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## Summary of the Provisions of the Sarbanes-Oxley Act of 2002

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**Section 3: Commission Rules and Enforcement.**

A violation by any person of the Sarbanes-Oxley Act, any rule or regulation of the Securities and Exchange Commission (SEC or the Commission) or any rule of the Public Company Accounting Oversight Board (PCAOB or the Board) is treated as a violation of the Securities and Exchange Act of 1934, giving rise to the same penalties that may be imposed for violations of that Act.

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**Section 101: Establishment; Administrative Provisions.**

The PCAOB was established to oversee the audits of public companies. The Board will have five financially-literate members, appointed for five-year terms. Two of the members must be or have been certified public accountants, and the remaining three must not be and cannot have been CPAs. The Chair may be held by one of the CPA members, provided that he or she has not been engaged as a practicing CPA for five years.

The Board's members will serve on a full-time basis.

No member may, concurrent with service on the Board, "share in any of the profits of, or receive payments from, a public accounting firm," other than "fixed continuing payments," such as retirement payments.

Members of the Board are appointed by the Commission, "after consultation with" the Chairman of the Federal Reserve Board and the Secretary of the Treasury.

Members may be removed by the Commission "for good cause."

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**Section 102: Registration with the Board.**

All public accounting firms that prepare or issue, or who participate in the preparation or issuance of, any audit report with respect to an issuer, must register with the Board.

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### **Section 103: Auditing, Quality Control, And Independence Standards And Rules.**

The Board shall:

1. register public accounting firms;
2. establish, or adopt, by rule, "auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers;"
3. conduct inspections of accounting firms;
4. conduct investigations and disciplinary proceedings, and impose appropriate sanctions;
5. perform such other duties or functions as necessary or appropriate;
6. enforce compliance with the 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; and
7. set the budget and manage the operations of the Board and the staff of the Board.

*Auditing standards.* The Board would be required to "cooperate on an on-going basis" with designated professional groups of accountants and any advisory groups convened in connection with standard-setting, and although the Board can "to the extent that it determines appropriate" adopt standards proposed by those groups, the Board will have authority to amend, modify, repeal, and reject any standards suggested by the groups. The Board must report on its standard-setting activity to the Commission on an annual basis.

The Board must require registered public accounting firms to "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."

The Board must require a 2nd partner review (concurring review) and approval of audit reports registered accounting firms must adopt quality control standards.

The Board must adopt an audit standard to implement the internal control review required by section 404(b). This standard must require the auditor to evaluate whether the internal control structure and procedures include records that accurately and fairly reflect the transactions of the issuer, provide reasonable assurance that the transactions are recorded in a manner that will permit the preparation of financial statements in accordance with GAAP, and a description of any material weaknesses in the internal controls.

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### **Section 104: Inspections of Registered Public Accounting Firms.**

Annual quality reviews (inspections) must be conducted for firms that audit more than 100 issues, all others must be conducted every 3 years. The SEC and/or the Board may order a special inspection of any firm at any time.

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### **Section 105: Investigations And Disciplinary Proceedings.**

All documents and information prepared or received by the Board 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, . . . unless and until presented in connection with a public proceeding or [otherwise] released" in connection with a disciplinary action. However, all such documents and information can be made available to the SEC, the U.S. Attorney General, and other federal and appropriate state agencies.

Disciplinary hearings will be closed unless the Board orders that they be public, for good cause, and with the consent of the parties.

Sanctions can be imposed by the Board to a firm if it fails to reasonably supervise any associated person with regard to auditing or quality control standards, or otherwise.

No sanctions report will be made available to the public unless and until stays pending appeal have been lifted.

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### **Section 106: Foreign Public Accounting Firms.**

The bill would subject foreign accounting firms who audit a U.S. company to registrations with the Board. This would include foreign firms that perform some audit work, such as in a foreign subsidiary of a U.S. company that is relied on by the primary auditor.

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### **Section 107: Commission Oversight Of The Board.**

The SEC shall have "oversight and enforcement authority over the Board." The SEC can, by rule or order, give the Board additional responsibilities. The SEC may require the Board to keep certain records, and it has the power to inspect the Board itself, in the same manner as it can with regard to SROs such as the NASD.

The Board, in its rulemaking process, is to be treated "as if the Board were a 'registered securities association'" - that is, a self-regulatory organization. The Board is required to file proposed rules and proposed rule changes with the SEC. The SEC may approve, reject, or amend such rules.

