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# IMPLEMENTATION AND FOREIGN ACCOMODATION ISSUES UNDER THE SARBANES-OXLEY ACT OF 2002

*Robert D. Strahota, Assistant Director*
*Office of International Affairs*
*US Securities and Exchange Commission*[*]

## [**]INTRODUCTION

1. On July 30, 2002, in response to corporate abuses and accounting scandals, President Bush signed into law the Sarbanes-Oxley Act of 2002 (the Act). It is arguably the most sweeping and important US federal securities legislation affecting public companies, the accounting profession and other market participants since the SEC was created in 1934. The reforms in the Act are broad ranging, and include provisions affecting disclosure and financial reporting by public companies, corporate governance and accountability. The Act also creates a Public Company Accounting Oversight Board (the Board or PCAOB) with responsibility for overseeing domestic and foreign public accounting firms that audit companies that are, or will be, subject to SEC reporting requirements.

2. The Act directs the SEC to implement by rulemaking many of the Act's provisions affecting public companies. These provisions generally make no distinction between US domestic and foreign issuers that have accessed or that seek to access U.S. capital markets. The terms "issuer" and "public company" as used in many places throughout the Act mean an issuer the securities of which are registered under the Securities Exchange Act of 1934 (Exchange Act), which is required to file reports under the Exchange Act, or that has filed a registration statement for a public offering of its securities under the Securities Act of 1933 that has not become effective and that has not been withdrawn.

3. The scope of the Act subjects 16-17,000 public companies, including more than 1,300 foreign issuers that file reports with the SEC under the Exchange Act, to the Act's provisions. However, the Act's provisions generally do not apply to foreign issuers with Level 1 American Depositary Receipt (ADR) facilities because these issuers are not Exchange Act reporting companies.[1]

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[*] *The US Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or presentation by its employees. The views expressed in this paper are those of Mr. Strahota and do not necessarily reflect the views of the Commission, individual commissioners, or Mr. Strahota's colleagues on the staff of the Commission. Earlier and similar versions of this paper have been prepared by staff in the Commission's Office of International Affairs and used in other outlines and presentations.

[**] The views expressed in this paper are those of the author and do not necessarily represent the opinions of the OECD or its member countries.

[1] Since Level 1 ADRs are not permitted to be used for public offerings of securities to raise money in the United States or for listing on principal US markets, in lieu US reporting requirements under the Exchange Act, Rule 12g3-2(b) under the Exchange Act permits issuers with Level 1

4. The provisions of the Act relating to public accountants that audit the financial statements of issuers subject to the Act also make no distinction between domestic and foreign public accountants. However, in this area, the Act permits the SEC and the PCAOB, subject to the approval of the SEC, to exempt by rule or order, conditionally or subject to specified terms and conditions, any foreign public accounting firm or any class of such firms from any provision of the Act or the rules of the PCAOB or the SEC issued under the Act, as deemed necessary or appropriate in the public interest and for the protection of investors.[2]

5. The SEC is committed to implementation of the Sarbanes-Oxley Act in a manner fully consistent with its purpose and intent, as mandated by Congress. In its rulemaking, the SEC has made a concerted effort, including solicitation of public comment and holding public roundtables, to gain a better understanding of any conflicts of law that may exist between requirements under the Act and foreign requirements. Where appropriate, the SEC has made, or is considering in the case of pending rulemaking, accommodations for foreign market participants. In addition, the PCAOB, along with the SEC, have addressed, and will consider in additional rulemaking, potential conflicts between the Act and foreign requirements related to the registration and oversight of foreign public accounting firms.

6. Substantially all of the SEC rulemaking required to implement the provisions of the Act applicable to public companies has been completed. Implementation of PCAOB rules is ongoing.[3] The remainder of this paper summarizes the rules that have been adopted or proposed under the principal provisions of the Act and the accommodations that have been made or proposed with respect to conflicts between the Act's provisions and foreign laws or requirements. Finally, the paper concludes by noting several recent initiatives of the International Organization of Securities Commissions (IOSCO) that recommend international best practices in a number of areas addressed by the Act.

