

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

04 JUN 30 P2:38

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S E N A T E

S. No. 209

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

The American corporate world was rocked with scandals when several corporations were found to have defrauded the public. Enron, a huge energy trading company, was accused of using partnerships to hide losses and selling millions in company stock while prohibiting employees from unloading their shares, among others. Arthur Andersen, the accounting firm handling the Enron account, was drawn into the mess because of allegations that it made big bucks consulting for Enron while serving as its auditor. A jury subsequently found Anderson guilty of obstructing justice when it destroyed documents relating to Enron.

At WorldCom, its former Chief Executive Officer Bernie Ebbers borrowed more than \$1 billion against his stock then got the company to bail him out after the company's collapse. He resigned before the company admitted to inflating its revenues. And most recently Adelphia, once the sixth biggest telecom company in America, filed for Chapter 11 bankruptcy protection, after founder and former CEO John Rigas and his two sons were arrested on charges that they had defrauded investors by using the company as their personal piggy bank.

Overnight, Dow Jones fell and investors panicked, and thousands of jobs were lost in the process.

In the Philippines, the BW Resources scandal of recent memory still lingers. At present, several educational pre-need companies are in the red. Even GSIS and SSS are not spared. It is estimated that the two social security systems will soon be unable to finance their members' needs due in part, to mismanagement of its funds and resources.

This bill seeks to address these corporate abuses by:

1. prohibition accounting firms from providing most consulting services to companies they are auditing.
2. requiring the rotation of an accounting partner overseeing the audits of a specific company every five years.
3. requiring the company's chief executive officer to certify to the accuracy of their financial reports under threats of punishment.

4. prohibiting the grant of loans to executives of publicly listed companies or companies imbued with public interests such as pension and educational pre-need companies.
5. defining and criminalizing securities fraud.
6. prohibiting the shredding or altering records of corporations under investigation.

Early approval of this bill is urgently requested.


SERGIO OSMEÑA III
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC
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SENATE

S. No. 209

Introduced by Senator S. R. Osmeña III

AN ACT
PROVIDING FOR CORPORATE ACCOUNTABILITY, FIXING THE PENALTIES
FOR ANY VIOLATION THEREOF, APPROPRIATING FUNDS THEREFOR
AND FOR OTHER PURPOSES.

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

TITLE I - GENERAL PROVISIONS

1
2 SECTION 1. **Short Title.** - This Act shall be known as the "Corporate
3 Reform Act of 2004".

4 SEC. 2. **Definitions.** -- For purposes of this Act, the following terms
5 shall be defined as follows::

6 a. Appropriate Regulatory Authority shall mean the State agency or
7 other authority responsible for the licensure or other regulation of the practice of
8 accounting with respect to the matter in question.

9 b. Audit shall mean an examination of the financial statements of any
10 issuer by an independent public accounting firm in accordance with the rules of
11 the Board or the Commission as defined hereunder, in accordance with then-
12 applicable generally accepted auditing and related standards for such purposes,
13 for the purpose of expressing an opinion on such statements.

14 c. Audit Committee shall mean a committee (or equivalent body)
15 established by and amongst the board of directors of an issuer for the purpose of
16 overseeing the accounting and financial reporting processes of the issuer and
17 audits of the financial statements of the issuer: Provided, That if no such

1 committee exists with respect to an issuer, the entire board of directors of the
2 issuer shall be the Audit Committee.

3 d. Audit Report shall mean a document or other record--

4 1. prepared following an audit performed for purposes of
5 compliance by an issuer with the requirements of the securities laws; and

6 2. in which a public accounting firm either --

7 a) sets forth the opinion of that firm regarding a financial
8 statement, report, or other documents; or

9 b) asserts that no such opinion can be expressed.

10 e. Board shall mean the Public Company Accounting Oversight Board
11 (PCAOB) established under Section 4.

12 f. Commission shall mean the Securities and Exchange Commission.

13 g. Issuer shall mean an issuer, the securities of which are registered
14 with national security exchanges, or that is required to file reports under this Act
15 or the securities laws. The term shall also apply to a company imbued with
16 public interest, as those dealing with pre-need, pension and retirement plans,
17 and other similar activities.

18 h. Non-Audit Service shall mean any professional service provided to
19 an issuer by a registered public accounting firm, other than those provided to an
20 issuer in connection with an audit or a review of the financial statements of an
21 issuer.

22 i. Person Associated With A Public Accounting Firm shall mean any
23 individual proprietor, partner, shareholder, principal, accountant, or other
24 professional employee of a public accounting firm, or any other independent
25 contractor or entity that, in connection with the preparation or issuance of any
26 audit report --

27 1. shares in the profits of, or receives compensation in any other
28 form from, that firm; or

1 2. participates as agent or otherwise on behalf of such accounting
2 firm in any activity of that firm.

3 Provided, That the Board shall, by rule, exempt persons engaged only in
4 ministerial tasks from the above definition to the extent that the Board determines
5 that any such exemption is consistent with the purposes of this Act, the public
6 interest, or the protection of investors.

7 j. Professional Standards shall mean

8 1. accounting principles that are --

9 a) established by the State's standard setting body;

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

13 2. auditing standards, standards for attestation engagements,
14 quality control policies and procedures, ethical and competency
15 standards, and independence standards (including rules implementing
16 Title III) that the Board or the Commission determines are--

17 a) related to the preparation or issuance of audit reports for
18 issuers; and

19 b) established or adopted by the Board or are promulgated as
20 rules of the Commission.

21 k. Public Accounting Firm shall mean

22 1. a proprietorship, partnership, incorporated association,
23 corporation, limited liability company, limited liability partnership, or other
24 legal entity that is engaged in the practice of public accounting or
25 preparing or issuing audit reports; and

26 2. to the extent so designated by the rules of the Board, any
27 associated person of any entity described in subparagraph 9 (a).

28 l. Registered Public Accounting Firm shall mean a public accounting firm
29 registered with the Board in accordance with this Act.

1 **SEC. 3. Commission Rules and Enforcement.**

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

5 b. Enforcement – Any person who violates any provision of this Act,
6 any rule or regulation of the Commission issued under this Act, or any rule of the
7 Board shall be treated for all purposes in the same manner as a violation of the
8 Revised Securities Act or the rules and regulations issued thereunder consistent
9 with the provisions of this Act, and any such person shall be subject to the same
10 penalties, and to the same extent as to the violation of that Act or such rules or
11 regulations.

12 1. Cease-And-Desist Proceedings - The Commission may
13 issue a cease-and-desist order with respect to public accounting firms.

14 c. Effect on Commission Authority - Nothing in this Act or the rules of
15 the Board shall be construed to impair or limit --

16 1. the authority of the Commission to regulate the accounting
17 profession, accounting firms, or persons associated with such firms for
18 purposes of enforcement of the securities laws;

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

24 3. the ability of the Commission to take, on the initiative of the
25 Commission, legal, administrative, or disciplinary action against any
26 registered accounting firm or any associated person thereof.

27 **TITLE II - PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

28 **SEC. 4. Establishment; Administrative Provisions.**

1 a. Establishment of the Board - There is hereby established the Public
2 Company Accounting Oversight Board, hereinafter referred to as the Board, to
3 oversee the audit of public companies that are subject to securities laws, and
4 related matters, in order to protect the interests of investors and further the public
5 interest in the preparation of informative, accurate, and independent audit reports
6 for companies the securities of which are sold to, and held by, and for, public
7 investors or companies otherwise imbued with public interest. The Board shall
8 be a body corporate, which shall operate as a nonprofit corporation, and have
9 rights of succession until dissolved by an act of Congress.

10 b. Status - The Board shall not be an agency or establishment of the
11 Government, and, except as otherwise provided in this Act, shall be subject to,
12 have all the powers conferred upon a nonprofit corporation by the Government.
13 No member or person employed by, or agent for, the Board shall be deemed to
14 be an officer or employee of, or agent for the Government by reason of such
15 service.

