Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue calling the roll.

The legislative clerk continued with the call of the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. REID. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard. The clerk will continue calling the roll.

The legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC COMPANY ACCOUNTING AND INVESTOR PROTECTION ACT OF 2002—Continued

Mr. REID. Mr. President, will the Chair inform us what the matter before the Senate now is?

The PRESIDING OFFICER. The Daschle second-degree amendment to the Edwards first-degree amendment.

Mr. REID. That is Daschle for Levin; is that not right?

The PRESIDING OFFICER. That is correct.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I raise a point of order that the pending second-degree amendment is not germane to the bill postcloture.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

The deputy majority leader.

AMENDMENT NO. 4286, AS MODIFIED, TO AMENDMENT NO. 4187

Mr. REID. I call up amendment No. 4286, and I ask unanimous consent that Carnahan amendment No. 4286 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mrs. CARNAHAN, for herself, Mr. DODD, Mr. DURBIN, Mr. LEVIN, Mr. HARKIN, and Mr. CORZINE, proposes an amendment numbered 4286, as modified, to amendment No. 4187.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require timely and public disclosure of transactions involving management and principal stockholders)

At the end of the amendment, insert the following:

(b) ELECTRONIC FILING.—Notwithstanding the provisions of section 403 of this Act, section 16(a)(2) of the Securities and Exchange Act of 1934, as added by section 403, is amended to read as follows:

''(2) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security, shall file electronically with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement before the end of the second business day following the day on which the subject transaction has been executed, or at such other times as the Commission shall establish, by rule, in any case in which the Commission determines that such 2 day period is not feasible, and the Commission shall provide that statement on a publicly accessible Internet site not later than the end of the business day following that filing, and the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website not later than the end of the business day following that filing (the requirements of this paragraph with respect to electronic filing and providing the statement on a corporate website shall take effect 1 year after the date of enactment of this paragraph), indicating ownership by that person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under this paragraph.''.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. CARNAHAN. Mr. President, I am offering this amendment on behalf of myself and Senators DODD, DUBBIN, LEVIN, HARKIN, and CORZINE.

The Senate is engaged in an important debate about how to improve our Nation's financial system. Today I am offering an amendment that is intended to provide more timely information to average investors. America has the most vibrant and dynamic economy in the world. Our robust and resilient capital markets are the foundation of our economy. But the success of those markets depends on the free flow of accurate, reliable information.

Recent disclosures about the inaccuracy of some companies' financial reports have shaken that confidence. I am pleased the Senate has acted quickly to take up this important reform legislation. I believe that this bill makes tremendous progress in improving the quality of information available to the markets. In the interest of further improvement, I am offering an amendment to modernize the method of disclosure required when insiders trade in their own companies' stock.

One warning sign that a company may be in trouble is when its executives are selling large amounts of company stock, as occurred at Enron. I have learned, however, that information about insider selling is not easily accessible.

Under our current system a company's officers are required to file a disclosure form with the Securities and Exchange Commission, SEC, any time they sell securities of their company. Tens of thousands of these forms are filed annually. These are not complicated forms. I have a copy here. It is a simple 2-page form.

The Office of Management and Budget estimates that the form should not take more than 30 minutes to fill out. With capital markets as sophisticated as they are in the U.S., information must be available quickly to be useful. However, insiders currently have up to six weeks to file their disclosure forms. And the overwhelming majority of these forms—95 percent—are filed on paper, rather than electronically.

The Banking Committee has already addressed the issue of timely disclosure. This legislation would require disclosure of sales within 2 days, a vast improvement over the current deadlines. However, this legislation is silent on the issue of modernizing this arcane paper filing system.

Right now, there is no way for an investor in Missouri to quickly learn that a company executive is selling off company stock. The only ways to get the information are to go to a reading room at the SEC in Washington, or to write a letter to the SEC. These written requests may take weeks to process. This is unacceptable in the electronic age.

My amendment requires that information about insider sales of publicly traded companies be filed electronically. The SEC would then be required to make the forms available to the public over the Internet. Any company that maintains a corporate Web site would be required to post these disclosure forms on the Web site. The SEC, itself, has acknowledged the value of having these forms filed electronically.

I have here a letter from SEC Chairman, Harvey Pitt. He wrote to me that ''expedited disclosure of trading by company insiders is imperative.'' In fact, he applauded the legislation I introduced earlier this year that requires electronic disclosure.

I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 1, 2002.

Hon. JEAN CARNAHAN,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR CARNAHAN: Thank you for your February 14th letter regarding S. 1897, the Fully Informed Investor Act which you recently introduced. I share your concerns about the issues regarding reporting of insiders' securities transactions that your bill addresses. As we announced on February 13th, the Commission will shortly propose rules that would provide accelerated reporting by companies of insider transactions in public company securities. This is an integral part of our effort to supplement the periodic disclosure system with ''current disclosure'' in order to put information investors want and need into their hands more promptly.

I also share the view reflected in your bill that expedited electronic disclosure of trading by company insiders is imperative, and I applaud your initiative. As you know, the Securities Exchange Act of 1934, rather than

rules adopted by the Commission, sets the deadlines for officers, directors and beneficial owners of ten percent of a class of equity securities of a public company to report their trading in those securities. A legislative solution, therefore, will be necessary to address fully the issue of investors' timely access to information about insiders' securities transactions.

While formal Commission comment on legislation is normally reserved for testimony or a response to a request from a committee or subcommittee given jurisdiction over the bill, we would welcome the opportunity to provide you with technical assistance on your bill if you would find that helpful. I have asked Casey Carter, the Director of our Office of Legislative Affairs, to contact your staff to see if you would like our assistance. Please feel free to call me or to have your staff call Ms. Carter at (202) 942–0019 if you have any questions.

Yours truly,

HARVEY L. PITT.

Mrs. CARNAHAN. This is not a new idea. In fact, more than 2 years ago, in April 2000, the SEC published a rulemaking for its electronic data system. In that rulemaking, the SEC indicated that it ''anticipated'' making insiders file disclosure forms electronically. I applaud the SEC for recognizing the need to modernize, but I am frustrated by the delay. It has been over 2 years since the SEC made this proposal.

