The Sarbanes-Oxley Act of 2002

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The President has signed legislation, the Sarbanes-Oxley Act of 2002, (the "Act"), that amends the U.S. securities and other laws in significant ways. The law changes corporate governance, including the responsibilities of directors and officers; the regulation of accounting firms that audit public companies; corporate reporting; and enforcement. Many of the Act's provisions will be enhanced by SEC rulemaking and, probably, by stock market listing standards as well.

Generally, the Act applies to U.S. and non-U.S. public companies that have registered securities (debt or equity) with the SEC under the Securities Exchange Act of 1934.

The Act is lengthy. The implications of the Act will not be fully known until the SEC adopts implementing rules and, thereafter, as interpretations develop, whether by the SEC or in litigation. This article is a summary and not a complete description of the Act, and as such it does not constitute legal advice for any particular situation.

EXECUTIVE SUMMARY

The Act establishes new law or changes existing law in the following areas:

1. Corporate Responsibility

Corporate governance and the responsibilities of directors and officers have been changed, including:

a. Enhanced audit committee responsibility and auditor oversight, including pre-approval of non-audit services by the auditor and disclosure of all non-audit services of the auditor approved by the committee.
b. CEOs and CFOs must certify that the company's annual and quarterly reports are accurate and not misleading, and that their responsibility for evaluating internal controls has been met.
c. Immediate ban on personal loans by companies to their directors or executives other than certain regular consumer loans. Existing loans may continue provided they are not revised or extended.

2. Auditor Independence and Regulation of Auditors

New standards for determining auditor independence have been established and a new oversight board for the regulation of auditors will be created. New audit standards include a prohibition against independent auditors providing many non-audit services (other than tax services) and mandatory audit partner rotation.

3. Enhanced Disclosure

The quality and timeliness of company information has been enhanced, including:

a. management and auditors must annually assess their company's internal controls and related disclosures;

b. additional disclosure of off-balance-sheet financing and financial contingencies;
c. additional regulation of the presentation of pro forma information;
d. accelerated disclosure under Section 16 of the Exchange Act (within two business days) of insider stock transactions; and
e. "real time" disclosure of certain information.

4. Other Provisions

Other provisions provide:

a. Protections for the independence of security analysts and enhanced disclosure of their potential conflicts of interest.
b. Expanded SEC review of company reports, enhanced SEC enforcement powers, and increased penalties for securities law violations.

A more detailed description of the Act's principal provisions follows.

I. CORPORATE RESPONSIBILITY

A. Audit Committees

1. Oversight and Independence

The audit committee of an issuer will appoint, compensate, and oversee the work of the issuer's auditor. Any issuer that does not meet the audit committee requirements will be delisted from Nasdaq and the national securities exchanges.

Each member of the audit committee must be "independent," in that each member must be unaffiliated with the issuer and is prohibited from accepting any consulting, advisory, or other compensatory fees from the issuer other than fees for services as a member of the board of directors and the audit committee.

2. Audit Committee Financial Expert

The SEC must issue rules requiring each public company to disclose, in its periodic reports, whether the board's audit committee has at least one member who is a "financial expert" (and if not, why not). Subject to SEC rules to be adopted, a financial expert is someone who, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, has an understanding of U.S. GAAP and financial statements and experience in preparing or auditing financial statements of comparable issuers, in the application of GAAP for accounting for estimates, accruals, and reserves, experience in internal accounting controls, and in the functioning of audit committees.

3. Complaints

Each audit committee must establish procedures for receiving, retaining, and handling complaints received by the issuer concerning accounting, internal accounting controls, or auditing matters. The procedures must also enable the issuer's employees to confidentially submit their concerns about questionable accounting or auditing practices.

4. Advisers and Funding

The audit committee may engage independent counsel and other advisers necessary to carry out its duties. And, the issuer must provide adequate funding, as the audit committee may determine, for compensating the issuer's auditor and any of the committee's advisers.

B. Senior Officers

1. Certification of Periodic Reports

The CEO and CFO of the issuer must certify in each annual or quarterly report (e.g., Forms 10-Q, 10-K, and 20-F) that:

(a) each officer has reviewed the report;
(b) based on each officer's knowledge, the report does not contain any untrue statement of 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;
(c) based on each officer's knowledge, the financial statements, and other 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;
(d) together, the CEO and CFO:
   (i) are responsible for establishing and maintaining internal controls;
   (ii) have designed the 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;

(iii) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days before the report; and

(iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date.