16 c. Duties of the Board - The Board shall, subject to approval by the
17 Commission and once a determination is made by the Commission under
18 subsection (d) of this section --

19 1. Register public accounting firms that prepare audit reports for
20 issuers, in accordance with Section 5;

21 2. Establish or adopt, or both, by rule, auditing, quality control,
22 ethics, independence, and other standards relating to the preparation of
23 audit reports for issuers, in accordance with Section 7;

24 3. Conduct inspections of registered public accounting firms, in
25 accordance with this Act and the rules of the Board;

26 2. Conduct investigations and disciplinary proceedings concerning,
27 and impose appropriate sanctions where justified upon, registered public
28 accounting firms and associated persons of such firms, in accordance with
29 this Act;

1 3. Perform such other duties or functions as the Board (or the
2 Commission, by rule or order) determines are necessary or appropriate to
3 promote high professional standards among, and improve the quality of
4 audit services offered by, registered public accounting firms and
5 associated persons thereof, or otherwise to carry out this Act, in order to
6 protect investors, or to further the public interest;

7 4. Enforce compliance with this Act, the rules of the Board,
8 professional standards, and the securities laws relating to the preparation
9 and issuance of audit reports and the obligations and liabilities of
10 accountants with respect thereto, by registered public accounting firms
11 and associated persons thereof; and

12 5. Set the budget and manage the operations of the Board and the
13 staff of the Board.

14 d. Commission Determination - The members of the Board shall take
15 such action (including hiring of staff, proposal of rules, and adoption of initial
16 and transitional auditing and other professional standards) as may be necessary
17 or appropriate to enable the Commission to determine, not later than one
18 hundred twenty (120) days after the enactment of this Act, that the Board is so
19 organized and has the capacity to carry out the requirements of this title, and to
20 enforce compliance with this title by registered public accounting firms and
21 associated persons thereof. The Commission shall be responsible, prior to the
22 appointment of the Board, for the planning for the establishment and
23 administrative transition to the Board's operation.

24 e. Board Membership -

25 1. Composition - The Board shall have five (5) members,
26 appointed from among prominent individuals of integrity and reputation
27 who have a demonstrated commitment to the interest of investors and the
28 public, and an understanding of the responsibilities for and nature of
29 financial disclosures required of issuers under the securities laws and the

1 obligations of accountants with respect to the preparation and issuance of
2 audit reports with respect to such disclosures.

3 2. Limitation - Only two members of the Board shall be or
4 have been certified public accountants: Provided, that, if one of the two
5 members is the chairperson, he or she should not have been a practicing
6 certified public accountant for at least five years prior to his or her
7 appointment to the Board.

8 3. Full-Time Independent Service - Each member of the
9 Board shall serve on a full-time basis, and shall not, concurrent with
10 service on the Board, be employed by any other person or engage in any
11 other professional or business activity. No member of the Board shall
12 share in any of the profits of, or receive payments from, a public
13 accounting firm (or any other person, as determined by rule of the
14 Commission), other than fixed continuing payments, subject to such
15 conditions as the Commission shall impose, under standard arrangements
16 for the retirement of members of public accounting Firms.

17 4. Appointment Of Board Members - Not later than ninety
18 (90) days after the effectivity of this Act, the Commission, after
19 consultation with the Chairman of the Monetary Board and the Secretary
20 of Finance, shall appoint the chairperson and other initial members of the
21 Board, and shall designate a term of service for each.

22 Any vacancy on the Board shall be filled in the same manner as
23 provided for in the preceding paragraph.

24 5. Term Of Service - The term of service of each Board
25 member shall be five years, and until a successor is appointed: Provided,
26 That the terms of office of the initial Board members (other than the
27 chairperson) shall expire in annual increments, one on each of the first
28 four (4) anniversaries of the initial date of appointment: Provided, further,
29 That any Board member appointed to fill a vacancy occurring before the

1 expiration of the term for which the predecessor was appointed shall be
2 appointed only for the remainder of that term: Provided, finally, That no
3 person shall serve as a member of the Board, or as chairperson of the
4 Board, for more than two terms, whether or not such terms of service are
5 consecutive.

6 6. Removal From Office - A member of the Board may be
7 removed by the Commission from office, for good cause shown before the
8 expiration of the term of that member.

9 f. Powers of the Board - In addition to any authority granted to the
10 Board under this Act, the Board shall have the power;

11 1. to sue and be sued, complain and defend, in its corporate
12 name and through its own counsel, with the approval of the Commission,
13 in any court;

14 2. to conduct its operations and maintain offices, and to
15 exercise all other rights and powers authorized by this Act, without regard
16 to any qualification, licensing, or other provision of law;

17 3. to lease, purchase, accept gifts or donations of or otherwise
18 acquire, improve, use, sell, exchange, or convey, all of or an interest in
19 any property, wherever situated;

20 4. to appoint such employees, accountants, attorneys, and
21 other agents as may be necessary or appropriate, and to determine their
22 qualifications, define their duties, and fix their salaries or other
23 compensation (at a level that is comparable to private sector self-
24 regulatory, accounting, technical, supervisory, or other staff or
25 management positions);

26 5. to allocate, assess, and collect accounting support fees
27 established for the Board, and other fees and charges imposed under this
28 title; and

1 6. to enter into contracts, execute instruments, incur liabilities,
2 and do any and all other acts and things necessary, appropriate, or
3 incidental to the conduct of its operations and the exercise of its
4 obligations, rights, and powers imposed or granted by this title.

5 g. Rules of the Board - The rules of the Board shall, subject to the
6 approval of the Commission --

7 1. provide for the operation and administration of the Board, the
8 exercise of its authority, and the performance of its responsibilities under
9 this Act;

10 2. permit, as the Board determines necessary or appropriate,
11 delegation by the Board of any of its functions to an individual member or
12 employee of the Board, or to a division of the Board, including functions
13 with respect to hearing, determining, ordering, certifying, reporting, or
14 otherwise acting as to any matter: Provided, That the Board shall retain
15 the discretionary right to review any action pursuant to any such delegated
16 function, upon its own motion: Provided, further, That a person shall be
17 entitled to a review by the Board with respect to any matter so delegated,
18 and the decision of the Board upon such review shall be deemed to be the
19 action of the Board for all purposes (including appeal or review thereof);
20 Provided, finally, That if the right to exercise a review is declined, or if no
21 such review is sought within the time stated in the rules of the Board, then
22 the action taken by the holder of such delegation shall for all purposes,
23 including appeal or review thereof, be deemed to be the action of the
24 Board;

25 3. establish ethics rules and standards of conduct for Board
26 members and staff, including a bar on practice before the Board (and the
27 Commission, with respect to Board-related matters) of one year for former
28 members of the Board, and appropriate periods (not to exceed one year)
29 for former staffs of the Board.

1 h. Annual Report to the Commission - The Board shall submit an annual
2 report (including its audited financial statements) to the Commission, and the
3 Commission shall transmit a copy of that report to the Congress of the
4 Philippines, not later than thirty (30) days after the date of receipt of that report by
5 the Commission.

6 **SEC. 5. Registration with the Board.**

7 a. Mandatory Registration - One hundred eighty (180) days after the
8 date of the Commission Determination under Section 4 (d), all public accounting
9 firms shall register with the Board. Thereafter, it shall be unlawful for any person
10 that is not a registered public accounting firm to prepare or issue, or to participate
11 in the preparation or issuance of, any audit report with respect to any issuer.

12 b. Application for Registration - A public accounting firm shall use
13 such forms as the Board shall prescribe, by rule, to apply for registration under
14 this section.

