Enron Corporation was an American energy, commodities, and services company based in Houston, Texas. Before its bankruptcy on December 2, 2001, Enron employed approximately 20,000 staff and was one of the world's leading electricity, natural gas, communications, and pulp and paper companies, with claimed revenues of nearly $101 billion in 2000.[1] Fortune named Enron "America's Most Innovative Company" for six consecutive years. At the end of 2001, it was revealed that its reported financial condition was sustained substantially by institutionalized, systematic, and creatively planned accounting fraud, known as the "Enron scandal". Enron has since become a popular symbol of willful corporate fraud and corruption. The scandal also brought into question the accounting practices and activities of many corporations throughout the United States and was a factor in the creation of the Sarbanes�Oxley Act of 2002. The scandal also affected the wider business world by causing the dissolution of the Arthur Andersen accounting firm.[2]

Enron filed for bankruptcy protection in the Southern District of New York in late 2001 and selected Weil, Gotshal & Manges as its bankruptcy counsel. It emerged from bankruptcy in November 2004, pursuant to a court-approved plan of reorganization, after one of the biggest and most complex bankruptcy cases in U.S. history. A new board of directors changed the name of Enron to Enron Creditors Recovery Corp., and focused on reorganizing and liquidating certain operations and assets of the pre-bankruptcy Enron.[3] On September 7, 2006, Enron sold Prisma Energy International Inc., its last remaining business, to Ashmore Energy International Ltd. (now AEI).

EARLY HISTORY:

Enron traces its roots to the Northern Natural Gas Company, which was formed in 1932, in Omaha, Nebraska. It was reorganized in 1979 as the leading subsidiary of a holding company, InterNorth which was a highly diversified energy and energy related products company. Internorth was a leader in natural gas production, transmission and marketing as well as natural gas liquids and an innovator in the plastics industry. It owned Peak Antifreeze and developed EVAL resins for food packaging. In 1985, it bought the smaller and less diversified Houston Natural Gas.[5]

The separate company initially named itself "HNG/InterNorth Inc.", even though InterNorth was the nominal survivor. It built a large and lavish headquarters complex with pink marble in Omaha (dubbed locally as the "Pink Palace"), that was later sold to Physicians Mutual. However, the departure of ex-InterNorth and first CEO of Enron Corp Samuel Segnar six months after the merger allowed former HNG CEO Kenneth Lay to become the next CEO of the newly merged company. Lay soon moved the company's headquarters to Houston after swearing to keep it in Omaha and began to thoroughly re-brand the business. Lay and his secretary, Nancy McNeil, originally selected the name "Enteron" (possibly spelled in camelcase as "EnterOn"), but, when it was pointed out that the term approximated a Greek word referring to the intestines, it was quickly shortened to "Enron". The final name was decided upon only after business cards, stationery, and other items had been printed reading Enteron. Enron's "crooked E" logo was designed in the mid-1990s by the late American graphic designer Paul Rand. Rand's original design included one of the elements of the E in yellow which disappeared when copied or faxed. This was quickly replaced by a green element. Almost immediately after the move to Houston, Enron began selling off key assets such as Northern PetroChemicals and took on silent partners in Enron CoGeneration, Northern Border Pipeline and Transwestern Pipeline and became a less diversified company. Early financial analysts said Enron was swimming in debt and the sale of key operations would not solve the problems.

Misleading financial accounts

In 1990, Enron Finance CEO Jeff Skilling hired Andrew Fastow, who was well acquainted with the burgeoning deregulated energy market Skilling wanted to exploit. In 1993, Fastow set to work establishing numerous limited liability special purpose entities (common business practice); however, it also allowed Enron to place liability so that it would not appear in its accounts, allowing it to maintain a robust and generally growing stock price and thus keeping its critical investment grade credit ratings.