(e) together, the CEO and CFO have disclosed to the issuer's auditor and the audit committee:

(i) all significant deficiencies in the design or operation of the issuer's internal controls that could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the auditor any material weaknesses in internal controls; and

(ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(f) the CEO and CFO 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 after the date of their evaluation, including any corrective actions for significant deficiencies and material weaknesses.

This certification requirement is effective upon adoption by the SEC of implementing rules, which shall not be later than 30 days after enactment. There is another similar certification requirement discussed below under "Penalties" which is effective immediately and applies to all upcoming periodic reports. The knowing and willful violation of the certification requirement described below is subject to criminal penalties.

2. Code of Ethics for Senior Financial Officers

The SEC must adopt rules requiring public companies to disclose in periodic reports whether they have adopted a "code of ethics" for senior financial officers and, if not, the reason why not. Additionally, the SEC rules must require the immediate public disclosure of any change in, or waiver of, the code of ethics of the public company. A "code of ethics" must include standards to promote (a) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and company relationships; (b) full, fair, accurate, timely, and understandable disclosure in the periodic reports filed with the SEC by the public company; and (c) compliance with applicable governmental rules and regulations.

3. Ban on Loans to Management

Issuers (both U.S. and foreign companies, and their subsidiaries) are prohibited from directly, or indirectly, extending personal loans to their executive officers and directors. The primary exceptions to this prohibition are: (a) existing loans that are not modified or renewed; (b) certain consumer credit arrangements such as home improvement and credit card loans, provided in each case that the loans are (i) made in the ordinary course of business, (ii) of a type generally made available by the issuer to the public, and (iii) made on market terms or terms no more favorable than those offered to the general public, and for issuers that are broker-dealers, margin loans to their employees, unless used to carry stock of the issuer. This ban is effective immediately.

4. Forfeiture by CEO or CFO of Certain Bonuses and Profits

If, as a result of misconduct, an issuer must restate its financials due to its material non-compliance with any financial reporting requirement, the CEO and CFO must reimburse the issuer for: (a) any bonus or other incentive- or equity-based compensation received during the 12-month period following the first public issuance or filing of the non-complying document with the SEC (whichever occurs first); or (b) any profits realized from the sale of the issuer's securities during that 12-month period. This provision is effective immediately.

5. Improper Influence on the Conduct of Audits

Officers and directors, or any persons acting under their direction, are prohibited from fraudulently influencing, coercing, manipulating, or misleading any auditor of the issuer's financial statements for the purpose of rendering the audited financial statements materially misleading. This provision is effective upon adoption by the SEC of implementing rules within 270 days of enactment.

6. Insider Trades During Pension Fund Blackout Periods

Executive officers and directors are prohibited from buying or selling their equity securities of the issuer during pension fund "blackout periods" if those directors or executive officers acquired the securities in connection with their service or employment in those capacities. Any profit realized by a director or executive officer from such prohibited trading will be recoverable by the issuer, irrespective of the intention of the director or executive officer in entering into the transaction. This remedy may be pursued by a shareholder if the issuer does not commence an action to recover the profit within 60 days of a request by the shareholder or if the issuer fails to diligently pursue the action. This provision is effective 180 days after enactment.

"Blackout periods" are periods of more than three business days during which trading in the security by 50% or more of the beneficiaries or participants in a company retirement plan is suspended. ERISA will be amended to require that the administrator of a § 401(k) or other individual account retirement plan provide 30 days advance notice of a blackout period to affected participants and beneficiaries.

7. *Officer and Director Bars and Penalties*

At the request of the SEC, an individual may be barred by court order from serving as an officer or director of a company if he has violated the general anti-fraud provisions of the securities laws (Section 10(b) of the Exchange Act, Section 17(a) of the Securities Act, and the related SEC rules) and his activities are found by the court to show that he is "unfit" to serve as an officer or director of a public company. Previously, this standard by which courts may bar an officer or director from serving a public company was "substantial unfitness." This provision is effective immediately.

II. AUDITOR INDEPENDENCE, REGULATION OF AUDITS AND AUDITORS

A. Services Prohibited to Auditors

To preserve its independence, a registered public accounting firm (generally described here as "auditor") and its associated persons, will be prohibited from providing to an issuer, contemporaneously with an audit, the following non-audit services:

1. bookkeeping or other services related to the accounting records or financial statements;
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; and
9. any other service that the Public Company Accounting Oversight Board determines to be impermissible.

