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PRESIDENT BUSH CALLS FOR STRENGTHENING CORPORATE DISCLOSURE, MANAGEMENT ACCOUNTABILITY, AND ACCOUNTANT OVERSIGHT

On March 7, 2002, President Bush proposed a ten-point plan to "improve corporate responsibility and protect America's shareholders."[1/] The plan is the White House's response to the collapse of Enron Corp. and its negative impact on the public's perception of publicly traded corporations and their auditors. It adds to the growing pool of proposals being floated by Congress and the Securities and Exchange Commission to improve corporate disclosure requirements, corporate governance practices, and the oversight of public accounting.

The President's plan, which we summarize and compare to the three leading Congressional plans below, consists of 10 proposals designed to "improve corporate disclosure, make corporate officers more accountable, and develop a stronger, more independent audit system – all without inviting endless litigation."[2/] Many of the President's proposals are modeled on rule changes already suggested by the SEC. All but two could be implemented by the SEC pursuant to its rulemaking authority.[3/] The fifth proposal, which would make it easier for the SEC to impose lifetime bans on corporate officers and directors from serving in other corporate positions, and the sixth proposal, to mandate reporting of insider stock sales within two days, would require legislation from Congress.

Because of its reliance on current SEC rulemaking, the President's plan has been criticized by Congressional Democrats for not going far enough in proposing new legislative fixes.[4/] Congress is currently considering three competing plans that echo many of the President's themes, but which vary in the degree to which they would alter the status quo for corporate disclosure practices, the regulation of auditing and accounting, and corporate insiders who are

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[1/] *See* Office of the Press Secretary, *President Outlines Plan To Improve Corporate Responsibility* (Mar. 7, 2002) <http://www.whitehouse.gov/news/releases/2002/03/20020307-3.html>.

[2/] Office of the Press Secretary, *Specifics on the President's Ten-Point Plan* (Mar. 7, 2002) <http://www.whitehouse.gov/news/releases/2002/03/20020307.html>.

[3/] *See* Bush Plan Specifics, *supra* note 2. *See also* 5 U.S.C. § 553; 15 U.S.C. §§ 77s & 78w (rulemaking provisions).

[4/] *See, e.g.*, Keith Perine, *Democrats Say Bush's Investor Protections Do Not Go Far Enough*, CQ Weekly, Mar. 9, 2002, at 645; David S. Hilzenrath and Jackie Spinner, *Democrats Propose Audit Reform*, Washington Post, March 8, 2002, at E04. Democrats have also announced that they will propose a legislative package that would create a criminal statute making it easier for prosecutors to win securities fraud convictions, extend the time in which investors may file securities fraud lawsuits, increase criminal penalties for destroying documents under subpoena, make it harder for corporate wrongdoers to shield assets by filing for bankruptcy, and offer new protections to corporate whistleblowers. *See* Richard A. Oppel, Jr., *Democrats Try to Surpass Bush in Tough Post-Enron Fraud Laws*, New York Times on the Web, Mar. 13, 2002, <http://www.nytimes.com/2002/03/13/business/13ENRO.html>. *See also* S. 2010, 107th Cong. (2002) (bill introduced by Senator Leahy proposing same reforms).

charged with securities law violations. The Congressional proposal that most closely resembles the President's is entitled the "Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002" and was introduced on February 14, 2002 by House Financial Services Chairman Michael G. Oxley (R-Ohio).[5] ("Oxley Bill.") On February 27, 2002, John LaFalce (D-New York), the Ranking Democrat on the House Financial Services Committee, introduced the "Comprehensive Investor Protection Act" ("LaFalce Bill"), which would roll back many of the securities law reforms of the past decade and impose sweeping new restrictions on accounting firms.[6] The legislative middle ground is occupied by Senators Chris Dodd (D-Connecticut) and Jon Corzine (D-New Jersey), who introduced their "Investor Confidence in Public Accounting Act of 2002" on March 8, 2002.[7] ("Dodd-Corzine Bill.")