An agency that is responsible for monitoring markets where trillions of dollars are electronically exchanged ought to be able to develop a fairly simple electronic database to make this information available.

The Senate now has the opportunity to require the SEC to move quickly. I am very pleased that the bill I introduced earlier this year on this subject was included in the House accounting reform bill. The House has required that insiders file electronically, within one day of their transactions. The House has also required that corporations disclose insider sales on their corporate Web sites.

I encourage my colleagues to support my amendment. We should not make investors wait any longer for these basic reforms.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have an amendment at the desk.

Mr. DODD. Mr. President, I ask to be heard on the Carnahan amendment very briefly. Does the Senator mind?

Mr. DORGAN. How briefly?

Mr. DODD. Two minutes or so.

Mr. DORGAN. I am happy to yield to the Senator from Connecticut, provided that I am recognized following his presentation.

Mr. DODD. I appreciate that.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I commend my colleague from Missouri for this very fine amendment. I think it is going to make a strong difference by improving electronic reporting. It doesn't get the kind of attention it should.

This is a positive and constructive suggestion. I am a cosponsor of the amendment and commend the distinguished Senator from Missouri for offering the amendment. It makes the bill stronger. It is something all our colleagues will be willing to support. I commend the Senator for her work.

AMENDMENT NO. 4215, AS MODIFIED

Mr. DORGAN. Mr. President, I have an amendment numbered 4215 at the desk. I have submitted a modification of that amendment which I believe has been reviewed by both sides. I ask for its immediate consideration and I ask unanimous consent that the amendment be modified.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment of the Senator from Missouri?

Mr. SARBANES. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. SARBANES. Is this the amendment that deals with the offshore companies?

Mr. DORGAN. Yes.

Mr. SARBANES. I have no objection to setting aside the pending amendments in order to consider this amendment. I understand upon the conclusion of the consideration of this amendment we will revert to the Edwards-Carnahan amendment

Mr. SCHUMER. Reserving the right to object, I believe I have two amendments that have been cleared by both sides. I would like to offer them immediately after the Senator from North Dakota.

Mr. SARBANES. We are hoping to get to the Senator from New York. I make a unanimous consent request that following the disposition of the amendment of the Senator from North Dakota, we turn to the amendments referred to by the Senator from New York.

Mr. ENSIGN. Provided that no second-degree amendments are in order to any of the three amendments.

Mr. SARBANES. Furthermore, upon conclusion of the consideration of the Schumer amendments, we return to the regular order, which I take it would be the Edwards-Carnahan amendment.

Mr. REID. Reserving the right to object, Senator SCHUMER has a number of amendments on the list. I think we better get numbers of those amendments before there is an agreement they be next in order.

Mr. SARBANES. Let us withdraw the unanimous consent request and make it only that Senator SCHUMER be recognized after the disposition of the Dorgan amendment and we can address those questions.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Reserving the right to object, just to make sure we have this clarified, the unanimous consent request is just to the Dorgan amendment pending, and we would not object as long as the second-degree amendment is not in order to his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, first of all I will offer an amendment that I believe will be accepted. I understand the process is that those who have amendments that will be accepted will be allowed to offer them and those whose amendments are not approved by both sides will not be allowed to offer them. In my judgment, this is not the kind of procedure we ought to use when considering this legislation. But I understand the Senator from Texas indicated he will object to setting aside or laying aside an amendment for the purpose of offering another first-degree amendment unless he agrees with the amendment. I will talk a little bit more about that in a couple of minutes.

I had asked unanimous consent my amendment be modified. Was the consent agreed?

The PRESIDING OFFICER. It was agreed to.

Mr. DORGAN. Is amendment No. 4215 called up at this point?

The PRESIDING OFFICER. The pending amendment is set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself and Mr. GRAHAM of Florida, proposes an amendment numbered 4215, as modified.

Mr. DORGAN. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify that the requirement that certain officers certify financial reports applies to domestic and foreign issuers)

On page 82, after line 24, insert the following:

(c) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

Mr. DORGAN. Let me describe what this amendment is briefly. There was a Wall Street Journal article on July 8 this week titled: ''Offshore-based Firm's Officials Won't Have to Swear to Results.''

The Securities and Exchange Commission's new order requiring chief executives and chief financial officers of the nation's biggest companies to swear to the accuracy of their financial results was intended to restore investors' battered confidence. But two of the companies that have promised the biggest concerns don't have to comply.

Why? Because Tyco International Ltd. and Global Crossing Ltd. are based in Bermuda, even though they conduct many of their operations and have main office in the United States and are listed on the U.S. stock exchanges.

Securities and Exchange Commission spokesmen said large foreign-domiciled companies over which the SEC has jurisdiction,

such as and Global Crossing and Tyco, were excluded from the list because the agency wanted to issue the order ''very quickly.'' Therefore it focused only on U.S. companies.

So the Securities and Exchange Commission says that the chief executives and chief financial officers of some of the biggest companies must swear to the accuracy of their financial results. But in recent times, we have had U.S. corporations decide that they want to renounce their American citizenship and they want to become citizens, for example, of Bermuda. That is called a corporate inversion. They have essentially renounced their American citizenship, saying we are now corporate citizens of another country.

Guess what? Under the SEC order, they are rewarded for leaving the United States, in that their chief executives no longer have to certify financial results. The SEC says: We had to get this done quickly, and we don't expect to change it at this point.

Why does a company renounce its U.S. citizenship? They do it because they don't want to pay U.S. taxes. Very simple. If they can become a citizen of another country and renounce their U.S. citizenship, they can save substantial money on their U.S. tax bill.

At a time when we are at war with terrorists, is that a patriotic thing to do? No, I don't think so. I hope the Senate, and I certainly encourage my colleagues to do this, will shut that door tight and stop these corporate inversions. Stop these corporations from creating a sham of renouncing their U.S. citizenship in order to avoid paying U.S. taxes.