15 Each public accounting firm shall submit, as part of its application for
16 registration, in such detail as the Board shall specify--

17 1) the names of all issuers for which the firm prepared or
18 issued audit reports during the immediately preceding calendar year, and
19 for which the firm expects to prepare or issue audit reports during the
20 current calendar year;

21 2) the annual fees received by the firm from each such issuer
22 for audit services, other accounting services, and non-audit services,
23 respectively;

24 3) such other current financial information for the most recently
25 completed fiscal year of the firm as the Board shall reasonably request;

26 4) a statement of the quality control policies of the firm for its
27 accounting and auditing practices;

1 5) a list of all accountants associated with the firm who
2 participate in or contribute to the preparation of audit reports, stating the
3 license or certification number of each such person, as well as the license
4 number of the firm itself;

5 6) information relating to criminal, civil, or administrative actions
6 or disciplinary proceedings pending against the firm or any associated
7 person of the firm in connection with any audit report;

8 7) copies of any periodic or annual disclosure filed by an issuer
9 with the Commission during the immediately preceding calendar year
10 which discloses accounting disagreements between such issuer and the
11 firm in connection with an audit report furnished or prepared by the firm for
12 such issuer; and

13 8) such other information as the rules of the Board or the
14 Commission shall specify as necessary or appropriate in the public
15 interest or for the protection of investors.

16 Each application for registration under this subsection shall include-
17 - a consent executed by the public accounting firm to cooperation in and
18 compliance with any request for testimony or the production of documents made
19 by the Board in the furtherance of its authority and responsibilities under this title
20 (and an agreement to secure and enforce similar consents from each of the
21 associated persons of the public accounting firm as a condition of their continued
22 employment by or other association with such firm); and

23 1) a statement that such firm understands and agrees that
24 cooperation and compliance, as described in the consent required by
25 subparagraph (a), and the securing and enforcement of such consents
26 from its associated persons, in accordance with the rules of the Board,
27 shall be a condition to the continuing effectiveness of the registration of
28 the firm with the Board.

1 c. Action on Applications - The Board shall approve a completed
2 application for registration not later than forty-five (45) days after the receipt of
3 the application, in accordance with the rules of the Board, unless the Board, prior
4 to such date, issues a written notice of disapproval to, or requests more
5 information from, the prospective registrant.

6 A written notice of disapproval of a completed application under the
7 preceding paragraph for registration shall be treated as a disciplinary sanction for
8 purposes of this Act.

9 d. Periodic Reports - Each registered public accounting firm shall
10 submit an annual report to the Board, and may be required to report more
11 frequently, as necessary to update the information contained in its application for
12 registration under this section, and to provide to the Board such additional
13 information as the Board or the Commission shall specify.

14 e. Public Availability - Registration applications and annual reports
15 required by this subsection, or such portions of such applications or reports as
16 may be designated under rules of the Board, shall be made available for public
17 inspection, subject to rules of the Board or the Commission, and to applicable
18 laws relating to the confidentiality of proprietary, personal, or other information
19 contained in such applications or reports, provided that, in all events, the Board
20 shall protect from public disclosure information reasonably identified by the
21 subject accounting firm as proprietary information.

22 f. Registration and Annual Fees - The Board shall assess and collect
23 a registration fee and an annual fee from each registered public accounting firm,
24 in amounts that are sufficient to recover the costs of processing and reviewing
25 applications and annual reports.

26 **SEC. 6. Auditing, Quality Control, and Independence Standards**
27 **and Rules.** -- The Board shall, by rule, establish, including, to the extent it
28 determines appropriate, through adoption of standards proposed by one or more
29 professional groups of accountants designated by the Board and amend or

1 otherwise modify or alter, such auditing and related attestation standards, such
2 quality control standards, and such ethics standards to be used by registered
3 public accounting firms in the preparation or issuance of audit reports as required
4 by this Act or the rules of the Commission, or as may be necessary or
5 appropriate in the public interest or for the protection of investors.

6 In carrying out the preceding paragraph, the Board--

7 a. shall include in the auditing standards that it adopts, requirements that
8 each registered public accounting firm shall--

9 1) prepare, and maintain for a period of not less than 7 years, audit
10 work papers, and other information related to any audit report, in sufficient
11 detail to support the conclusions reached in such report;

12 2) provide a concurring or second partner review and approval of
13 such audit report (and other related information), and concurring approval
14 in its issuance, by a qualified person (as prescribed by the Board)
15 associated with the public accounting firm, other than the person in charge
16 of the audit, or by an independent reviewer (as prescribed by the Board);
17 and

18 3) describe in each audit report the scope of the auditor's
19 testing of the internal control structure and procedures of the issuer, and
20 present (in such report or in a separate report)--

21 a) the findings of the auditor from such testing;

22 b) an evaluation of whether such internal control
23 structure and procedures--

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

27 (2) provide reasonable assurance that transactions
28 are recorded as necessary to permit preparations of financial
29 statements in accordance with generally accepted

1 accounting principles, and that receipts and expenditures of
2 the issuer are being made only in accordance with
3 authorizations of management and directors of the issuer;
4 and

5 (3) a description, at a minimum, of material
6 weaknesses in such internal controls, and of any material
7 noncompliance found on the basis of such testing;

8 b. shall include, in the quality control standards that it adopts with respect
9 to the issuance of audit reports, requirements for every registered public
10 accounting firm relating to--

11 1. monitoring of professional ethics and independence from
12 issuers on behalf of which the firm issues audit reports;

13 2. consultation within such firm on accounting and auditing
14 questions;

15 TITLE III - AUDITOR INDEPENDENCE

16 SEC. 7. Services Outside The Scope of Practice of Auditors.

17 a. Prohibited Activities - Except as provided in subsection (c) hereof, it
18 shall be unlawful for a registered public accounting firm (and any associated
19 person of that firm, to the extent determined appropriate by the Commission) that
20 performs for any issuer any audit required by this title or the rules of the
21 Commission under this title or, beginning one hundred eighty (180) days after the
22 date of commencement of the operations of the Public Company Accounting
23 Oversight Board established under Section 4 of this Act, to provide to that issuer,
24 contemporaneously with the audit, any non-audit service, including --

25 1. bookkeeping or other services related to the accounting records
26 or financial statements of the audit client;

27 2. financial information systems design and implementation;

28 3. appraisal or valuation services, fairness opinions, or
29 contribution-in-kind reports;

- 1 4. actuarial services;
- 2 5. internal audit outsourcing services;
- 3 6. management functions or human resources;
- 4 7. broker or dealer, investment adviser, or investment banking
- 5 services;
- 6 8. legal services and expert services unrelated to the audit; and
- 7 9. any other service that the Board determines, by regulation, is
- 8 impermissible.

9 b. Pre-approval Required For Non-Audit Services - A registered
10 public accounting firm shall engage in any non-audit services, including tax
11 services, that is not described in any of paragraphs (1) through (9) of subsection
12 (a) for an audit client, only if the activity is approved in advance by the audit
13 committee of the issuer, in accordance with Section 8.

14 c. Exemption Authority - The Board shall, on a case by case basis,
15 exempt any person, issuer, public accounting firm, or transaction from the
16 prohibition on the provision of services under paragraph (a) to the extent that
17 such exemption is necessary or appropriate in the public interest and is
18 consistent with the protection of investors, and subject to review by the
19 Commission.

20 **SEC. 8. Pre-approval Requirements.** -- All auditing services and non-
21 audit services, other than as provided in subparagraph (b) hereof, provided to an
22 issuer by the auditor of the issuer shall be pre-approved by the audit committee of
23 the issuer.

24 The pre-approval requirement under the preceding subparagraph is
25 waived with respect to the provision of non-audit services for an issuer, if --

26 a. the aggregate amount of all such non-audit services provided to the
27 issuer constitutes not more than five percent (5%) of the total amount of
28 revenues paid by the issuer to its auditor during the fiscal year in which the non-
29 audit services are provided;

1 b. such services were not recognized by the issuer at the time of the
2 engagement to be non-audit services; and

3 c. such services are promptly brought to the attention of the audit
4 committee of the issuer and approved prior to the completion of the audit by the
5 audit committee or by one or more members of the audit committee who are
6 members of the board of directors to whom authority to grant such approvals has
7 been delegated by the audit committee.