Specifics Of The Bush Plan

Proposal No. 1: *Enhancing Quarterly Disclosure About Financial Performance, Condition, and Risks.*

The President's first proposal seeks to require quarterly disclosure of financial information that investors need to "judge a firm's financial performance, condition, and risks." The President contends that "disclosure practices have fallen behind the advanced techniques of corporate finance, allowing some firms to conceal the true risks faced by investors." He faults many firms for mistaking compliance with generally accepted accounting principles for proper disclosure.

The President would entrust the SEC with ensuring that companies disclose sufficient information to provide "a true and fair picture of themselves" and that this information is provided in "plain English," so that reasonable investors can understand it. Under current rules, "plain English" is generally only required for Securities Act prospectuses and for summary term sheets in tender offers, mergers, and going-private transactions.[8] Thus, the first proposal would be likely to expand, in a still unspecified manner, the current "plain English" rules to other disclosures.

SEC Chairman Harvey Pitt has endorsed the concept of financial reports that investors "can easily and quickly interpret and understand."[9] Both the President's and Congress' proposals, however, are long on requiring "plain language" disclosure and short on the specifics as to precisely how companies might make their financial reports more understandable. The Oxley Bill would require the SEC to decide whether new rules are needed to improve the transparency, completeness, and usefulness of financial statements and other corporate disclosures.[10] The LaFalce Bill would give the SEC 180 days to promulgate new rules requiring the presentation of "financial information in plain language."[11] Each of the Oxley, LaFalce, and Dodd-Corzine Bills would mandate specific disclosures about two subjects heavily featured in the Enron collapse: unconsolidated ("off-balance-sheet") entities and transactions with insiders and other related parties.[12]

5/ *See* H.R. 3763, 107th Cong. (2002).

6/ *See* H.R. 3818, 107th Cong. (2002).

7/ *See* S. 2004, 107th Cong. (2002).

8/ *See* 17 C.F.R. § 230.421 (plain English in prospectuses); *Regulation of Takeovers and Security Holder Communications*, Exchange Act Release No. 34-42055, 1999 WL 969596, at *26-27 (Oct. 22, 1999) (Item 1001 of Regulation M-A, requiring "plain English" summary term sheets in tender offers, mergers, and going-private transactions); *Plain English Disclosure*, Securities Act Release No. 33-7497, 1998 WL 44199 (Feb. 6, 1998) (requiring prospectuses to use active rather than passive voice, short sentences, everyday words, and tables and bullet points, and to avoid multiple negatives).

9/ *See* Harvey L. Pitt, *Testimony Concerning Legislative Solutions to Problems Raised by Events Relating to Enron Corporation*, Before Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives (Feb. 4, 2002) <http://www.sec.gov/news/testimony/020402tshlp.htm>.

10/ *See* Oxley Bill § 6(c).

11/ *See* LaFalce Bill § 7(b).

12/ *See* Oxley Bill § 6(a); LaFalce Bill § 7; Dodd-Corzine Bill § 301.

Proposal No. 2: *Giving Investors Prompt Access to Critical Information.*

The President's second proposal is aimed at providing investors with "prompt access to critical information," by requiring the SEC to "expand the list of significant events requiring prompt disclosure between reporting periods." The Oxley and LeFalce Bills make essentially the same proposal.[13/]

Currently, after the occurrence of certain specified significant events, a company must file a report with the SEC within either 15 days or 5 days of the occurrence of the event, depending on the event.[14/] The SEC is presently evaluating whether to require additional disclosures for the following events:

- Changes in rating agency decisions and other rating agency contacts;
- Transactions in the company's securities, including derivative securities, with executive officers and directors;
- Defaults and other events that could trigger acceleration of direct or contingent obligations;
- Transactions that result in material direct or contingent obligations not included in a prospectus filed by the company with the Commission;
- Offerings of equity securities not included in a prospectus filed by the company with the Commission;
- Waivers of corporate ethics and conduct rules for officers, directors, and other key employees;
- Material modifications to rights of security holders;
- Departure of the company's CEO, CFO, COO, or president (or persons in equivalent positions);
- Notices that reliance on a prior audit is no longer permissible, or that the auditor will not consent to use of its report in a Securities Act filing;
- Definitive agreement that is material to the company (negotiations of agreements would be excluded from this requirement unless and until a definitive agreement is entered into);
- Any loss or gain of a material customer or contract;
- Any material write-offs, restructurings, or impairments;
- Any material change in accounting policy or estimate;
- Movement or de-listing of the company's securities from one quotation system or exchange to another; and
- Any material events, including the beginning and end of lockout periods for the company's employee benefit, retirement, and stock ownership plans.[15/]

The potential additions to the significant event list reflect the SEC's concern that "more timely access to a greater range of important information . . . than what is required by the existing reporting system" is necessary.[16/] The SEC intends to propose that companies file reports describing these events "no later than the second business day following their occurrence . . . [and possibly] by the opening of business on the day after the occurrence of the event."[17/]

13/ The Oxley Bill would require disclosure "on a rapid and essentially contemporaneous basis" of such information concerning the financial condition or operations of the company as the SEC determines by rule is necessary. *See* Oxley Bill § 4(a)(1). The LaFalce Bill proposes that the SEC establish rules for a "Current Disclosure Reporting System" that would require companies to provide timely information about significant events and trends in its operations. *See* LaFalce Bill § 8.

14/ These events include (1) change in control of the company; (2) acquisition or disposition of assets; (3) bankruptcy or receivership; (4) changes in the company's certifying accountants; (5) non-public information required to be disclosed under Regulation FD; (6) resignations of the company's directors; (7) change in fiscal year; and (8) other events "that the [company] deems of importance to securities holders." *See* 17 C.F.R. § 249.308 (Form 8-K, Current Report).

15/ *See SEC to Propose New Corporate Disclosure Rules* (Feb. 13, 2002) <http://www.sec.gov/news/press/2002-22.txt>.

16/ *See id.*

17/ *See id.*

Proposal No. 3: *Requiring CEOs to Vouch for Their Companies' Public Disclosures.*

Consistent with the President's focus on corporate leadership and accountability, the third proposal would make CEOs "personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures, including their financial statements" and quarterly financial disclosures. CEOs would have to attest that "the financial statements and company disclosures accurately and fairly disclose the information of which the CEO is aware that a reasonable investor should have to make an informed investment decision." The Oxley, LeFalce, and Todd-Corzine Bills do not contain similar proposals.

Current rules do not require those who sign financial disclosures to affirm that the disclosures are accurate.[18/] In November 1998, the Securities and Exchange Commission proposed a rule change to formalize its view that the persons signing a registration statement or periodic report filed under the Exchange Act are in fact certifying that they have read the document and know of nothing that would make it untrue or misleading.[19/] The SEC's proposed rule change would also require the company's principal executive officers and a majority of the board of directors to sign Forms 8-A, 10, 10-SB, 20-F, 40-F, 10-Q, and 10-QSB.[20/]

Proposal No. 4: *Disgorgement of Profits Arising from Erroneous Financial Statements as a Result of Misconduct.*

To deter accounting fraud and earnings manipulation, the President's fourth proposal would require that "CEO bonuses and other incentive-based forms of compensation ... be disgorged in cases of accounting restatements resulting from misconduct." The proposal does not explain what kind of "misconduct" would result in disgorgement. In a speech on February 22, 2002, SEC Chairman Harvey Pitt stated that the SEC would consider the concept of forcing executives to repay bonuses and other compensation tied to inflated or fraudulent earnings growth in future enforcement actions.[21/]

The President's fourth proposal is broader than the disgorgement provisions in the LaFalce and Oxley Bills, which would limit disgorgement to instances in which insiders profited from trading during "blackout periods" when employees were precluded from purchasing or selling the company's securities in their retirement accounts.[22/] If adopted, the President's disgorgement proposal could potentially enhance the SEC's ability to seek court orders compelling insiders to disgorge ill-gotten gains.[23/]

[18/] Quarterly reports must be signed by a duly authorized corporate officer and either the principal financial officer or accounting officer. *See* 17 C.F.R. § 249.308a, Instruction G (signature requirement for Form 10-Q quarterly reports). Annual reports must include the signatures of the company's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and at least the majority of the company's board of directors or persons performing similar functions. *See* 17 C.F.R. § 249.310, Instruction D (signature requirement for Form 10-K annual reports).

