師事務所或任何與該事務所有聯繫的人任何可能違反監委會規則、有關擬備及發出審計報告的證券法例或專業準則等的作為或不作為。</li> </ul>

<sup>7</sup> 條例草案訂有審計調查委員會在行使特定調查權力之前所須符合的相稱規限。

<sup>8</sup> 調查工作通常由行政律師負責，行政律師是會委會內具有法律專業資格的人員，由英國財務匯報局的提名委員會委任。

<sup>9</sup> 核委會通常會成立一個小組以調查或聆訊某宗個案。

	香港	英國	澳洲	美國
調查權力 (續)	<ul style="list-style-type: none"> <li>審計調查委員會亦獲賦權要求作出解釋的人藉着法定聲明核實其解釋。在取得裁判官頒發的手令後，審計調查委員會的人員亦可進入有關處所搜尋和檢取有關文件。任何人無合理辯解而沒有遵從審計調查委員會的要求，即屬犯罪。</li> </ul>	<ul style="list-style-type: none"> <li>行政律師如認為適當，有權要求任何「會委會參與團體」(即認可專業組織)在法律上可行範圍內提供其管有或控制的文件資料。</li> <li>會委會可要求任何其他人士提供或從該人收取任何可能對調查工作或紀律處分程序屬重要的資料。然而，除了不遵從其要求的會計師事務所／會計師外，會委會無權制裁任何未有遵從該等要求的其他人。</li> </ul>	<ul style="list-style-type: none"> <li>被傳召出席聆訊的人必須應訊，而以證人身份出席聆訊的人亦不得拒絕或不回答問題，又或拒絕或不交出有關文件。除非有關人士有合理辯解，否則未有或拒絕回答問題或交出文件，即屬犯罪。</li> <li>此外，核委會亦可把未有或拒絕回答問題或交出文件的個案轉介法庭，而法庭可對有關個案進行研訊，及按藐視法庭罪行的罰則懲罰該人。</li> <li>任何人都不得作出阻礙或妨礙核委會進行調查或聆訊的行為。</li> </ul>	<ul style="list-style-type: none"> <li>監委會可要求某事務所或任何與該執業會計師事務所所有聯繫的人作供，亦可要求該事務所或有聯繫的人交出其管有的文件或資料，以及可查閱簿冊及紀錄，以核實所獲提供的文件或資料是否準確。倘該事務所或人士拒絕合作，監委會可採取行動，例如禁止該人與該事務所任何聯繫或暫停／取銷該事務所的註冊。</li> <li>監委會可要求任何其他人士(例如該會計師事務所的客戶)作供或交出其管有而監委會又認為有關或重要的文件，亦可要求證券及交易委員會發出傳召出庭令，飭令任何人作供及交出其管有的文件。</li> </ul>

	香港	英國	澳洲	美國
<b>主動提起紀律處分程序</b>	<ul style="list-style-type: none"> <li>審計調查委員會會向財務匯報局提交調查報告，以便後者決定應否把個案轉交其他監管當局或專業團體。</li> </ul>	<ul style="list-style-type: none"> <li>如行政律師在完成調查後，懷疑某會計師事務所行為不當，而該會計師事務所又未能給予令人滿意的回應，則可向會委會提出對有關會計師事務所的正式投訴。</li> </ul>	<ul style="list-style-type: none"> <li>核委會亦負責進行紀律處分程序／聆訊。</li> </ul>	<ul style="list-style-type: none"> <li>監委會亦負責進行紀律處分程序，以決定某註冊執業會計師事務所或有聯繫的人是否應予以紀律處分。</li> </ul>
<b>紀律處分程序</b>	<ul style="list-style-type: none"> <li>不適用，擬設的財務匯報局並無紀律處分的職能。</li> </ul>	<ul style="list-style-type: none"> <li>會委會接獲正式投訴後，會委出一個紀律審裁小組，進行紀律處分聆訊。</li> <li>在紀律處分程序中，行政律師須擔任原訴人，並須提出指控有關會計師事務所的證據。</li> <li>紀律審裁小組須讓有關的會計師事務所有機會聆聽針對該事務所的證據，以及傳召／盤問證人及作出申述。</li> </ul>	<ul style="list-style-type: none"> <li>核委會通常會應澳洲證券及投資委員會或澳洲審慎監管局<sup>10</sup>的申請而採取行動。</li> <li>核委會須讓澳洲證券及投資委員會／澳洲審慎監管局以及有關的核數師有機會出席聆訊及援引證據。</li> </ul>	<ul style="list-style-type: none"> <li>在紀律聆訊中，監委會須對有關的事務所或人士提出具體指控。</li> <li>監委會須讓有關的事務所或人士有機會在紀律處分程序中提出抗辯。</li> </ul>

