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Capital Markets and Securities

A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

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SARBANES – OXLEY ACT OF 2002

The recently enacted Sarbanes-Oxley Act of 2002 (the "Act") provides sweeping changes in the areas of corporate governance, accounting practices and disclosure requirements both for public companies and for their directors and officers. While certain provisions take effect immediately, others direct the SEC to promulgate implementing rules and regulations and to conduct numerous studies, which in turn will likely prompt further rulemaking.

The Act is applicable to companies that have securities traded on Nasdaq or a national securities exchange as well as to companies whose securities are not so traded but who are otherwise required to file reports with the SEC pursuant to Section 13(a) or 15(d)of the Securities Exchange Act of 1934 (the "Exchange Act"). The Act's requirements apply to both foreign private issuers and U.S. companies. This represents a significant departure from the longstanding practice of deferring to the regulatory regime of foreign private issuers' home countries for many disclosure, reporting and governance issues.

We have summarized below the principal provisions of the Act. The full text of the Act is available at http://financialservices.house.gov/media/pdf/H3763CR_HSE.PDF, and more detailed memoranda on specific provisions of the Act are available on our website at www.vedderprice.com.

Corporate Responsibility

Corporate Responsibility for Financial Reports; Civil Provision (Section 302). The Act directs the SEC to adopt new CEO and CFO certification rules to become effective no later than August 29, 2002. The rules will require the CEO and CFO of all issuers to certify, in each annual or quarterly report filed or submitted under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), that:

- The signing officer has reviewed the report;
- Based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the

statements made, in light of the circumstances under which such statements were made, not misleading;

- Based on the officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

- The signing officers:

  - Are responsible for establishing and maintaining internal controls;

  - Have designed such internal controls to ensure that material information related to the issuer and its consolidated subsidiaries is made known to them, particularly during the period in which the reports are being prepared;

  - Have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report;

  - Have presented in the report their conclusions about the effectiveness of the internal controls based upon their evaluation;

  - Have disclosed to the auditors and the audit committee all significant deficiencies in such controls or any fraud (whether or not material) involving management or other employees having a significant role in the issuer's internal controls which may have an adverse effect on the issuer's ability to report financial data; and

  - Have indicated in the report whether or not there were significant changes in internal controls or other factors that could affect internal controls after the date of their evaluation.

Corporate Responsibility for Financial Reports; Criminal Provision (Section 906). This section of the Act contains a separate criminal provision related to the failure of corporate officers to certify financial reports. Unlike Section 302, this section is immediately effective. This section requires that every "periodic" report containing financial statements "filed" with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act shall be "accompanied by" a written statement of the CEO and CFO of the issuer certifying that the periodic report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and that the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. The requirement applies to annual reports on Form 10-K, 20-F and 40-F and quarterly reports on Form 10-Q (and their respective small business company form counterparts). Companies filing or furnishing reports on Form 8-K or 6-K containing financial statements should consult counsel as to the applicability of this section.

The Act provides that any officer who certifies a statement "knowing that the periodic report . . . does not comport with all the requirements set forth in this section" will be subject to a fine of up to $1 million or up to 10 years' imprisonment, or both. The penalties increase to a fine of up to $5 million or up to 20 years' imprisonment, or both, if such violation is willful. While the certifications required by Section 906 are not qualified "to the best of the officer's knowledge" as in Section 302, the knowledge element must be present before the above criminal penalties are imposed. Nonetheless, many certifying officers are including an express "knowledge" qualifier to mitigate potential civil liability which may arise out of false or misleading reports. No penalties for failure to submit a certification are specified.

Public Company Audit Committees (Section 301). The Act directs the SEC to require securities exchanges not later than April 26, 2003 to prohibit the listing of any security of a company which is not in compliance (subject to an opportunity to cure) with the following requirements that the audit committee:

- be directly responsible for the appointment, compensation and oversight of the work of any audit firm employed by that issuer (and the firm shall report directly to the audit committee);

- be composed of "independent members" of the issuer's board of directors — in order to be "independent", a director may not, other than in his or her capacity as a member of the board or any board committee, accept any consulting, advisory, or other compensatory fee from the public company, or be an affiliated person of the public company or any of its subsidiaries;

- establish procedures for the treatment of complaints and the protection of whistleblowers with regard to questionable accounting or auditing matters;

- have the authority to engage advisers, including independent counsel; and

- have appropriate funding, as determined by the audit committee, for payment to the auditors and any advisors retained by the audit committee.

