

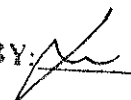
FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

'11 MAR 31 P5:02

SENATE
Senate Bill No. 2769

RECEIVED BY: 

Introduced by **Senator Lacson**

EXPLANATORY NOTE

Our country is facing a crisis of confidence that is eroding the public's trust in our markets, and poses a real threat to the economy. The present state of our laws requires a strong and balanced response to the accounting and corporate responsibility problems confronting our financial markets. The problem of restoring investor confidence has become more and more widespread.


Thus, it is critical to put provisions in place that will deter and punish corporate and accounting fraud and corruption, ensure justice for wrongdoers, and protect the interests of workers and shareholders.

This bill aims to improve the quality and transparency of financial reporting, independent audits, and accounting services for public companies. It strengthens the independence of firms that audit public companies; increases corporate responsibility and the usefulness of corporate financial disclosure; penalizes corporate wrongdoing and protects the objectivity and independence of securities analysts.

Moreover, to intensify corporate responsibility, chief executive officers and chief financial officers must personally vouch for the truth and fairness of their company's disclosures under pain of sanctions that include reimbursement of any bonus or other incentive/equity-based compensation they have received from the issuer and the profits they have realized from the sale of securities of the issuer within the 12 month period following the first public issuance or the filing with the Securities and Exchange Commission of the financial document embodying such financial report. The proposed measure likewise specifically provides for penalties for the destruction, alteration or falsification of corporate audit record or any other record to obstruct government investigation. Increased criminal penalties are imposed on those who commit securities fraud.

Furthermore, corporate misdeeds will be found and punished by furthering the authority of the SEC to uncover wrongdoing. The SEC may now bar dishonest directors and officers from ever again serving in positions of corporate responsibility.

For the reasons above-stated, approval of this bill is therefore earnestly requested.


PANFILO M. LACSON
Senator

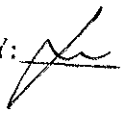
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AN ACT
TO PROTECT INVESTORS BY IMPROVING THE ACCURACY AND
RELIABILITY OF CORPORATE FINANCIAL REPORTING AND DISCLOSURES,
AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress Assembled:

SECTION 1. Short Title: This Act shall be known as the "Corporate Accountability and Responsibility Act of 2011".

Sec. 2. Declaration of Policy. - The state recognizes the vital role of the private sector in nation building and shall endeavor to actively promote corporate governance reforms aimed at raising investor's confidence, develop capital market and help achieve high sustained growth for the corporate sector and the economy. Towards this end, a system designed to improve the quality of financial reporting, independent audits and accounting services for public companies, the independence of accounting firms that audit public companies and increase the responsibility of management for financial and corporate disclosures are hereby adopted.

Sec. 3. Definitions: As used in this Act, the following terms shall mean:

(1) **AUDIT-** The term 'audit' means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the generally accepted auditing and related standards or the rules of the Commission for the purpose of expressing an opinion on such statements.

(2) **AUDIT COMMITTEE** - The term 'audit committee' means--

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

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

(3) **AUDIT REPORT-** The term 'audit report' means a document or other record-

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

(B) in which a public accounting firm either--

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

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

(4) **COMMISSION-** The term refers to the Securities and Exchange Commission.

(5) **INDEPENDENT DIRECTOR** – refers to a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having any relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This means that apart from the directors' fees and shareholdings, he should be independent of management and free from any business or other relationship which could materially interfere with the exercise of his independent judgment.

(6) **ISSUER-** The term 'issuer' means a corporation whose securities are registered or listed in a stock exchange or a corporation which is a grantee of permit/license and secondary franchise from the Commission or a public company as defined herein, and a branch or subsidiary of a foreign corporation operating in the Philippines whose securities are registered or listed in a stock exchange.

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

- (A) bookkeeping or other services related to the accounting records or financial statements of the audit client;
- (B) financial information systems design and implementation;
- (C) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (D) actuarial services;
- (E) internal audit outsourcing services;
- (F) management functions or human resources;
- (G) broker or dealer, investment adviser, or investment banking services;
- (H) legal services unrelated to the audit; and
- (I) any other service as may be determined by the appropriate government authority.