It might be interesting to ask companies such as Tyco: If you get yourself in trouble someplace around the world, who are you going to call? The Bermuda navy? The Bermuda army? The Bermuda marines? You want the full protection of the U.S. Government and the U.S. military and all the benefits that being a U.S. citizen brings along. But then you want to renounce your citizenship and move to Bermuda, in a technical sense, while keeping your offices in the United States and saving big money on taxes. And then, under the SEC order, you don't even have to have your chief executive officers certify the financial results of the corporation.

That is a shame. The SEC should know better. What could they have been thinking? I have accused them of sleeping, but this is not sleeping; this is making really dumb decisions.

I have discussed my concern with the staff of the Banking Committee. They believe that their bill implicitly addresses the reincorporation problem. But Senator GRAHAM of Florida and I said we are not satisfied with ''implicitly'' being covered. We want the issue addressed explicitly.

Let me also say, the technical people smile when I talk about this, but, frankly, it took a day and a half for us to evaluate whether it was implicitly covered in the bill. So because of that, I think it is important to have an explicit provision in this bill that says those companies involved in inversions that renounce their citizenship, they, too, will be required to certify their results. Their chief executive officers and their CFOs will be required to certify their results.

In a moment I will conclude and ask that this amendment be attached to the bill. As I do that, I ask for the attention of the Senator from Maryland and the manager on the other side to say that I have another amendment that I will offer. I understand, based on your process, you don't want it offered now. Let me describe it briefly.

The other amendment deals with the issue of what is called disgorgement of profits.

The top executives of these corporations make bonuses, commissions, and a substantial amount of compensation—some of them hundreds of millions of dollars. Then they issue a restatement of earnings and everything collapses. But they keep their profits and they keep their commissions and they keep their bonuses.

This legislation says you can't do that. When you restate, and just prior to restatement you have made all these bonuses, you have to disgorge this money. It is a $2 word, but I think everybody understands what it means.

The thing that is missing in this bill is that disgorgement should be required in cases of bankruptcy as well. So I have an amendment that will say: Yes, disgorgement in this bill with respect to periods prior to restatement, but also disgorgement for the 12 months prior to the filing of bankruptcy by a corporation as well.

A fair number of people have had a lot to say about this. Former SEC Chairman, Richard Breeden, who was the Chairman of the SEC under President H.W. Bush from 1989 to 1993, said:

> We should consider disgorgement to the company of any net proceeds of stock sales or option exercises within a 6-month or a 1-year period prior to a bankruptcy filing.

So he feels that way.

Goldman Sachs CEO Henry Paulson has also spoken in favor of this idea.

This bill will be incomplete if it does not include disgorgement in the period prior to bankruptcy. Those making a fortune, getting bonuses and commissions of tens of millions, yes hundreds of millions, as their companies are headed to bankruptcy—that is unfair. We need to do something about this.

I will not ask consent at the moment because I want to get my first amendment approved, but I will, following some discussions, either this morning or else on Monday, ask consent to set aside the second-degree amendment so we can consider, in first-degree, this issue. My hope is we would have a 100-to-0 vote on this matter because, failing that, this bill will be incomplete.

This bill is a great bill. I have credited Senator SARBANES and others at length. This is a wonderful piece of legislation that I fully support. It can be and will be improved by my amendments and by the amendments of Senator SCHUMER and others. Let's complete this amendment process.

Let me just say one last thing, if I might.

I know it has taken the patience of Job to try to manage this bill on the floor of the Senate. I understand all the difficulties that Senator SARBANES and Senator REID and many others have had these recent days because I have been here every day when this bill has been on the floor. My aggressiveness in trying to get these amendments considered has nothing at all to do with the wonderful stewardship of the chairman. I am very proud of the result he brings to the floor, and I believe both of my amendments will improve it. I hope I can work with him from now until Monday afternoon to have the bankruptcy amendment included in this legislation.

Mr. SARBANES. Will the Senator yield for just a moment?

Mr. DORGAN. I will be happy to yield.

Mr. SARBANES. Madam President, I simply want to say I think the subject matter with which the Senator's other amendment, that he just referred to, deals is a very important subject, and I think his observations are very much on point. Working with the other side, we are trying to work through the amendment. We are in the process of trying to do that. Of course, we will be continuing to talk with the Senator, and I hope we can resolve it. It would be very helpful. I appreciate his kind words.

Mr. DORGAN. I thank the Senator from Maryland. I ask my amendment be considered at this point and be voted upon.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 4215, as modified.

The amendment, (No. 4215), as modified, was agreed to.

Mr. SARBANES. I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from New York.

AMENDMENT NO. 4295

Mr. SCHUMER. I ask unanimous consent the Carnahan amendment be laid aside, and I send an amendment to the desk which we have talked about.

Mr. SARBANES. Will the Senator describe the amendment?

Mr. SCHUMER. Yes. This amendment is the amendment that enhances the conflict of interest provisions by prohibiting personal loans by issuers to chief officers of the issuer. It has been agreed to by both sides.

Mr. SARBANES. I ask unanimous consent no second-degree amendment to the Schumer amendment, when it is sent to the desk, be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to laying aside the pending amendment for purposes of

sending up a new amendment? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. SCHUMER) proposes an amendment No. 4295.

Mr. SCHUMER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To enhance conflict of interest provisions by prohibiting personal loans by issuers to chief officers of the issue)

On page 91, strike line 19 and all that follows through page 93, line 22 and insert the following:

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

''(1) IN GENERAL.—It shall be unlawful for any issuer, directly or indirectly, to extend or maintain credit, or arrange for the extension of credit, in the form of personal loan to or for any director or executive officer (or equivalent thereof) of that issuer.

''(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in Section 5 of the Home Owners Loan Act, consumer credit (as defined in section 103 of the truth in lending act), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), that is—

''(A) made in the ordinary course of the consumer credit business of such issuer;

''(B) of a type that is generally made available by such issuer to the public; and

''(C) made by such issue on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such loans.''.

Mr. SCHUMER. Madam President, I also ask unanimous consent that Senator FEINSTEIN be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Madam President, I am going to be very brief because I know we do not have too much time and we have other business. I thank both the majority and minority managers, Senator SARBANES and Senator GRAMM, for their work on this amendment. I have also spoken to the people in the White House who were supportive of this amendment. It is a very simple amendment. It basically says that with certain narrow exceptions, CEOs and CFOs of companies will not be able to get loans from those companies.