<sup>10</sup> 澳洲審慎監管局按照《澳洲審慎監管法》成立，是澳洲金融行業（包括銀行、信貸機構及保險公司）的監管機構。

	香港	英國	澳洲	美國
<b>制裁</b>	<ul style="list-style-type: none"> <li>審計調查委員會並無紀律處分的職能。紀律處分的職能則按《專業會計師條例》（第50章），由會計師公會負責。</li> <li>有關會計師或執業單位可就會計師公會紀律委員會所作的紀律處分決定向上訴法庭提出上訴。</li> </ul>	<ul style="list-style-type: none"> <li>紀律審裁小組可施加制裁，例如譴責、罰款及暫時吊銷牌照等。各認可專業組織必須承認會委會所作出的裁定。</li> <li>有關人士可就紀律審裁小組的決定向上訴審裁處提出上訴。</li> </ul>	<ul style="list-style-type: none"> <li>核委會可譴責有關人士、撤銷或在指定期間暫時吊銷某人作為核數師的註冊；或要求該人承諾從事或不從事某種指明行為。</li> <li>有關人士可就核委會的決定，向行政上訴審裁處提出上訴。</li> </ul>	<ul style="list-style-type: none"> <li>監委會除了可施加制裁(例如暫時吊銷／撤銷註冊、判處民事罰款、譴責、強制額外專業培訓等)外，亦可把調查個案轉介證券及交易委員會或任何其他監管機構。</li> <li>證券及交易委員會可覆核及修改監委會所施加的紀律制裁。</li> </ul>
<b>監察企業匯報的質素</b>	<ul style="list-style-type: none"> <li>財務匯報檢討委員會的成員由行政長官委任，不少於20名。他們都是在財務匯報、審計、銀行、金融服務及商業等各方面具備專才的人士。</li> </ul>	<ul style="list-style-type: none"> <li>目前，財務匯報檢討委員會是由財務匯報局所委任的24名成員組成的。</li> </ul>	<ul style="list-style-type: none"> <li>財務匯報委員會由不少於五名成員組成。</li> </ul>	<ul style="list-style-type: none"> <li>不適用。上市公司的企業匯報仍然由證券及交易委員會負責監察。因此，證券及交易委員會具有要求上市法團提交文件或紀錄，以及作出解釋的一般權力。</li> </ul>



	香港	英國	澳洲	美國
<b>監察企業匯報的質素（續）</b>	<ul style="list-style-type: none"> <li>就查訊個別個案而成立的財務匯報檢討委員會，會由從財務匯報檢討委員會中選出的至少五名成員組成。</li> <li>財務匯報檢討委員會會就上市實體的帳目及財務報表涉嫌未有遵從有關的法律、會計或監管上的規定進行查訊。</li> <li>財務匯報檢討委員會具有索取文件、資料和要求有關方面作出解釋的權力。</li> </ul>	<ul style="list-style-type: none"> <li>查訊工作由財務匯報檢討委員會成員所組成的小組進行；該小組一般有五名成員。</li> <li>該小組會研究公眾公司和大型私人公司的帳目是否符合有關的法律及會計規定<sup>11</sup>。</li> <li>財務匯報檢討委員會團可要求公司董事解釋表面上偏離會計規定的情況，並要求該公司、其人員或核數師交出文件和資料，或作出解釋。</li> </ul>	<ul style="list-style-type: none"> <li>就審議個案而成立的專責小組會由從財務匯報委員會中選出的三名成員組成。</li> <li>專責小組會研究財務報告是否符合有關的財務匯報規定，及如未符合規定，財務報告需如何修改，以確保遵照有關規定。專責小組亦須作出有關報告。</li> <li>專責小組可傳召要求澳洲證券及投資委員會的人員、有關公司的人員、核數師和涉案的任何其他人作供、回答問題和交出文件。</li> </ul>	