The Act also sets forth provisions (discussed in greater detail below) to ensure a close and regular working relationship between audit committees and outside auditors. Under Section 202, audit committees are required to pre-approve all audit and non-audit services. Under Section 204, outside auditors are required to regularly report to the issuer's audit committee regarding the conduct of audits.

Improper Influence on the Conduct of Audits (Section 303). The Act makes it unlawful for an officer, director, or person acting under the direction of management of an issuer to "fraudulently influence, coerce, manipulate, or mislead" any auditor for the purpose of creating materially misleading financial statements. Rules related to this section must be proposed by the SEC by October 28, 2002, and must be finalized by April 26, 2003.

Forfeiture of Certain Bonuses and Profits (Section 304). If an issuer is required to restate its financial statements due to material noncompliance with financial reporting requirements as a result of misconduct, the CEO and CFO must reimburse the issuer for any bonus or other incentive-based or equity-based compensation received and any profits realized by them from the sale of securities of the issuer, all within the 12-month period following the first public issuance or date of SEC filing (whichever first occurs). The SEC has the discretion to provide exemptions to this section where appropriate. This provision was effective upon enactment.

Officer and Director Bars for Unfitness (Section 305 and Section 1105). The Act amends the standard required before a court can bar an officer or director from serving as an officer or director of a public company by substituting "unfitness" for "substantial unfitness". Additionally, the Act now empowers the SEC in cease and desist proceedings to bar any person from acting as an officer or director of a public company if such person has violated Section 10(b) under the Exchange Act or Section 17(a)(1) under the Securities Act, or the rules under such sections. These provisions were effective upon enactment.

Insider Trading During Pension Fund Blackout Periods (Section 306). The Act prohibits any director or executive officer of a public company from purchasing, selling, or otherwise acquiring or transferring any equity security of the issuer during any blackout period, if such equity security was acquired in connection with the director's or officer's service as such. A "blackout period" is defined as any period of more than 3 consecutive business days when 50% or more of the participants or beneficiaries of the issuer's individual account plans (e.g., 401(k) plans, but excluding certain one-participant plans) are temporarily suspended by the issuer from trading in such securities. There is an exception for regularly scheduled blackout periods, provided that the periods are incorporated into the individual employee account plan and have been properly disclosed. Issuers must notify the SEC, directors and executive officers of the blackout period. Issuers must also provide 30 days' prior notice of a blackout period to all plan participants and beneficiaries, subject to certain exceptions. If the issuer fails to bring an action to recover profits made by a director or executive officer through improper trading during a blackout period within 60 days after the date of request, the owner of any security of the issuer may, for a period of 2 years following the date a prohibited profit is realized, sue derivatively and recover profits on the issuer's behalf. The Secretary of Labor is required to issue initial guidance and a model notice pursuant to Section 101(i)(6) of ERISA by January 1, 2003. The Secretary must also promulgate rules necessary to carry out the purposes of this section by October 13, 2002. The provisions of this section shall take effect by January 26, 2003.

Enhanced Financial Disclosures

Disclosures in Periodic Reports (Section 401). The Act requires that each financial report of a public company (other than registered investment companies) that is required to be prepared in accordance with (or reconciled to) GAAP contain all material correcting adjustments that have been identified by a registered public accounting firm. In addition, the SEC is directed to issue final rules not later than January 26, 2003 which provide that:

- Each annual and quarterly financial report *shall disclose all material off-balance sheet transactions*, arrangements, obligations (including contingent obligations), and

other relationships of the company with unconsolidated entities or other persons that may have a material current or future effect on financial condition or operations; and

- Pro forma financial information either included in any reports filed with the SEC or in any public disclosure or press release be presented in a manner that does not contain an untrue statement or an omission or a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading, and that reconciles it with the financial condition and results of operations of the company under GAAP.

