107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To guarantee persons who invest in publicly held companies accurate information about the financial condition of such companies so they can make fully informed investment decisions, to increase the independence of the Financial Accounting Standards Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Shareholder Bill of Rights Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) approximately 1 out of every 2 American households owns stock directly or indirectly in United States publicly traded companies, with significant savings, educational, retirement, and other investments dependent upon the effective functioning of United States capital markets;

(2) the American public has lost confidence in the quality of information they receive about the financial condition of publicly traded United States companies in which they may invest;

(3) publicly traded companies and the businesses that provide services related to the value and exchange of the stock of such companies, including auditors, financial analysts, investment bankers, and stockbrokers, have too often engaged in practices that fail accurately to describe, evaluate, and explain the true financial situation of a company;

(4) publicly traded companies and the businesses that provide services related to the value and exchange of the stock of such companies operate routinely with multiple conflicts of interest between and among the persons upon whom the investing public depend to be independent and to protect the interests of the investing public and stockholders;

(5) such conflicts are a significant contributing factor to the problem of misleading financial statements by publicly traded companies, and the disclosure or elimination of these conflicts will improve the credibility and reliability of the financial reporting of publicly traded companies; and

(6) independently issued standards establishing generally accepted accounting principles are critically important to the accuracy of the financial statements of publicly traded companies, and the issuance of such standards by an independent body should be respected and safeguarded.

SEC. 3. ENHANCING THE INDEPENDENCE OF ACCOUNTING STANDARDS.

(a) SAFEGUARDING INDEPENDENCE OF PRIVATE SECTOR ISSUANCE OF ACCOUNTING STANDARDS.—Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)) is amended—

(1) by striking ''(a) The Commission shall'' and inserting ''(a)(1) The Commission shall''; and

(2) adding at the end the following new paragraph:

''(2) DELEGATION OF AUTHORITY TO ISSUE ACCOUNTING AND REPORTING STANDARDS.—

"(A) DELEGATION OF AUTHORITY.—The Commission may delegate the authority to establish, define, and improve standards of financial accounting and reporting under this section and sections 3(b) and 13(b)(1) of the Securities Exchange Act of 1934, to an independent, nongovernmental organization (such as the Financial Accounting Standards Board) to benefit the public, issuers of securities, and users of financial information, and may require issuers to comply with the standards issued by such organization.

"(B) INDEPENDENT, STABLE SOURCE OF FUNDING.—

"(i) ESTABLISHMENT OF FUNDING SYSTEM.—To ensure that an organization designated under subparagraph (A) has a stable, independent, and adequate source of funding to carry out its duties under subparagraph (A)—

"(I) such organization shall, after consulting with the Secretary of the Treasury, the Commission, the Commodities Futures Trading Commission, and the national securities ex-

changes, establish an appropriate system for assessing fees and charges against issuers, independent public accountants, and other users of financial statements as may be necessary or appropriate to defray the expenses of carrying out its duties under subparagraph (A); and

''(II) the Commission shall promulgate such rules and regulations to carry out this section as it deems necessary or appropriate in the public interest or for the protection of investors.

''(ii) LIMITATION ON FUNDS.—

''(I) IN GENERAL.—No fees or other funds may be provided to or received by an organization designated under subparagraph (A) with any understanding or condition that the organization will take a particular position on any matter before the organization.

''(II) USE OF FEES.—An organization designated under subparagraph

(A) shall utilize the fees it receives under clause (i) to carry out its duties under subparagraph (A) in a professional and cost-effective manner.

''(III) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to render such designated organization subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of the designated organization.

''(C) APPOINTMENT AUTHORITY OF DESIGNATED ORGANIZATION.—The Commission may delegate the authority specified in subparagraph (A) only to an organization—

''(i) all of the appointed members of which—

"(I) possess expertise in accounting matters; and

"(II) include 1 individual nominated by the Commission; and

"(ii) at least one third of the appointed members of which—

"(I) represent investors and the public interest; and

"(II) have not recently been employed by or associated with a public accounting firm or issuer.

"(D) PROMPT RESOLUTION OF ACCOUNTING AND REPORTING MATTERS.—

"(i) IN GENERAL.—The organization designated by the Commission under subparagraph (A) shall resolve pending accounting and reporting matters in a prompt manner with appropriate due process open to public observation and participation by establishing, amending, or reaffirming relevant financial accounting and reporting standards and related guidance.

"(ii) COMMISSION AUTHORITY.—If an accounting or reporting matter on the public agenda of the designated organization

remains unresolved after 2 years, any person may petition the Commission, or the Commission may determine on its own initiative, to resolve the matter by—

"(I) requiring the designated organization to resolve the matter by a specified date; or

"(II) issuing relevant accounting or reporting standards or related guidance.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective 1 year after the date of enactment of this Act, except that if the Commission delegates the authority under subparagraph (A) to the Financial Accounting Standards Board, the requirements in subparagraph (C) shall not apply to a member of the Financial Accounting Standards Board in office on the date of enactment of this Act until the conclusion of the term of office of such member.

