

105TH CONGRESS
2D SESSION

H. R. 3165

To amend the Securities Exchange Act of 1934 to provide an opportunity for judicial review concerning the adoption of accounting principles applicable to issuers of federally-registered securities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1998

Mr. BAKER introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Securities Exchange Act of 1934 to provide an opportunity for judicial review concerning the adoption of accounting principles applicable to issuers of federally-registered securities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Accounting
5 Fairness Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The Financial Accounting Standards Board
2 was established in 1972 as a private sector body to
3 establish and improve financial accounting prin-
4 ciples.

5 (2) In 1973, the Securities and Exchange Com-
6 mission, which is statutorily empowered to prescribe
7 accounting principles to be used in financial state-
8 ments filed with the Securities and Exchange Com-
9 mission and otherwise used pursuant to the Federal
10 securities laws, established a presumption that fi-
11 nancial statements that do not comply with financial
12 accounting principles promulgated by the Financial
13 Accounting Standards Board would be misleading
14 and therefore in violation of those laws.

15 (3) Since 1973, financial accounting principles
16 established by the Financial Accounting Standards
17 Board accordingly have generally had the full force
18 and effect of Securities and Exchange Commission
19 regulations.

20 (4) Questions have been raised as to whether
21 under these circumstances persons aggrieved by a
22 Financial Accounting Standards Board pronounce-
23 ment of financial accounting principles would have
24 the right to judicial review thereof, and whether
25 such pronouncements must comply with statutory

1 and other requirements applicable to the promulga-
2 tion of Securities and Exchange Commission.

3 (5) Congress believes it appropriate to provide
4 that, under these circumstances, such promulgations
5 by the Financial Accounting Standards Board are
6 covered by statutory and other requirements relating
7 to the adoption of regulations by the Securities and
8 Exchange Commission, including provisions relating
9 to judicial review and provisions, among other
10 things, requiring that the Commission consider
11 whether proposed regulations would promote effi-
12 ciency, competition, and capital formation.

13 **SEC. 3. AVAILABILITY OF JUDICIAL REVIEW.**

14 Section 19 of the Securities Exchange Act of 1934
15 (15 U.S.C. 78s) is amended—

16 (1) by adding at the end of the heading of such
17 section the following: “; OVERSIGHT OF ACCOUNTING
18 PRINCIPLES”; and

19 (2) by adding at the end the following new sub-
20 section:

21 “(j) REVIEW OF FINANCIAL ACCOUNTING PRIN-
22 CIPLES.—

23 “(1) EXPRESS APPROVAL OF ACCOUNTING
24 PRINCIPLES REQUIRED.—The Commission shall not
25 treat any proposed accounting principle of any ac-

1 counting standards board as a generally accepted ac-
2 counting principle for purposes of any financial
3 statement, report, or other document required under
4 any of the securities laws unless such proposed ac-
5 counting principle has been approved by the Com-
6 mission in accordance with the requirements of this
7 subsection. The Commission shall not treat any such
8 statement, report, or document as being without
9 substantial authoritative support because of the fail-
10 ure of such statement, report, or document to com-
11 ply with any proposed accounting principle until
12 such proposed accounting principle has been ap-
13 proved by the Commission in accordance with the re-
14 quirements of this subsection, or the Commission
15 has otherwise expressly provided by rule or regula-
16 tion.

17 “(2) REVIEW OF ACCOUNTING PRINCIPLES.—
18 Each accounting standards board shall file with the
19 Commission, in accordance with such rules as the
20 Commission may prescribe, copies of any proposed
21 accounting principle or any proposed change in, ad-
22 dition to, or deletion from the accounting principles
23 of such board (hereinafter in this subsection collec-
24 tively referred to as a ‘proposed accounting prin-
25 ciple’) accompanied by a concise general statement

1 of the basis and purpose of such proposed account-
2 ing principle. The Commission shall, upon the filing
3 of any proposed accounting principle, publish notice
4 thereof together with the terms of substance of the
5 proposed accounting principle or a description of the
6 subjects and issues involved. The Commission shall
7 give interested persons a reasonable opportunity to
8 submit written data, views, and arguments concern-
9 ing such proposed accounting principle.

10 “(3) PROCEDURE FOR REVIEW.—Within 35
11 days of the date of publication of notice of the filing
12 of a proposed accounting principle in accordance
13 with paragraph (2) of this subsection, or within such
14 longer period as the Commission may designate up
15 to 90 days of such date if it finds such longer period
16 to be appropriate and publishes its reasons for so
17 finding or as to which the accounting standards
18 board consents, the Commission shall—

19 “(A) by order approve such proposed ac-
20 counting principle, or

21 “(B) institute proceedings to determine
22 whether the proposed accounting principle
23 should be disapproved.