8 Approval by an audit committee of an issuer under this subsection of a
9 non-audit service to be performed by the auditor of the issuer shall be disclosed
10 to investors in periodic reports under Section 21.

11 The audit committee of an issuer may delegate to one or more designated
12 members of the audit committee who are independent directors of the board of
13 directors, the authority to grant pre-approvals required by this subsection. The
14 decision of any member to whom authority is delegated under this paragraph to
15 pre-approve an activity under this subsection shall be presented to the full audit
16 committee at each of its scheduled meetings.

17 **SEC. 9. Audit Partner Rotation.** - It shall be unlawful for a registered
18 public accounting firm to provide audit services to an issuer if the lead (or
19 coordinating) audit partner (having primary responsibility for the audit), or the
20 audit partner responsible for reviewing the audit, has performed audit services for
21 that issuer in each of the five (5) previous fiscal years of that issuer.

22 **SEC. 10. Auditor Reports To Audit Committees.** - Each registered
23 public accounting firm that performs for any issuer any audit required by this title
24 shall timely report to the audit committee of the issuer -

25 a. all critical accounting policies and practices to be used;

26 b. all alternative treatments of financial information within generally
27 accepted accounting principles that have been discussed with management
28 officials of the issuer, ramifications of the use of such alternative disclosures and

1 treatments, and the treatment preferred by the registered public accounting firm;
2 and

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

6 **SEC. 11. Conflicts of Interest.** - It shall be unlawful for a registered
7 public accounting firm to perform for an issuer any audit service required by this
8 title, if a chief executive officer, controller, chief financial officer, chief accounting
9 officer, or any person serving in an equivalent position for the issuer, was
10 employed by that registered independent public accounting firm and participated
11 in any capacity in the audit of that issuer during the one-year period preceding
12 the date of the initiation of the audit.

13 **SEC. 12. Commission Authority.**

14 a. Commission Regulations. - Not later than one hundred eighty (180)
15 days from the effectivity of this Act, the Commission shall issue regulations to
16 carry out the provisions of this Title.

17 b. Auditor Independence. - It shall be unlawful for any registered public
18 accounting firm (or an associated person thereof, as applicable) to prepare or
19 issue any audit report with respect to any issuer, if the firm or associated person
20 engaged in any activity with respect to that issuer is prohibited under Section 7
21 (a) or any rule or regulation of the Commission or of the Board issued
22 thereunder.

23 **SEC. 13. Considerations By Appropriate State Regulatory Authority.** -
24 In supervising non-registered public accounting firms and their associated
25 persons, appropriate State regulatory authorities shall make an independent
26 determination of the proper standards applicable, particularly taking into
27 consideration the size and nature of the business of the accounting firms they
28 supervise and the size and nature of the business of the clients of those firms.
29 The standards applied by the Board under this Act should not be presumed to be

1 applicable for purposes of this section for small and medium sized non-registered
2 public accounting firms.

3 **TITLE IV - CORPORATE RESPONSIBILITY**

4 **SEC. 14. Public Company Audit Committees. –**

5 a. Commission Rules - Two hundred seventy (270) days after the
6 effectivity of this Act, the Commission shall, by rule, direct the national securities
7 exchanges and national securities associations to prohibit the listing of any
8 security of an issuer that is not in compliance with the requirements of any
9 portion of paragraphs (b) through (f).

10 The rules of the Commission under the preceding paragraph shall provide
11 for appropriate procedures for an issuer to have an opportunity to cure any
12 defects that would be the basis for a prohibition under preceding paragraph,
13 before the imposition of such prohibition.

14 b. Responsibilities Relating To Registered Public Accounting Firms -
15 The audit committee of each issuer, in its capacity as a committee of the board of
16 directors, shall be directly responsible for the appointment, compensation, and
17 oversight of the work of any registered public accounting firm employed by that
18 issuer (including resolution of disagreements between management and the
19 auditor regarding financial reporting) for the purpose of preparing or issuing an
20 audit report or related work, and each such registered public accounting firm
21 shall report directly to the audit committee.

22 c. Independence - Each member of the audit committee of the issuer
23 shall be a member of the board of directors of the issuer, and shall otherwise be
24 independent.

25 In order to be considered to be independent for purposes of this
26 paragraph, a member of an audit committee of an issuer shall not, other than in
27 his or her capacity as a member of the audit committee, the board of directors, or
28 any other board committee --

1 1. accept any consulting, advisory, or other compensatory fee from
2 the issuer; or

3 2. be an affiliated person of the issuer or any subsidiary thereof.

4 The Commission shall exempt from the requirements of preceding
5 paragraph a particular relationship with respect to audit committee members, as
6 the Commission determines appropriate in light of the circumstances.

7 d. Complaints - Each audit committee shall establish procedures for --
8 The receipt, retention and treatment of complaints received by the issuer
9 regarding accounting, internal accounting controls, or auditing matters, and the
10 confidential, anonymous submission by employees of the issuer of concerns
11 regarding questionable accounting or auditing matters.

12 e. Authority To Engage Advisers - Each audit committee shall have
13 the authority to engage independent counsel and other advisers, as it determines
14 necessary to carry out its duties.

15 f. Funding - Each issuer shall provide for appropriate funding, as
16 determined by the audit committee, in its capacity as a committee of the board of
17 directors, for payment of compensation to the registered public accounting firm
18 employed by the issuer for the purpose of rendering or issuing an audit report,
19 and to any advisers employed by the audit committee under paragraph (e).

20 **SEC. 15. Corporate Responsibility For Financial Reports.**

21 a. Regulations Required - The Commission shall, by rule, require, for
22 each company filing periodic reports with the Commission that the principal
23 executive officer or officers and the principal financial officer or officers, or
24 persons performing similar functions, certify in each annual or quarterly report
25 filed or submitted under this Act that --

26 1. the signing officer has reviewed the report;

27 2. based on the officer's knowledge, the report does not contain

28 any untrue statement of a material fact or omit to state a material fact

1 necessary in order to make the statements made, in light of the
2 circumstances under which such statements were made, not misleading;

3 3. based on such officer's knowledge, the financial statements,
4 and other financial information included in the report, fairly present in all
5 material respects the financial condition and results of operations of the
6 issuer as of, and for, the periods presented in the report;

7 4. the signing officers -

8 (a) are responsible for establishing and maintaining internal
9 controls;

10 (b) have designed such internal controls to ensure that
11 material information relating to the issuer and its consolidated
12 subsidiaries is made known to such officers by others within those
13 entities, particularly during the period in which the periodic reports
14 are being prepared;

15 (c) have evaluated the effectiveness of the issuer's internal
16 controls as of a date within ninety (90) days prior to the report; and

17 (d) have presented in the report their conclusions about the
18 effectiveness of their internal controls based on their evaluation as
19 of that date;

20 5. the signing officers have disclosed to the issuer's auditors and
21 the audit committee of the board of directors (or persons fulfilling the
22 equivalent function) --

23 (a) all significant deficiencies in the design or operation of
24 internal controls which could adversely affect the issuer's ability to
25 record, process, summarize, and report financial data and have
26 identified for the issuer's auditors any material weaknesses in
27 internal controls; and

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

4 6. the signing officers have indicated in the report whether or not
5 there were significant changes in internal controls or in other factors that
6 could significantly affect internal controls subsequent to the date of their
7 evaluation, including any corrective actions with regard to significant
8 deficiencies and material weaknesses.

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

15 **SEC. 16. Improper Influence on Conduct of Audits.**

16 a. Rules to Prohibit - It shall be unlawful, in contravention of such
17 rules or regulations as the Commission shall prescribe as necessary and
18 appropriate in the public interest or for the protection of investors, for any officer
19 or director of an issuer, or any other person acting under the direction thereof, to
20 take any action to fraudulently influence, coerce, manipulate, or mislead any
21 independent public or certified accountant engaged in the performance of an
22 audit of the financial statements of that issuer for the purpose of rendering such
23 financial statements materially misleading.