Enron was originally involved in transmitting and distributing electricity and natural gas throughout the United States. The company developed, built, and operated power plants and pipelines while dealing with rules of law and other infrastructures worldwide. Enron owned a large network of natural gas pipelines, which stretched ocean to ocean and border to border including Northern Natural Gas, Florida Gas Transmission, Transwestern Pipeline company and a partnership in Northern Border Pipeline from Canada. The states of California, New Hampshire and Rhode Island had already passed power deregulation laws by July 1996, the time of Enron's proposal to acquire Portland General Electric.[6] In 1998, Enron moved into the water sector, creating the Azurix Corporation, which it part-floated on the New York Stock Exchange in June 1999. Azurix failed to break into the water utility market, and one of its major concessions, in Buenos Aires, was a large-scale money-loser. After the move to Houston, many analysts[who?] criticized the Enron management as swimming in debt. The Enron management pursued aggressive retribution against its critics, setting the pattern for dealing with accountants, lawyers, and the financial media.

Enron grew wealthy due largely to marketing, promoting power, and its high stock price. Enron was named "America's Most Innovative Company" by Fortune for six consecutive years, from 1996 to 2001. It was on the Fortune's "100 Best Companies to Work for in America" list in 2000, and had offices that were stunning in their opulence. Enron was hailed by many, including labor and the workforce, as an overall great company, praised for its large long-term pensions, benefits for its workers and extremely effective management until its exposure in corporate fraud. The first analyst to publicly disclose Enron's financial flaws was Daniel Scotto, who in August 2001 issued a report entitled "All Stressed-up� And No Place To Go", which encouraged investors to sell Enron stocks and bonds at any and all costs.

As was later discovered, many of Enron's recorded assets and profits were inflated or even wholly fraudulent and nonexistent. One example of fraudulent records was in 1999 when Enron promised to pay back Merrill Lynch & Co investment with interest in order to show profit on its books. Debts and losses were put into entities formed "offshore" that were not included in the firm's financial statements, and other sophisticated and arcane financial transactions between Enron and related companies were used to take unprofitable entities off the company's books.

Its most valuable asset and the largest source of honest income, the 1930s-era Northern Natural Gas, was eventually purchased back by a group of Omaha investors, who moved its headquarters back to Omaha, and is now a unit of Warren Buffett's MidAmerican Energy Holdings Corp. NNG was put up as collateral for a $2.5 billion capital infusion by Dynegy Corporation when Dynegy was planning to buy Enron. When Dynegy looked closely at Enron's books, they backed out of the deal and fired their CEO, Chuck Watson. The new chairman and head CEO, the late Daniel Dienstbier, had been president of NNG and an Enron executive at one time and was forced out of Enron by Ken Lay. Dienstbier was an acquaintance of Warren Buffett. NNG continues to be profitable today.

2001 Accounting scandal

In 2001, after a series of revelations involving irregular accounting procedures bordering on fraud perpetrated throughout the 1990s involving Enron and its accounting firm Arthur Andersen, along with the September 11 attacks, Enron suffered the largest Chapter 11 bankruptcy in history (since surpassed by those of Worldcom in 2002 and Lehman Brothers in 2008).

As the scandal unraveled, Enron shares dropped from over US $90.00 in the summer of 2000 to just pennies.[citation needed] Enron had been considered a blue chip stock, so this was an unprecedented event in the financial world. Enron's plunge occurred after the revelation that much of its profits and revenue were the result of deals with special purpose entities (limited partnerships which it controlled). This meant that many of Enron's debts and the losses that it suffered were not reported in its financial statements.[citation needed]

A white knight rescue attempt by a similar, smaller energy company, Dynegy, collapsed in late November due to concerns over an unexpected restatement of earnings.[citation needed] Enron filed for bankruptcy on December 2, 2001. In addition, the scandal caused the dissolution of Arthur Andersen, which at the time was one of the world's top accounting firms. The firm was found guilty of obstruction of justice in 2002 for destroying documents related to the Enron audit.[citation needed] Since the SEC is not allowed to accept audits from convicted felons, Andersen was forced to stop auditing public companies. Although the conviction was thrown out in 2005 by the Supreme Court, the damage to the Andersen name has prevented it from returning as a viable business even on a limited scale.