Pre-approval of audit and non-audit services by an issuer's audit committee, as required in Section 202 of the Act, must also be disclosed in an issuer's periodic reports.

Ban on Personal Loans to Executives (Section 402). The Act amends the Exchange Act to prohibit, effective as of the date of enactment, any public company (other than registered investment companies), directly or indirectly, from extending or maintaining credit, arranging for or renewing an extension of credit in the form of a personal loan to or for any director or executive officer of the company. This provision exempts existing loans, but prohibits the material modification of any terms or the renewal of such loans.

This limitation does not preclude a variety of loans that are made or provided in the ordinary course of business, that are of a type that is generally available to the public, and that are made on terms that are no more favorable than those offered by the issuer to the general public.

The provision leaves open to interpretation what involves "credit" and, as such, may affect additional financial arrangements that are not traditional loans.

Transactions Involving Management and Principal Stockholders (Section 403). The Act amends Section 16 of the Exchange Act, effective August 29, 2002, by requiring directors, officers, and beneficial owners of more than 10% of a class of equity securities to report changes in beneficial ownership on Form 4 at the end of the second business day following the day on which the transaction was executed. The SEC is authorized to establish exceptions for situations where the 2-day reporting period is not feasible. However, the SEC has indicated that it will provide only narrow, transaction-specific exceptions pursuant to final rules to be adopted by August 29, 2002.

Effective July 30, 2003, such statements must be filed electronically and will be maintained by the SEC at a publicly available website. The company shall also provide the statements on its website no later than close of business on the day following the filing.

Management Assessment of Internal Controls (Section 404). The Act directs the SEC to issue rules requiring public companies (other than registered investment companies) to include an internal control report in all annual reports which shall state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and contain an assessment of the effectiveness of the internal control structure and

procedures as of the most recent fiscal year. The company's outside auditor is required to attest to and report on management's internal control assessment. There is no date specified by which this provision must take effect.

Code of Ethics for Senior Financial Officers (Section 406). The Act directs the SEC to issue rules requiring public companies to include a statement in their periodic reports indicating whether they have adopted a code of ethics for their senior financial officers, and if not, why they have not done so. Any change in or waiver of an existing code of ethics will be required to be immediately disclosed on Form 8-K or by other electronic means. The Act defines "code of ethics" as such standards reasonably necessary to promote:

- honest and ethical conduct, including the ethical handling of conflicts of interests;
- full, fair, accurate, timely and understandable disclosure in periodic reports; and
- compliance with applicable rules and regulations.

The SEC is directed to propose such rules not later than October 28, 2002 and to adopt final rules not later than January 26, 2003.

Disclosure of Audit Committee Financial Expert (Section 407). The Act directs the SEC to issue rules requiring public companies to include a statement in their periodic reports indicating whether the company's audit committee has at least one member who is a financial expert, and if not, why that is not the case. The SEC is to define "financial expert", giving consideration to whether a person has, through education and experience as a public accountant or auditor, CFO, comptroller, principal accounting officer or similar position, an understanding of GAAP, financial statements and audit committee functions, and experience in:

- the preparation or auditing of financial statements of generally comparable companies;
- the application of GAAP in connection with accounting for estimates, accruals and reserves; and
- internal auditing controls.

The SEC is directed to propose such rules not later than October 28, 2002 and to adopt final rules not later than January 26, 2003.

Enhanced Review of Periodic Disclosures (Section 408). The Act requires the SEC to review, "on a regular and systematic" basis (but, in any event, no less than once every three years), the periodic disclosures made by companies under Section 13(a) of the Exchange Act, including a review of financial statements. In scheduling reviews, the SEC is directed to consider companies:

- that have issued material restatements;
- that experience significant stock price volatility relative to other companies;
- that have a relatively large market capitalization;
- that have limited operating histories and disparities in price to earnings ratios; and
- that have operations that significantly affect any material sector of the economy.

