Summary and Analysis of Sarbanes – Oxley Act
Provided by the ACCA Central Pennsylvania Chapter

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED **July 29, 2002**

To:

From:

Re: Sarbanes-Oxley Act Summary and Analysis

Since the writing of this Memo the bill has become law.

Following is a summary and analysis of the Sarbanes-Oxley Bill, and a chart that sets out the sections of the Act with extracts of key provisions. Current word has it that the President will sign the bill into law sometime this week.

The Sarbanes-Oxley Act creates new felonies relating to destroying audit records, financial statement certifications and financial fraud, but in fact it does not actually criminalize any conduct that wasn't already subject to prosecution. Stiffer penalties are prescribed, but the practical impact of the criminal provisions seems more symbolic than real. It "sends a message" of outrage, even as the villains are being rounded up under the authority of the old law.

Although the criminal aspects of the law are probably mostly symbolic, the tort aspects are real. The statute of limitations for securities fraud has been extended. Tort lawyers will have new tools to use against companies, new opportunities to "get" companies that make accounting or disclosure judgments that turn out to be wrong, and help from increased SEC scrutiny of companies.

There are also several vexing provisions that will affect our policies and procedures and radically change some of our disclosure practices.

Some issues we will want to note or consider are:

- Permitted auditor services must be pre-approved by the Audit Committee.
- We should discuss with Auditors their and our records retention periods for audit and financial records.
- We need to study the lawyer-as-informant provision to understand exactly what is intended and how best to comply.
- We will need to incorporate new disclosure requirements, such as the internal controls review, in our SEC filings.
- We should consider whether this manifestation of CEO-CFO financials certification changes the verification procedures we planned based on the SEC proposals.
- The CEO-CFO bonus forfeiture provision should be studied.
- We need to understand if relocation loans to executives are included in banned loans.
- We should discuss the many ramifications of the "real time" disclosure requirement and its implications for M&A and other sensitive transactions.

- Our Code of Conduct should be evaluated against the code of ethics requirement the SEC is directed to promulgate.
- Our internal complaint and confidential ethics violation reporting processes should be compared against the law's requirements.
- We should consider requiring Legal Department pre-approval of all officer and director stock transactions to be able to comply with the new 2-day filing requirement.
- Assessment of our procedures to evaluate contingent liabilities and other financial statement "wild cards" should be conducted.
- Assessment of the substance and manner of communications with auditors should be considered in light of their records and e-mail retention requirements and the policies Auditors implements to comply.

BILL SECTION	**SELECTED NOTEWORTHY PROVISIONS**	**COMMENTS**
TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)	This title deals with a new oversight board for Auditors. This Board will *"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."*	This Title and its Sections 101 thru 109 affect Auditors and require them to become registered and provide the new PCAOB information about its practices and procedures.
Sec. 101. Establishment; administrative provisions.	The PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD is established.	
Sec. 102. Registration with the Board.	Every firm that audits a public company must register with this Board.	
Sec. 103. Auditing, quality control, and independence standards and rules.	*The Board shall…establish…such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by… accounting firms in the preparation… of audit reports, as required by [law]… or as may be necessary or appropriate … for the protection of investors.* *The Board:* *(A) shall … require… that each … accounting firm shall* *(i) prepare, and maintain for …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 …approval of such audit report …, by a qualified person (as prescribed by the Board) associated with the …accounting firm, …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,… 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*	The auditor workpaper retention aspects may affect our financial records retention schedule. The scope of the audit that the Audit Committee establishes with the auditor will be described in the auditor's report. The auditor's evaluation of the Company's internal controls will be included in the report.

	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….*	
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.	*Except as… [allowed under a PCAO Board waiver], it shall be unlawful for a[n]… accounting firm …that performs for any issuer any audit …, to provide to that issuer, contemporaneously with the audit, any non-audit service, 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;*	Nine categories of services that an auditor is barred from providing.