Enron also withdrew a naming rights deal with the Houston Astros Major League Baseball club to have its name associated with their new stadium, which was formerly known as Enron Field (now Minute Maid Park).[citation needed]

[edit]Accounting practices

Enron created offshore entities (units which may be used for planning and avoidance of taxes, raising the profitability of a business). This provided ownership and management with full freedom of currency movement and the anonymity that allowed the company to hide losses. These entities made Enron look more profitable than it actually was, and created a dangerous spiral, in which each quarter, corporate officers would have to perform more and more financial deception to create the illusion of billions in profits while the company was actually losing money.[21] This practice drove up their stock price to new levels, at which point the executives began to work on insider information and trade millions of dollars worth of Enron stock. The executives and insiders at Enron knew about the offshore accounts that were hiding losses for the company; however, the investors knew nothing of this. Chief Financial Officer Andrew Fastow led the team which created the off-books companies, and manipulated the deals to provide himself, his family, and his friends with hundreds of millions of dollars in guaranteed revenue, at the expense of the corporation for which he worked and its stockholders.[citation needed]

In 1999, Enron launched EnronOnline, an Internet-based trading operation, which was used by virtually every energy company in the United States. Enron president and chief operating officer Jeffrey Skilling began advocating a novel idea: the company didn't really need any "assets."[citation needed] By pushing the company's aggressive investment strategy, he helped make Enron the biggest wholesaler of gas and electricity, trading over $27 billion per quarter. The firm's figures, however, had to be accepted at face value. Under Skilling, Enron adopted mark to market accounting, in which anticipated future profits from any deal were tabulated as if real today. Thus, Enron could record gains from what over time might turn out to be losses, as the company's fiscal health became secondary to manipulating its stock price on Wall Street during the Tech boom.[citation needed] But when a company's success is measured by agreeable financial statements emerging from a black box, a term Skilling himself admitted, actual balance sheets prove inconvenient. Indeed, Enron's unscrupulous actions were often gambles to keep the deception going and so push up the stock price. An advancing number meant a continued infusion of investor capital on which debt-ridden Enron in large part subsisted. Much like a ponzi-scheme. Under pressure to maintain the illusion, Skilling verbally attacked Wall Street Analyst Richard Grubman,[22] who questioned Enron's unusual accounting practice during a recorded conference call. When Grubman complained that Enron was the only company that could not release a balance sheet along with its earnings statements, Skilling replied "Well, thank you very much, we appreciate that . . . asshole." Though the comment was met with dismay and astonishment by press and public, it became an inside joke among many Enron employees, mocking Grubman for his perceived meddling rather than Skilling's lack of tact. When asked during his trial, Skilling wholeheartedly admitted that industrial dominance and abuse was a global problem: "Oh yes, yes sure, it is."[23]

[edit]Peak and decline of stock price

In August 2000, Enron's stock price hit its highest value of $90.[24] At this point Enron executives, who possessed the inside information on the hidden losses, began to sell their stock. At the same time, the general public and Enron's investors were told to buy the stock. Executives told the investors that the stock would continue to climb until it reached possibly the $130 to $140 range, while secretly unloading their shares.

As executives sold their shares, the price began to drop. Investors were told to continue buying stock or hold steady if they already owned Enron because the stock price would rebound in the near future.[citation needed] Kenneth Lay's strategy for responding to Enron's continuing problems was in his demeanor. As he did many times, Lay would issue a statement or make an appearance to calm investors and assure them that Enron was headed in the right direction.[citation needed]

By August 15, 2001, Enron's stock price had fallen to $42. Many of the investors still trusted Lay and believed that Enron would rule the market.[citation needed] They continued to buy or hold their stock as the equity value declined. As October closed, the stock had fallen to $15. Many saw this as a great opportunity to buy Enron stock because of what Lay had been telling them in the media.[citation needed]