In his speech before Wall Street yesterday, President Bush forcefully stated: ''. . . I challenge compensation committees to put an end to all company loans to corporate officers.''

I couldn't agree more. It seems like we didn't learn our lessons during the S&L crisis in the 1980's? These same kinds of transactions were used then to ''cook the books'' and our Nation's economy and financial institutions paid the price for it. Once again, history repeats itself.

My amendment is very simple: it makes it unlawful for any publicly traded company to make loans to its executive officers. Let me give a few examples as to why we should do this.

Executives of major corporations, including Enron, WorldCom, and Adelphia, collectively received more than $5 billion in company funds in the form of personal loans. For example, Bernard Ebbers, CEO of WorldCom, borrowed a mind-boggling $408 million from the corporation over several years, while receiving a compensation package valued at over $10 million annually, all the while the company was facing massive losses. In the case of Adelphia, the Rigas Family received loans and other financial benefits totaling a staggering $3.1 billion, while that company has also reported huge financial losses.

The question is: Why can't these super rich corporate executives go to the corner bank, the Suntrust's or Bank of America's, like everyone else to take loans?

In the case of WorldCom, Ebbers had funded his personal stock market activities by borrowing on margin. When the value of those investments plunged, Ebbers had to pay up. How did he do it? He borrowed money from his board of directors to pay for the stock he had bought that was now being called in.

This is just wrong, and it must be stopped.

I urge the amendment be agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 4295) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4296

Mr. SCHUMER. I have a second amendment that has also been agreed to, so I ask, again, the Carnahan amendment be laid aside, and I send the amendment to the desk and ask for its consideration. I ask unanimous consent Senator SHELBY be added as a cosponsor on this amendment on the SPEs.

Mr. SARBANES. I ask unanimous consent no second-degree amendment be in order to the Schumer amendment being sent to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there objection to laying aside the pending amendments for the purpose of introducing a new amendment? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. SCHUMER), for himself and Mr. SHELBY, proposes an amendment numbered 4296.

Mr. SCHUMER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require a study of the accounting treatment of special purpose entities)

On page 91, between lines 18 and 19, insert the following:

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) 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.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) 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 Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles 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

(E) any recommendations of the Commission 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 Commission.

Mr. SCHUMER. Madam President, I will again be brief. This amendment relates to a second problem that we have seen in the latest crisis that we have faced in our financial markets, and that is the special purpose entities. Sometimes special purpose entities have a valid purpose. Many companies use them for valid purposes.

We have seen, particularly most egregiously in the case of Enron, these have been entities that have been used to take losses off the books, and then shareholders, and everybody else, don't know much about them.

Enron, for instance, conducted business through thousands of these with names such as LJM, Cayman LP, and

Raptor. They become pretty famous and the Enron's former CFO, Andrew Fastow, contributed hard assets and related debt to Raptor SPE and then Raptor would turn around and borrow large sums of money from a bank to purchase assets or conduct other business.

This is the key. The debts of this SPE, Raptor, never showed up on Enron's financial statements.

People make money on it. Fastow made $30 million in management fees. These things go way overboard. The way we had proposed originally legislating on this was too complicated, but there are some good ones. There are some with legitimate purposes and many with bad purposes.

Congress can't set these accounting standards, nor should we. Rather, that is the SEC and FASB's job.

We have asked in this amendment that the SEC do a comprehensive study of the SPEs to show where the damage is, point the way to reform, and make recommendations. This amendment does not put Congress in the business of setting accounting standards.

It does, however, say to thousands of Enron and other employees who have lost pensions that we are stepping up to the plate now to stop these kinds of egregious practices.

I add that there are probably many of these SPEs for bad purposes floating around in other companies, and this study cannot come too soon.

We have received agreement. I thank Senators SARBANES and GRAMM.

I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4296) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I thank Senator SARBANES and his staff as well as Senator GRAMM and his staff for their work on accepting these two important amendments that I think improves the bill, which is a very fine bill that I am proud to support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, let me spend a few minutes talking about the underlying legislation, S. 2673.

There has been a great deal of debate over the last good number of days on this issue. I am pleased that we were able to get cloture. It is time we move on to this issue.

The American public, a good many stockholders, a good many pension plans, a good many retirement plans are discussing what are we going to do about the meltdown that last occurred in corporate America at the executive level with some key corporations. It is really, in most instances, a crisis of confidence.

There are a lot of well-run corporations across America that are publicly held. They have historically observed the prudent rules. Their boards have acted responsibly. But there are bad players. There are big, bad players that have had a dramatic impact on the markets. There is no question that we have to deal with this straight away.

When I look at the whole of this issue, it isn't just in the markets where there is a crisis of confidence that Americans share: When you look at 9/11, then Enron, then WorldCom, and, of course, all the scandals that have occurred, and out in the West with the Ninth Circuit suggesting that the Pledge of Allegiance isn't constitutional, put all of that together, and America has to be scratching its head at this moment, asking: Where does all of this take us? Where is that rock of stability that we have come to rely on for so long?

I suggest that when we are debating this issue, while this is an issue that has to be dealt with, and we are now moving appropriately, it is one of a combination of factors that is critically important for our country to deal with.

One issue we have to deal with is the war on terrorism. The DOD appropriations ought to be the first bill we deal with on the defense side to begin to shore up again this sense of confidence in the American structure. Certainly, protecting our soldiers in the post-9/11 fighting that has gone on in Afghanistan is appropriate, and now, as we search out terrorism around the world, that is critical.

The next step I would suggest is the confirming of judges. It is important that we deal with judges. For the judicial system of this country to remain strong, vacancies need to be filled. People should receive their day in court in a timely fashion. That has been one of the hallmarks and the strengths of this country throughout its history, and it ought to be today.

Clearly, I hope we appoint judges who will not act as the ones in the Ninth Circuit who suggested that the Pledge of Allegiance is unconstitutional. I think President Bush has gone a long way in nominating good judges to the Senate.