	(8) legal services and expert services unrelated to the audit; and *(9) any other service that the Board determines, by regulation, is impermissible.* *PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.* *A[n]… accounting firm may engage in any non-audit service, including tax services, that is* ***not*** *described in any of paragraphs (1) through (9) [above]…for an audit client, only if the activity is approved in advance by the audit committee of the issuer….*	Other services not named in the nine above must be approved in advance by the Audit Committee.
Sec. 202. Preapproval requirements.	*AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.* *DE MINIMUS EXCEPTION.—The preapproval requirement … is waived with respect to the provision of non-audit services for an issuer, if:* *''(i) the aggregate amount of all such non-audit services …constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year…;* *''(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and* *''(iii) such services are promptly brought to the attention of the audit committee … and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee …to whom authority to grant such approvals has been delegated by the audit committee.* *DISCLOSURE TO INVESTORS.—Approval by an audit committee …of a non-audit service to be performed by the auditor … shall be disclosed to investors in periodic reports [to the SEC]…* *DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more … members of the audit committee who are independent directors …, the authority to grant preapprovals required by this subsection.* *The decisions of any member to whom authority is delegated under this paragraph … shall be presented to the full audit committee at each of its scheduled meetings.*	Preapproval of allowed auditor services by Audit Committee. Process to exempt services costing up to 5% of the audit fee. Disclosure is required.
Sec. 203. Audit partner rotation.	5 year limit on responsible partner.	
Sec. 204. Auditor reports to audit committees.	*Each… accounting firm …shall timely report to the audit committee …* *(1) all critical accounting policies and practices to be used;* *(2) all alternative treatments of financial information within [GAAP] that have been discussed with management …, ramifications of the use of such alternative[s]…, and the treatment preferred by the … accounting firm; and* *(3) other material written communications between the … accounting firm and … management …, such as any management letter or schedule of unadjusted differences.*	Mandatory audit/or discussion with Audit Committee.
Sec. 205. Conforming amendments.		

Sec. 206. Conflicts of interest.	*It [is] unlawful for a … accounting firm to perform for an issuer any audit service …, if a chief executive officer, controller, chief financial officer, chief accounting officer… for the issuer, was employed by that … accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.*	"Revolving door" bar.
Sec. 207. Study of mandatory rotation of registered public accounting firms.	One year for study and report to Congress on this concept.	
Sec. 208. Commission authority.		
Sec. 209. Considerations by appropriate State regulatory authorities.		
TITLE III—CORPORATE RESPONSIBILITY		
Sec. 301. Public company audit committees.	*The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.* *Each member of the audit committee … shall be a member of the board of directors …, and shall otherwise be independent. [T]o be considered … independent for purposes of this paragraph, a member of an audit committee … may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—* *(i) accept any consulting, advisory, or other compensatory fee from the issuer; or* *''(ii) be an affiliated person of the issuer or any subsidiary thereof.* *The Commission may exempt from the requirements of [the preceding] subparagraph a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.* *COMPLAINTS.—Each audit committee shall establish procedures for—* *(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and* *(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.* *AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines*	Audit Committee must appoint auditors. The full board can ratify the choice. Audit Committee members must be independent. This duplicates the existing NYSE requirement, with specific exclusions for consulting, etc. fees. We must assess our complaint and confidential reporting systems. A special Policy may be warranted.

	necessary to carry out its duties. *FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—* *(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and* *(B) to any advisers employed by the audit committee …*	
Sec. 302. Corporate responsibility for financial reports.	*[E]ffective not later than 30 days after the date of enactment of this Act.…[T]he principal executive officer … and the principal financial officer …[shall] certify in each annual or quarterly report filed …that:* *(1) the signing officer has reviewed the report;* *(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;* *(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;* *(4) the signing officers:* *(A) are responsible for establishing and maintaining internal controls;* *(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;* *(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and* *(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;* *(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):* *(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and* *(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and* *(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.*	"Based on such officer's knowledge" is a clearer, better standard than SEC's proposed "to the knowledge" The CEO and CFO must evaluate effectiveness of internal controls every quarter. Each 10-K and 10-Q must include CEO and CFO conclusions about internal controls and explain any significant changes. <u>Every</u> fraud, no matter how small, by these employees must be disclosed by CEO and CFO to auditors and Audit Committee.