Lay was accused of selling over $70 million worth of stock at this time, which he used to repay cash advances on lines of credit. He sold another $20 million worth of stock in the open market.[citation needed] Also, Lay's wife, Linda, was accused of selling 500,000 shares of Enron stock totaling $1.2 million on November 28, 2001. The money earned from this sale did not go to the family but rather to charitable organizations, which already received pledges of contributions from the foundation.[citation needed] Records show that Mrs. Lay placed the sale order sometime between 10:00 and 10:20 am. News of Enron's problems, including the millions of dollars in losses they hid went public about 10:30 that morning, and the stock price soon fell to below one dollar.

Former Enron executive Paula Rieker was charged with criminal insider trading. Rieker obtained 18,380 Enron shares for $15.51 a share. She sold that stock for $49.77 a share in July 2001, a week before the public was told what she already knew about the $102 million loss.[citation needed]

[edit]Post-bankruptcy

Enron initially planned to retain its three domestic pipeline companies as well as most of its overseas assets. However, before emerging from bankruptcy, Enron spun off its domestic pipeline companies as CrossCountry Energy.[citation needed]

Enron sold its last business, Prisma Energy, in 2006, leaving it as an asset-less shell.[citation needed] In early 2007, it changed its name to Enron Creditors Recovery Corporation. Its goal is to pay off the old Enron's remaining creditors and wind down Enron's affairs.

Azurix, the former water utility branch of the company, remains under Enron ownership, although it remains asset-less. It is involved in several litigations against the government of Argentina claiming compensation relating to the negligence and corruption of the local governance during its management of the Buenos Aires water concession in 1999, which led to substantial amounts of debt (approx. $620 million) and the eventual collapse of the branch.[citation needed]

Shortly after emerging from bankruptcy in November 2004, Enron's new board of directors sued 11 financial institutions for helping Lay, Fastow, Skilling and others hide Enron's true financial condition. The proceedings were dubbed the "megaclaims litigation." Among the defendants were Royal Bank of Scotland, Deutsche Bank and Citigroup. As of 2008, Enron has settled with all of the institutions, ending with Citigroup. Enron was able to obtain nearly $20 billion dollars to distribute to its creditors as a result of the megaclaims litigation.[citation needed] As of December 2009, some claim and process payments are still being distributed

California's deregulation and subsequent energy crisis

In October 2000, Daniel Scotto, the top ranked utility analyst on Wall Street, suspended his ratings on all energy companies conducting business in California because of the possibility that the companies would not receive full and adequate compensation for the deferred energy accounts used as the cornerstone for the California Deregulation Plan enacted in the late 1990s.[citation needed] Five months later, Pacific Gas & Electric (PG&E) was forced into bankruptcy. Senator Phil Gramm, the second largest recipient of campaign contributions from Enron,[25] succeeded in legislating California's energy commodity trading deregulation. Despite warnings from prominent consumer groups which stated that this law would give energy traders too much influence over energy commodity prices, the legislation was passed in December 2000.

As Public Citizen reported, "Because of Enron�s new, unregulated power auction, the company�s 'Wholesale Services' revenues quadrupled�from $12 billion in the first quarter of 2000 to $48.4 billion in the first quarter of 2001."[26]

Before passage of the deregulation law, there had been only one Stage 3 rolling blackout declared. Following passage, California had a total of 38 blackouts defined as Stage 3 rolling blackouts, until federal regulators intervened in June 2001.[citation needed] These blackouts occurred mainly as a result of a poorly designed market system that was manipulated by traders and marketers. Enron traders were revealed as intentionally encouraging the removal of power from the market during California's energy crisis by encouraging suppliers to shut down plants to perform unnecessary maintenance, as documented in recordings made at the time.[27][28] These acts contributed to the need for rolling blackouts, which adversely affected many businesses dependent upon a reliable supply of electricity, and inconvenienced a large number of retail consumers. This scattered supply raised the price exponentially, and Enron traders were thus able to sell power at premium prices, sometimes up to a factor of 20x its normal peak value.

guilty verdict of 25 counts in the case against Enron executives, Ken Lay and Jeffery Skilling, demonstrates that the corporate governance laws in place prior to the passage of the Sarbanes-Oxley Act were effective in bringing those who defraud our investors to justice.