## PROVISIONS APPLICABLE TO PUBLIC COMPANIES

**7. Listed company audit committee requirements.** On April 9, 2003, the SEC adopted a rule, required by Section 301 of the Act, directing the national securities exchanges and national securities associations ("SROs") to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by Section 302.[4] Such requirements provide that all audit committee members be independent directors and that the audit committee be directly responsible for the appointment, compensation and oversight of the issuer's independent auditor. Also, the audit committee must establish procedures for handling complaints regarding accounting or internal control matters of the issuer, including confidential methods for addressing concerns raised by employees. The rule includes the following accommodations for foreign issuers:

- Foreign private issuers have additional time to comply with new listing rules (by July 31, 2005 rather than October 31, 2004);

- Non-management employees may serve as audit committee members, consistent with co-determination and similar requirements in some countries;

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ADRs to furnish information to the SEC in the form that such information would be required to be filed with a regulator or exchange or made available to shareholders in accordance with the requirements of the issuer's home country.

[2] Act, Section 106(c).

[3] Copies of SEC releases announcing proposed and final rules may be found on the SEC's web site, www.sec.gov. Copies of PCAOB rule proposals and final rules may be found on the PCAOB web site, www.pcaobus.org.

4 Securities Act Release No. 33-8220 (April 9, 2003).

- Shareholders may select or ratify the selection of auditors, also consistent with requirements in many countries;

- Alternative structures such as statutory auditors or boards of auditors who are not management employees may perform auditor oversight functions where such structures are provided for under local law;

- Foreign government and controlling shareholders may have representation on audit committees subject to certain conditions, including non-voting status in the case of controlling shareholders;

- Where a listed company is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each audit committee member is a board member of at least one of the companies;

- Foreign government issuers are exempt from the audit committee requirements;

- The term "audit committee expert" was expanded include a person with an understanding of an issuer's home country GAAP rather than US GAAP.

- In addition, the Commission has stated that it will respond to evolving standards of corporate governance to address any future conflicts that may arise with foreign corporate governance practices.

**8. Certification of financial reports.** As required by the Act, effective August 29, 2002, the SEC adopted rules requiring the CEOs and CFOs of publicly traded companies, including certain investment companies, to personally certify that the financial reports that their companies file with the SEC are accurate and fairly presented.[5] The new rules provide that foreign private issuers filing annual reports are subject to the certification requirement. Foreign issuers are not required to file quarterly reports and, therefore, are not subject to the certification requirement with respect to such reports. Also, the certification requirement does not apply to Form 6-K, which requires foreign issuers to make current reporting disclosures based on home country requirements, including stock exchange practices.

9. **Non-GAAP financial measures.** On January 22, 2003, the SEC adopted final rules under Section 401(b) of the Act that address public companies' disclosure of certain financial information that is derived on the basis of methodologies other than in accordance with US GAAP.[6] The SEC's approach is consistent with IOSCO's Cautionary Statement Regarding Non-GAAP Results Measures, issued in May 2002. New SEC Regulation G would require that an issuer provide the following information as part of the disclosure of the non-GAAP financial measure: (1) a presentation of the most comparable financial measure calculated in accordance with GAAP; and (2) a reconciliation of the differences between that measure and the non-GAAP measure. Non-GAAP measures used by a foreign issuer would be reconciled to the GAAP used in the preparation of the issuer's primary financial statements.

10. The final rule applies to domestic issuers and to foreign private issuers, subject to a safe harbor for disclosure of non-GAAP financial measures outside of the United States. The final rule clarifies that the safe harbor also applies to written communications in the United States, so long as such communications are released concurrent with their dissemination abroad and are not otherwise targeted at US persons.

**11. Form 8-K reporting requirements.** Section 409 of SOX added Section 13(l) to the Exchange Act requiring companies to disclose on a rapid and current basis such material information regarding their changes in financial condition and results of operations as the SEC requires by rule. At the same time as the non-GAAP requirements

[5] Securities Act Release No. 33-8124 and Investment Company Act Release No. 25722 (August 29, 2002).
6 Securities Act Release No. 33-8176 (January 22, 2003). See also Filing Guidance Related To: Conditions for Use of Non-GAAP Financial Measures, Exchange Act Release No. 47583 (March 27, 2003).

were adopted, the SEC amended Current Report Form 8-K to require releases regarding earnings or other information falling within 13(l) to be filed within two business days on Form 8-K

12. Form 8-K does not apply to foreign issuers, and the new requirement does not require a company to issue an earnings release, but stock exchange or Nasdaq timely disclosure under listing rules may require such a release. Form 6-K disclosure may apply to foreign issuers.