(8) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM –

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

- (i) shares in the profits of, or receives compensation in any other form from, that firm; or
- (ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

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

(9) **PROFESSIONAL STANDARDS** - The term 'professional standards' means—

(A) accounting principles that are—

(i) established by the Accounting Standards Council and the rules promulgated by the Commission with regard to the preparation of financial statements; and

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

(B) auditing standards that are established by the Auditing Standards and Practices Council, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing Title III) that the Commission determines—

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

(ii) are established or promulgated as rules of the Commission.

(10) **PUBLIC ACCOUNTING FIRM**- The term 'public accounting firm' means-

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

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

(11) **PUBLIC COMPANY** – The term 'public company' refers to any corporation with a class of equity securities listed in an Exchange or with assets in excess of Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more stockholders each holding at least one hundred (100) shares of a class of its securities.

(12) **SECURITY** - The term refers to the "securities" referred to in 3.1 of Republic Act 8799, otherwise known as the Securities Regulation Code;

(13) **SECURITIES LAWS** - The term refers to Republic Act 8799, otherwise known as the Securities Regulation Code and the rules, regulations, and orders issued by the Commission thereunder.

SEC. 4. Commission Rules and Enforcement. - (a) *Regulatory Action.* - The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest for the protection of investors, and in furtherance of this Act.

(b) *Effect on Commission Authority.* - Nothing in this Act shall be construed to impair or limit: (1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

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

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any director, executive, or finance officer of an issuer or any registered accounting firm or any associated person hereof.

TITLE I CORPORATE RESPONSIBILITY

Sec. 5. Public Company Audit Committees. - (a) The Board of Directors of an issuer shall constitute an Audit Committee in aid of good corporate governance.

(b) The Audit Committee shall be composed of at least three (3) Board members, preferably with accounting and finance background, one of whom shall be an independent director and another should have related audit experience. It shall have the following specific functions:

(1) Provide oversight over the senior management's activities in managing credit, market, liquidity, operational, legal and other risks of the corporation. This function shall include receiving from senior management periodic information on risk exposures and risk management activities. However, in consideration of the risk profile of the corporation, the Board may constitute a separate Risk Management Committee to focus on carrying out this oversight role over risk management;

(2) Provide oversight of the corporation's internal and external auditors;

(3) Review and approve audit scope and frequency, and the annual internal audit plan;

(4) Discuss with the external auditor before the audit commences the nature and scope of the audit, and ensure coordination where more than one audit firm is involved;

(5) Responsible for the setting-up of an internal audit department and consider the appointment of an internal auditor as well as an independent external auditor, the audit fee and any question of resignation or dismissal;

(6) Monitor and evaluate the adequacy and effectiveness of the corporation's internal control system;

(7) Receive and review reports of internal and external auditors and regulatory agencies, where applicable and ensure that management is taking appropriate corrective actions, in a timely manner in addressing control and compliance functions with regulatory agencies;

(8) Review the quarterly, half-year and annual financial statements before submission to the Board, focusing particularly on:

(A) Any change/s in accounting policies and practices

(B) Major judgmental areas

(C) Significant adjustments resulting from the audit

(D) Going concern assumption

(E) Compliance with accounting standards

(F) Compliance with tax, legal, and stock exchange requirements

(9) Responsible for coordinating, monitoring and facilitating compliance with existing laws, rules and regulations. It may also constitute a Compliance Unit for this purpose.

(10) Evaluate and determine non-audit services by external auditors and keep under review the non-audit fees paid to the external auditor both in relation to their significance to the auditor and in relation to the company's total expenditure on consultancy. The non-audit services should be disclosed in the annual report.

(11) Establish and identify the reporting line of the chief audit executive so that the reporting level allows the internal audit activity to fulfill its responsibilities. The chief audit executive shall report directly to the Audit Committee functionally. The Audit Committee shall ensure that the internal auditors shall have free and full access to all the company's records, properties and personnel relevant to the internal audit activity and that the internal audit activity should be free from interference in determining the scope of internal auditing examinations, performing work, and communicating results, and shall provide a venue for the Audit Committee to review and approve the annual internal audit plan.