Post-Enron, there is general agreement that after Sarbanes-Oxley was passed, financial reporting reporter requirements are tighter, internal controls have improved, and there is more transparency in the overall auditing process than pre-Enron. However, data clearly shows that the cost of the implementation of a minor provision of the Act now outweigh the actual benefits of the entire Act.

Section 404 of SOX is only 168 words long but is regarded as the most burdensome part of this legislation. This section requires both an internal audit of financial accounting controls and an external audit. The implementation of these audits has been costly and time consuming for all businesses and unaffordable for many small and medium-sized businesses that are trying to compete in the global marketplace. The SEC initially estimated the costs to comply with Section 404 to be $91,000 per company; some studies estimate that actual compliance costs have been 30 times that figure. And the indirect costs on our economy are incalculable.

As a result, many companies have chosen to list on foreign exchanges in lieu of listing on an U.S. exchange. The Wall Street Journal reported that in 2000 "nine out of every 10 dollars raised by foreign companies through new stock offerings were done in New York....But by 2005, the reverse was true: Nine of every 10 dollars were raised through new company listings in London or Luxembourg..."

America's century-old lead in world capital formation is being outsourced due to self-inflicted policy wounds. When we ask how America is actively chasing away capital investment, a chorus responds with "Sarbanes-Oxley 404" (SOX). Our competitors agree -- the London Exchange advertises itself as a "SOX Free" zone.

A recent American Enterprise Institute study concluded that SOX has imposed a net cost on the American economy of $1.4 trillion. That is a 10% tax on the entire GDP of the United States. This hurts both employment growth and investors. Much of this superfluous regulatory tax can be eliminated by simply clarifying the 168 words in Section 404 that have caused so much confusion.

This is why I have introduced the COMPETE Act (Competitive and Open Markets that Protect and Enhance the Treatment of Entrepreneurs Act), to advance the reasonable application of SOX.

First, my legislation will allow smaller public companies to voluntarily opt-out of onerous Section 404 reporting requirements. They will still be required to maintain enhanced internal controls, more transparency, and prohibitions on conflicts of interest.

Secondly, the legislation instructs the SEC and PCAOB to define the standard of what is a true material weakness. This will allow auditors to focus on substantial issues truly affecting the investor's bottom line rather than auditing every insignificant transaction or accounting for every minor asset.

Thirdly, my legislation allows companies conducting an internal audit to receive technical advice from their external auditors. While PCAOB and external auditors claim that guidance has been issued to address this problem, the message is simply not getting through to auditors on the ground - resulting in an often hostile and costly relationship between the business and their auditing firms.

Lastly, under the COMPETE Act, all companies that have to comply with Section 404 will be subject to less frequent random external audits after first year of successful compliance.

The Orlando Business Journal had it right when they said that "nobody favors further erosion of protection and confidence in corporations. At the same time, saddling smaller public companies with exorbitant accounting expenses isn't justified."

I believe it is time to review the effects of Sarbanes-Oxley; keep that which is a net advantage to investors, and reform or eliminate those provisions that are a net disadvantage to investors. Congress needs to help restore America's lead in the world's capital markets.

Status

President George W. Bush signed the Sarbanes-Oxley Act of 2002 (Public Law 107-204) on Tuesday, July 30, 2002. Congress presented the act to the president on July 26, 2002, after passage in the Senate by a 99-0 vote and in the House by a 423-3 margin.

As enacted, the law will directly impact the following groups:

CPAs and CPA firms auditing public companies;

Publicly traded companies, their employees, officers, and owners�including holders of more than 10 percent of the outstanding common shares. This category would include CPAs employed by publicly traded companies as chief financial officers (CFOs) or in the finance department;

Attorneys who work for or have as clients publicly traded companies; and

Brokers, dealers, investment bankers and financial analysts who work for these companies.