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

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

1 d. Deadline for Rulemaking - The Commission shall issue rules or
2 regulations required by this section, not later than two hundred seventy (270)
3 days after the date of enactment of this Act.

4 **SEC. 17. Forfeiture of Certain Bonuses and Profits.** -- If an
5 issuer is required to prepare an accounting restatement due to the
6 material noncompliance of the issuer, as a result of misconduct, with any
7 financial reporting requirement under the securities laws, the chief
8 executive officer and chief financial officer of the issuer shall reimburse the
9 issuer for --

10 a. any bonus or other incentive-based or equity-based compensation
11 received by that person from the issuer during the twelve (12) month period
12 following the first public issuance or filing with the Commission, whichever comes
13 first, of the financial document embodying such financial reporting requirement;
14 and

15 b. any profits realized from the sale of securities of the issuer during
16 the twelve (12) month period.

17 The Commission shall exempt any person from the application of
18 preceding paragraph, as it deems necessary and appropriate.

19 **SEC. 18. Equitable Relief** - In any action proceeding or instituted by the
20 Commission under any provision of the securities laws, the Commission shall
21 seek, and any court shall grant any equitable relief that may be appropriate or
22 necessary for the benefit of investors.

23 **SEC. 19. Prohibition on Insider Trading.** -- It shall be unlawful for any
24 director or executive officer of an issuer of any equity security, directly or
25 indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of
26 the issuer with respect to such equity security if such director or officer acquires
27 such equity security in connection with his or her service or employment as a
28 director or executive officer, within three (3) years from acquisition of such
29 shares.

1 Any profit realized by a director or executive Officer referred to in the
2 above paragraph from any purchase, sale, or other acquisition or transfer in
3 violation of this subsection shall inure to and be recoverable by the issuer,
4 irrespective of any intention on the part of such director or executive officer in
5 entering into the transaction.

6 An action to recover profits in accordance with this subsection shall be
7 instituted at law or in equity in any court of competent jurisdiction by the issuer, or
8 by the owner of any security of the issuer in the name and in behalf of the issuer
9 if the issuer fails or refuses to bring such action within sixty (60) days after the
10 date of request, or fails diligently to prosecute the action thereafter, except that
11 no such suit shall be brought more than two (2) years after the date on which
12 such profit was realized.

13 **SEC. 20. Study of Enforcement Actions.** -- The Commission shall
14 review and analyze all enforcement actions by the Commission involving
15 violations of reporting requirements imposed under the securities laws, and
16 restatements of financial statements, over the 5-year period preceding the date
17 of enactment of this Act, to identify areas of reporting that are most susceptible to
18 fraud, inappropriate manipulation, or inappropriate earnings management, such
19 as revenue recognition and the accounting treatment of off-balance sheet special
20 purpose entities.

21 The Commission shall report its findings to the Congress of the Philippines
22 within six (6) months from the effectivity of this Act.

23 **TITLE V - ENHANCED FINANCIAL DISCLOSURES**

24 **SEC. 21. Disclosures In Periodic Reports.** -- Each financial report that
25 contains financial statements, and that is required to be prepared in accordance
26 with generally accepted accounting principles under this title and filed with the
27 Commission shall reflect all material correcting adjustments that have been
28 identified by a registered public accounting firm in accordance with generally
29 accepted accounting principles and the rules and regulations of the Commission.

1 Not later than one hundred eighty (180) days after the effectivity of this
2 Act, the Commission shall issue rules providing that each annual and quarterly
3 financial report required to be filed with the Commission shall disclose all material
4 off-balance sheet transactions, arrangements, obligations (including contingent
5 obligations), and other relationships of the issuer with unconsolidated entities or
6 other persons, that may have material, current or future effect on financial
7 condition, changes in financial condition, results of operations, liquidity, capital
8 expenditures, capital resources, or significant components of revenues or
9 expenses.

10 Not later than 180 days after the effectivity of this Act, the Commission
11 shall issue rules providing that pro forma financial information included in any
12 periodic or other report filed with the Commission pursuant to the securities laws,
13 or any public disclosure or press or other release, shall be presented in a manner
14 that –

15 a. does not contain an untrue statement of a material fact or omit to
16 state a material fact necessary in order to make the pro forma financial
17 information, in light of the circumstances under which it is presented, not
18 misleading; and

19 b. reconciled it with the financial condition and results of operations of
20 the issuer under generally accepted accounting principles.

21 The Commission shall, not later than one (1) year after the effective date
22 of adoption of off-balance sheet disclosure rules required by this Section,
23 complete a study of filings by issuers and their disclosures to determine –

24 a. the extent of off-balance sheet transactions, including
25 assets, liabilities, leases, losses, and the use of special purpose entities; and

26 b. whether generally accepted accounting rules result in
27 financial statements of issuers reflecting the economics of such off-balance sheet
28 transactions to investors in a transparent fashion.

1 Not later than six (6) months after the date of completion of the study
2 required by this Section, the Commission shall submit a report to the President
3 and to the Congress of the Philippines, setting forth –

4 a. the amount or an estimate of the amount of off-balance sheet
5 transactions, including assets, liabilities, leases, and losses of, and the use of
6 special purpose entities by, issuers filing periodic reports;

7 b. the extent to which special purpose entities are used to facilitate
8 off-balance sheet transactions;

9 c. whether generally accepted accounting principles or the rules of the
10 Commission result in financial statements of issuers reflecting the economics of
11 such transactions to investors in a transparent fashion;

12 d. whether generally accepted accounting principles specifically result
13 in the consolidation of special purpose entities sponsored by an issuer in cases
14 in which the issuer has the majority of the risks and rewards of the special
15 purpose entity; and

16 e. any recommendations of the Commission for improving the
17 transparency and quality of reporting off-balance sheet transactions in the
18 financial statements and disclosures required to be filed by an issuer with the
19 Commission.

20 **SEC. 22. Prohibition on Personal Loans to Executives.** -- It shall be
21 unlawful for any issuer, directly or indirectly, including through any subsidiary, to
22 extend or maintain credit, to arrange for the extension of credit, or to renew an
23 extension of credit, in the form of a personal loan to or for any director or
24 executive officer (or equivalent thereof) of the issuer: Provided, however, that an
25 extension of credit maintained by the issuer before the approval of this Act shall
26 not be subject to the provisions of this subsection, provided that there is no
27 material modification to any term of any such extension of credit or any renewal
28 of any such extension of credit on or after that date of enactment: Provided,

1 further, this shall not apply to any loan made or maintained by insured depository
2 institution.

3 The above paragraph does not preclude any home improvements and
4 manufacture home loans, consumer credit, or any extension of credit under an
5 open and credit plan, or a charge card, or any extension of credit by a broker or
6 dealer registered this Act to an employee of that broker or dealer to buy, trade, or
7 carry securities, that is permitted under rules or regulations of the Securities and
8 Exchange Commission (other than an extension of credit that would be used to
9 purchase the stock of that issuer), that is –

10 a. made or provided in the ordinary course of the consumer credit
11 business of such issuer;

12 b. of a type that is generally made available by such issuer to the public;
13 and

14 c. made by such issuer on market terms, or terms that are no more
15 favorable than those offered by the issuer to the general public for such
16 extensions of credit.

17 **SEC. 23. Disclosures of Transactions Involving Management and**
18 **Principal Stockholders.** -- Every person who is directly or indirectly the
19 beneficial owner of more than 10 percent of any class of any equity security
20 (other than an exempted security) which is registered with the Securities and
21 Exchange Commission or companies imbued with public interest such as
22 pension and other pre-need plans and other similar companies, or who is a
23 director or an officer of the issuer of such security, shall file the statements
24 required by this subsection with the Commission (and, if such security is
25 registered on a national securities exchange, also with the stock exchange).

26 The statements required by this subsection shall be filed --

27 a. at the time of the registration of such security on a national
28 securities exchange or ninety (90) days after the approval of this Act whichever
29 comes earlier;

1 applicable to its principal financial officer and comptroller or principal accounting
2 officer, or persons performing similar functions.