[19/] *See The Regulation of Securities Offerings*, Securities Act Release No. 7606A, 1998 WL 792508, at *118 (Nov. 13, 1998). Informally, the SEC has already taken the position that "by signing documents filed with the Commission, board members implicitly indicate that they believe that the filing is accurate and complete." *Audit Committee Disclosure*, Exchange Act Release No. 41987, 1999 WL 955908, at *9 (Oct. 7, 1999).

[20/] *See* Securities Act Release No. 7606A, 1998 WL 792508, at *118-19.

[21/] *See* R.R. Donnelly & Sons Co. (March 2002) <http://www.realcorporatelawyer.com/EZineMarch2002. htm#SEC3.>. *See also* Chairman Harvey L. Pitt, *Remarks at the SEC Speaks Conference* (Feb. 22, 2002) <http://www.sec.gov/news/speech/spch540.htm.> ("Compensation — especially in the form of stock options — can align management's interests with those of the shareholders, but not if management can profit from illusory short-term gains, but not suffer the consequences of subsequent restatements, the way the public does.").

[22/] *See* LaFalce Bill § 6; Oxley Bill § 5.

[23/] A federal court can order disgorgement of profits in a wide variety of contexts once the SEC has proven federal securities law violations. The SEC has statutory authority to seek disgorgement plus treble damages for insider trading violations. *See* 15 U.S.C. §§ 78u-1(a)(1), 78ff(a). Disgorgement for other securities laws violations is typically premised on the court's equitable power to fashion an appropriate remedy. *See, e.g.*, *SEC v. Lorin*, 76 F.3d 458, 462 (2d Cir. 1996) (per curiam) (stock price manipulation); *SEC v. Bilzerian*, 29 F.3d 689,696-97 (D.C.Cir. 1994), *affirming* 814 F. Supp. 116 (D.D.C. 1993) (Williams Act violations); *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1089-90 (D.N.J.1996) (fraudulent IPO), *aff'd*, 124 F.3d 449 (3d Cir.1997).

Proposal No. 5: *Authorizing SEC to Bar CEOs and Other Officers from Serving in Corporate Leadership Positions.*

The President's fifth proposal would ask Congress for legislation authorizing the SEC to impose lifetime bans on individuals from serving as officers or directors of publicly-held corporations for "serious misconduct." Such legislation would empower the SEC to impose officer and director bars in its own administrative proceedings, rather than in federal court, as is presently the case. [24]

In a speech on February 15, 2002, Director Stephen Cutler of the SEC Division of Enforcement announced that the SEC would ask Congress for the administrative authority to bar officers and directors who have committed fraud.[25] The SEC often fails to obtain such bars because the legal standard applied by federal courts is extremely difficult to meet.[26] Mr. Cutler did not state whether the SEC would ask Congress to relax the legal standard for bars sought in SEC administrative proceedings.

Proposal No. 6: *Requiring More Prompt Disclosure of Stock Sales by Corporate Leaders.*

In his sixth proposal, the President would require officers and directors "to disclose significant transactions involving [their] purchase and sale of the company stock within two business days of execution." Currently, officers, directors, and principal stockholders (more-than-10% shareholders) must report open market transactions within ten days after the month in which the transactions occur, which can be up to 40 days later.[27] Reporting sales of securities back to the company by officers and directors may be deferred under existing rules until 45 days after the end of the fiscal year in which the sales took place, a period of potentially more than a year.[28]