Auditors may provide all other non-audit services, including tax services, provided the services are approved in advance by the issuer's audit committee.[1] Additionally, all audit services provided to an issuer must be pre-approved by its audit committee.[2] Pre-approvals for services may be made when approving the audit engagement.

The pre-approval requirement will be waived for non-audit services if the aggregate amount of all such non-audit services provided to the issuer is *de minimis* (i.e., they constitute less than 5% of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the non-audit services are provided); the services were not recognized by the issuer at the time of the engagement to be non-audit services; and the services are promptly brought to the attention of the audit committee of the issuer and approved before the completion of the audit by the audit committee (or its designated members).

All approvals by an audit committee of non-audit services of the auditor must be disclosed in the issuer's Exchange Act periodic reports. Providing comfort letters for a securities offering is considered an audit service.

B. Audit Partner Rotation

The lead (or coordinating) audit partner and the lead review partner will have to be rotated off the audit engagement after five years.

C. Auditor Reports to Audit Committee

Each auditor will be required to timely report to the audit committee of its public company clients:

1. all critical accounting policies and practices to be used;
2. all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management of the issuer, the ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the auditor; and
3. other material written communications between the auditor and management of the issuer, such as any management letter or schedule of unadjusted differences.

D. Prohibition Where CEO or CFO Previously Employed by Auditor

An auditor will be prohibited from providing audit services to an issuer if the CEO, comptroller, CFO, or chief accounting officer, was employed by the auditor and participated in any capacity in the audit of that issuer within one year before initiation of the audit.

III. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

A. Creation

The Act creates a new Public Company Accounting Oversight Board ("Board"), to oversee the audit of public companies subject to the securities laws and related matters. The Board will consist of five full-time members, two members of which must be or must have been certified public accountants. Members will be approved by the SEC. The SEC will have oversight and enforcement authority over the Board and no rule of the Board will become effective without prior approval of the SEC. Funding for the Board's operations will be provided by assessing auditors and issuers.

B. Duties

The Board will:

1. register public accounting firms that prepare audit reports for issuers;
2. establish auditing, quality control, ethics, independence, and other standards for the preparation of audit reports for issuers;
3. inspect registered public accounting firms (annually for larger firms);
4. investigate and conduct disciplinary proceedings and sanction registered public accounting firms and their associated persons;
5. perform such other duties or functions as the Board or the SEC determines to be necessary or appropriate to promote high professional standards and improve the quality of audit services offered by registered public accounting firms;
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; and
7. set the budget and manage the operations of the Board and its staff.

C. Registration

The Board is expected to be functioning within 270 days of enactment. Beginning 180 days thereafter, only auditors that are registered with the Board will be permitted to prepare audit reports for any issuer. In registering, auditors must consent to comply with any request of the Board or the SEC for testimony or production of documents.

D. Foreign Public Accounting Firms

Any foreign public accounting firm that prepares an audit report for any issuer will be subject to the Act and the rules of the Board and the SEC issued under the Act, to the same extent as a U.S. auditor. Registration under the Act does not by itself create a basis for subjecting a foreign public accounting firm to the jurisdiction of the Federal or state courts, other than for controversies between the foreign firm and the Board.

Additionally, the Board may determine that a foreign public accounting firm that does not issue audit reports, but nonetheless plays a substantial role in preparing and furnishing such reports for particular issuers should be treated as a public accounting firm for purposes of registration under the Act.

E. SEC Authority Over U.S. GAAP

The Act gives the SEC enhanced authority to determine what constitutes U.S. GAAP on its own for SEC reporting purposes or based on activities of private standard setting bodies, over which it is also given additional oversight powers.

IV. ENHANCED DISCLOSURES

The provisions of the Act described below relating to disclosure obligations are intended to enhance the quality and timeliness of information made publicly available by issuers and their insiders. The Act does not exclude foreign companies that file periodic reports with the SEC from the disclosure requirements. Consequently, at least for now, both U.S. and non-U.S. issuers will be subject to all of the disclosure requirements, except for those disclosures of insider trading (under Section 16 of the Exchange Act) which currently do not apply to foreign issuers.

A. Correcting Adjustments by Auditors

Section 13 of the Exchange Act has been amended. It now requires companies to disclose in their periodic reports any material correcting adjustments to any "financial report" filed with the SEC that contains financial statements required to be prepared under, or reconciled to, U.S. GAAP, that have been identified by the issuers' auditors in accordance with GAAP or SEC rules. This provision may be effective immediately, but it requires that the material correcting adjustment be identified by "a registered public accounting firm" and registration will not be required for some time.