Sec. 303. Improper influence on conduct of audits.	*It [is] unlawful…for any officer or director of an issuer, or any other person acting under the[ir] direction…, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.*	
Sec. 304. Forfeiture of certain bonuses and profits.	*If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the CEO and CFO of the issuer shall reimburse the issuer for:* *(1) any bonus or other incentive-based or equity based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the SEC (whichever first occurs) of the financial document embodying such financial reporting requirement; and* *(2) any profits realized from the sale of securities of the issuer during that 12-month period.* *The SEC may exempt any person from the application of [the above] subsection …as it deems necessary and appropriate.*	
Sec. 305. Officer and director bars and penalties.	Ban on future service as executive of public company for bad conduct.	
Sec. 306. Insider trades during pension fund blackout periods.	*[I]t [is] unlawful for any director or executive officer of an issuer…, directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer …during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.* The law goes on to clarify what types of "blackouts" are covered, prescribe rules for notifying benefit plan participants about the details of blackout periods, sanctions for executives who violate the ban, and otherwise clarify applicability of this provision. This becomes effective 180 days after enactment.	
Sec. 307. Rules of professional responsibility for attorneys.	*Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct <u>for attorneys appearing and practicing before the Commission in any way in the representation of issuers</u>, including a rule:* *(1) requiring an attorney to report evidence of a <u>material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof</u>, to the chief legal counsel or the chief executive officer of the company…; and* *(2) if the counsel or officer does not <u>appropriately respond</u> to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer*	We should consider whether we need a special procedure on this. Exactly which inside attorneys does this apply to? Who decides what is "material"? Who decides what is an appropriate response?

	or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors. [emphasis added]	
Sec. 308. Fair funds for investors.	This is a palliative that will be of little beneficial effect despite its politically popularity. "Disgorgement" from and penalties paid by wrongdoing directors and executives will be put in a fund to reimburse injured shareholders. It creates a handy pot of cash for tort lawyers, but will rarely provide sufficient compensation to injured investors.	
TITLE IV—ENHANCED FINANCIAL DISCLOSURES		
Sec. 401. Disclosures in periodic reports.	*Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) [GAAP] … and filed with the SEC shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with [GAAP] and the rules … of the SEC.* *OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after …enactment …, the SEC shall issue final rules providing that each annual and quarterly financial report required to be filed … shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.* *PRO FORMA FIGURES.— Not later than 180 days after… enactment…, the SEC shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the SEC pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—* *(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and* *(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.* *STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES…. The SEC shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules… as added by this section, complete a study of filings by issuers and their disclosures to determine—* *(A) the 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.*	

	Not later than 6 months after the date of completion of the study required by paragraph [above], the SEC shall submit a report to the President, [and Congress]…, setting forth: *(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic [with the SEC];* *(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;* *(C) whether [GAAP] or the rules of the SEC result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;* *(D) whether [GAAP] specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and* *(E) any recommendations of the SEC for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the SEC.*	
Sec. 402. Enhanced conflict of interest provisions.	*PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.* *(1)…It shall be unlawful for any [SEC filing company], directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer … of that [company]. An extension of credit maintained by the [company] on the date of enactment of this [law] shall not be subject to the[se] provisions …, provided that there is no material modification to any term of any such extension of credit or any renewal thereof … on or after that date of enactment.* *(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans…, consumer credit …, or any extension of credit under an open end credit plan …, or a charge card …, or any extension of credit by a broker or dealer …to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules … of the … Federal Reserve System …(other than an extension of credit that would be used to purchase the stock of that issuer), that is—* *''(A) made or provided in the ordinary course of the consumer credit business of such issuer;* *''(B) of a type that is generally made available by such issuer to the public; and* *''(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.*	This appears to bar relocation loans as well as virtually all other loans to executive officers.
Sec. 403. Disclosures of transactions involving management and principal stockholders.	The following provisions apply 30 days after the law becomes effective: *TIME OF FILING.—The [Form 3 or 4] statements [of beneficial ownership required to be filed [with the SEC] by officers and directors and 10% shareholders] shall be filed—* *''(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed [with the SEC];*	By the end of August, we need to start filing Form 4s with the SEC within 2 days of an officer or director stock transaction. To comply, we need to consider requiring regular pre-clearance by Legal of all proposed transactions.