The Board must notify the SEC of pending investigations involving potential violations of the securities laws, and coordinate its investigation with the SEC Division of Enforcement as necessary to protect an ongoing SEC investigation.

The SEC may, by order, "censure or impose limitations upon the activities, functions, and operations of the Board" if it finds that the Board has violated the

Act or the securities laws, or if the Board has failed to ensure the compliance of accounting firms with applicable rules without reasonable justification.

The Board must notify the SEC when it imposes "any final sanction" on any accounting firm or associated person. The Board's findings and sanctions are subject to review by the SEC.

The SEC may enhance, modify, cancel, reduce, or require remission of such sanction.

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### **Section 108: Accounting Standards.**

The SEC is authorized to "recognize, as 'generally accepted'... any accounting principles" that are established by a standard-setting body that meets the bill's criteria, which include requirements that the body:

1. be a private entity;
2. be governed by a board of trustees (or equivalent body), the majority of whom are not or have not been associated persons with a public accounting firm for the past 2 years;
3. be funded in a manner similar to the Board;
4. have adopted procedures to ensure prompt consideration of changes to accounting principles by a majority vote; and
5. consider, when adopting standards, the need to keep them current and the extent to which international convergence of standards is necessary or appropriate

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### **Section 109: Funding.**

In order to audit a public company, a public accounting firm must register with the Board. The Board shall 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.

The Board shall also establish by rule a reasonable "annual accounting support fee" as may be necessary or appropriate to maintain the Board. This fee will be assessed on issuers only.

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### **Section 201: Services Outside The Scope Of Practice Of Auditors.**

It shall be "unlawful" for a registered public accounting firm to provide any non-audit service to an issuer contemporaneously with the audit, including: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing

services; (6) management functions or human resources; (7) broker or dealer, investment adviser, or investment banking services; (8) legal services and expert services unrelated to the audit; (9) any other service that the Board determines, by regulation, is impermissible. The Board may, on a case-by-case basis, exempt from these prohibitions any person, issuer, public accounting firm, or transaction, subject to review by the Commission.

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### **Section 202: Preapproval Requirements.**

It will not be unlawful to provide other non-audit services if they are pre-approved by the audit committee in the following manner. The bill allows an accounting firm to "engage in any non-audit service, including tax services," that is not listed above, only if the activity is pre-approved by the audit committee of the issuer. The audit committee will disclose to investors in periodic reports its decision to pre-approve non-audit services. Statutory insurance company regulatory audits are treated as an audit service, and thus do not require pre-approval.

The pre-approval requirement is waived with respect to the provision of non-audit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than 5% of the total amount of revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed), such services were not recognized by the issuer at the time of the engagement to be non-audit services; and such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit.

The authority to pre-approve services can be delegated to 1 or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee.

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### **Section 203: Audit Partner Rotation.**

The lead audit or coordinating partner and the reviewing partner must rotate off of the audit every 5 years.

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### **Section 204: Auditor Reports to Audit Committees.**

The accounting firm must report to the audit committee all "critical accounting policies and practices to be used; all alternative treatments of financial information within [GAAP] that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred" by the firm.

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**Section 205: Conforming Amendments.**

Conforming amendments are made to various Exchange Act definitions related to audit committees; registered public accounting firms; auditor requirements; and other conforming amendments.

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**Section 206: Conflicts of Interest.**

The CEO, Controller, CFO, Chief Accounting Officer or person in an equivalent position cannot have been employed by the company's audit firm during the 1-year period preceding the audit.

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**Section 207: Study of Mandatory Rotation of Registered Public Accountants.**

The GAO will do a study on the potential effects of requiring the mandatory rotation of audit firms.

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**Section 208: Commission Authority.**

Not later than 180 days after the date of enactment of the Act, the Commission is to issue final regulations to carry out various subsections of the Act.

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**Section 209: Consideration by Appropriate State Regulatory Authorities.**

State regulators are directed to make an independent determination as to whether the Boards standards shall be applied to small and mid-size non-registered accounting firms.

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**Section 301: Public Company Audit Committees.**

Each member of the audit committee shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"Independent" is defined as not receiving, other than for service on the board, any consulting, advisory, or other compensatory fee from the issuer, and as not

being an affiliated person of the issuer, or any subsidiary thereof.

The SEC may make exemptions for certain individuals on a case-by-case basis.

The audit committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer.

The audit committee shall establish procedures for the "receipt, retention, and treatment of complaints" received by the issuer regarding accounting, internal controls, and auditing.

Each audit committee shall have the authority to engage independent counsel or other advisors, as it determines necessary to carry out its duties.