Yet, the politics here in the Senate today is obvious: Withhold as long as you can. Withhold as long as you can.

The President spoke the other day on Wall Street relating to corporate accounting. The U.S. Senate is speaking today, as they should.

I ask unanimous consent that a commentary by Lawrence Kudlow be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, July 11, 2002]

A CLASS ABOVE THE CORRUPTION AND CRITICS

(By Lawrence Kudlow)

In front of a New York audience on Tuesday, President Bush unveiled a revised plan to counter corporate wrongdoing and accounting fraud, saying, ''There can be no capitalism without conscience, no wealth without character.'' Adam Smith, the father of free-market economics, couldn't have said it better.

Smith always argued that smooth-functioning markets require ethical behavior at their center. From Day One of his presidency, Mr. Bush has applied this rule even more broadly, emphasizing the need for ethical clarity and moral certitude in all areas of American life. He has successfully applied the rule of ethics to the war on terror, and now he is transferring the very same principle to root out corporate corruption.

From the election campaign to today, poll after poll shows that the public believes Mr. Bush is a leader with strong character and unshakable moral principles. Following the blowups of WorldCom, Enron and Tyco—and many other rotten apples—Mr. Bush's honest outrage has been heartfelt, and not political.

It has also shone above the political carping of Tom Daschle, Al Gore, Richard Gephardt and other national Democrats who would locate the source of the contagious virus of accounting fraud and corporate corruption within the Bush administration. Theirs is a political, reckless, and silly approach to a serious situation. The bad-business bug gained strength and spread well before George W. Bush became president. And today it is a grave problem that requires sober solutions.

Serious Democrats, such as Senate Banking Committee head Paul Sarbanes and Senate Investigations Subcommittee Chairman Carl Levin, have taken a completely different tack from the business-as-usual partisan politics of the Daschle gang.

Mr. Sarbanes has crafted a significant proposal to set up an independent accounting-standards board—one that will end conflict of interests between the auditing and consulting functions, properly score stock options, create new pressure for independent boards of directors, and legislate tough legal sanctions on executives, bankers, auditors, accountants and others who violate the new standards.

The accounting system desperately needs a fix; it is even more incoherent than the dreaded tax code. A new accounting-standards board should come under the aegis of the Securities and Exchange Commission. Along with proposals from the New York Stock Exchange to create truly independent boards of directors, this action will promote honest accounting and shareholder-based corporate governance.

Meanwhile, Mr. Levin has just as seriously proposed giving the SEC, the federal government's principal accounting overseer, the right to levy tough fines on corporate evildoers without having to go to court first.

Suburban liberals like Sens. Sarbanes and Levin, its seems, have suddenly become conservative lawmakers who will ''move corporate accounting out of the shadows,'' as Mr. Bush rightly put it, and protect the basic workings of our wealth-creating capitalist system.

President Bush, in tune with these focused Democrats, has proposed a doubling of the maximum prison term for mail- and wire-fraud statutes from five to 10 years. This severe jail-time penalty will greatly concentrate the executive mind. And so will Mr. Bush's proposal that fraudulently earned bonuses and compensation must be returned;

and so will his request that corporate officers and directors who engage in serious misconduct be barred from again sitting in corporate-leadership positions. More, if the Bush corporate doctrine moves through Congress, top executives will now have to certify their financial statements with their own signatures. False reporting could lead to jail.

It seems that our more serious men in Washington want to bolster the rue of law by strengthening the incentive to choose right from wrong.

Incentives matter. If you tax something more you get less of it. If you tax something less you get more of it. A 10-year jail term for rotten corporate apples—or their accountants—is a huge legal tax on wrongful actions.

Of course, standing behind higher ethical standards in business is the great American investor class. Covering more than 50 percent of American households and more than 80 million people, this group is positively changing financial practices and the political culture. These shareholders have lost enormous wealth, in part from dishonest accounting and egocentric corporate misdeeds. And they're furious.

Financial markets have been democratized in the past 15 years with the rise of this investor class. They have already voted to depress the stock market as a signal of their indignation, and they're now prepared to vote this November against the silly politicians who fail to realize the enormity of the current problem. Consider this: Slightly more than 60 percent of the investor class voted in the last election. This may be the most powerful lobby in America.

In no uncertain terms, this new political movement is forcing Washington to renew the rule of law, strengthen accounting and financial standards across the board, and restore a proper incentive system that will return Adam Smith's ethical epicenter to the greatest wealth-creating machine in all of history. The days of egocentric and corrupt Soviet-style corporation have come to an end. In the stock market, moral amnesia is dead.

Mr. CRAIG. Madam President, I see Chairman SARBANES on the floor. It is not often that Lawrence Kudlow praises the chairman, but he did the other day in an op-ed and commentary that he often writes. He talked about the Sarbanes bill and said:

Serious Democrats, such as the Senate Banking Committee head Paul Sarbanes and Senate Investigations Subcommittee Chairman Carl Levin, have taken a completely different tact from the business as usual—

I will not repeat the remainder of it. But that ought to be a part of the RECORD because I think it reflects the spectrum of the thinking on the floor of the U.S. Senate at this moment. Whether you are conservative, moderate, or liberal, we know that we have to regain the confidence of the American investing public and the world investing public, and for that matter, the market systems of our country and in corporate America.

As long and as loud as many of us speak about the good corporations out there and how well run they are, the moment another Enron occurs or someone else speaks out about misdealings, that confidence is once again dashed.

This legislation moves to create a bright line between, good and bad accounting by separating auditing and consulting services for accountants in public corporations. It requires disclosure of off-balance sheet transactions and other obligations that might affect the corporate financial condition, and it establishes independent auditing boards to oversee corporate accounting.

All of those are very critical in creating bright lines of clarity, understanding, confidence, and stronger enforcement of criminal behavior.

Someone in my State said the other day: You don't have to strengthen the accounting procedure, CRAIG. Put the bums in jail. Those are criminal acts. When you knowingly are distorting the financial strength of a company which affects its stock, destroys retirement funds, employee's stock options, and all of that, it is, in fact, a criminal act.