<sup>11</sup> 英國財務匯報檢討委員會根據《2005年監督帳目及報告(指明組織)令》獲委任，審核上市證券發行人所提交的財務報告是否符合《上市規則》的會計規定；如委員會認為適當的話，可通知金融事務管理局有關他們對這些報告所作出的任何結論。

	香港	英國	澳洲	美國
監察企業匯報的質素（續）	<ul style="list-style-type: none"> <li>財務匯報局可請求有關方面自發對帳目作出修正。</li> <li>財務匯報局可向法院申請頒令強制就帳目作出修正，或把個案轉介有關的證券交易所，以採取進一步行動。</li> </ul>	<ul style="list-style-type: none"> <li>財務匯報檢討委員會團可請求有關方面自發對帳目作出修正。</li> <li>財務匯報檢討委員會團可向法院申請頒令強制就帳目作出修正，或把個案轉介金融事務管理局，以採取進一步行動。</li> </ul>	<ul style="list-style-type: none"> <li>法院或一事實審裁處在決定財務報告是否符合有關的財務匯報規定時，可參考專責小組的報告。</li> </ul>	

PUBLIC LAW 107-204—JULY 30, 2002

116 STAT. 745

Public Law 107-204  
107th Congress

**An Act**

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

July 30, 2002  
[H.R. 3763]

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

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

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

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

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

**TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

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

**TITLE II—AUDITOR INDEPENDENCE**

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

**TITLE III—CORPORATE RESPONSIBILITY**

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

**TITLE IV—ENHANCED FINANCIAL DISCLOSURES**

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

Sarbanes-Oxley  
Act of 2002.  
Corporate  
responsibility.  
15 USC 7201  
note.

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

#### TITLE V—ANALYST CONFLICTS OF INTEREST

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

#### TITLE VI—COMMISSION RESOURCES AND AUTHORITY

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

#### TITLE VII—STUDIES AND REPORTS

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

#### TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

- Sec. 801. Short title.
- Sec. 802. Criminal penalties for altering documents.
- Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
- Sec. 804. Statute of limitations for securities fraud.
- Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
- Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

#### TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

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

#### TITLE X—CORPORATE TAX RETURNS

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

#### TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

- Sec. 1101. Short title.
- Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
- Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 1104. Amendment to the Federal Sentencing Guidelines.
- Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
- Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
- Sec. 1107. Retaliation against informants.

15 USC 7201.

#### SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term “appropriate State regulatory authority” means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States

having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) **AUDIT.**—The term “audit” means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) **AUDIT COMMITTEE.**—The term “audit committee” means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) **AUDIT REPORT.**—The term “audit report” means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) **BOARD.**—The term “Board” means the Public Company Accounting Oversight Board established under section 101.

(6) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

(7) **ISSUER.**—The term “issuer” means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) **NON-AUDIT SERVICES.**—The term “non-audit services” means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) **PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.**—

(A) **IN GENERAL.**—The terms “person associated with a public accounting firm” (or with a “registered public accounting firm”) and “associated person of a public accounting firm” (or of a “registered public accounting firm”) mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term “professional standards” means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term “public accounting firm” means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term “registered public accounting firm” means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term “rules of the Board” means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term “security” has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term “securities laws” means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting “the Sarbanes-Oxley Act of 2002,” before “the Public”.

### SEC. 3. COMMISSION RULES AND ENFORCEMENT.

15 USC 7202.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”;

(B) in subsection (d)(1), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”;

(C) in subsection (e), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”; and

(D) in subsection (f), by inserting “or the Public Company Accounting Oversight Board” after “self-regulatory organization” each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by inserting “registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002),” after “government securities dealer,”.

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking “sections 12,” each place it appears and inserting “sections 10A(m), 12,”; and

(B) striking “and 16,” each place it appears and inserting “and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,”.