(c) The Chairman of this committee should be an independent director. He should be responsible for inculcating in the minds of the Board members the importance of management responsibilities in maintaining a sound system of internal control and the Board's oversight responsibility.

(d) For Philippine branches or subsidiaries of foreign corporations covered by this Code, the local audit head for such entities should be independent of the Philippine operations and should report to the regional or corporate headquarters.

Sec. 6. Corporate Responsibility For Financial Reports. —(a) *Regulations Required* - The Commission shall, by rule, require, for each company filing periodic reports to the Commission, that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act 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, results of operations and cash flows 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.

(b) *Foreign Re-incorporations Have No Effect* - Nothing in this section shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the Philippines to outside of the Philippines.

Sec. 7. Improper Influence On Conduct Of Audits. - (a) *Rules To Prohibit* - It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, 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.

(b) *Enforcement* - In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) *No Preemption of Other Law* - The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

Sec. 8. Forfeiture of Certain Bonuses and Profits. - (a) *Additional Compensation Prior To Noncompliance With Commission's Financial Reporting Requirements* - 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 chief executive officer and chief financial officer 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 Commission (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.

(b) *Commission's Exemption Authority* - The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

TITLE II

ENHANCED FINANCIAL REPORTING AND DISCLOSURES

Sec. 9. *Disclosures In Periodic Reports.* - (a) *Accuracy of Financial Reports* - Each financial report that contains financial statements and required to be prepared in accordance with generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

(b) *Off-Balance Sheet Transactions* - Each annual and quarterly financial report required to be filed with the Commission 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.

(c) *Rules On Pro Forma Figures* - Pro forma financial information included in any periodic or other report filed with the Commission 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.

Sec. 10. *Enhanced Conflict of Interest Provisions.* - *Disclosure Required On Personal Loans To Executives* - (1) *In General* - Any issuer directly or indirectly, including through any subsidiary, extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer, is required to disclose such fact in its annual report submitted to the Commission. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

(2) *Limitation* - Paragraph (1) does not apply to any home improvement and 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 registered broker or dealer to an employee of that broker or dealer to buy, trade, or carry securities, 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.

Sec.11. Disclosures Of Transactions Involving Management And Principal Stockholders. - (a) *Disclosures Required* - (1) *Directors, Officers, And Principal Stockholders Required To File* - Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 8, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered with the Exchange, also with the Exchange).

(2) *Time of Filing* - The statements required by this subsection 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 pursuant to section 8 of the Securities Regulation Code;

(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.

(3) *Contents Of Statements* - A statement filed -- (A) Under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

(B) Under subparagraph (C) of such paragraph 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.

(4) *Electronic Filing And Availability* - Beginning not later than 1 year after the date of enactment of this Act -- (A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

(B) The Commission 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 shall provide that statement on that corporate website if it has one, not later than the end of the business day following that filing.

Sec.12. Management Assessment Of Internal Controls. - (a) *Rules Required* - The Commission shall prescribe rules requiring each annual 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* - With respect to the internal control assessment required by subsection (a), each registered public 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 Board. Any such attestation shall be the subject of a separate engagement.

Sec.13. Code of Ethics For Senior Financial Officers. - (a) *Code Of Ethics Disclosure* - The Commission shall issue rules to require each issuer, together with periodic reports required to be submitted to the Commission, 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, or persons performing similar functions.

(b) *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

(1) compliance with applicable governmental rules and regulations.

SEC. 14. Enhanced Review Of Periodic Disclosures By Issuers. - (a) *Regular and Systematic Review* - The Commission shall review disclosures made by issuers submitting periodic reports to the Commission 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 Commission 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 required to file reports with the Commission be reviewed under this section less frequently than once every 3 years.