**13. MD&A disclosure of off-balance sheet arrangements and aggregate contractual obligations**. The Commission has long recognized the need for a narrative explanation of financial statements and accompanying footnotes, and has developed the Management's Discussion and Analysis (MD&A) over the years to fulfill this need. The disclosure in MD&A is of paramount importance in increasing the transparency of a company's financial performance and providing investors with the disclosure necessary to evaluate a company and to make informed investment decisions. The Commission adopted amendments to implement the mandate of Section 401(a) of the Act to the effect of requiring a registrant to provide an explanation of its off-balance sheet arrangements in a separately captioned subsection of the MD&A section of its disclosure documents.[7]

14. Since foreign issuers are not subject to SEC quarterly reporting requirements, the rules apply to a foreign issuer's MD&A disclosures included in annual reports on Form 20-F and to such issuer's Securities Act and Exchange Act registration statements.

**15. Prohibition on trading during pension fund blackout periods.** As required by Section 306(a) of the Act, the SEC adopted Regulation Blackout Trading Restriction (BTR) to help ensure that corporate officers and directors cannot trade a company's securities if employees cannot trade because of pension fund blackout periods.[8] This prohibition on trading applies to securities acquired by officers and directors in connection with their employment with an issuer. Regulation BTR prohibits executive officers and directors of US registered companies from buying or selling company shares during pension black-out periods, when regular employees are also prohibited from doing so by their pension plans. The application of Regulation BTR to the directors and executive officers of foreign private issuers is limited to situations where (i) 50% or more of the issuer's pension plan participants and beneficiaries located in the United States are subject to a temporary trading suspension, and (ii) the affected participants and beneficiaries represent more than 15% of the issuer's worldwide employees, or the plan has more than 50,000 participants total.

**16. Management report on internal control over financial reporting.** The SEC implemented Section 404 of the Act by requiring domestic and foreign reporting companies to provide: (i) on an annual basis, a management report on the company's system of internal controls over financial reporting; and (ii) on a quarterly basis, a report of material changes to those controls.[9] Foreign private issuers are not required to begin reporting on internal control over financial reporting on an annual basis until the first fiscal year ending on or after April 15, 2005. Also, disclosure of changes in internal control over financial reporting will be made on an annual basis rather than a quarterly basis. Foreign private issuers must use a suitable framework for evaluating internal controls, but are not required to use a US framework. Specifically mentioned as suitable alternatives are the Guidance on Assessing Control published by the Canadian Institute of Chartered Accountants and the Turnbull Report published by the Institute of Chartered Accountants in England & Wales.

**17. Enhanced disclosures regarding financial experts and code of ethics.** On January 15, 2003, the SEC adopted final rules under Sections 406 and 407 of the Act requiring a company to disclose: (i) the number and names of the "audit committee financial experts" serving on the company's audit committee, and whether they are independent of management; and (ii) whether the company has adopted a code of ethics that covers the company's principal

[7] Securities Act Release No. 33-8182 (January 27, 2003).

[8] Exchange Act Release No. 34-47225 (January 25, 2003).

[9] Securities Act Release No. 33-8238 (June 5, 2003).

executive officer and senior financial and accounting officers, or if it has not, the reasons why not.[10] The rules apply to foreign private issuers filing annual reports with the Commission.

18. Due to concerns raised by both domestic and foreign commenters about whether the term "financial expert" was too restrictive, the SEC changed the terminology to "audit committee financial expert" and broadened the means by which expertise could be gained to include an understanding of an issuer's home country GAAP rather than US GAAP.

**19. Insider loan prohibition.** Section 402 of the Act imposes a prohibition on loans to executive officers and directors by both domestic and foreign issuers. However, it also exempts US federally insured banks that are subject to the insider lending restrictions under the Federal Reserve Act. There was no corresponding exemption for foreign banks subject to similar insider lending restrictions in their home jurisdictions.

20. On September 11, 2003, the SEC proposed for comment a rule that would exempt from this insider lending prohibition qualified foreign banks meet specified criteria similar to those that qualify domestic banks for this statutory exemption.[11] Proposed Rule 13k-1 would exempt an issuer that is a foreign bank or the parent company of a foreign bank with respect to loans by the foreign bank to its insiders or the insiders of its parent company as long as:

i. either:

   a) the laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits; or

   b) the Federal Reserve Board has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home jurisdiction supervisor under 12 CFR 211.24(c); and

ii. the laws or regulations of the foreign bank's home jurisdiction restrict the foreign bank from making loans to its executive officers and directors or those of its parent company unless the foreign bank extends the loan:

   a) on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank or its parent company; or

   b) pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank or its parent company and does not give preference to any of the executive officers or directors of the foreign bank or its parent company over any other employees of the foreign bank or its parent company; or

   c) following the express approval of the loan by the foreign bank's home jurisdiction supervisor; and

iii. for any loan that, when aggregated with the amount of all other outstanding loans to a particular executive officer or director, exceeds $500,000:

   a) a majority of the foreign bank's board of directors has approved the loan in advance; and

   b) the loan's intended recipient has abstained from participating in the vote regarding the loan.