3 The Commission shall revise its regulations concerning matters requiring
4 prompt disclosure to require the immediate disclosure, by means of the filing of
5 such form, dissemination by the Internet or by other electronic means, by any
6 issuer of any change in or waiver of the code of ethics for senior financial office.

7 For purposes of this section, the term "code of ethics" means such
8 standards as are reasonably necessary to promote --

9 a. honest and ethical conduct, including the ethical handling of actual or
10 apparent conflicts of interest between personal and professional relationships;

11 b. full, fair, accurate, timely, and understandable disclosure in the periodic
12 reports required to be filed by the issuer; and

13 c. compliance with applicable governmental rules and regulations.

14 The Commission shall promulgate rules to implement this section, not
15 later than ninety (90) days after the approval of this Act.

16 **SEC. 26. Disclosure Of Audit Committee Financial Expert.** -- The
17 Commission shall issue rules, as necessary or appropriate in the public interest
18 and consistent with the protection of investors, to require each issuer, together
19 with periodic reports required, to disclose whether or not, and if not, the reasons
20 therefore, the audit committee of that issuer is comprised of at least one (1)
21 member who is a financial expert, as such term is defined by the Commission.

22 In defining the term 'financial expert' for purposes of preceding paragraph,
23 the Commission shall consider whether a person has, through education and
24 experience as a public accountant or auditor or a principal financial officer,
25 comptroller, or principal accounting officer of an issuer, or from a position
26 involving the performance of similar functions --

27 a. an understanding of generally accepted accounting principles and
28 financial statements;

29 b. experience in --

1 1. the preparation or auditing of financial statements of generally
2 comparable issuers; and

3 2. the application of such principles in connection with the
4 accounting for estimates, accruals, and reserves;

5 c. experience with internal accounting controls; and

6 d. an understanding of audit committee functions.

7 The Commission shall promulgate rules to implement this section, not
8 later than ninety (90) days after the approval of this Act.

9 **SEC. 27. Enhanced Review of Periodic Disclosures by Issuers. --**

10 The Commission shall review disclosures made by issuers and which have a
11 class of securities listed on a national securities exchange or of companies
12 otherwise imbued with public interest on a regular and systematic basis for the
13 protection of investors and the general public. Such review shall include a review
14 of an issuer's financial statement.

15 For purposes of scheduling the reviews required by preceding paragraph,
16 the Commission shall consider, among other factors --

17 a. issuers that have issued material restatements of financial results;

18 b. issuers that experience significant volatility in their stock price as
19 compared to other issuers;

20 c. issuers with the largest market capitalization;

21 d. emerging companies with disparities in price to earning ratios;

22 e. issuers whose operations significantly affect any material sector of
23 the economy; and

24 f. any other factors that the Commission may consider relevant.

25 In no event shall an issuer required to file reports be reviewed under this
26 section less frequently than once every three (3) years.

27 **SEC. 28. Real Time Issuer Disclosures** - Each issuer reporting under
28 this Act shall disclose to the public on a rapid and current basis such additional
29 information concerning material changes in the financial condition or operations

1 of the issuer, in plain English, which may include trend and qualitative information
2 and graphic presentations, as the Commission determines, by rule, is necessary
3 or useful for the protection of investors and in the public interest.

4 TITLE VI – ANALYST CONFLICTS OF INTEREST

5 SEC. 29. **Securities Analysts and Research Reports.** -- a. Analyst

6 Protections -- The Commission, or upon the authorization and direction of the
7 Commission, a registered securities association or national securities exchange,
8 shall adopt, not later than one (1) year after the effectivity of this Act, rules
9 reasonably designed to address conflicts of interest that can arise when
10 securities analysts recommend equity securities in research reports and public
11 appearances, in order to improve the objectivity of research and provide
12 investors with more useful and reliable information, including rules designed --

13 1. to foster greater public confidence in securities research, and
14 protect the objectivity and independence of securities analysts, by --

15 a) restricting the prepublication clearance or approval of
16 research reports by persons employed by the broker or dealer who
17 are engaged in investment banking activities, or persons not
18 directly responsible for investment research, other than legal or
19 compliance staff;

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

23 c) requiring that a broker or dealer and persons employed
24 by a broker or dealer who are involved with investment banking
25 activities may not, directly or indirectly, retaliate against or threaten
26 to retaliate against any securities analyst employed by that broker
27 or dealer or its affiliates as a result of an adverse, negative, or
28 otherwise unfavorable research report that may adversely affect the
29 present or prospective investment banking relationship of the

1 broker or dealer with the issuer that is the subject of the research
2 report, except that such rules may not limit the authority of a broker
3 or dealer to discipline a securities analyst for causes other than
4 such research report in accordance with the policies and
5 procedures of the firm;

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

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

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

17 b. Disclosure - The Commission, or upon the authorization and direction
18 of the Commission, a registered securities association or national securities
19 exchange, shall have adopted, not later than ninety (90) days after the date of
20 enactment of this Act, rules reasonably designed to require each securities
21 analyst to disclose in public appearances, and each registered broker or dealer
22 to disclose in each research report, as applicable, conflicts of interest that are
23 known or should have been known by the securities analyst or the broker or
24 dealer, to exist at the time of the appearance of the date of distribution of the
25 report, including --

26 1. the extent to which the securities analyst has debt or equity
27 investments in the issuer that is the subject of the appearance or research
28 report;

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

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

14 4. whether the securities analyst received compensation with
15 respect to a research report, based, among others, upon the investment
16 banking revenues (either generally or specifically earned from the issuer
17 being analyzed) of the registered broker or dealer; and

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

21 As used in this section, the term 'securities analyst' shall mean any
22 associated person of a registered broker or dealer that is principally responsible
23 for, and any associated person who reports directly or indirectly to a securities
24 analyst in connection with, the preparation of the substance of a research report,
25 whether or not any such person has the job title of 'securities analyst'.

26 As used in this section, the term 'research report' means a written or
27 electronic communication that includes an analysis of equity securities of
28 individual companies or industries, and that provides information reasonably
29 sufficient upon which to base an investment decision.

1 The Commission may promulgate and amend its regulations, or direct a
2 registered securities association or national securities exchange to promulgate
3 and amend its rules, to carry out the provisions of this Section as is necessary for
4 the protection of investors and in the public interest.

5 **TITLE VII – COMMISSION AUTHORITY**

6 **SEC. 30. Appearance and Practice before the Commission.** -- The
7 Commission may censure any person, or deny, temporarily or permanently, to
8 any person the privilege of appearing or practicing before the Commission in any
9 way, if that person is found by the Commission, after notice and opportunity for
10 hearing in the matter –

11 a. not to possess the requisite qualifications to represent others;

12 b. to be lacking in character or integrity, or to have engaged in
13 unethical or improper professional conduct; or

14 c. to have willfully violated , or willfully aided and abetted the violation
15 of, any provision of the securities laws or the rules and regulations issued
16 thereunder.

17 With respect to any registered public accounting firm or associated
18 person, for purposes of this section, the term 'improper professional conduct'
19 means –

20 a. intentional or knowing conduct, including reckless conduct, that results
21 in a violation of applicable professional standards; and

22 b. negligent conduct in the form of –

23 1. a single instance of highly unreasonable conduct that results in
24 a violation of applicable professional standards in circumstances in which
25 the registered public accounting firm or associated person knows, or
26 should know, that heightened scrutiny is warranted; or

27 2. repeated instances of unreasonable conduct, each resulting in a
28 violation of applicable professional standards, that indicate a lack of
29 competence to practice before the Commission.

