

PROVIDING FOR THE CONSIDERATION OF H.R. 1058, THE
SECURITIES LITIGATION REFORM ACT

MARCH 6, 1995.—Referred to the House Calendar and ordered to be printed

Mr. DREIER, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 105]

The Committee on Rules, having had under consideration House Resolution 105, by a rollcall vote of 9 yeas to 4 nays, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 1058, the “Securities Litigation Reform Act” under a modified open rule. The rule provides for one hour of general debate divided equally between the chairman and ranking minority member of the Committee on Commerce.

The rule makes in order H.R. 1058 for the purpose of amendment under the five minute rule, and the bill is considered as read, meaning it is open to amendment at any point. Priority in recognition may be accorded to Members who have pre-printed their amendments in the Congressional Record. The rule provides for a time limit of eight hours on the amendment process. The rule makes in order the amendment offered by Representative Wyden or a designee and the amendment offered by Representative Cox or a designee which are printed in the Committee on Rules report and the rule waives all points of order against the amendment for failure to comply with clause 7 of rule XVI. Finally, the rule provides for one motion to recommit.

COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

RULES COMMITTEE ROLLCALL NO. 60

Date: March 6, 1995.

Measure: H.R. 1058, Securities Litigation Reform Act.

Motion By: Mr. Moakley.

Summary of Motion: Extend amendment time cap to 12-hours.

Results: Rejected, 4 to 9.

Vote By Members: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 61

Date: March 6, 1995.

Measure: H.R. 1058, Securities Litigation Reform Act.

Motion By: Mr. Frost.

Summary of Motion: Extend amendment time cap to 12-hours, not counting time to debate Cox amendment.

Results: Rejected, 4 to 9.

Vote By Members: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 62

Date: March 6, 1995.

Measure: H.R. 1058, Securities Litigation Reform Act.

Motion By: Mr. Beilenson.

Summary of Motion: Exclude from 8-hour time cap the time consumed on the Cox amendment.

Results: Rejected, 4 to 9.

Vote By Members: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 63

Date: March 6, 1995.

Measure: H.R. 1058, Securities Litigation Reform Act.

Motion By: Mr. Quillen.

Summary of Motion: Report rule favorably to the House.

Results: Adopted, 9 to 4.

Vote By Members: Quillen—Yea; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Nay; Frost—Nay; Hall—Nay; Solomon—Yea.

AMENDMENTS MADE IN ORDER BY THE RULE

(1) An amendment to be offered by Representative Wyden of Oregon or a designee:

Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

“SEC. 13A. FRAUD DETECTION AND DISCLOSURE.

“(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer’s financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

“(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

“(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

“(3) an evaluation of whether there is substantial doubt about the issuer’s ability to continue as a going concern over the ensuing fiscal year.

“(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

“(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer’s financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

“(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

“(B) as soon as practicable inform the appropriate level of the issuer’s management and assure that the issuer’s audit committee, or the issuer’s board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

“(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the ac-

countant's attention in the course of such accountant's audit, the independent public accountant concludes that—

“(A) any such illegal act has a material effect on the financial statements of the issuer,

“(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

“(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

“(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

“(A) resign from the engagement; or

“(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

“(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

“(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

“(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

“(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

“(f) DEFINITIONS.—As used in this section, the term ‘illegal act’ means any action or omission to act that violates any law, or any rule or regulation having the force of law.”.

(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

(2) An amendment to be offered by Representative Cox of California or a designee:

Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting “, except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves conduct actionable as fraud in the purchase or sale of securities” before the period.