[10] Securities Act Release No. 33-8177 (January 23, 2003).

[11] Exchange Act Release No. 34-48481 (September 11, 2003).

**PROVISIONS APPLICABLE TO PUBLIC ACCOUNTANTS**

**21. Public Company Accounting Oversight Board.** Title 1 of the Act establishes the PCAOB to oversee the public accounting firms that perform independent audits of companies that file reports with the SEC. The Board is a non-governmental, nonprofit corporation consisting of five full-time, independent members, only two of whom may be certified public accountants.

22. The Board is responsible for, among other things: registering accounting firms that prepare audit reports on US listed issuers; Writing and administering standards governing: (1) auditing and attestation; (2) quality control; (3) ethics; and (4) independence, in relation to audits of public companies required to file audited financial statements with the SEC; conducting inspections of registered accounting firms in relation to audits of US listed companies; and conducting investigations, bringing disciplinary proceedings and imposing sanctions in relation to audits of US listed companies.

**23. Registration rules.** On July 16, 2003, the SEC approved the PCAOB's final rules requiring the registration of all public accounting firms, foreign or domestic, that provide audit services with respect to financial statements of any US or foreign public company filed with the SEC.[12] While the PCAOB determined not to exempt relevant foreign accounting firms from registration, it did make certain accommodations.

24. In a fashion similar to that taken by the SEC in its implementation of the Act, the PCAOB's final rules reflect reasoned, practical accommodations for foreign firms designed to avoid conflicts of law. The accommodations eliminate potential conflicts of laws raised by the registration system, narrow the scope of information to be provided, and extend the deadline for foreign firms to register. They include the following:

- Foreign firms will receive an additional six months, until approximately 26 April 2004, within which to register;

- Subject to certain qualifications, the PCAOB will allow an applicant to withhold information from its registration application if disclosure of such information would violate foreign law. To take advantage of this accommodation, the firm must identify the information at issue and must provide:

  i. a copy of the conflicting foreign law;

  ii. a legal opinion as to the conflict; and

  iii. (iii) an explanation of its efforts to seek consents or waivers to eliminate the conflict, as well as a representation that the applicant was unable to obtain such consents and waivers; and

- In its roster of accountants, foreign public accounting firms are required to list only accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of audit services for any issuer during the last calendar year.

25. The Board must now consider the nature of its oversight over foreign accounting firms. The PCAOB has indicated its desire to work with non-US accounting regulatory bodies to develop cooperative registration, inspection and disciplinary procedures. The PCAOB has also stated its hope to quickly make substantial progress with its foreign colleagues in developing such coordinated registration and oversight models.

26. The Commission has applauded the Board's efforts to work cooperatively with its counterparts and has encouraged the PCAOB to move expeditiously to determine the nature and scope of its oversight over foreign firms. :

[12] Exchange Act Release No. 34-48180 (July 16, 2003).

27. The PCAOB in its rulemaking has noted that the nature and scope of its oversight over non-US accounting firms will be the subject of dialogue between the PCAOB and its foreign counterparts. It also emphasized that its recent proposed rules on inspection and investigation are not intended in any way to signal that the PCAOB has already determined how its oversight should operate as to non-US firms, or to preclude any adjustments to the rules that may be appropriate in light of the dialogue.[13]

**28. Auditor independence.** The Act strengthens auditor independence requirements to reduce conflicts of interest. To this end, on January 22, 2003, the Commission adopted rules under the Act that:

- Revise the rules relating to non-audit services that, if provided to an audit client, would impair an auditing firm's independence. These include nine specifically excluded services, including legal services, financial information systems design and implementation, and internal audit outsourcing services;

- Require certain partners on the audit engagement team to rotate after no more than five or seven consecutive years, depending on the partner's involvement in the audit;

- Establish a one-year cooling off period before a member of the audit firm's engagement team may be employed by an issuer;

- Require the auditor to report certain matters to the issuer's audit committee, including critical accounting policies used;

- Require the issuer's audit committee to pre-approve all audit and non-audit services provided to the issuer by the auditor; and

- Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid to, the auditor.[14]

29. Based on comments received, the SEC's final rules reflect concerns raised by both foreign and domestic commentators and include the following revisions:

- The partner rotation requirement will apply to partners that serve the client at the issuer or parent level. Partners serving an issuer's subsidiary will be subject to rotation, only if they are lead partners and the subsidiary's revenues constitute 20% or more of the consolidated assets or revenues of the parent.