1 TITLE VIII – STUDIES AND REPORTS

2 SEC. 31. **Commission Study and Report Regarding Credit Rating**

3 **Agencies.** -- The Commission shall conduct a study of the role and function of
4 credit rating agencies in the operation of the securities market. The study
5 required by this subsection shall examine –

6 a. the role of credit rating agencies in the evaluation of issuers of
7 securities;

8 b. importance of that role to investors and the functioning of the
9 securities markets;

10 c. any impediments to the accurate appraisal by credit rating agencies
11 of the financial resources and risks of issuers of securities;

12 d. any barriers to entry into the business of acting as a credit rating
13 agency, and measures needed to remove such barriers;

14 e. any measures which shall be required to improve the
15 dissemination of information concerning such resources and risks when credit
16 rating agencies announce credit ratings; and

17 f. any conflict of interest in the operation of credit rating agencies and
18 measures to prevent such conflicts or ameliorate the consequences of such
19 conflicts.

20 The Commission shall submit a report on the study required by preceding
21 paragraph to the President and to the Congress of the Philippines not later than
22 one hundred eighty (180) days after the effectivity of this Act.

23 SEC. 32. **Study and Report on Violators and Violations.** -- The

24 Commission shall conduct a study to determine, based upon information for the
25 period from January 1, 1998 to December 31, 2001, particularly –

26 a. the number of securities professionals, defined as public
27 accountants, public accounting firms, investment bankers, investment advisers,
28 brokers, dealers, attorneys, and other securities professional practicing before
29 the Commission –

1 1. who have been found to have aided and abetted a violation
2 of the securities laws, including rules or regulations promulgated
3 thereunder, but who have not been sanctioned, disciplined, or otherwise
4 penalized as a primary violator in any administrative action or civil
5 proceeding, including in any settlement of such an action or proceeding
6 (referred to in this section as 'aiders and abettors'); and

7 2. who have been found to have been primary violators of the
8 securities laws;

9 b. a description of the securities laws violations committed by aiders
10 and abettors and by primary violators, including --

11 the specific provision of securities laws violated;

12 1. the specific sanctions and penalties imposed upon such
13 aiders and abettors and primary violators, including the amount of any
14 monetary penalties assessed upon and collected from such persons;

15 2. the occurrence of multiple violations by the same person or
16 persons, either as an aider or abettor or as a primary violator; and

17 5. whether, as to each such violator, disciplinary sanctions
18 have been imposed, including any censure, suspension, temporary bar, or
19 permanent bar to practice before the Commission; and

20 6. the amount of disgorgement, restitution, or any other fines or
21 payments that the Commission has assessed upon and collected from,
22 aiders and abettors and from primary violators.

23 A report based upon the study conducted pursuant to this Section shall be
24 submitted to the Congress of the Philippines not later than one hundred eighty
25 (180) days after the effectivity of this Act.

26 **SEC. 33. Study of Enforcement Actions.** -- The Commission shall
27 review and analyze all enforcement actions by the Commission involving
28 violations of reporting requirements imposed under the securities laws, and
29 restatements of financial statements, over the five (5) year period preceding the

1 date of effectivity of this Act, identify areas of reporting that are most susceptible
2 to fraud, inappropriate manipulation, or inappropriate earnings management,
3 such as revenue recognition and the accounting treatment of off-balance sheet
4 special purpose entities.

5 The Commission shall report its findings to the Congress of the Philippines
6 not later than one hundred eighty (180) days after the date of effectivity of this
7 Act, and shall use such findings to revise its rules and regulations, as necessary.
8 The report shall include a discussion of regulatory or legislative steps that are
9 recommended or that may be necessary to address concerns identified in the
10 study.

11 **SEC. 34. Study of Investment Banks.** -- The Chairman of the
12 Monetary Board shall conduct a study on whether investment banks and financial
13 advisers assisted public companies in manipulating their earnings and
14 obfuscating their true financial condition. The study should address the rules of
15 investment banks and financial advisers --

16 a. With respect to the design and implementation of derivatives
17 transactions, transactions involving special purpose vehicles, and other financial
18 arrangements that shall have had the effect of altering the company's reported
19 financial statements in ways that obscured the true financial picture of the
20 company;

21 b. With respect to transactions that may have had the effect of altering
22 the company's reported financial picture of the company; and

23 c. Generally, in creating and marketing transactions which shall have
24 been designed solely to enable companies to manipulate revenue streams,
25 obtain loans, or move liabilities off-balance sheets without altering the economic
26 and business risks faced by the companies or any other mechanism to obscure a
27 company's financial picture.

28 **TITLE IX – CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY**

1 SEC. 35. **Criminal Penalties for Altering Documents.** -- a. Whoever
2 knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a
3 false entry in any record, document, or tangible object with the intent to impede,
4 obstruct, or influence the investigation or proper administration of any matter
5 within the jurisdiction of any department or agency of the Philippines or any case
6 filed under Title IV of this Act, or in relation to or contemplation of any such
7 matter or case, shall be punished with a fine of not less than one hundred
8 thousand pesos (P100,000.00) but not more than five hundred thousand pesos
9 (P500,000.00) and imprisonment of not less than ten (10) years but not more
10 than twenty (20) years.

11 b. Whoever knowingly and willfully violates any rule or regulation
12 promulgated by the Securities and Exchange Commission with regard to the
13 retention of corporate records shall be punished with a fine of not less than one
14 hundred thousand pesos (P100,000.00), or imprisonment of not less than two
15 (2) years but not more than five (5) years or both such fine and imprisonment at
16 discretion of the court: Provided, That the Securities and Exchange Commission
17 shall promulgate, within one hundred eighty (180) days from the effectivity of this
18 Act, such rules and regulations as are necessary relating to the retention of
19 relevant records such as work papers, documents that form the basis of an audit
20 or review, memoranda, correspondence, communications, other documents and
21 records, including electronic records, that are created, sent or received in
22 connection with an audit or review and contain conclusions, opinions, analyses,
23 or financial data relating to such audit or review, which is conducted by any
24 accountant who conducts an audit of an issuer of securities: Provided, further,
25 that the Commission shall, from time to time, amend or supplement the rules
26 and regulations that it is required to promulgate under this section, in order to
27 ensure that such rules and regulations adequately comport with the purposes of
28 this section: Proved, finally, that any accountant who conducts an audit of an
29 issuer of securities shall maintain all audit or review work papers for a period of

1 five (5) years from the end of the fiscal period in which the audit or review was
2 concluded.

3 **SEC.36. Debts Non-dischargeable If Incurred In Violation Of**
4 **Securities Fraud Laws.** -- All debts that are incurred in violation of securities
5 laws through fraud, deceit, or manipulation, in connection with the purchase or
6 sale of any security shall not be discharged and shall be settled accordingly.

7 A private right of action that involves a claim of fraud, deceit, manipulation,
8 or contrivance in contravention of a regulatory requirement concerning the
9 securities laws, shall be brought not later than two (2) years after the discovery of
10 the facts constituting the violation; or five (5) years after such violation, whichever
11 comes earlier.

12 The limitations period provided in this section shall apply to all
13 proceedings addressed by this section that are commenced on or after the date
14 of the effectivity of this Act. Nothing in this section shall create a new, private
15 right of action.

16 **SEC. 37. Protection For Employees Who Provide Evidence Of Fraud.**

17 -- No company with duly listed securities or that is required to file reports under
18 this Act or otherwise imbued with public interest, or any officer, employee,
19 contractor, subcontractor, or agent of such company, shall discharge, demote,
20 suspend, threaten, harass, or in any other manner discriminate against an
21 employee in the terms and conditions of employment because of any lawful act
22 done by the employee--

23 a. to provide information, cause information to be provided, or
24 otherwise assist in an investigation regarding any conduct which the employee
25 reasonably believes constitutes a violation of this Act or any rule or regulation of
26 the Securities and Exchange Commission, when the information or assistance is
27 provided to or the investigation is conducted by-

28 1. a law enforcement agency;

29 2. any Member of Congress or any committee of Congress; or

1 3. a person with supervisory authority over the employee (or such
2 other person working for the employer who has the authority to
3 investigate, discover, or terminate misconduct); or

4 b. to file, cause to be filed, testify, participate in, or otherwise assist in
5 a proceeding filed or about to be filed (with the knowledge of the employer)
6 relating to an alleged violation of this Act or any rule or regulation of the
7 Securities and Exchange Commission, or any provision of law relating to fraud
8 against shareholders, or the general public.