B. Off-Balance-Sheet Transactions

The SEC must issue rules requiring each annual and quarterly financial report filed with the SEC to disclose all material "off-balance-sheet" transactions, arrangements, obligations, and other relationships with unconsolidated entities or other persons that may have a material current or future impact on the issuer's financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses. This provision will be effective within 180 days of enactment when the SEC adopts implementing rules.

C. Pro Forma Financial Information

The SEC is to adopt more stringent rules for pro forma financial information disclosed by public companies. Pro forma financial disclosures must be presented in a manner that does not contain any untrue statement or omission of a material fact necessary to make the financial information not misleading, and pro forma financial data must be reconciled with the corresponding financial condition and results of operations under GAAP.

D. Accelerated Filing of Changes in Beneficial Ownership by Insiders

Section 16 of the Exchange Act is amended to require directors, officers, and over 10% shareholders of U.S. reporting issuers, to disclose changes in beneficial ownership of their issuer's equity securities by the end of the second business day after the transaction. Insiders must also report purchases or sales of "securities-based swap agreements" within the same two business days. The SEC may modify the rule. This provision is effective 30 days after enactment.

Additionally, within one year of enactment, insiders must file their Section 16 reports electronically, and the SEC must post them on its EDGAR website within one day of filing. Issuers with websites must also post on their websites their insiders' statements within one day of SEC filing.

E. Mandated Disclosures Regarding Fitness of Management and Adequate Internal Controls

The SEC must adopt rules requiring issuers' annual reports to contain an "internal control report" prepared by management. The internal control report must (a) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and (b) assess as of the end of the last fiscal year, the effectiveness of the internal control structure and procedures for financial reporting. Management's assessment of the internal control report must be attested to by the issuer's auditor. This attestation would be deemed part of the audit engagement. This provision would be effective upon adoption of SEC implementing rules (with no deadline).

F. Real Time Disclosures

Each issuer is required to disclose, in plain English and on a "rapid and current" basis, such information concerning material changes in financial condition or operations, as the SEC may require. The disclosure of trend and qualitative information and graphic presentations may be required. This provision is effective upon adoption of SEC implementing rules (with no deadline).

Currently, the SEC has two projects under way to increase and accelerate current reporting requirements under Form 8-K. Further use by the SEC of its new authority under the Act, could subject issuers to so-called "evergreen" disclosure requirements, where existing disclosure is required to be updated as material events occur. Any such change might render unnecessary the need for the SEC's Regulation FD, which was intended to prevent selective disclosure of material inside information. Upon adoption, that regulation was criticized as unnecessarily restricting or complicating corporate communications. Under current SEC interpretations and judicial decisions, absent an obligation under Regulation FD, public companies are at times permitted to defer disclosures of material events if no "duty to update" exists at that time.

G. Enhanced Scrutiny

The SEC must now review disclosures made by issuers, including their financial statements, on a regular and systematic basis, which shall be no less frequently than once every three years. The SEC must base its scheduling of reviews on specific factors, which include: companies that have issued material restatements of financial results; companies that experience significant volatility in their stock price; companies with the largest market capitalization; emerging companies with disparities in price-to-earnings ratios; companies whose operations significantly affect a material sector of the economy; and any other factors that the SEC may deem relevant.

V. OTHER PROVISIONS

A. Analyst Conflicts of Interest

The Act adds a new Section 15D to the Exchange Act. Under this new provision, the SEC or, at its direction, a national securities exchange or the NASD must adopt rules to address conflicts of interests for securities analysts. These provisions are similar to those recently adopted by the NYSE and NASD. The Act's new provisions:

1. restrict the prepublication clearance of research reports by investment bankers (or persons not directly responsible for investment research);
2. limit the supervision and compensation review of securities analysts to non-investment bankers;
3. prohibit retaliation against securities analysts for publishing negative research reports that may adversely affect a present or prospective investment banking relationship of the broker-dealer;
4. define blackout periods during which underwriters or dealers that have participated in a public offering of securities may not publish research reports relating to those securities or to the issuer;
5. require effective "Chinese Walls" within broker-dealers to separate securities analysts from the review, pressure, or oversight of investment bankers;
6. require disclosure of analyst conflicts of interest in public appearances and research reports, including:
   - (i) any investments of the analyst in the issuer;
   - (ii) any compensation received by the analyst or broker-dealer from the issuer;
   - (iii) whether the issuer is, or within 12 months preceding the research report has been, a client of the broker-dealer and, if so, the types of services provided to the issuer; and
   - (iv) whether the analyst received compensation for a research report, based upon (among other factors) the investment banking revenues of the broker-dealer.