The Oxley, LaFalce, and Dodd-Corzine Bills would require that insider and affiliate transactions be reported far more quickly. The Oxley Bill proposes that affiliated persons report transactions in the company's securities to the SEC electronically before the end of the next business day. The LaFalce Bill would require the same disclosure to the SEC and, if feasible, by the SEC to the public on the same day as the transaction, as well as same-day reporting by the company on its website, if it has one. Under Dodd-Corzine, officers, directors, and principal stockholders would have until the end of the next calendar day to file an electronic report of the transaction with the SEC, and the SEC would have to make the information public on the same day. If the company has a website, it would have to report the transaction on its website on the day it occurs.[29]

On February 13, 2002, the SEC announced that it was considering similar changes. The SEC proposed "dramatically shorten[ing]" the 40-day period for open market transactions and requiring that "a company report on a current basis any transactions involving securities of the company entered into with any of its executive officers or directors."[30] But the SEC has not yet described the specific deadlines it would seek to impose.

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[24] Currently, the SEC must apply for a court order prohibiting any person who violates the antifraud provisions of the securities laws from acting as an officer or director of a public company if the person's conduct demonstrates "substantial unfitness to serve as an officer or director." *See* 15 U.S.C. §§ 77t(e) & 78u(d)(2).

[25] Stephen M. Cutler, *Remarks at the Glasser LegalWorks 20th Annual Federal Securities Institute* (Feb. 15, 2002) <http://www.sec.gov/news/speech/spch538.htm.>.

[26] "In determining whether to order [an officer or director] bar, a court may consider: '(1) the 'egregiousness' of the underlying securities law violation; (2) the defendant's 'repeat offender' status; (3) the defendant's 'role' or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur.'" *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1193 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999).

[27] *See* 15 U.S.C. § 78p(a). Congress would probably have to enact legislation to change the 40-day reporting period for insider trading activities under Section 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a). *See* Pitt Testimony Concerning Legislative Solutions, *supra* note 8.

[28] *See* 17 C.F.R. § 240.16a-3(f).

[29] *See* Oxley Bill § 4(b)(1); LaFalce Bill § 11(a); Dodd-Corzine Bill § 301(b).

[30] *See SEC to Propose New Corporate Disclosure Rules* (Feb. 13, 2002) <http://www.sec.gov/news/press/ 2002-22.txt>.

Proposal No. 7: *Additional Restrictions on Services Provided by the Corporation's Auditors.*

The President is generally supportive of allowing accounting firms to provide non-audit services to their audit clients. In his view, accounting firms are "uniquely qualified to offer many services that strengthen corporations' controls, and the performance of some services can enhance the quality of audits." His caveat to that support is that the "fees from such services must never compromise the integrity of an independent audit." Thus, to increase the public's confidence in companies' independent auditors, the President's seventh proposal would have the SEC "establish guidelines for audit committees to prohibit an external auditor from performing any other service to an audit client, if the service compromises the independence of the audit." Specifically, he would like the SEC to prohibit "performance by an outside auditor of internal audit functions for the same client." Companies would also be required to "disclose in greater detail all fees paid to the auditing firm and its affiliates" (the specifics of this detail is not described), and "audit committees would directly report their recommended choice of auditor to the shareholders."

The President's proposal would depart from existing rules in three ways. First, the current independence regulations permit accountants to provide a limited amount of internal audit services to their audit clients so long as management controls the process.[31/] Second, disclosure of the fees paid to the company's independent outside auditor is presently broken down into only three categories: (1) audit fees; (2) fees for financial information systems design and implementation; and (3) all other fees.[32/] Third, at present, the securities laws do not require audit committees to make recommendations to shareholders about whom to select as the companies' independent auditors.