- The rotation period for audit partners who are not the lead or concurring partners for a given issuer is extended to seven years, rather than a five-year rotation period as originally proposed.

- For foreign audit firms, the date for calculating the rotation period for lead and concurring audit partners begins on May 6, 2003, and does not include the time those partners have already served at a particular issuer.

- The cooling-off period will apply to the lead, concurring partner or any other member of the audit engagement team, unless exempted, who provides more than 10 hours of audit, review or attest services. The restrictions on employment will apply only with regard to key positions at the issuer, and not at the subsidiaries or affiliates of the issuer.

- Foreign accounting firms can provide tax services (which are permitted under the Act), despite their local definition as legal services, which are among the enumerated list of prohibited services.

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[13] See e.g., PCAOB Proposed Rules on Investigations and Adjudications, Release No. 2003-012 (July 28, 2003) and Proposed Rules on Inspections of Registered Public Accounting Firms, Release No. 2003-013 (July 28, 2003).

[14] Securities Act Release No. 33-8183 (January 28, 2003)

- In other areas where conflicts between US and foreign requirements may result, the SEC will continue to address such circumstances on *ad hoc* basis, including for example the prohibition on contribution-in-kind reports, which auditors in some EU countries are legally required to provide.

**OTHER PROVISIONS**

**30. Attorney conduct rule.** On January 29, 2003, the SEC adopted rules implementing provisions of Section 307 of the Act that prescribe "minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers."[15]

31. These rules require attorneys to report material violations of the securities laws "up-the-ladder" within the issuer to the chief legal counsel or the CEO. If these persons do not respond appropriately, the rules require attorneys to report the evidence to the audit committee, full board, or other appropriate body, including a "qualified legal compliance committee," (QLCC). The QLCC must be comprised of at least one member of the audit committee (or its equivalent) and at least two independent board members.

32. The rules cover attorneys who provide legal services to issuers and who are on notice that what they are preparing will be included in a filing with the SEC. The rules will not cover foreign attorneys who are not admitted in the United States and who do not advise clients regarding US law.

33. The rules also allow attorneys to reveal confidential information in order to prevent a material violation of the securities laws that is likely to cause substantial financial injury to the issuer or to rectify the consequences of such a violation.

34. The rules as adopted exclude many, but not all, foreign attorneys from its coverage. Specifically, the rule excludes "non-appearing foreign attorneys," which are defined as attorneys who: (1) are admitted to practice outside the United States; (2) do not hold themselves out as practicing, or giving legal advice regarding, US law; and (3) conduct activities that would constitute appearing and practicing before the Commission only (i) incidental to a foreign law practice, or (ii) in consultation with US counsel. Thus, foreign attorneys who provide advice regarding US securities law, other than in consultation with US counsel, may still be subject to the rules.

35. The Commission has not adopted rules that include a mandatory "noisy withdrawal" provision, which would require attorneys, under certain circumstances, to notify the Commission that they have withdrawn from representing an issuer for professional reasons. Instead, the Commission sought further comment on that issue and also proposed a new alternative, whereby the issuer would be required to disclose its counsel's withdrawal to the Commission as a material event. The Commission sought specific comment from foreign private issuers on this proposal, which may address the potential conflict between SEC rules and foreign attorney client privilege requirements. The comment period closed on April 7, 2003.

36. **Security analyst conflicts of interest.** In order to improve the objectivity, reliability and usefulness of information that analysts provide to investors, Section 501 of the Act requires that the SEC or self-regulatory organizations ("SROs") promulgate rules to address conflicts of interest that can arise when analysts recommend securities in research reports and public appearances. These rules include safeguards such as blackout periods during which a broker-dealer who has participated in a security underwriting cannot publish a research report related to that security. The Act also calls for enhanced disclosure of conflicts of interest, including the extent to which an analyst has an investment in the issuer's securities or has received compensation from the issuer.

[15] Securities Act Release No. 33-8185 (January 29. 2003).