B. Rules of Professional Responsibility for Attorneys

The SEC is required to establish minimum standards of professional conduct for attorneys representing issuers before the SEC. Attorneys appearing before the SEC on behalf of issuers will have to report evidence of material violations of securities laws, breaches of fiduciary duty, or similar violations by the company or its agents to its chief legal counsel or CEO. If the counsel or CEO does not respond appropriately, the attorney must report the evidence to the audit committee, to another committee composed entirely of outside directors, or to the board of directors as a whole.

C. Whistle-Blower Protection

The Act protects employees of public companies from retaliation for providing evidence of fraud. No public company may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee because the employee lawfully provides information or otherwise assists in an investigation of conduct of the public company that the employee reasonably believes violates the securities laws or otherwise assists a securities or fraud-related investigation of the public company. Any employee who is retaliated against for such whistle-blowing activities may sue the company within 90 days of discharge or other retaliatory action by the employer. An employee that prevails under this provision is entitled to receive compensatory damages and attorneys' fees.

D. Debts Nondischargeable in Bankruptcy

The Act amends Federal bankruptcy laws to provide that a debtor may no longer discharge in bankruptcy any order or claim for a violation of any Federal or state securities law, or for common law fraud, deceit, or manipulation in connection with the purchase or sale of any security.

E. Temporary Freeze Authority for SEC

The SEC may, during an investigation into securities law violations by a public company or a director, officer, partner, controlling person, agent, or employee of a public company, seek a temporary order from a Federal district court requiring the company to escrow extraordinary payments (whether compensation or otherwise) to any such person for 45 days. The 45-day freeze period may be extended once for another 45 days. It may also be extended until the proceeding expires.

F. SEC Censure

The SEC may censure or bar any person from appearing before the SEC, if it finds that such person (i) is not qualified to represent others, (ii) lacks the requisite character or integrity or has engaged in unethical conduct, or (iii) has willfully violated, or willfully aided or abetted the violation of, any provision of the securities laws, rules, or regulations.

VI. CRIMINALIZATION OF MISCONDUCT, PENALTIES AND STATUTES OF LIMITATIONS

A. Criminalization of Misconduct

The Act makes criminal the following misconduct, effective immediately:

1. CEO and CFO Officer Certification Requirement

All periodic reports containing financial statements filed with the SEC must be accompanied by a written statement by the CEO and CFO of the issuer (or equivalent), certifying that: (a) the periodic report fully complies with the rules of the Exchange Act governing periodic reports; and (b) the information contained therein fairly presents, in all material respects, the financial condition and results of operations of the issuer. Knowingly certifying a statement that does not comport with all these requirements will be an offense punishable by a fine of up to $1 million and imprisonment for up to 10 years. Willfully giving the certification knowing that it is false will be an offense punishable by a fine of up to $5 million and imprisonment for up to 20 years.

This certification requirement applies to all public companies (in addition to the 947 of the largest U.S. companies already required to submit a separate sworn statement under the SEC June 27 order). This requirement is effective immediately, for all future periodic reports (probably Forms 10-Q, 10K, and 20-F only, not Forms 8-K and 6-K) filed on or after July 30.

The form of the certification has yet to be determined by the SEC. However, because the Act specifies a statement "accompanying" the report, it should probably be submitted separately from the filing itself.

Finally, this certification requirement required under Section 906 of the Act differs significantly from the one under Section 302 described earlier, specifically in terms of standards for certification and the consequences of same. The SEC will have to clarify how this will be resolved.

2. Destruction of Corporate Audit Records

The knowing and willful destruction of any audit work papers or other documents related to an audit will be subject to a maximum 10 years in prison. Auditors of a public company must maintain all audit or review work papers for 5 years.

3. Destruction, Alteration, or Falsification of Records

Destruction, alteration, or falsification of records in Federal investigations and bankruptcy proceedings with the intent to impede or influence such investigations or proceedings is subject to a maximum 20 years imprisonment.

4. Criminal Penalties for Defrauding Shareholders of Public Companies

The Act increases the penalties under the Federal mail fraud statute by subjecting anyone convicted of securities fraud or attempted securities fraud to a fine or imprisonment for up to 25 years or both.