Real Time Issuer Disclosures (Section 409). The Act requires that each company reporting under Section 13(a) or 15(d) of the Exchange Act disclose additional information, as the SEC determines by rule is necessary and useful for the protection of investors, related to material changes in financial condition or operations in plain English and "on a rapid and current basis." This provision represents a significant departure from the current state of securities law that public companies do not have a *general* duty to promptly disclose material events. Currently, the securities laws mandate prompt disclosure of material information only in specific circumstances, including where required in connection with a periodic report or a line item of Form 8-K, where a company is purchasing or selling its own securities, where a statement is necessary to correct a prior materially inaccurate statement or to prevent insider trading. The Act does not specify a deadline by which the SEC must adopt rules.

Corporate Tax Returns (Section 1001). This non-binding provision of the Act expresses the sense of the Senate that "the Federal income tax return of a corporation" be signed by the CEO of that corporation.

Rules of Professional Responsibility for Attorneys *(Section 307).*

The Act directs the SEC to issue rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before the SEC in the representation of issuers. Such rules will include:

- a requirement that an attorney report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the issuer or any agent thereof to the chief legal counsel or the CEO of the issuer; and
- a requirement that the attorney report the evidence to the audit committee of the board of directors of the issuer, or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

Public Company Accounting Oversight Board; Auditor Independence

The Public Company Accounting Oversight Board (The "Board") (Section 101). The Board created by the Act will operate as a nonprofit corporation consisting of 5 members, only two of

whom shall be or have been certified public accountants. The SEC is required to appoint the members of the Board by October 28, 2002 and have oversight responsibility for its actions. The Board must be organized and capable of fulfilling its requirements under the Act by April 26, 2003. The Board is to issue rules in order to fulfill four main duties:

- to register accounting firms that conduct audits for public companies;
- to establish auditing, quality control, ethics, independence and other standards related to the preparation of audit reports;
- to conduct inspections; and
- to conduct investigations and disciplinary proceedings and impose appropriate sanctions. All Board rules are subject to SEC approval, and all Board actions are likewise subject to SEC review. (Section 107).

Registration (Section 102). Any accounting firm ("firm") that provides audit services to a public company ("issuer") is required to register with the Board within 180 days after the Board's effective date of operation (which will be not later than April 26, 2003). Firms that have not registered by this date are barred from providing audit services to issuers. The firms must provide lists of all issuer audit clients and include fees received for audit and non-audit services. A complete list of information to be disclosed is set forth in Annex C.

Auditing, Quality Control, and Independence Standards (Section 103). The Board shall issue rules to establish various standards to be used by firms in the preparation of audit reports. The Board has the authority to adopt standards proposed by advisory groups or certain groups of professional accountants as well. The Act requires that the standards include, among others, the following specific rules:

- Each firm shall maintain audit work papers and any related information for at least 7 years;
- Each firm shall provide for review and approval of each audit report and concurring approval in its issuance by a qualified person (as defined by the Board) or by an independent reviewer (as defined by the Board); and
- Each firm shall provide in its audit report the scope of internal control structure testing as required by Section 404(b) of the Act which contains: 1) specific findings regarding the adequacy of the issuer's internal control structure and procedures, 2) a reasonable assurance that the transactions are recorded in a manner which allows for the preparation of financial statements in accordance with GAAP, and 3) a description of any material weaknesses in such internal controls and any material noncompliance found on the basis of the testing.

Inspections (Section 104). Firms that provide audit services to 100 or more public companies will be subject to annual inspection by the Board; all others will be inspected at least

once every three years. In conducting such inspections, the Board is empowered to require testimony and documents from the firms and request the same from their clients. Documents and information received by the Board in connection with inspections shall be confidential and privileged as an evidentiary matter. The Board may issue rules regarding document retention for firms related to these inspections.

Sanctions (Section 104(c)(4)-(5)). Upon a determination of a knowing violation of the Act, Board rules, or securities laws related to audits, the Board can suspend or revoke a firm's registration or can bar or suspend any person from association with a registered firm. The Board may also impose a temporary or permanent limitation on the activities, functions, or operations of such firm or person. Civil penalties of up to $750,000 for a natural person and $15 million for a firm may also be assessed. For violations not rising to the level of "intentional or other knowing conduct", the Board may impose censure, require additional education or training, or impose fines of up to $100,000 for a natural person and $2 million for a firm. Additional appropriate sanctions may be provided for in rules established by the Board.