	(B) within 10 days after he or she becomes such beneficial owner, director, or officer; *(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement … involving such equity security,* ***before the end of the second business day following the day on which the subject transaction has been executed****, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.* *CONTENTS OF STATEMENTS.— A [Form 4] filed …shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.* *ELECTRONIC FILING AND AVAILABILITY.— Beginning not later than 1 year after the date of enactment of [this law]:* *(A) [Form 4] statements [showing changes in ownership] [not including Form 3] shall be filed electronically;* *(B) the SEC shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and* *(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.''.*	Securities swap contracts now have to be reported.
Sec. 404. Management assessment of internal controls.	*(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each [10-K] report … to contain an internal control report, which shall—* *(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and* *(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.* *(b) INTERNAL CONTROL EVALUATION AND REPORTING. —…[E]ach … accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the PCAOBoard. Any such attestation shall not be the subject of a separate engagement.*	New requirement for 10-K's.
Sec. 405. Exemption.	Investment company exemption.	
Sec. 406. Code of ethics for senior financial officers.	*(a) CODE OF ETHICS DISCLOSURE.—The SEC shall issue rules[within 180 days] to require each issuer, together with [10-K, 10-Q and 8-K] periodic reports …, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer…* *(b) CHANGES IN CODES OF ETHICS.—The SEC shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K …to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means,*	We should assess whether our Code of Conduct and related policies meet this standard. Consider possible ramifications.

	by any issuer of any change in or waiver of the code of ethics for senior financial officers. *(c) DEFINITION.—In this section, the term ''code of ethics'' means such standards as are reasonably necessary to promote—* *(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;* *(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and* *(3) compliance with applicable governmental rules and regulations.*	
Sec. 407. Disclosure of audit committee financial expert.	*(a) FINANCIAL EXPERT—The Commission shall issue rules [within 180 days],… to require each issuer, together with [10-K, 10-Q and 8-K] periodic reports …, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.* *(b) In defining the term ''financial expert'' …, the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions:* *(1) an understanding of [GAAP] and financial statements;* *(2) experience in:* *(A) the preparation or auditing of financial statements of generally comparable issuers; and* *(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;* *(3) experience with internal accounting controls; and* *(4) an understanding of audit committee functions.*	This merely duplicates the NYSE's existing requirement.
Sec. 408. Enhanced review of periodic disclosures by issuers.	*(a) REGULAR AND SYSTEMATIC REVIEW.—The SEC shall review disclosures made by issuers reporting under section 13(a) of the Exchange Act (including reports filed on Form 10–K), …, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.* *(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the SEC shall consider, among other factors—* *(1) issuers that have issued material restatements of financial results;* *(2) issuers that experience significant volatility in their stock price as compared to other issuers;* *(3) issuers with the largest market capitalization;* *(4) emerging companies with disparities in price to earning ratios;* *(5) issuers whose operations significantly affect any material sector of the economy; and* *(6) any other factors that the Commission may consider relevant.* *(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer …be reviewed … less frequently than once every 3 years.*	An SEC review at least every 3 years is now required.
Sec. 409. Real time issuer disclosures.	*REAL TIME ISSUER DISCLOSURES.—Each [public company] … shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the [company], in plain English, which may*	This is a worrisome new requirement. Among other things, it will require us to fret about when aberrant