Our President has said it. Others have spoken on the floor. But there is a line we have to draw. It is not one of grandstanding for political purposes but doing the right thing, to set in place good public policy that directs the free market system in the appropriate fashion. Do we want to make it so restrictive that decisionmaking in the board room means always looking over their shoulder to see that they have done it exactly right against a Federal law when the marketplace is a dynamic place and laws are static?

We know there have to be some static lines attached. There is no doubt about it. Those have to be clear. At the same time, we cannot be so restrictive that we blight the market and send investments outside the United States to the rest of the world.

The Wall Street Journal wrote yesterday that everything you are hearing now from Washington is aimed at winning the November elections and not at calming financial markets. I hope this bill is all about calming financial markets. And I believe the majority of this bill does have that goal. Some of rhetoric may not reflect it. But I truly believe the chairman and the ranking member are working in the direction of building a substantive bill that will go to conference, that works out our differences between the House and that goes to the President's desk.

I hope the Wall Street Journal is wrong. I hope we refrain from making corporate accountability simply another political exercise. It ought not be. It has not been. It should never be.

In Idaho they say: ''You can't hang the same man twice.'' ''You can't hang the same person twice.''

So let's make the laws clear, easily defined, not arbitrary, not like our tax laws today where even the best consultants cannot give good advice.

What we are working with, I hope, is clean and clear and appropriate. There are more than 16,000 corporations under the jurisdiction of the SEC. Of those, no more than a handful have been accused of criminal wrongdoing. In the end—when all the dust settles, the market stabilizes, and investors begin again to regain confidence, and the Congress has acted—no more than a handful of corporations will have been the bad actors.

So I hope and I trust we can finalize what we are doing here today, and Monday possibly. It is important. The bottom line is very simple: Congress needs to act, and act now, and reaffirm the confidence the American people have in our public institutions.

I just came from a Republican bicameral meeting between the House and the Senate Republican leaders. They said: Get us the bill immediately. Assign conferees. Let's go to work. Let's get this out before the August recess.

Let's send a message to the American and the world investor that we have acted timely, that we have acted responsibly. The President has laid down his marker. The House has laid down their marker. It is now time for us to do the same. And in doing so, and in moving with expeditious action—not haste, not in an irresponsible way—I think we can turn to the American people and say: We have put in place the right safeguards, the right protections, the right firewalls. Study the papers, study the financials, and begin, once again, to reinvest in the American marketplace because it will be the right place to put your money.

Madam President, I yield floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I want to pick up on what the Senator from Idaho just said, which is, we were just meeting on the House side among the leadership. One of the messages that was very clear was, when this bill passes, the House is very eager to appoint conferees and to move forward to get a bill out as quickly and as responsibly as possible, to send all the right messages to the investing public and to Wall Street that Congress has seen the problem and that we are ready, willing, and able to act, and act in an expeditious way.

I think it is important for us to act. I agree with that sentiment. The House, obviously, acted months ago in dealing with this problem. We have taken a little bit longer, which we have a tendency to do in the Senate—take a little longer to get things done. But we are now moving forward, and we should not delay in getting to conference. We should not delay in appointing conferees in the Senate. And we should have a process by which we engage in these meetings earnestly and come up with a product, if possible, by the August recess.

It is little difficult. The House is going to be out a week before the Senate. So it is a pretty big task ahead of us, but we should go about it in earnest, and we should do our best to move this forward and send the signals that the Congress has moved as expeditiously as possible to meet the concerns of the investing public about the markets and the reliability of the numbers that corporations are sending out to the investing public.

I have to say, as one of the four members of the committee who voted against this bill in the committee, I have some concerns about the underlying bill that came out of committee. I have some concerns about particularly the impact on some of the small companies that will be governed by this legislation.

A lot has been made that this is a piece of legislation that just deals with publicly traded companies, and so we are talking about the big companies. As any of you who have watched the market for any length of time know, there are a lot of small companies that go into the equity markets and are publicly traded, particularly a lot of technology companies.

A lot of the economic growth engines of our economy are small publicly traded companies. One of the concerns I have is this bill may be appropriate for large multinational corporations—such as General Motors or IBM; you can go down the list; Xerox, whatever—but it may not be particularly an appropriate vehicle of regulation for small-cap stocks.

As you know, there are small-capital stocks, mutual funds, small-cap funds. To apply the same rigorous accounting standards and rules and regulations that very well may be appropriate for these large companies to these smaller companies could have a very significant negative effect on economic growth in our country.

To put these kinds of rules and regulations in place for these small companies is going to be very expensive, very onerous, and make it very difficult for them to conduct business. And remember, folks, who is responsible for economic growth in America, job creation in America. Let me underscore this. We have job claims up again just last week. The economic engine for job creation is smaller businesses. A lot of them are these small publicly traded companies.

It is a very grave concern to me that, yes, we look at these companies we are talking about here. These are big companies that have done a lot of things that, obviously, they should not have done, and with big accounting firms. We are not hearing about scandal in these smaller publicly traded companies that use small accounting firms in most cases. To apply these rules to these smaller companies is really problematic and has a negative effect on our economy.

The last thing I want to see us do—yes, we want to strengthen confidence in the capital markets. Yes, we want to deal with the problems of fraud, and we want to hold people who commit fraud more accountable, and toughen punishments, which is what we have done on the floor. Those are very important things to do. But we should not do that at the expense of jobs and economic growth in our economy.

I understand there is a provision in the bill that allows smaller—any company, I guess, to seek a waiver as to some of the provisions of this act. I know a lot of small businesses, and most of them do not have a lot of money to hire lobbyists and lawyers and other people to come here to Washington, DC, or to New York and plead their case that they should somehow be preempted from the provisions of this act.

You are talking about 16,000 publicly traded companies, most of which—well over 75 percent—are relatively small in size. Imagine the burden of the regulators having to deal with petition after petition after petition.

Senator GRAMM has an amendment, which I presume he will offer on Monday. I am hopeful that the Senate will seriously consider giving the regulatory body some flexibility in providing blanket waivers to classes of companies, or based on some sort of rational scheme of determination of size and scope of a company, that we give a little flexibility to the regulators not to sort of throw all the babies in this one big basket, and understand that there are real significant consequences to jobs and future growth of this economy if we did that.