(c) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate such rules or regulations as it deems necessary or appropriate in the public interest or for the protection of investors to carry out section 19(a)(2) of the Securities Act of 1933, as added by this section.

SEC. 4. ENSURING AUDITOR INDEPENDENCE.

(a) IN GENERAL.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) in subsection (d), by inserting ''or subsection (g)'' after ''subsection (b)''; and

(2) by adding at the end the following new subsection:

''(g) AUDITOR INDEPENDENCE.—

''(1) BAN ON SELF-AUDIT.—An independent public accountant who performs non-audit services for an issuer of a publicly traded security shall not, during the engagement period and for the 2-year period after the date on which the engagement period for such services ended, conduct an audit of any system, control, transaction, or other arrangement designed, recommended, or established by the accountant for such issuer.

''(2) BAN ON CONTEMPORANEOUS NON-AUDITING SERVICES.—Any independent public accountant that conducts an audit and certifies a financial statement or report under this section or section 12, 13, or 17 of this Act, section 7 of the Securities Act of 1933 (including Schedule A of that Act), section 5(b), 10, or 14 of the Public Utility Holding Company Act of 1935, section 8 or 30 of the Investment Company Act of 1940, or section 203(c)(1) of the

Investment Advisers Act of 1940, with respect to an issuer of a publicly traded security shall not, during the pendency of such audit and professional engagement period and for the 2-year period following the date upon which the relevant financial statement or report is certified, provide to such issuer any non-audit services, including any management consulting, tax planning, or internal auditing services.

''(3) TWO-YEAR BAN ON AUDITOR EMPLOYMENT.—Any individual who, in his or her capacity with an independent public accountant, participates personally and substantially in an audit leading to the certification of a financial statement or report under this section or section 12, 13, or 17 of this Act, section 7 of the Securities Act of 1933 (including Schedule A of that Act), section 5(b), 10, or 14 of the Public Utility Holding Company Act of 1935, section 8 or 30 of the Investment Company Act of 1940, or section 203(c)(1) of the Investment Advisers Act of 1940, with respect to an issuer of a publicly traded security shall not, during the pendency of such audit and professional engagement period and for 2 years after the date upon which the relevant financial statement or report is certified, ac-

cept any directorship, employment, or contract for services from such issuer.

''(4) ISSUER INFORMATION REQUIRED FOR AUDIT.—

''(A) AUDITOR ACCESS TO MATERIAL INFORMATION.—With respect to any issuer that employs an independent public accountant to conduct an audit of a financial statement or report under this section or section 12, 13, or 17 of this Act, section 7 of the Securities Act of 1933 (including Schedule A of that Act), section 5(b), 10, or 14 of the Public Utility Holding Company Act of 1935, section 8 or 30 of the Investment Company Act of 1940, or section 203(c)(1) of the Investment Advisers Act of 1940, the Commission shall promulgate rules and regulations that require such issuer to provide all material information to such accountant during the course of such audit and not to withhold any material information from such accountant on the basis of privilege or for any other reason.

''(B) IMPROPER INFLUENCE ON CONDUCT OF AUDIT.—It shall be unlawful for any director, officer, or affiliated person of an issuer to

take any action to improperly influence, coerce, manipulate, or mislead any independent public accountant engaged in an audit of a financial statement or report of such issuer.

''(5) ACCOUNTING OVERSIGHT.—To help ensure effective audits and financial statements and reports that fairly represent the financial condition of the issuer, the audit committee of the issuer (or the board of directors of the issuer if no such committee exist) shall take reasonable steps to exercise oversight over the accounting practices and policies of the issuer, including—

''(A) evaluating the relationship between the issuer and the independent public accountant conducting an audit of the issuer to ensure the independence and objectivity of the accountant;

''(B) obtaining information from such accountant about the accounting practices and policies and the financial statements and reports of the issuer, and providing the accountant with periodic opportunities outside the presence of management to express any concerns about such practices, policies, statements, or reports;

"(C) evaluating the quality and acceptability of the accounting principles of the issuer, as applied in its financial reporting, including the clarity of the financial statements and reports of the issuer and the degree of aggressiveness of the accounting principles, underlying estimates, and other significant decisions made by the management of the issuer in preparing its financial statements and reports; and

"(D) ensuring adequate public disclosure of the accounting practices and policies of the issuer, and of any material business activities, assets, or liabilities not included in the balance sheet or income statement of the issuer.".

(b) EFFECTIVE DATE.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate such rules or regulations as may be necessary or appropriate to carry out section 10A(g) of the Securities Exchange Act of 1934, as added by this section, but whether or not such rules or regulations are promulgated by such date, the prohibitions and requirements established under that subsection (g) shall take effect at the end of the 240-day period beginning on the date of enactment of this Act.

SEC. 5. EMPOWERING SHAREHOLDERS.