Sec. 15. Real Time Issuer Disclosures. - Each issuer reporting under section 17 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 issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

Sec.16. Auditing, Quality Control, And Independence Standards and Rules. - (a) *Auditing, Quality Control And Ethics Standards - (1) In General* - The Commission shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) *Rule Requirements* - In carrying out paragraph (1), the Commission-

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

(i) prepare, and maintain for a period of not less than 5 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

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

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 204(b), and present (in such report or in a separate report)--

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

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

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

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

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

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every 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 Commission may prescribe, subject to subsection (a)(1).

(3) *Authority To Adopt Other Standards. - (A) In General* - In carrying out this subsection, the Commission -- (i) may adopt as its rules any portion of any statement of auditing standards or other professional standards that the Commission determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Commission, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

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

(B) *Initial and Transitional Standards* - The Commission shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Commission determines necessary.

(4) *Advisory Groups* - The Commission shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include representatives of the Philippine Institute of Certified Public Accountants, Accounting Standards Council, Auditing Standards and Practices Council, practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Commission may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) *Independence Standards and Rules* - The Commission shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors.

(c) *Cooperation with Designated Professional Groups of Accountants and Advisory Groups.* - (1) *In General* - The Commission shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

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

TITLE III

AUDITOR INDEPENDENCE

Sec. 17. *Non-Audit Services.* - A public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title may provide to that issuer, contemporaneously with the audit, any non-audit services; *Provided*, that, such non-audit services shall not compromise the independence and objectivity of the external audit. In general, the provision of tax services contemporaneously with the external audit shall not be deemed to compromise the independence and objectivity of the external audit. The provision of non-audit services should, however, be disclosed by the issuer in the annual report submitted to the Commission.

Sec. 18. *Audit Partner Rotation.* - The lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, should be changed or rotated every five (5) years or earlier.

Sec. 19. *Auditor Reports to Audit Committees.* - Reports to Audit Committees - Each public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer--

(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 officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.

Sec. 20. *Conflict of Interest.* - It shall be unlawful for a public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm as a partner and participated in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.

TITLE IV

ANALYST CONFLICTS OF INTEREST

Sec. 21. *Treatment of Securities Analysts by Registered Securities Associations and National Securities Exchanges.* - Securities Analysts and Research Reports. - (a) Analysts Protections - The Commission, or upon the authorization and direction of the Commission, the Exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed --

(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by -- (A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

(b) Disclosure - The Commission, or upon the authorization and direction of the Commission, the Exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including-

(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either

generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

(c) Definitions - In this section - (1) the term '*securities analyst*' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

(2) the term '*research report*' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

(c) *Commission Authority* - The Commission may promulgate and amend its regulations, or direct the Exchange to promulgate and amend its rules, and to carry out the provisions of the Securities Regulation Code as is necessary for the protection of investors and in the public interest.

TITLE V

CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

Sec. 22. Criminal Penalties For Altering Documents. - (a) *Destruction, Alteration or Falsification of Records in Investigations and Bankruptcy* – The penalty of imprisonment ranging from four years and one day to eight years and a fine of five hundred thousand pesos (P500,000.00) shall be imposed upon any person who 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 Philippines or any case filed under the provisions of this Act and the Securities Regulation Code, or in relation to or contemplation of any such matter or case.

(b) *Destruction of Corporate Audit Record* – (1) Any accountant who conducts an audit of an issuer shall maintain all audit or review work-papers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

(2) The Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as work-papers, 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 containing conclusions, opinions, analyses, or financial data relating to such an audit or review, conducted by any accountant who conducts an audit of the above-described issuer of securities. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

(c) *Penalty for Violation* – The penalty of imprisonment ranging from four years and one day to six years and a fine of five hundred thousand pesos (P500,000.00) shall be

imposed upon any person who knowingly and willfully violates subsection (a), or any rule or regulation promulgated by the Commission under subsection (b)(2) of this Act.

(d) Duty to Maintain Documents - Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by law or regulation to maintain, or refrain from destroying, any document.