Specifics

New Public Company Accounting Oversight Board (PCAOB)

The law establishes a five-member accounting oversight board that is subject to Securities and Exchange Commission (SEC) oversight.

Though the board oversees accounting firms, only two members of the board may be CPAs.

The SEC will appoint the board.

Duties of the board include registering public accounting firms that prepare audit reports; and establishing or adopting auditing, quality control, ethics and independence standards.

The board also inspects, investigates and disciplines public accounting firms and enforces compliance with the act.

Registration With the Board Is Mandatory. For public accounting firms, foreign or domestic, that participate in the preparation or issuance of any audit report with respect to a public company. Registration and annual fees collected from each registered CPA firm will go towards the costs of processing and reviewing applications and annual reports.

Seven-Year Record Retention Requirement. PCAOB must adopt a rule to require registered CPA firms to prepare and maintain audit work papers and other information related to an audit for at least seven years in sufficient detail to support the conclusions reached in the audit report. (A separate criminal provision requires retention of all audit and review workpapers for five years from the end of the fiscal year in which the audit or review was completed.)

Cooperation with CPA Groups. The board will cooperate with professional accountant groups and advisory groups to increase the effectiveness of the standards setting process. (The PCAOB may cooperate, but authority to set standards rests with the PCAOB, subject to SEC review.)

Annual Inspections. Inspection of registered public accounting firms shall occur annually for every registered public accounting firm that regularly provides audit reports for more than 100 issuers (at least once every three years for registered firms that audit fewer than 100 issuers).

Investigations. The board may investigate any act, omission or practice by a registered firm or an individual associated with a registered firm for any possible violation of the act, the board�s rules, professional standards, or provisions of the securities laws relating to the preparation and issuance of audit reports.

(a) The board may require testimony or documents and information (including audit work papers) from a registered firm or individual associated with a registered firm or in the possession of any other person.

Sanctions for violations that the board finds may include:

(a) Suspension or revocation of a registration;

(b) Suspension or bar of a person from further associating with any registered public accounting firm;

(c) Limitations on the activities of a firm or person associated with the firm; and

(d) Penalize the firm up to $2 million per violation, up to a maximum of $15 million.

(e) Individuals employed or associated with a registered firm who violate the act can face penalties that range from required additional continuing professional education (CPE) or training, disbarment of the individual from further association with any registered public accounting firm, or even a fine up to $100,00 for each violation, up to a maximum of $750,000.

(1) A portion of the penalties collected will go to accounting scholarships.

Funding. The law also provides independent funding for the Financial Accounting Standards Board (FASB). While the SEC and American Institute of CPAs (AICPA) both have recognized FASB as the standard setting body for accounting principles, federal authority to issue auditing, quality control, ethics and independence standards may seriously impact the AICPAs� role in official pronouncements.

(a) Source. The budget for the board and FASB will be payable from �annual accounting support fees� set by the board and approved by the Commission. The fees will be collected from publicly traded companies and will be determined by dividing the average monthly equity market capitalization of the company for the preceding fiscal year by the average monthly equity market capitalization of all such companies for that year.

Other Requirements for CPA Firms

Most Consulting Banned for Audit Clients. Title II of the act prohibits most �consulting� services outside the scope of practice of auditors.

(a) These services are prohibited even if pre-approved by the issuer�s audit committee.

(b) Prohibited services include:

- Bookkeeping and related services,

- Design and implementation of financial information systems,

- Appraisal or valuation services (including fairness opinions and contribution-in-kind reports),

- Actuarial services,

- Internal audit outsourcing,

- Services that provide any management or human resources,

- Investment or broker/dealer services, and

- Legal and �expert services unrelated to the audit.�

- Any other service that the board determines, by regulation, is impermissible.