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

## **TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

15 USC 7211.

### **SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.**

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

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

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

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon,



registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

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

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

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors

Deadline.

of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

Contracts.

(g) **RULES OF THE BOARD.**—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) **ANNUAL REPORT TO THE COMMISSION.**—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

Deadline.

#### **SEC. 102. REGISTRATION WITH THE BOARD.**

15 USC 7212.

(a) **MANDATORY REGISTRATION.**—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) **APPLICATIONS FOR REGISTRATION.**—

(1) **FORM OF APPLICATION.**—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) **CONTENTS OF APPLICATIONS.**—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required

Deadline.

to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) **PUBLIC AVAILABILITY.**—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) **REGISTRATION AND ANNUAL FEES.**—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

**SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.** 15 USC 7213.

(a) **AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.**—

(1) **IN GENERAL.**—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) **RULE REQUIREMENTS.**—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the

Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) **ADVISORY GROUPS.**—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) **INDEPENDENCE STANDARDS AND RULES.**—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) **COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.**—

(1) **IN GENERAL.**—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) **BOARD RESPONSES.**—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) **EVALUATION OF STANDARD SETTING PROCESS.**—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

**SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.** 15 USC 7214.

(a) **IN GENERAL.**—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) **INSPECTION FREQUENCY.**—

(1) **IN GENERAL.**—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—



(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

**(h) INTERIM COMMISSION REVIEW.—**

(1) **REVIEWABLE MATTERS.**—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) **TREATMENT OF REVIEW.**—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be “final agency action” for purposes of section 704 of title 5, United States Code.

(3) **TIMING.**—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

**SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.**

15 USC 7215.

(a) **IN GENERAL.**—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

Establishment.

**(b) INVESTIGATIONS.—**

(1) **AUTHORITY.**—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

Notification.

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States;

and

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine

whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than \$100,000 for a natural person or \$2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than \$750,000 for a natural person or \$15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable

care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

- (A) the Commission;
- (B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and
- (C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

- (A) the name of the sanctioned person;
- (B) a description of the sanction and the basis for its imposition; and
- (C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

15 USC 7216.

**SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.**

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm

(or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

**(b) PRODUCTION OF AUDIT WORKPAPERS.—**

**(1) CONSENT BY FOREIGN FIRMS.—**If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

**(2) CONSENT BY DOMESTIC FIRMS.—**A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

**(c) EXEMPTION AUTHORITY.—**The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

**(d) DEFINITION.—**In this section, the term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

**SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.**

15 USC 7217.

**(a) GENERAL OVERSIGHT RESPONSIBILITY.—**The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a “registered securities association” for purposes of those sections 17(a)(1) and 17(b)(1).

**(b) RULES OF THE BOARD.—**

**(1) DEFINITION.—**In this section, the term “proposed rule” means any proposed rule of the Board, and any modification of any such rule.

**(2) PRIOR APPROVAL REQUIRED.—**No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a “registered securities association” for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase “consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization” in section 19(b)(2) of that Act shall be deemed to read “consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors”; and

(B) the phrase “otherwise in furtherance of the purposes of this title” in section 19(b)(3)(C) of that Act shall be deemed to read “otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002”.

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a “registered securities association” for purposes of that section 19(c), except that the phrase “to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title” in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read “to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board”.

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—



(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to “members” of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase “consistent with the purposes of this title” in that section 19(e)(1) shall be deemed to read “consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002”;

(D) references to rules of the Municipal Securities Rule-making Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove

from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

15 USC 7218.

**SEC. 108. ACCOUNTING STANDARDS.**

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b) RECOGNITION OF ACCOUNTING STANDARDS.—

“(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as ‘generally accepted’ for purposes of the securities laws, any accounting principles established by a standard setting body—

“(A) that—

“(i) is organized as a private entity;

“(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

“(iii) is funded as provided in section 109 of the Sarbanes-Oxley Act of 2002;

“(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

“(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

“(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

“(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.”.

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors. Regulations.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

#### SEC. 109. FUNDING.

15 USC 7219.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) LIMITATION ON FEE.—The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in

a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking “and” at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: “; and

“(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.”.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).