So I know that is an issue on which we are going to have a discussion next week. But, to me, it is a very significant issue, one where you can be for tougher regulation, you can be for increased accountability, you can be for tougher penalties—all those things, setting up this governing board, having standards in place—you can be for all these things in the bill, but you have to understand that General Motors and ABC Tech Company in Scranton, PA, are fundamentally different entities and should not be treated the same way.

It really is important for us to have some sort of provision for the regulatory body to exempt some of these smaller entities, where some of these regulations do not really apply or misapply, from this scheme of regulation that is in this bill.

So with that, it looks as if we have another Member who might be interested in offering an amendment or giving a speech.

I am happy to yield.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, later I want to address a couple of points made by the Senator from Pennsylvania, but the Senator from Delaware is in the Chamber and wishes to speak. So I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, I know the Senator from Maryland is getting tired of receiving all these bouquets, but he deserves them. Senator ENZI is not on the floor, but he deserves one or two as well, along with others of our colleagues, not just on the Banking Committee but other Members as recently as this morning who offered amendments to this legislation which improve it materially, especially the amendment offered by the Senator from Missouri, Mrs. CARNAHAN. It is all well and good that we say to those who are senior officials within companies, if you have a stock transaction, you have to report it. Give them the paperwork, they report it, and it goes somewhere where few people ever have a chance to see it or be aware of it. It is quite another thing to list that transaction, do it electronically so anyone who has access to the Internet can find out about it. Senator CARNAHAN's amendment includes this electronic disclosure, and that is a very good improvement to the legislation.

I like what the Senator from North Dakota, Mr. DORGAN, has offered today, with respect to the process where we have companies normally registered and incorporated here in a State in America who somehow slip off to Bermuda and incorporate. We actually provide an incentive; if we don't adopt the Dorgan amendment, we provide an incentive for that kind of behavior. Not only does that have an adverse effect on States such as New York or Delaware or Maryland or Pennsylvania, it also has an adverse effect on shareholders because the heads of companies that are registered or incorporated in a place such as Bermuda would otherwise not have to sign off and vouch for the financial statements they are providing.

Even as recently as this morning, a good bill has gotten better.

I appreciate the amendment offered earlier by Senator LOTT on behalf of the President and the addition of a number of provisions in the bill that the administration supports, and, frankly, I think we all should.

I came across an interesting column this week. I didn't know if I would read it, but given that the Senator from New York is presiding, I have to at least read the first paragraph. This is a column by a fellow who writes in the LA Times and is syndicated across the country, Ronald Brownstein. I will read a paragraph and perhaps ask unanimous consent that the entire column be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSH NEEDS TO DROP THE VELVET GLOVE APPROACH

(By Ronald Brownstein)

It's easy to imagine the frenzy that would be engulfing Washington if it was President Clinton now revising his explanation of a controversial 12-year-old stock deal.

Bush Limbaugh would be roaring in outrage. Robert H. Bork would be decrying the loss of moral authority in the Oval Office. Sen. Arlen Specter, R-Pa., would be demanding a special prosecutor. Congressional committees would be subpoenaing the president's old business partners.

President Bush probably will be spared all that, even after suddenly altering his explanation for why he was eight months late in reporting to the Securities and Exchange Commission his 1990 sale of stock in Harken Energy Corp., a company on whose board he sat, shortly before it announced large losses. (For years he blamed it on the SEC; now he's fingering Harken's lawyers.)

After the fanatical ethics wars of the Clinton years, few in Washington have much stomach for a full-scale confrontation—though the Washington Post raised eyebrows by revealing Bush's former personal attorney was the SEC general counsel at the time commission cleared him of wrongdoing in the stock sale. The attorney, James Doty, says he reused himself.

The demands of the war against terrorism also will discourage a political firefight over the sale. But even so, the disclosures were still creating awkward moments for Bush as he prepared to call for greater corporate responsibility.

Actually, the focus on Bush's behavior 12 years ago may frame the wrong debate. It's likely that the dominant argument in Washington will be over whether it's credible for Bush to demand better corporate behavior while facing these personal questions. The more relevant issue is whether it's credible for Bush to threaten a crackdown now after his administration spent its frist 18 months promising business kinder and gentler enforcement of the range of federal laws against corporate misconduct—from the environment to the stock markets to the workplace.

In other words, can Bush plausibly shake the iron fist after stroking the Fortune 500 for so long with a velvet glove?

BUSINESS AS USUAL

For all the nouvelle elements of Bush's thinking on social issues such as education or home ownership, he's always been a conventional conservative on government oversight of business. As governor of Texas, presidential candidate and president, Bush has focused more on intrusive government than irresponsible corporations.

His consistent message has been that, in pursuing its goals and enforcing its laws, government should be more cooperative and less coercive. During the 2000 campaign, he crystallized his view on government's relationship with business when he insisted: ''I do not believe you can sue you way or regulate your way to clean air and clean water.''

Bush has put flesh on that philosophy by staffing many federal agencies with alumni of the industries they now regulate. The Interior Department is crowded with former lobbyists for the coal and oil industries. A former timber lobbyist is watching the national forests Harvey L. Pitt, the SEC chairman, came from the accounting industry; Bush already has appointed another accounting industry alum to the five-member commission and nominated yet a third. (That means Bush is seeking to construct an SEC, for the first time, with a majority of commissioners tied to accounting.)

To monitor safety in the workplace, Bush found an executive from the chemical industry. To monitor safety in the mines, he appointed an executive from the mining industry. The list goes on.

In chorus, Bush's appointees have sung the same tune. At her confirmation hearing last year, Environmental Protection Agency Administrator Christie Whitman promised more negotiation and less litigation against recalcitrant companies. ''Instilling fear does not solve problems,'' she insisted.

Over at the Occupational Safety and Health Administration, director John Henshaw as late as last month told a business audience: ''Hopefully we can put the days of OSHA as an adversary behind us.''