(c) Services Not Prohibited. Firms, however, may provide tax services or others that are not listed, provided the firm receives pre-approval from the board. However, certain tax planning products, like tax avoidance services, may be considered prohibited nonaudit services.

Audit Reports Require Concurring Partner Review. Requires a concurring or second partner�s review and approval of all audit reports and their issuance.

�Revolving Door� Employment of CPAs with Audit Clients Is Banned. A registered CPA firm is prohibited from auditing any SEC registered client whose chief executive, CFO, controller or equivalent was on the audit team of the firm within the past year.

Audit Partner Rotation Required. Audit partners who either have performed audit services or been responsible for reviewing the audit of a particular client must be rotated every five consecutive years. CPAs should read carefully the requirements for rotation of both the partner-in-charge and the concurring review partner for certain organizational constraints.

(a) No Firm Rotation Requirement. Firm rotation is not required. However, the U.S. Comptroller General will study and review the potential effects of mandatory rotation and will report its findings to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

CPA Firms Are Required to Report Directly to the Audit Committee.

CPA Firm Consolidations to Be Studied. The U.S. Comptroller General will conduct a study analyzing the impact of the merger of CPA firms to determine if consolidation leads to higher costs, lower quality of services, impairment of auditor independence, or lack of choice.

Corporate and Criminal Fraud Accountability. Changes to the securities laws can penalize anyone found to have destroyed, altered, hid or falsified records or documents to impede, obstruct or influence an investigation conducted by any federal agency, or in bankruptcy, with fines or up to 20 years imprisonment, or both.

Current Requirements for Audit Firms. Accountants are required to maintain all audit or review workpapers for a period of five years from the end of the fiscal period in which the audit or review was concluded.

Additional Rules. The law requires the SEC to promulgate rules and regulations on the retention of any and all materials related to an audit, including communications, correspondence and other documents created, sent or received in connection with an audit or review.

(a) Penalties. For violating the requirement or the rules that will be developed will result in a fine, or up to 10 years imprisonment, or both.

Of Note to Industry Members�Requirements for Corporations, Their Officers and Board Members

No Lying to the Auditor. The act makes unlawful for an officer or director or anyone acting for a principal to take any action to fraudulently influence, coerce, manipulate or mislead the auditing CPA firm.

Code of Ethics for Financial Officers. The SEC is mandated to issue rules adopting a code of ethics for senior financial officers.

Financial Expert Requirement. The SEC is required to issue rules requiring a publicly traded company�s audit committee to be comprised of at least one member who is a financial expert.

Audit Committee Responsible for Public Accounting Firm. The act vests the audit committee of a publicly traded company with responsibility for the appointment, compensation and oversight of any registered public accounting firm employed to perform audit services.

Audit Committee Independence. Requires audit committee members to be members of the board of directors of the company, and to otherwise be independent.

CEOs & CFOs Required to Affirm Financials. Chief executive officers (CEOs) and CFOs must certify in every annual report that they have reviewed the report and that it does not contain untrue statements or omissions of material facts.

(a) Penalty for Violation. If material noncompliance causes the company to restate its financials, the CEO and CFO forfeit any bonuses and other incentives received during the 12-month period following the first filing of the erroneous financials.

CEOs & CFOs Must Enact Internal Controls. CEOs and CFOs will be responsible for establishing and maintaining internal controls to ensure they are notified of material information.

Penalties for Fraud. The act also has stiffened penalties for corporate and criminal fraud by company insiders. The law makes it a crime to destroy, alter or falsify records in a federal investigation or if a company declares bankruptcy. The penalty for those found guilty includes fines, or up to 20 years imprisonment, or both.

Companies Affected by the Act. Publicly traded companies affected by the act are those defined as an �issuer� under Section 3 of the Securities Exchange Act of 1934, whose securities are registered under Section 12 of the 1934 Act. An issuer also is considered a company that is required to file reports under Section 15(d) of the act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933. The SEC has yet to provide further guidance as to entities covered by the act.