(a) TREATMENT OF SHAREHOLDER PROPOSALS.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsections:

''(i) SHAREHOLDER PROPOSALS.—

''(1) IN GENERAL.—Subject to paragraph (2), and notwithstanding any other provision of law, if a shareholder proposal is not prohibited under the laws of a State, the Commission shall not prohibit a person or group of persons that is located in that State from having included in the proxy statement and any proxy, consent, or authorization provided to the security holders of an issuer, a proposal—

''(A) to remove a director or to nominate a person to serve as a director of the issuer;

''(B) to retain or remove an auditor of the issuer;

''(C) to assess and ensure the independence, expertise, and active participation of the members of the board of directors of the issuer;

''(D) to require the auditor of the issuer and the chair of the audit committee of the board of directors (or, if no audit committee exists, another member of the board of directors), separately or in tandem—

"(i) to attend an annual meeting, either on a specified date or on a routine basis; and

"(ii) to provide responses to written questions posed by security holders of the issuer regarding the financial condition of the issuer or a financial statement or report of the issuer; or

"(E) to obtain complete disclosure regarding, or to establish policies affecting or restricting, the compensation of a director, chief executive officer, or senior officer of the issuer, including with respect to compensation provided in the form of stock, stock options, phantom stock units, incentive pay, deferred compensation, available credit, credit forgiveness, tax benefits, insurance benefits, retirement benefits, severance pay, consulting fees, or arrangements granting preferential treatment of such persons compared to other employees or creditors of such issuer.

"(2) APPLICABILITY.—Paragraph (1) shall apply only to proposals described in that paragraph by a person or group of persons that is the beneficial owner of voting equity securities representing a total

of not less than $1,000,000 in market value, or not less than 3 percent of a class of outstanding securities of the issuer.

''(j) SHAREHOLDER APPROVAL OF STOCK OPTION COMPENSATION.—The Commission shall issue rules and regulations which shall require prior shareholder approval of any compensation plan which provides stock options to a director, officer, or employee of an issuer, and which does not require such stock options to be treated as an expense for the purpose of ascertaining income, profit, or loss in the financial statements and reports of the issuer.''.

(b) EFFECTIVE DATE.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate such rules or regulations as may be necessary or appropriate to carry out subsections (i) and (j) of section 14 of the Securities Exchange Act of 1934, as added by this section, but whether or not such rules or regulations are promulgated by such date, the Commission shall cease prohibiting the shareholder proposals identified in that subsection (i), and shall begin requiring shareholder approval of the stock option plans identified in that subsection (j), at the end of the 240-day period beginning on the date of enactment of this Act.

SEC. 6. INCREASED DISCLOSURE OF DIRECTOR AND OFFICER COMPENSATION.

(a) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934, as amended by this Act, is amended by adding at the end the following new subsection:

''(k) DIRECTOR AND OFFICER COMPENSATION.—

''(1) BAN ON PREFERENTIAL TREATMENT OF DIRECTORS OR OFFICERS.—The Commission shall issue rules and regulations to prohibit an issuer from providing or conveying, or agreeing to provide or convey, to any director or officer of such issuer any preferential treatment or preferred status compared to any other employee or creditor of such issuer regarding the satisfaction of any compensation or employment benefit after or in anticipation of a declaration of bankruptcy by such issuer, including any arrangement to ensure that a deferred compensation, tax, health, insurance, or retirement benefit will continue to be provided to 1 or more directors or officers but not other employees.

''(2) DIRECTOR DISCLOSURE OF ITEMS OF VALUE.—Each member of a board of directors of an issuer shall disclose to the Commission on a quarterly basis all contributions or items of value provided by such issuer, another board member, or any officer of the issuer to the disclosing board member

or to any person, including any immediate family member or business entity, affiliated with the disclosing board member.

''(3) DIRECTOR AND OFFICER LOANS.—The Commission shall promulgate rules and regulations to require an issuer to disclose, within 48 hours, in a filing that shall be made available to the public—

''(A) the establishment of a credit facility by the issuer for use by or on behalf of a director or officer of the issuer, and the material terms of such credit facility including the interest rate assessed by the issuer for the issuance of credit and whether the director or officer may satisfy a credit extension by tendering securities;

''(B) any use of such credit facility;

''(C) any payment made on the credit facility, including by tendering securities to the issuer;

''(D) any forgiveness by the issuer of amounts owed on the credit facility; and

''(E) in the annual submission filed by the issuer, with respect to each such credit facility established for a director or officer, a summary of the information provided to the Commission

during the period covered by such filing regarding each such credit facility.''.

(b) EFFECTIVE DATE.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate such rules or regulations as may be necessary or appropriate to carry out section 14(k) of the Securities Exchange Act of 1934, as added by this section, but whether or not such rules or regulations are promulgated by such date, the prohibitions and requirements established under that section 14(k) shall take effect at the end of the 240-day period beginning on the date of enactment of this Act.

SEC. 7. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act and the amendments made by this Act shall become effective 180 days after the date of enactment of this Act.