Foreign Public Accounting Firms (Section 106). Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer is subject to this Act. The foreign firm is deemed to have consented to the production of its workpapers in connection with an audit investigation and to be subject to U.S. jurisdiction if the foreign firm issues an opinion or "performs material services upon which a registered public accounting firm relies" in issuing any part of an audit report or opinion.

Non-Audit Services (Section 201). The Act bars public accounting firms from providing the following non-audit services to their audit clients:

- bookkeeping and related accounting services;
- financial information systems services;
- appraisal or valuation services, including fairness opinions and contribution-in-kind reports;
- actuarial services;
- internal audit outsourcing services;
- management or human resources services;
- investment advisor services;
- legal services; and
- other services deemed impermissible by the Board.

The Board has authority to exempt any person, issuer, firm or transaction from these restrictions, subject to SEC review.

Audit Committee Pre-Approval of Services (Section 202). The Act requires the issuer's audit committee (or, in the absence of an audit committee, the entire board of directors) to pre-approve all audit services and non-audit services listed above, subject to a de minimus exception. Such approval is required to be disclosed to investors in periodic reports required by the SEC (Section 13(a)).

Audit Partner Rotation (Section 203). The Act prohibits the lead (or coordinating) audit partner and the reviewing audit partner from performing audit services for the same public company for more than five consecutive years. It is unclear whether the Act includes years prior to enactment in this determination, though it refers to "registered public accounting firms", which suggests that this provision will not be effective, and the five year period will not begin to run, until the Board is established and has completed the registration process for a firm.

Auditor Communication with Audit Committee (Section 204). This provision requires firms to timely report the following information to an issuer's audit committee:

- all of the issuer's critical accounting policies and practices;
- all alternative treatments of financial information within GAAP discussed with management, including the ramifications of such alternative treatment and the firm's preferred method of treatment; and
- other material written communications between the firm and the issuer's management, such as any management letter or schedule of unadjusted differences.

Auditor Conflicts of Interest (Section 206). A firm may not provide audit services to an issuer if the CEO, CFO, chief accounting officer, controller, or any equivalent thereof was employed by the firm and participated in any capacity in the issuer's audit during the 1-year period preceding the audit initiation.

Funding (Section 109). The main source of funds for Board operations will come from an annual fee assessed against all public companies based on their relative market capitalization. The cost of reviewing and processing registration materials will be provided for in annual fees assessed against public accounting firms. (Section 102).

New Criminal Provisions and Civil Penalties

The Act toughens penalties for several existing crimes (including mail fraud, wire fraud, ERISA violations, and violations under Section 32(a) of the Exchange Act), creates new crimes, and requires the U.S. Sentencing Commission to revise sentencing guidelines to reflect the serious nature of corporate fraud and obstruction of justice.

Destroying or Altering Records and Record Retention (Sections 802, 1102).

- Any person who knowingly alters or destroys a document with the intent to impede any investigation or administration of any federal investigation or bankruptcy case is subject to fine and imprisonment of up to 20 years. (Section 802)

- Any person who corruptly alters or destroys a record or document with the intent to impair the document's integrity or availability for use in an official proceeding or otherwise attempts to influence such a proceeding is subject to fine and imprisonment of up to 20 years. (Section 1102)

- Accountants or firms conducting issuer audits are required to maintain all audit records or review workpapers for 5 years from the end of the fiscal period in which the audit or review was conducted. Any person who knowingly and willfully violates this section is subject to fine and imprisonment of up to 10 years.

Defrauding Shareholders of Public Companies (Section 807) Any person who knowingly employs or attempts to employ a scheme to 1) defraud a person in connection with any security registered under the Exchange Act; or 2) obtain money or property in connection with the purchase or sale of any security of an issuer by false representations or promises is subject to fine and imprisonment of up to 25 years.