The Oxley, LaFalce, and Dodd-Corzine Bills would generally curtail the ability of accounting firms to provide non-audit services more than the President's plan.[33/] In addition to services already proscribed by the SEC rules, the Oxley Bill would bar auditors from providing any financial information system design or internal audit services.[34/] The LaFalce Bill would prohibit any significant financial system design and implementation services, any bookkeeping services that relate to the company's accounting records, financial statements, or public financial disclosures, any internal audit outsourcing, and any expert services.[35/] The Dodd-Corzine Bill would prohibit those same services, as well as any bookkeeping that relates to the company's accounting records or financial statements, any appraisal or valuation services, fairness opinions, or contribution-in-kind reports, any actuarial services, and any expert services. Under Dodd-Corzine, accounting firms would not be permitted to provide other non-audit services, including tax work, unless the company's audit committee approved them in advance after determining that the services would not impair the accounting firms' independence.[36/]

The SEC, while supportive of having "truly independent" auditors, has not proposed any additional restrictions on accountants' ability to provide non-audit services.[37/]

Proposal No. 8: *New Independent Regulatory Board for Corporate Auditors.*

The President's eighth proposal would establish "an independent regulatory board . . ., under the supervision of the SEC, to develop standards of professional conduct and competence." The board would have authority to "monitor, investigate, and where needed, enforce its ethics principles by punishing individual offenders."

[31/] Specifically, an auditor may provide internal audit services if (1) the services do not amount to more than 40% of the company's total hours expended on internal audit activities; (2) management or a competent employee of the company is responsible for the internal audit function; (3) management determines the scope, risk, and frequency of internal audit activities; (4) management evaluates the findings and results of internal audit activities; and (5) management does not rely on its auditor's services as the primary basis for determining the adequacy of the company's internal controls. *See* 17 C.F.R. § 210.2-01(c)(1)(v).

[32/] *See* 7 C.F.R. § 240.14a-101, Item 9(e)(1) - (3).

[33/] The current rules already prohibit or place significant limitations on the kinds of non-audit services auditors may provide to their clients. *See* 17 C.F.R. § 210.2-01(c)(4) (listing services that would make an accountant not independent).

[34/] *See* Oxley Bill § 2(c)(1).

[35/] *See* LaFalce Bill § 2(a).

[36/] *See* Dodd-Corzine Bill § 201(a)(1).

[37/] *See* Pitt Testimony Concerning Legislative Solutions, *supra* note 9. On March 4 and 6, 2002, the SEC held two days of roundtable discussions on ways to improve financial disclosure and auditor oversight. *See SEC Announces Financial Disclosure and Auditor Oversight Roundtables* (Feb. 22, 2002) <http://www.sec.gov/news/press/2002-28.txt>.

This proposal is consistent with the view of the SEC, which has proposed establishing a new "Public Accountability Board" under SEC oversight to assume responsibility for auditor and accountant discipline and quality control. The predominant majority of the Board's members would come from outside the accounting profession, and the Board would be funded by the "entire private sector," so that no group could wield undue influence over the Board's decisions and efforts.[38] The Oxley, LaFalce, and Dodd-Corzine Bills propose establishing similar bodies to oversee public accounting.[39]

Proposal No. 9: *Closer Regulation of Financial Accounting Standards Board.*

The President's ninth proposal is directed at the Financial Accounting Standards Board, to which the SEC has delegated the authority to establish generally accepted accounting principles. "Under this proposal, the SEC would exercise more effective and broader oversight of the Financial Accounting Standards Board, insure its independence, and require prompt promulgation of standards that reflect economic reality rather than compliance with technical requirements." This is in line with Chairman Pitt's proposal that the FASB remain the standard-setter for accounting principles, but that it be required to "act quickly to give guidance."[40] The Dodd-Corzine Bill would improve the independence and effectiveness of the FASB by funding it entirely with fees from public companies and requiring it to set accounting standards on a more timely basis "to reflect changes in methods of doing business and changes in the economic environment."[41]

Proposal No. 10: *Comparing Firms' Accounting Systems with Best Practices.*

The President's tenth proposal would raise the standards for evaluating a company's system of financial controls under generally accepted auditing standards ("GAAS").[42] GAAS currently requires only that an auditor determine if there are significant deficiencies in the design or operation of control systems that could adversely affect a company's ability report its financial information accurately.[43] Under the President's proposal, "auditors would be required to compare the quality of a company's financial controls with the best practices of the industry" — rather than minimum standards — and "communicate its findings to the audit committee." The audit committee would then discuss the auditor's findings and how to improve the company's practices with management, the board of directors, and the auditor, and could "act independently to require improvement where necessary." The other proposals from Congress and the SEC do not address the standards used to evaluate companies' internal controls.