Sec.23. Statute of Limitations for Securities Fraud. - *(a) In General* - A private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, may be brought not later than the earlier of --

(1) 2 years after the discovery of the facts constituting the violation; or

(2) 5 years after such violation.

(b) Effective Date - The limitations period provided in the preceding section shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) No Creation of Actions. - Nothing in this section shall create a new private right of action.

Sec. 24. Protection for Employees of Publicly Traded Companies who Provide Evidence of Fraud. Civil action to protect against retaliation in fraud cases. -- No company with a class of securities registered under section 8 of the Securities Regulation Code (, or that is required to file reports under section 17 of the Securities Regulation Code, or any officer, employee, contractor, subcontractor, or agent of 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 to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any rule or regulation of the Commission, or any provision of law relating to fraud against shareholders; or 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 any rule or regulation of the Commission, or any provision of law relating to fraud against shareholders.

Sec. 25. Criminal Penalties for Defrauding Shareholders of Publicly Traded Companies. - Securities fraud. - The penalty of imprisonment ranging from six years and one day to eight years and a fine of five hundred thousand pesos (P500,000.00) shall be imposed upon any person who knowingly executes, or attempts to execute, a scheme or artifice -- (1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 8 of the Securities Regulation Code or that is required to file reports under section 17 of the Securities Regulation Code; 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 an issuer with a class of securities registered under section 8 of the Securities Regulation Code or that is required to file reports under section 17 of the Securities Regulation Code;

TITLE VI

CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS

Sec. 26. Corporate Responsibility For Financial Reports. - *Failure of corporate officers to certify financial reports.* - (a) *Certification of Periodic Financial Reports* - Each periodic report containing financial statements filed by an issuer with the Commission pursuant to the Securities Regulation Code shall be accompanied by a written statement by the chief executive officer and chief financial officer or any official of similar rank of the issuer.

(b) *Content* - The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of the Regulation Code and that the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

(c) *Criminal Penalties* - (1) The penalty of imprisonment of three years and a fine of two hundred thousand pesos (P200,000.00) shall be imposed upon any person who shall certify any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comply with all the requirements set forth in this section; or

(2) The penalty of imprisonment for six years and a fine of five hundred thousand pesos (P500,000.00) shall be imposed upon any person who shall willfully certify any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comply with all the requirements set forth in this section.

TITLE VII

CORPORATE TAX RETURNS

Sec. 27. Signing of Corporate Tax Returns by the Chief Executive Officers. - The income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XIII

CORPORATE FRAUD ACCOUNTABILITY

Sec. 28. Temporary Freeze Authority of the Securities and Exchange Commission. - *Temporary Freeze - (A) In General - (i) Issuance of Temporary Order* - Whenever, during the course of a lawful investigation involving possible violations of the 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 the regional trial court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

(ii) *Standard* - A temporary order shall be entered under the preceding section 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.

(iii) *Effective Period* - A temporary order issued under clause shall be effective and may be extended or terminated under the conditions set forth under the Revised Rules of Court.

Sec. 29. *Authority of the Commission to Prohibit Persons from Serving as Officers or Directors.* - In any cease-and-desist proceeding under Section 64 of the Securities Regulation Code, the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 8, or that is required to file reports pursuant to section 17, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

TITLE IX FINAL PROVISIONS

Sec. 30. *Implementing Rules and Regulations.* - The Professional Regulations Commission, the Board of Accountancy, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas and other appropriate government agency which is responsible for the licensure or other regulation of the practice of accounting or over an accounting firm shall promulgate within ninety (90) days the Implementing Rules and Regulations necessary to implement the provisions of this Act.

Sec. 31. *Separability Clause.* - If any of the provisions of this Act is held or declared to be unconstitutional or invalid by a competent court, the other provisions hereof not so declared shall continue to be in force as if the provision as annulled or voided had never been implemented in this Act.

Sec. 32. *Repealing Clause.* - All laws, executive orders, presidential decrees, rules and regulation or parts thereof which are inconsistent with any part of this Act are hereby repealed or amended accordingly.

Sec. 33. *Effectivity Clause.* - This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation in the Philippines.

Approved,