Temporary Freeze Authority (Section 1103). If, in the course of an investigation of securities violations, it appears that an issuer is likely to make extraordinary payments to any of its employees, the SEC may seek a temporary order freezing the payments for 45 days, with a possible extension to 90 days.

Authority to Prohibit Persons From Serving as Officers or Directors (Section 1105). The SEC may prohibit a person who has committed securities fraud from serving as an officer or director of an issuer.

Debts Nondischargeable if Incurred in Violation of Securities Fraud Laws (Section 803). Any judgment, settlement, or other administrative order for damages related to any securities law violation or fraud in connection with the trading of any security is no longer dischargeable in personal bankruptcy. This rule applies only to individuals.

Statute of Limitations Extended (Section 804). The Act extends the statute of limitations for securities fraud to either 1) 2 years after discovery of the facts constituting the violation, or 2) 5 years after the violation. The previous limits for filing were 1 year and 3 years, respectively.

Analyst Conflicts of Interest *(Section 501).*

The Act directs the SEC to adopt rules (or direct a registered securities association or national securities exchange to adopt rules) to address conflicts of interest involving securities analysts. The NYSE and Nasdaq have recently adopted rules which cover many of the issues highlighted in the Act.

Specifically, the Act aims to:

- restrict the ability of investment bankers to pre-approve research reports;
- ensure that research analysts are not supervised by persons involved in investment banking;
- prevent retaliation against analysts for negative reports;
- establish blackout periods for brokers or dealers participating in a public offering during which they may not distribute reports related to such offering; and
- enhance structural separation between analyst and investment banking activities for registered broker-dealers.

In addition to setting the above standards, the Act also requires the adoption of rules requiring conflict of interest disclosures by research analysts making public appearances and by broker-dealers in research reports. The disclosures are related to any compensation received or client relationship between the subject of the report and the analyst or broker-dealer.

Studies and Reports

Title VII of the Act also mandates the conduct of numerous studies, the results of which will likely generate additional rulemaking by the SEC and securities exchanges, and possibly additional legislation. A summary of such studies and the time frame in which they must be completed is included in Annex B.

ANNEX A

IMPLEMENTATION/EFFECTIVE DATES UNDER THE ACT	
Date	**Description**
Provisions taking effect immediately	1. Section 202 (audit committee pre-approval); 2. Section 906 (CEO/CFO certification requirements); 3. Section 304 (forfeiture of certain bonuses and profits); 4. Section 305 (officer and director bars and penalties); and 5. Section 402 (prohibition of loans to executive officers).
August 29, 2002	The SEC shall promulgate rules requiring CEO and CFO certification of every annual or quarterly report filed with the SEC. (Section 302)
	Changes in beneficial ownership by a director, officer, or stockholder owning more than 10% of an issuer must be reported on Form 4 at the end of the second business day following the transaction date. (Section 403)
October 13, 2002	The Secretary of Labor shall promulgate interim final rules necessary to carry out the purposes of section 306, specifically providing for the advance notice of pension fund blackout periods.
October 28, 2002	The SEC shall appoint the chairperson and other initial members of the Board. (Section 101(e)(4)(A))
	The SEC shall issue proposed rules prohibiting directors and officers of an issuer to fraudulently induce or mislead an auditor with the purpose of creating a materially misleading financial statement. (Section 303) (to be finalized within 270 days)
	The SEC shall issue proposed rules to require disclosure of the existence of a code of ethics for senior financial officers. (Section 406)
	The SEC shall issue proposed rules related to the disclosure of whether an audit committee has a financial expert as a member. (Section 407)
January 26, 2003	The SEC shall issue final rules implementing various provisions of the Act related to Auditor Independence. (Section 208)
	The SEC shall issue rules regarding the provision of notice for pension fund blackout periods. (Section 306)
	The SEC shall issue rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before the SEC in any way in the representation of issuers. (Section 307)
	The SEC shall issue final rules providing for the disclosure regarding off-balance sheet transactions and pro forma information. (Section 401)