Debts Not Dischargeable in Bankruptcy. Amends federal bankruptcy law to make non-dischargeable in bankruptcy certain debts that result from a violation relating to federal or state securities law, or of common law fraud pertaining to securities sales or purchases.

Expanded Statute of Limitations for Securities Fraud. For a civil action brought by a non-government entity or individual, an action involving a claim of securities fraud, deceit or manipulation may be brought not later than the earlier of two years after discovery or five years after the violation.

No Listing on National Exchanges for Violators. The SEC will direct national securities exchanges and associations to prohibit the listing of securities of a noncompliant company.

No Insider Trading. No insider trading is permitted during pension fund blackout periods. The insider must forfeit any profit during this period to the company.

SEC Rules on Enhanced Financial Disclosures.

(a) Off-Balance Sheet Transactions: All quarterly and annual financial reports filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities.

(b) Pro Forma Figures: Pro forma financial information in any report filed with the SEC or in any public release cannot contain false or misleading statements or omit material fact necessary to make the financial information not misleading.

No Personal Loans. No personal loans or extensions of credit to company executives either directly or though a subsidiary, except for certain extensions of credit under an open-ended credit plan or charge card, home improvement and manufactured home loans, or extensions of credit by a broker or dealer to its employee to buy, trade or carry securities.

(a) The terms of permitted loans cannot be more favorable than those offered to the general public.

Criminal Penalties Enhanced\*

BEHAVIOR

SENTENCE

The alteration, destruction, concealment of any records with the intent of obstructing a federal investigation. Fine and/or up to 10 years imprisonment.

Failure to maintain audit or review �workpapers� for at least five years. Fine and/or up to 5 years imprisonment.

Anyone who �knowingly executes, or attempts to execute, a scheme� to defraud a purchaser of securities. Fine and/or up to 10 years imprisonment.

Any CEO or CFO who �recklessly� violates his or her certification of the company�s financial statements.

If �willfully� violates.

Fine of up to $1,000,000 and/or up tp 10 years imprisonment.

Fine of up to $5 million and/or up to 20 years imprisonment.

Two or more persons who conspire to commit any offense against or to defraud the U.S. or its agencies. Fine and/or up to 10 years imprisonment.

Any person who �corruptly� alters, destroys, conceals, etc., any records or documents with the intent of impairing the integrity of the record or document for use in an official proceeding. Fine and/or up to 20 years imprisonment.

Mail and wire fraud.

Violating applicable Employee Retirement Income Security Act (ERISA) provisions.

Increase from 5 to 20 years imprisonment.

Various lengths depending on violation.

\* Source: Sarbanes-Oxley Act of 2002 and New York City Office of the Comptroller.

Analyst Conflicts of Interest

No Retaliation Against Analysts. Brokers and dealers of securities are not allowed to retaliate or threaten to retaliate against an analyst employed by the broker or dealer as a result of an adverse, negative or unfavorable research report on a public company.

Conflict of Interest Disclosures. Securities analysts and brokers or dealers are required to disclose conflicts of interest, such as:

(a) Whether the analyst has investments or debt in the company it is reporting on;

(b) Whether any compensation received by the broker, dealer or analyst is �appropriate in the public interest and consistent with the protection of investors;�

(c) Whether an issuer has been a client of the broker or dealer; and

(d) Whether the analyst received compensation with respect to a research report based on investment banking revenues.

Attorney Requirements

Requirement on Attorneys to Report Violations. The SEC is required to issue rules setting forth minimum standards of professional conduct for attorneys appearing and representing a public company in any manner in front of the Commission. As part of this requirement, the SEC will be required to issue rules on the following:

(a) Requiring attorneys employed by a public company to report to the chief counsel or CEO of the company, evidence of a �material� violation of securities law, breach of fiduciary duty, or similar violation by the company or its agent.

(b) Once reported, if the counsel or CEO does not appropriately respond to the evidence, the attorney must report the evidence to the board of directors or its audit committee.