9 A person who alleges discharge or other discrimination by any person in
10 violation of this section shall seek relief under this section by --

11 a. filing a complaint with the Secretary of Labor; or

12 b. bring an action in the appropriate court of law, which shall have
13 jurisdiction over such an action without regard to the amount in controversy, if the
14 Secretary has not issued a final decision within one hundred eighty (180) days
15 from the filing of the complaint and there is no showing that such delay is due to
16 the bad faith of the claimant,.

17 An action under this Section shall be commenced not later than ninety
18 (90) days after the date on which the violation occurs.

19 An employee prevailing in any action under this section shall be entitled to
20 all relief necessary to make the employee whole. Relief for any action under this
21 section shall include--

22 a. reinstatement with the same seniority status that the employee
23 would have had, but for discrimination;

24 b. the amount of back pay, with interest; and

25 c. compensation for any special damages sustained as a result of the
26 discrimination, including litigation costs, expert fees, and reasonable attorney
27 fees.

1 Nothing in this section shall be deemed to diminish the rights, privileges,
2 or remedies, of any employee under any law, or under any collective bargaining
3 agreement.

4 **SEC. 38. Criminal Penalties For Defrauding Shareholders Of**
5 **Publicly Traded Companies, And The General Public In Case Of Companies**
6 **Imbued With Public Interest.** -- Whoever knowingly executes, or attempts to
7 execute, a scheme or artifice --

8 a. to defraud any person in connection with any security of an issuer with
9 a class of securities registered with the Securities and Exchange Commission or
10 that is required to file reports under this Act.

11 b. to obtain, by means of false or fraudulent pretenses, representations,
12 or promises, any money or property in connection with the purchase of any
13 security of an issuer with a class of securities registered under the Securities and
14 Exchange Commission, shall be punishable with a fine of not less than one
15 hundred thousand pesos (P100,000.00) and imprisonment of not less than ten
16 (10) years but not more than twenty (20) years.

17 **SEC. 39. Corporate Responsibility For Financial Reports.** -- Each
18 periodic report containing financial statements filed by an issuer with the
19 Securities and Exchange Commission shall be accompanied by a written
20 statement by the chief executive officer and chief financial officer (or equivalent
21 thereof) of the issuer. Failure to do so shall be punishable by a fine of not less
22 than one hundred thousand pesos (P100,000.00) and imprisonment of not less
23 than two (2) years but not more than five (5) years.

24 The statement required under above paragraph shall certify that the
25 periodic report containing the financial statements fully complies with the
26 requirements of this Act and that information contained in the periodic report
27 fairly presents, in all material respects, the financial condition and results of
28 operations of the issuer.

1 **SEC. 40. Corporate Tax Returns.** -- The income tax return of a
2 corporation shall be signed by the chief executive officer of such corporation.
3 Failure to do so shall be punishable by a fine of not less than one hundred
4 thousand pesos (P100,000.00) or imprisonment of not less than five (5) years but
5 not more than ten (10) years, or both such fine and imprisonment at the
6 discretion of the Court.

7 **SEC. 41. Tampering With A Record Or Otherwise Impeding An**
8 **Official Proceeding.** - Whoever intentionally

9 a. alters, destroys, mutilates, or conceals a record, document, or other
10 object, or attempts to do so, with the intent to impair the object's integrity or
11 availability for use in an official proceeding; or

12 (a) otherwise obstructs, influences, or impedes any official proceeding, or
13 attempts to do so, shall be punished with a fine of not less than P200,000 and
14 imprisonment of not less than ten (10) years but not more than twenty (20)
15 years.

16 **SEC. 42. Attempt and Conspiracy to Commit Criminal Fraud**

17 Any person who attempts or conspires to commit any offense under this
18 Title shall be subject to the same penalties as those prescribed for the offense,
19 the commission of which was the object of the attempt or conspiracy.

20 **SEC. 43. Temporary Freeze Authority For The Securities And**
21 **Exchange Commission.** -- Whenever, during the course of a lawful
22 investigation involving possible violations of the securities laws by an issuer of
23 publicly traded securities or any of its directors, officers, partners, controlling
24 persons, agents, or employees, it shall appear to the Commission that it is likely
25 that the issuer will make extraordinary payment (whether compensation or
26 otherwise) to any of the foregoing persons, the Commission may petition a court
27 for a temporary order requiring the issuer to escrow, subject to court supervision,
28 those payments in an interest-bearing account for forty-five (45) days.

1 A temporary order shall be entered under the preceding paragraph, only
2 after notice and opportunity for a hearing, unless the court determines that notice
3 and hearing prior to entry of the order would be impracticable or contrary to the
4 public interest.

5 A temporary order issued shall (I) become effective immediately; (II) be
6 served upon the parties subject to it; and (III) unless set aside, limited or
7 suspended by a court of competent jurisdiction, shall remain effective and
8 enforceable for forty-five (45) days: Provided, that the court may extend the
9 temporary order, upon good cause shown, for not longer than forty-five (45)
10 additional days: Provided, further, that the combined period of the order shall not
11 exceed ninety (90) days.

12 If the issuer or other person described in this section is charged with any
13 violation of the securities laws before the expiration of the effective period of a
14 temporary order issued pursuant to the preceding paragraph, including any
15 applicable extension period, the order shall remain in effect, subject to court
16 approval, until the conclusion of any legal proceedings related thereto, and the
17 affected issuer or other person shall have the right to petition the court for review
18 of the order.

19 If the issuer or other person described in this section is not charged with
20 any violation of securities laws, the escrow shall terminate at the expiration of the
21 forty-five (45) day effective period of the temporary order or the expiration of any
22 extension period, as applicable, and the disputed payments, with accrued
23 interest shall be returned to the issuer or other affected person.

24 **SEC. 44. Authority Of The Commission To Prohibit Persons From**
25 **Serving As Officers Or Directors.** - In any cease-and-desist proceeding, the
26 Commission may issue an order to prohibit, conditionally or unconditionally, and
27 permanently or for such period of time as it shall determine, any person who has
28 violated any provision of this Act or the rules or regulations thereunder, from
29 acting as an officer or director of any issuer that has a class of securities

1 registered with the Commission, or that is required to file reports pursuant to this
2 Act, if the conduct of that person demonstrates unfitness to serve as an officer or
3 director of any such issuer.

4 SEC. 45. **Retaliation Against Informants.** - Whoever knowingly, with
5 the intent to retaliate, takes any action harmful to any person, including
6 interference with the lawful employment or livelihood of any person, for providing
7 to a law enforcement officer any truthful information relating to the commission or
8 possible commission of any offense punishable under this Act, shall be punished
9 with a fine of not less than one hundred thousand pesos (P100,000.00) and
10 imprisonment of not less than five (5) years but not more than ten (10) years.

11 **TITLE X – FINAL PROVISIONS**

12 SEC. 46. **Rules And Regulations.** – The Securities and Exchange
13 Commission shall promulgate rules and regulations that are not otherwise
14 provided under any other provision of this Act, within one hundred eighty (180)
15 days from the effectivity of this Act.

16 SEC. 47. **Appropriations.** - The amount as may be necessary for the
17 effective implementation of this Act shall be charged to the current appropriations
18 of the Securities and Exchange Commission. Thereafter, such amount as may
19 be necessary for its continued implementation shall be charged to the annual
20 General Appropriations Act.

21 SEC. 48. **Separability Clause.** - If any provision of this Act shall be
22 declared unconstitutional, any other provision not affected thereby shall remain in
23 full force and effect.

24 SEC. 49. **Repealing Clause.** - All laws, decrees, orders, rules and
25 regulations, or parts thereof inconsistent with this Act are hereby repealed or
26 amended accordingly.

27 SEC. 50. **Effectivity.** – This Act shall take effect fifteen (15) days after
28 its publication in at least two (2) national newspapers of general circulation.

Approved,