	include trend and qualitative information and graphic presentations, as the SEC determines, by rule, is necessary or useful for the protection of investors and in the public interest.	operational results have become a "trend", and could affect how often we assess contingent liabilities. We will have to gear up for rapid disclosure drafting and approval.
TITLE V—ANALYST CONFLICTS OF INTEREST		
Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.	Requires disclosure of analyst conflicts, protects analysts from retribution for negative comments about a firm client and sets enforcement procedures.	
TITLE VI—COMMISSION RESOURCES AND AUTHORITY		
Sec. 601. Authorization of appropriations.	Provides increased SEC funding.	
Sec. 602. Appearance and practice before the Commission.	Allows the SEC to censure people who practice before it.	
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	Congress directs various government agencies to study and report on several issues involved in recent corporate scandals because Congress can't figure out what to do about them yet.	
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.	*The ''Corporate and Criminal Fraud Accountability Act of 2002''.*	
Sec. 802. Criminal penalties for altering documents.	***Destruction, alteration, or falsification of records in Federal investigations and bankruptcy --****Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.* Auditors must "*maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded."* [The rule against destroying otherwise outdated records pertinent to ongoing or threatened litigation also applies.] *The SEC shall promulgate, within 180 days,… rules … as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review….* 10 year jail term and fines for violations.	We should consider what this means for our own financial records retention periods. Will "drafts" be covered? We will want to be especially diligent about being professional in all e-mails to Auditors.
Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.	A settlement, judgment or order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment for violation of any of the Federal securities laws, any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security is not dischargeable in bankruptcy.	
Sec. 804. Statute of limitations for securities fraud.	For all proceedings commenced on or after the date of enactment of this Act, the statute of limitations is extended until the earlier of: 2 years after the discovery of the facts constituting the violation; or 5 years after such violation.	We should consider what this means to our records retention schedules.
Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.	Federal Sentencing Commission is directed to look at its sentencing guidelines to stiffen penalties for corporate crimes.	
Sec. 806. Protection for employees of publicly traded companies who provide evidence	*WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLIC COMPANIES.—No [public] company …, or any officer, employee, contractor, subcontractor, or agent of*	

of fraud.	*such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee:* *(1) to provide information…, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule …of the SEC, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by:* *(A) a Federal regulatory or law enforcement agency;* *(B) any Member of Congress or any committee of Congress; or* *(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or* *(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule …of the SEC, or any provision of Federal law relating to fraud against shareholders.* Violations can be redressed through Labor Dep't or civil action.	
Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.	*Whoever knowingly executes, or attempts to execute, a scheme or artifice:* *(1) to defraud any person in connection with any security of a [public company]; or* *(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of [a public company];* *shall be fined…, or imprisoned not more than 25 years, or both.*	
TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS		
Sec. 901. Short title.	*The ''White-Collar Crime Penalty Enhancement Act of 2002''*	
Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.	*Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.*	
Sec. 903. Criminal penalties for mail and wire fraud.	*Mail and Wire Fraud penalties increased from 5 to 20 years.*	
Sec. 904. Criminal penalties for violations of the Employee	Increases penalties to up to 10 years' prison and $500,000 fine.	

Retirement Income Security Act of 1974.		
Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.	Federal Sentencing Commission is directed to look at its sentencing guidelines to stiffen penalties for white-collar crimes.	
Sec. 906. Corporate responsibility for financial reports.	*Each periodic report containing financial statements filed by an issuer with the SEC shall be accompanied by a written statement by the CEO and CFO. The statement … shall certify that the periodic report containing the financial statements fully complies with the requirements of … the Exchange Act …, and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.* *Whoever:* *(1) certifies any statement as set forth above knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or* *(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.*	
TITLE X—CORPORATE TAX RETURNS		
Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.	*It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.* This has no binding effect.	
TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY		
Sec. 1101. Short title.	*The ‘‘Corporate Fraud Accountability Act of 2002’’*	
Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.	*Whoever corruptly—* *(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or* *(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.*	
Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.	*Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is*	

	likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. *A temporary order shall be entered … only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.* *A temporary order … shall:* *(I) become effective immediately;* *(II) be served upon the parties subject to it; and* *(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.* *The effective period of an order …may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.*	
Sec. 1104. Amendment to the Federal Sentencing Guidelines.	*The Sentencing Commission is requested to review and strengthen penalties for corporate fraud.*	
Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.	*The SEC may issue an order in any cease-and-desist proceeding to prohibit, …for such period of time as it shall determine, any person who has violated [the antifraud section of the Securities Act], from acting as an officer or director of any [public company], if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.* *The SEC may issue an order in any cease-and-desist proceeding to prohibit, …for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any [public company] if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.*	
Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.	*Penalties increased from $1,000,000, or 10 years' prison to $25,000,000, or 20 years' prison.*	
Sec. 1107. Retaliation against informants	*Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.*	