37. On February 20, 2003, the Commission adopted of Regulation Analyst Certification ("Reg. AC"), which requires that analysts personally certify their research and is designed to promote truthfulness in research reports and public appearances.[16] Reg AC addresses the requirements mandated by the Act, but also contains provisions designed to address other concerns identified by the Commission. Reg AC will require analysts to provide information to investors regarding potential conflicts of interest, so that the investor can determine whether he or she believes that the information provided by the analyst is trustworthy.

38. Reg AC, among other things, also requires broker-dealers that distribute research reports to obtain from their research analysts a statement certifying that the views expressed by the analyst during the prior quarter accurately reflected his or her personal views and were not related to any compensation he or she received, or will receive. If the analyst does not provide the certifications, the broker-dealer must notify its SRO and, for the next 120 days, the broker-dealer would have to disclose in all research reports prepared by the research analyst that he or she did not provide the required certifications.

39. In proposing Regulation AC, the SEC did not distinguish between research that was issued by a U.S. entity and research that was issued by a non-U.S. entity. Several commenters raised the issue of the Regulation's effect on research originating from a foreign entity. These commenters generally opposed the proposed scope of Regulation AC, which captured foreign entities (and their associated persons) that issue research reports, including those who are not required to be registered with the Commission under Section 15 of the Exchange Act.

40. In light of these comments, the SEC created a narrow exception for foreign persons that are located outside of the United States and are not associated with a registered broker-dealer that prepares and provides research on foreign securities to major United States institutions in the U.S. in accordance with the provisions of Rule 15a-6(a)(2). In these instances, the foreign person is excepted from the requirements of Regulation AC.

41. In addition, in the case of a research analyst employed outside the United States by a foreign person located outside the United States, the certification provisions of Rule 502 of Regulation AC only apply to public appearances while the research analyst is physically present in the United States.

42. In addition to the SEC's rulemaking, the Commission also has approved comprehensive revisions to the rules of the New York Stock Exhange and National Association of Securities Dealers intended to address analyst conflicts of interest.[17]

**43. Credit rating agencies.** Section 702 of the Act calls for an SEC study on the role and function of credit rating agencies ("CRAs") in the operation of securities markets. The SEC's report was submitted to the President and Congress on January 24, 2003. It addresses:

- The role of CRAs and their importance to the securities markets;
- Impediments faced by CRAs in performing that role;
- Measures to improve information flow to the market from CRAs;
- Barriers to entry into the CRA business; and
- Conflicts of interest faced by CRAs.

44. The report coincided with a review of CRAs already underway at the SEC. On June 4, 2003, the SEC issued a concept release on CRAs seeking comment on a wide range of issues concerning CRAs.[18] The SEC recognizes that,

[16] Securities Act Release No. 33-8193 (February 20, 2003).

[17] See Exchange Act Release No. 34-48252 (July 29, 2003).

[18] Securities Act Release No. 33-8236 (June 4, 2003).

in recent years, the importance of credit ratings to investors and other market participants has increased significantly, having an impact on issuers' access to and cost of capital, the structure of financial transactions, and the ability of fiduciaries and others to make particular investments. In light of this increased importance, the SEC is considering the appropriate degree of regulatory oversight that should be applied to CRAs.

**IOSCO INITIATIVES**

45. Although passage of the Sarbanes-Oxley Act was prompted by accounting scandals and corporate governance failures in the United States, the issues that it raises are being faced by markets around the world. The SEC recognizes and applauds the efforts of lawmakers and regulators in many jurisdictions as they work to restore investor confidence globally.

46. Many of the SEC's efforts to implement the Sarbanes-Oxley Act reflect international consensus on the critical areas necessary for investor confidence in securities markets, as set forth in the following IOSCO initiatives:

- Principles for Auditor Oversight, Statement of the Technical Committee of IOSCO (October 2002).
- Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence, Statement of the Technical Committee of IOSCO (October 2002).
- Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities, Statement of the Technical Committee of IOSCO (October 2002).
- General Principles Regarding Disclosure of Management's Discussion and Analysis of Financial Condition and Results of Operations, Report of the Technical Committee of IOSCO (February 2003).
- IOSCO Statement Of Principles For Addressing Sell-Side Securities Analyst Conflicts Of Interest, Statement of the Technical Committee of IOSCO (September 2003).
- IOSCO Statement Of Principles Regarding The Activities Of Credit Rating Agencies, Statement of the Technical Committee of IOSCO (September 2003).[19]

[19] All of the IOSCO documents are available on the IOSCO web site, www.iosco.org.