Other Proposed Reforms

Each of the bills proposed by Congress includes measures that go beyond the President's plan. If enacted, the LaFalce Bill would make the most sweeping changes. It would expose companies, accounting firms, and potentially others to additional civil liability for securities law violations by restoring joint and several liability in many cases, restoring civil liability for aiding and abetting, and lengthening the statute of limitations for implied private rights of

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[38] *See* Pitt Testimony Concerning Legislative Solutions, *supra* note 9; *Harvey L. Pitt, Public Statement by SEC Chairman: Regulation of the Accounting Profession* (Jan. 17, 2002) <http://www.sec.gov/news/speech/spch535.htm>.

[39] *See* Oxley Bill § 2(b) (requiring SEC to create "public regulatory organization"); LaFalce Bill § 4 (establishing "Public Accounting Regulatory Board"); Dodd-Corzine Bill § 101-04 (authorizing SEC to designate "Independent Public Accounting Board").

[40] *See* Pitt Testimony Concerning Legislative Solutions, *supra* note 9.

[41] *See* Dodd-Corzine Bill § 204(b).

[42] "Internal control is a process — effected by an entity's board of directors, management, and other personnel — designed to provide reasonable assurance regarding . . . (a) reliability of financial reporting, (b) effectiveness and efficiency of operations, and (c) compliance with applicable laws and regulations." SAS-55, *Consideration of Internal Control in a Financial Statement Audit* (AICPA 1988).

[43] *See* 1 AICPA Professional Standards, AU § 325 (2001).

action.[44] The LaFalce Bill also proposes the most stringent regulation of the audit process, requiring companies to rotate their auditors every four years, giving audit committees the power to hire and fire auditors, mandating that auditors retain audit-related documents for seven years, and making auditors wait two years before they could go to work for their clients.[45] The Dodd-Corzine Bill would similarly prohibit accounting firms from auditing companies whose senior managers worked for the accounting firm during the previous two years.[46]

Both the Oxley and LaFalce Bills would make it unlawful for insiders to "improperly influence" the conduct of audits[47] and require the SEC, on a "more regular and systematic basis," to review disclosures made by companies with the largest market capitalization, most actively traded securities, or most widely held securities.[48] The LaFalce and Dodd-Corzine Bills would appropriate additional funds for the SEC to implement the new legislative requirements.[49]

In addition, the bills would require a host of studies on various issues, including rules relating to conflicts of interest by securities analysts[50], the role and function of credit rating agencies[51], potential changes in corporate governance practices and corporate codes of ethics[52], potential effects of requiring mandatory rotation of auditors[53], and possible trends in accounting fraud as indicated by SEC enforcement actions and restatements within the past five years.[54]

44/ *See* LaFalce Bill §§ 12, 14, 15.

45/ *See* LaFalce Bill §§ 2, 15(a).

46/ *See* Dodd-Corzine Bill § 201(b).

47/ *See* Oxley Bill § 3; LaFalce Bill § 3.

48/ *See* Oxley Bill § 8; LaFalce Bill § 9.

49/ *See* LaFalce Bill § 10; Dodd-Corzine Bill § 207.

50/ *See* Oxley Bill § 7; LaFalce Bill § 16.

51/ *See* Oxley Bill § 11; LaFalce Bill § 13.

52/ *See* Oxley Bill § 9; LaFalce Bill § 5; Dodd-Corzine Bill § 304.

53/ *See* Dodd-Corzine Bill § 305.

54/ *See* Oxley Bill § 10.

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