IMPLEMENTATION/EFFECTIVE DATES UNDER THE ACT	
Date	**Description**
January 26, 2003	The SEC shall issue final rules to require disclosure of the existence of a code of ethics for senior financial officers. (Section 406)
	The SEC shall issue final rules requiring the disclosure of whether an audit committee has a financial expert as a member. (Section 407)
	The SEC shall issue rules necessary related to the retention of audit and review records. (Section 802)
	The Federal Sentencing Commission shall amend sentencing guidelines related to various white collar crime provisions. (Sections 805, 905, 1104)
April 26, 2003	The SEC shall issue final rules prohibiting directors and officers of an issuer to fraudulently induce or mislead an auditor with the purpose of creating a materially misleading financial statement. (Section 303)
	The SEC shall determine that the Board is operative and able to fulfill its requirements under the Act. (Section 101(d))
July 30, 2003	The SEC shall issue rules related to analyst conflict of interest and disclosure provisions. (Section 501)
180 days after the SEC determines the Board is operative	It shall be unlawful as of this date for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of any audit report with respect to any issuer. (Section 102(a))

STUDIES TO BE COMPLETED UNDER THE ACT		
Date	**Description of Study**	**To be completed by**
January 26, 2003	Study regarding enforcement actions including civil penalties or disgorgement to identify areas for improvement as well as other methods to provide restitution to injured investors, including methods to improve collection rates. (Section 308(c))	SEC
	Study of the role and function of credit rating agencies in the operation of the securities market. (Section 702)	SEC
	Study reviewing and analyzing all enforcement actions brought by the SEC involving reporting requirement violations and restatements of financial statements over the 5-year period preceding the date of enactment of this Act. (Section 704)	SEC
	Study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obscuring their true financial condition, particularly in the case of Enron and Global Crossing. (Section 705)	Comptroller General
January 30, 2003	Study of violators of securities laws, including specific provisions violated and penalties assessed, for the period of 1/1/98 through 12/31/01. (Section 703)	SEC
July 30, 2003	Study on the adoption of a principles-based accounting system (as opposed to rules-based). (Section 108(d))	SEC
	Study on the potential effects of requiring the mandatory rotation of registered public accounting firms. (Section 207)	Comptroller General
	Study of filings by issuers and their disclosures required by section 13(j) of the Securities and Exchange Act of 1934 to determine the extent of off-balance sheet-transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion. (Section 401)	SEC
	Study identifying factors that have led to the consolidation of public accounting firms, including the present and future impact of such consolidation and solutions to any potential problems, including means of increasing competition. (Section 701)	Comptroller General

STUDIES TO BE COMPLETED UNDER THE ACT		
Date	**Description of Study**	**To be completed by**
January 30, 2004	Report setting forth the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Exchange Act 1934; the extent to which special purpose entities are used to facilitate off-balance sheet transactions; whether GAAP or the SEC rules result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion; whether GAAP specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and any recommendations of the SEC for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the SEC.	SEC

Information required in firm applications for registration with the Board
(Sections 102(b)(2)(A)-(H); 102(b)(3)(A)-(B))

- The names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

- The annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

- Such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

- A statement of the quality control policies of the firm for its accounting and auditing practices;

- A list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, including the license or certification number of each such person, as well as the State license numbers of the firm itself;

- Information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

- Copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer;

- Such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors;

- A consent executed by the firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

A statement that such firm understands and agrees that cooperation and compliance as described in the consent shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

Vedder Price is a national, full-service law firm with more than 200 attorneys in Chicago, New York and New Jersey. Please contact your Vedder Price contact attorney with any questions or if you need any assistance.

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About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with more than 200 attorneys in Chicago, New York City and Livingston, New Jersey. The attorneys in the firm's Capital Markets Group regularly represent corporations and investment bankers, both foreign and domestic, in a wide variety of matters, including:

- debt and equity offerings, including initial public offerings, structured debt financings, aircraft securitizations, dual-class equity structures, and sophisticated preferred stock instruments;
- capital formation for initial capitalization, financing ongoing operations, and acquisitions;
- corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
- private placement of securities, including Rule 144A and Regulation S transactions;
- tender offers, mergers and acquisitions, and recapitalizations and restructurings;
- international offerings of securities and compliance by foreign issuers with U.S. securities laws;
- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

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