24 Such proceedings shall include notice of the grounds
25 for disapproval under consideration and opportunity

1 for hearing and be concluded within 180 days of the
2 date of publication of notice of the filing of the pro-
3 posed accounting principle. At the conclusion of such
4 proceedings the Commission, by order, shall approve
5 or disapprove such proposed accounting principle.
6 The Commission may extend the time for conclusion
7 of such proceedings for up to 60 days if it finds
8 good cause for such extension and publishes its rea-
9 sons for so finding or for such longer period as to
10 which the accounting standards board consents. The
11 Commission shall not approve any proposed account-
12 ing principle prior to the 30th day after the date of
13 publication of notice of the filing thereof, unless the
14 Commission finds good cause for so doing and pub-
15 lishes its reasons for so finding.

16 “(4) GROUNDS FOR APPROVAL.—The Commis-
17 sion shall approve a proposed accounting principle of
18 a board if it finds that such proposed accounting
19 principle is consistent with the public interest and
20 the protection of investors. The Commission shall
21 disapprove a proposed accounting principle of a
22 board if it does not make such finding. In determin-
23 ing whether such proposed accounting principle is
24 consistent with the public interest, the Commission
25 shall also consider, in addition to the protection of

1 investors, whether the principle will promote effi-
2 ciency, competition, and capital formation. The
3 Commission shall not approve a proposed accounting
4 principle that would impose a burden on competition
5 not necessary or appropriate in furtherance of the
6 purposes of this title.

7 “(5) CONSULTATION WITH BANKING AGEN-
8 CIES.—In reviewing any proposed accounting prin-
9 ciple that will apply to any persons subject to exam-
10 ination by or reporting requirements of a Federal
11 banking agency, the Commission shall consult with
12 and consider the views of each such Federal banking
13 agency. If a Federal banking agency comments in
14 writing on a proposed accounting principle that has
15 been published for comment, the Commission shall
16 respond in writing to such written comment before
17 approving or disapproving the proposed accounting
18 principle. The Commission shall, at the request of a
19 Federal banking agency, publish such comment and
20 response in the Federal Register at the time of ap-
21 proving or disapproving the proposed accounting
22 principle.

23 “(6) AGENCY RECORD.—At the time of filing
24 any proposed accounting principle under paragraph
25 (2), an accounting standards board shall submit to

1 the Commission the record of its proceedings in con-
2 nection with such principle. Such record shall in-
3 clude all written comments or statements filed with
4 the accounting standards board with respect to the
5 proposed accounting principle and all written com-
6 munications between the accounting standards board
7 and any person relating to the proposed accounting
8 principle. The Commission, in reviewing a proposed
9 accounting principle, shall keep in a public file and
10 make available for copying the record submitted by
11 the accounting standards board and all written
12 statements filed with the Commission with respect to
13 the proposed accounting principle and all written
14 communications between the Commission and any
15 person relating to the proposed accounting principle.
16 The Commission shall not be required to keep in a
17 public file or make available for copying any such
18 statement or communication that it may withhold
19 from the public in accordance with section 552 of
20 title 5, United States Code.

21 “(7) JUDICIAL REVIEW AVAILABLE.—Any pro-
22 posed accounting principle that the Commission has
23 approved under paragraph (4) shall, for purposes of
24 section 25 of this title, be considered to be a rule of

1 the Commission promulgated pursuant to this sec-
2 tion.

3 “(8) DEFINITIONS.—For purposes of this sub-
4 section:

5 “(A) PROPOSED ACCOUNTING PRIN-
6 CIPLE.—

7 “(i) ACCOUNTING PRINCIPLE.—The
8 term ‘accounting principle’ means a state-
9 ment or interpretation of a standard or
10 concept of, or guidance with respect to, fi-
11 nancial accounting or reporting, but does
12 not include any technical bulletin, discus-
13 sion memorandum, invitation to comment,
14 special or research report, or response to
15 an inquiry or other request.

16 “(ii) PROPOSED ACCOUNTING PRIN-
17 CIPLE.—The term ‘proposed accounting
18 principle’ means an accounting principle
19 that has been formally adopted or ratified
20 by the standard-setting body of an ac-
21 counting standards board.

22 “(B) ACCOUNTING STANDARDS BOARD.—
23 The term ‘accounting standards board’ means
24 an accounting standards-setting organization
25 whose principles are, pursuant to rules or regu-

1 lations of the Commission, treated by Commis-
2 sion as generally accepted accounting principles
3 for purposes of any financial statement, report,
4 or other document required to be filed under
5 any of the securities laws.

6 “(C) FEDERAL BANKING AGENCY.—The
7 term ‘Federal banking agency’ has the meaning
8 provided in section 3(z) of the Federal Deposit
9 Insurance Act (12 U.S.C. 1813(z)).

10 “(9) EFFECTIVE DATE.—The provisions of this
11 subsection shall apply with respect to any accounting
12 principle that is formally adopted or ratified by the
13 standard-setting body of an accounting standards
14 board on or after January 1, 1998.”.

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