Each issuer shall provide appropriate funding to the audit committee.

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### **Section 302: Corporate Responsibility For Financial Reports.**

The CEO and CFO of each issuer shall prepare a statement to accompany the audit report to certify the "appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer." A violation of this section must be knowing and intentional to give rise to liability.

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### **Section 303: Improper Influence on Conduct of Audits.**

It shall be unlawful for any officer or director of an issuer to take any action to fraudulently influence, coerce, manipulate, or mislead any auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.

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### **Section 304: Forfeiture of Certain Bonuses and Profits**

If an issuer is required to prepare a restatement due to "material noncompliance" with financial reporting requirements, the chief executive officer and the chief financial officer shall "reimburse the issuer for any bonus or other incentive-based or equity-based compensation received" during the twelve months following the issuance or filing of the non-compliant document and "any profits realized from the sale of securities of the issuer" during that period.

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### **Section 305: Officer And Director Bars And Penalties**

In any action brought by the SEC for violation of the securities laws, federal courts are authorized to "grant any equitable relief that may be appropriate or necessary for the benefit of investors."

The SEC may issue an order to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated section 10(b) of the 1934 Act from acting as an officer or director of an issuer if the SEC has found that such person's conduct "demonstrates unfitness" to serve as an officer or director of any such issuer.

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### **Section 306: Insider Trades During Pension Fund Black-Out Periods.**

Prohibits the purchase or sale of stock by officers and directors and other insiders during blackout periods. Any profits resulting from sales in violation of this section "shall inure to and be recoverable by the issuer." If the issuer fails to bring suit or prosecute diligently, a suit to recover such profit may be instituted by "the owner of any security of the issuer."

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### **Section 307: Rules of Professional Responsibility for Attorneys.**

Attorneys appearing and practicing before the Commission in any way in the representation of issuers are required to report evidence of a material violation of securities laws to the chief legal counsel or the CEO of the company and if they do not appropriately respond to the evidence, attorney's are required to report the evidence to the audit committee of the board of directors.

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### **Section 308: Fair Funds for Investors.**

Civil penalties added to the disgorgement funds for the relief of victims of such violation.

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### **Section 401: Disclosures In Periodic Reports.**

Each financial report that is required to be prepared in accordance with GAAP shall "reflect all material correcting adjustments . . . that have been identified by a registered accounting firm . . . ."

"Each annual and quarterly financial report . . . shall disclose all material off-balance sheet transactions" and "other relationships" with "unconsolidated

entities" that may have a material current or future effect on the financial condition of the issuer.

The SEC shall issue rules providing that pro forma financial information must be presented so as not to "contain an untrue statement" or omit to state a material fact necessary in order to make the pro forma financial information not misleading.

SEC shall study off-balance sheet disclosures to determine a) extent of off-balance sheet transactions (including assets, liabilities, leases, losses and the use of special purpose entities); and b) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion and make a report containing recommendations to the Congress.

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#### **Section 402: Enhanced Conflict of Interest Provisions.**

Generally, it will be unlawful for an issuer to extend credit to any director or executive officer. Consumer credit companies may make home improvement and consumer credit loans and issue credit cards to its directors and executive officers if it is done in the ordinary course of business on the same terms and conditions made to the general public.

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#### **Section 403: Disclosures Of Transactions Involving Management And Principal Stockholders.**

Directors, officers, and 10% owners must report designated transactions by the end of the second business day following the day on which the transaction was executed.

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#### **Section 404: Management Assessment Of Internal Controls.**

Requires each annual report of an issuer to contain an "internal control report", which shall:

1. state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and
2. contain an assessment, as of the end of the issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

Each issuer's auditor shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this section shall be in accordance with standards for attestation engagements issued or adopted by the

Board. An attestation engagement shall not be the subject of a separate engagement.

The language in the report of the Committee which accompanies the bill to explain the legislative intent states, "--- the Committee does not intend that the auditor's evaluation be the subject of a separate engagement or the basis for increased charges or fees."

Directs the SEC to require each issuer to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of that code.

Directs the SEC to revise its regulations concerning prompt disclosure on Form 8-K to require immediate disclosure "of any change in, or waiver of," an issuer's code of ethics.

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#### **Section 405: Exemption.**

Nothing in Section 401, 402 or 404, the amendments made by those sections, or the rules of the Commission under those sections apply to any registered investment company.

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#### **Section 406: Code of Ethics for Senior Financial Officers.**

The SEC shall issue rules that require each issuer to disclose whether or not, and if not, the reasons therefore, such issuer has adopted a code of ethics for senior financial officers.