B. Increased Penalties and Other Remedies

1. Attempts and Conspiracies to Commit Criminal Fraud Offenses

The Act amends the Federal criminal fraud statute and provides that any person who attempts or conspires to commit any offense under the Federal criminal fraud statute (mail, wire, bank, or securities fraud) will be subject to the same penalties as those prescribed for the underlying offense.

2. Criminal Penalties for Mail and Wire Fraud

The penalty for mail and wire fraud will be increased from 5 to 20 years in prison.

3. Criminal Penalties for ERISA Violations

The Act amends the maximum fine for violations of ERISA by a natural person from $5,000 to $100,000 and increases the maximum jail term from 1 year to 10 years. Penalties for violations committed by companies will also increase from $100,000 to $500,000.

The foregoing penalties are effective immediately.

4. Increased Criminal Penalties Under Securities Exchange Act

The Act amends the Exchange Act to provide that a person who willfully violates any provision of the Exchange Act, or any rule or regulation thereunder, or who willfully and knowingly makes a statement in an application, report, or document required to be filed under the Exchange Act, which is false or misleading with respect to any material fact, will be subject to a fine of $5 million (increased from $1 million) or imprisonment for up to 20 years (increased from 10 years), if such person is a natural person; and an increase in the fine from $2.5 million to $25 million for a person other than a natural person.

5. Retaliation Against Informants

Knowing and intentional retaliation against informants providing truthful information relating to the commission or possible commission of a Federal offense will be punishable by a fine and imprisonment for up to 20 years.

C. Statute of Limitations for Securities Fraud Lengthened

The Act lengthens the statute of limitations for securities fraud. A private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in violation of a regulatory requirement concerning the securities laws may now be brought not later than the earlier of (i) two years after the discovery of the facts constituting the violation, or (ii) five years after the violation. This provision is effective immediately.

VII. STUDIES AND REPORTS

The Act requires that a number of studies and reports be conducted:

A. Mandatory Rotation of Auditors

The Comptroller General of the United States is directed to conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

B. Accounting Standards

The SEC is directed to conduct a study on the adoption by the U.S. financial reporting system of a principles-based accounting system.

C. Consolidation of Public Accounting Firms

The Comptroller General is directed to conduct a study of the factors that led to consolidation among public accounting firms, the effects of the consolidation, resulting problems, possible solutions, and related issues.

D. Credit Rating Agencies

The SEC is directed to conduct a study of the role and function of credit rating agencies in the operation of the securities market.

E. Violators and Violations

The SEC is directed to conduct a study to determine, based on the period from January 1, 1998, to December 31, 2001, the number of securities professionals practicing before the SEC who have engaged in violations of the Federal securities laws.

F. Enforcement Actions

The SEC is directed to review and analyze all its enforcement actions involving violations of reporting requirements imposed under the securities laws, and restatement of financial statements, over the past five years. The SEC is directed to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management and provide recommendations for regulatory or legislative action to address the concerns of the study.

G. Investment Banks

The Comptroller General is directed to conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition.

VIII. SEC RULEMAKING

Although the requirements of the Act are clear in broad measure, in many cases the details and effects of the Act will not be known until implementing regulations are issued over the course of the next year. The Act requires the SEC to issue rules on the following timetable:

SEC Rules	Dates Required
A. CEOs and CFOs to certify annual and quarterly reports.	Effective by August 29, 2002.
B. Companies to disclose whether at least one audit committee member qualifies as a "financial expert."	Proposed rules by October 28, 2002; final rules by January 26, 2003.
C. Prevention of directors and officers fraudulently influencing or misleading a company's auditors.	Proposed rules by October 28, 2002; final rules by April 26, 2003.
D. Disclosure of whether a company has adopted a code of ethics.	Proposed rules by October 28, 2002; final rules by January 26, 2003.
E. Disclosure of material off-balance-sheet transactions and accurate disclosure of pro forma information.	Final rules by January 26, 2003.
F. Minimum standards of professional conduct for attorneys who practice before the Commission.	Final rules by January 26, 2003.
G. Recognizing Public Company Accounting Oversight Board.	By April 26, 2003.
H. Securities exchanges and associations required to prohibit listing of a company whose audit committee is not composed entirely of independent board members.	SEC rules to be effective by April 26, 2003.
I. Analyst independence.	Final rules by July 30, 2003.