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#### **Section 407: Disclosure of Audit Committee Financial Expert.**

The SEC shall issue rules to require issuers to disclose whether at least 1 member of its audit committee is a "financial expert."

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#### **Section 408: Enhanced Review of Periodic Disclosures by Issuers.**

The SEC shall review disclosures made by issuers (including reports filed on Form 10-K) on a regular and systematic basis for the protection of investors. Issuers will not be reviewed less frequently than once every three years.

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**Section 409: Real Time Issuer Disclosures.**

Issuers must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

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**Section 501: Treatment of Securities Analysts by Registered Securities Associations and National Securities Exchanges.**

National Securities Exchanges and registered securities associations must adopt conflict of interest rules for research analysts who recommend equities in research reports.

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**Section 601: Authorization of Appropriations.**

SEC appropriations for 2003 are increased to \$776,000,000. \$98 million of the funds shall be used to hire an additional 200 employees to provide enhanced oversight of auditors and audit services required by the Federal securities laws.

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**Section 602: Appearance and Practice Before the Commission.**

The SEC may censure any person, or temporarily bar or deny any person the right to appear or practice before the SEC if the person does not possess the requisite qualifications to represent others, lacks character or integrity, or has willfully violated Federal securities laws.

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**Section 603: Federal Court Authority to Impose Penny Stock Bars.**

Authority of the courts to prohibit persons from participating in an offering of penny stock.

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**Section 604: Qualifications of Associated Persons of Brokers and Dealers.**

Amendments to the Exchange Act and Investment Advisors Act regarding brokers and dealers.

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**Section 701: GAO Study and Report Regarding Consolidation of Public Accounting Firms.**

**Section 702: Commission study and report regarding credit rating agencies.**

**Section 703: Study and report on violators and violations.**

**Section 704: Study of Enforcement Actions.**

**Section 705: Study of Investment Banks.**

Various studies to be conducted as described in the Act.

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**Title VIII: Corporate and Criminal Fraud Accountability.**

It is a felony to "knowingly" destroy or create documents to "impede, obstruct or influence" any existing or contemplated federal investigation.

Auditors are required to maintain "all audit or review work papers" for five years.

The statute of limitations on securities fraud claims is extended to the earlier of five years from the fraud, or two years after the fraud was discovered, from three years and one year, respectively.

Employees of issuers and accounting firms are extended "whistleblower protection" that would prohibit the employer from taking certain actions against employees who lawfully disclose private employer information to, among others, parties in a judicial proceeding involving a fraud claim. Whistle blowers are also granted a remedy of special damages and attorney's fees.

A new crime for securities fraud that has penalties of fines and up to 10 years imprisonment.

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**Title IX: White Collar Crime Penalty Enhancements.**

Maximum penalty for mail and wire fraud increased from 5 to 10 years.

Creates a crime for tampering with a record or otherwise impeding any official proceeding.

SEC given authority to seek court freeze of extraordinary payments to directors, offices, partners, controlling persons, agents of employees.

U.S. Sentencing Commission to review sentencing guidelines for securities and accounting fraud.

SEC may prohibit anyone convicted of securities fraud from being an officer or director of any publicly traded company.

Financial statements filed with the SEC must be certified by the CEO and CFO. The certification must state that the financial statements and disclosures fully comply with provisions of the Securities Exchange Act and that they fairly present, in all material respects, the operations and financial condition of the issuer. Maximum penalties for willful and knowing violations of this section are a fine of not more than \$500,000 and/or imprisonment of up to 5 years.

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## **Title X - Corporate Tax Returns.**

### **Section 1001: Sense of the Senate Regarding the Signing of Corporate Tax Returns by Chief Executive Officers.**

It is the sense of Congress that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

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## **Title XI - Corporate Fraud and Accountability.**

### **Section 1102: Tampering With a Record or Otherwise Impeding an Official Proceeding.**

Makes it a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding or to otherwise obstruct, influence or impede any official proceeding is liable for up to 20 years in prison and a fine.

### **Section 1103: Temporary Freeze Authority for the Securities and Exchange Commission.**

The SEC is authorized to freeze the payment of an extraordinary payment to any director, officer, partner, controlling person, agent, or employee of a company during an investigation of possible violations of securities laws.

### **Section 1105: Authority of the Commission to Prohibit Persons from Serving as Officers or Directors.**

The SEC may prohibit a person from serving as an officer or director of a public company if the person has committed securities fraud.

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