And before Enron and WorldCom and Martha Stewart forced the SEC chair to try to morph into Harvey Pitt-bull, he was sending the same message, telling the accounting industry last fall that he viewed them as the agency's ''partner'' and pledging ''a new era of respect and cooperation'' after the confrontations of the Clinton years.

Partnership with industry has its place. But enforcing federal law to police the market place isn't it. No cop anywhere would agree with Whitman; they instead would argue that the best way to discourage drug dealing or street crime is to instill fear—of relentless enforcement. The same is true in the boardroom. Polluters or stock swindlers are more likely to stop because they fear being caught than because Washington asks them nicely.

Mr. CARPER. Here is the first paragraph:

It's easy to imagine the frenzy that would be engulfing Washington if it was President Clinton now revising his explanation of a controversial 12-year-old stock deal. Rush Limbaugh would be reacting in outrage. Robert Bork would be decrying the loss of moral authority in the Oval Office. [One of our Senators] would be demanding a special prosecutor. Congressional committees would be subpoenaing the president's old business partners.

This is a whole lot more important than trying to find political advantage in a particularly difficult debate and a difficult time in this economic recovery. This is about the economy.

As a nation, we are trying to come out of a recession. There is a fair amount of financial data which suggests we are heading in the right direction. The number of people being laid off is slowing. Manufacturing activity is increasing. Even economic activity among some of the most hard-hit sectors of the economy, technology sectors, is showing signs of life. I am encouraged by that.

If you look at the stock exchange for much of the last several weeks and months, it does not really reflect the returning, emerging vibrancy in the rest of the economy. That is not a good thing.

One of the reasons why it is so important for us to pass this legislation is to send a clear signal to investors not just around the country, but around the world that the United States is a good place in which to invest. Our trade deficit last year was about $300 billion. This year it is going to be even more than $300 billion.

We are starting to see the value of American currency, the dollar, which was robust and strong for the last several years, deteriorate. The worst thing that could happen for us, at a time when we need to attract foreign investments, would be to send a message that the United States is not a good or safe place in which to invest. When we are looking to much of the rest of the world to help finance a trade deficit of over $300 billion, it is important that we send a strong message throughout the world that the U.S. remains the best place in which to invest.

There are a number of provisions. I will not go through this bill provision by provision. I want to talk about some of the groups that have the greatest interest, the most at stake, what our obligation is to them, and how this legislation seeks to make sure that we not only recognize that obligation but that we act on it.

Shareholders of companies, publicly traded companies, should have confidence. They should have confidence not only in the CEOs and top officials, but they should have confidence in the board of directors whose job it is to represent the interest of the shareholders and to know that that board is indeed independent. Shareholders should have confidence in the audit committees of the board. Investors should know that the audit committees of the board are comprised of independent-minded board members, knowledgeable board members who will act, not as a lap dog, but as a watchdog every day as they serve on the audit committee.

Shareholders should have confidence that there are rigorous auditing standards that exist in this country and not that there are rigorous auditing standards that are on a piece of paper somewhere, but there is a strong, independent, knowledgeable entity that is going to make sure that those auditing standards are enforced.

How about the auditors of publicly traded companies? We should take away from them the temptation to look the other way or give the benefit of the doubt to a company that they are auditing because of the temptation from some other part of the auditing company which deals with consulting services; in many cases, these are lucrative services. We want to make sure the folks doing the audits of publicly traded companies are interested in doing a good job because that is their responsibility. Auditors should not be interested in cutting corners, looking the other way because doing so might enable their accounting company to attract and to retain lucrative consulting services.

This bill goes a long way—some would say too far—toward curtailing that activity. To me, it strikes the right balance.

Most of us know of someone who used to work for one of the big eight, then big five, now the big four accounting firms who actually went to work for one of the companies that they audited. I do. I suspect all of us could think of someone who has made that transition in their lives. There is nothing wrong with that. However, the revolving door can be more troublesome when the person moves from the auditing company one day, the company responsible for doing the audit, and the next day, the next week, the next month ends up as a senior official of the company that last week, last month they were auditing.

This measure doesn't completely stop that revolving door, but it slows it down.

Another area that this bill tries to address is the question: How often is it appropriate to have a fresh set of eyes in charge of those independent auditors doing that independent audit of a publicly traded company? Under current standards every 7 years we say that the lead partner of an audit should be changed. This measure takes it down to 5 years. Not everyone agrees with

that. Some would like to have a change in auditing companies, requiring auditing companies to rotate every 5 or 7 years. I don't think that is a good idea. I do believe the approach we take in this measure, moving from 7 to 5 years the period of time after which the lead auditor, the lead partner has to be changed, is sound.

How about investors? I talked about shareholders, about the auditors themselves. How about investors? The investors in this country and other countries need to be comforted by the knowledge that when they hear an analyst on television or read of an analyst's recommendation of a particular stock or stocks, when an analyst says buy, they mean buy. When an analyst says sell, they mean sell. When an analyst says hold, they mean hold.

Investors have the right to know that the analysts whose advice they are following or attempting to follow are not being pressured to color their recommendations of a buy, sell, or hold by what is happening on the investment banking side of the business, and to know that the analyst's compensation is going to be derived more from how well the analyst does his job, providing good analysis and investment advice, and not about how much new business that analyst can help bring to the investment banking side of their company.

How about the CEOs and senior management? When they break the law, they should be fully prosecuted under the law, and if what they have done is an offense for which they can be imprisoned, they ought to be. Our job in the Congress is to pass laws and to say what the crime or penalty should be when people violate those laws.

It is the job of the Justice Department to fully prosecute—with the help of the SEC and the other watchdog agencies—people who violate the laws. Senator LEAHY, on behalf of a number of Senators, earlier this week—yesterday, I believe—offered legislation that provides a new law that says not only can we prosecute some of the corporate wrongdoers—I am tempted to call them criminals, but I won't—who violate the trust, and to not only say you have to go after them under the mail and fraud provisions of the criminal code, but to broaden that—which is sometimes difficult to do—and make the prosecutions more easily done and with very tough penalties under another part of the code.

CEOs should not be allowed to profit from financial misinformation or from manipulation of their books. I commend the President and those who have worked on this legislation to say, to the extent that this does happen—a CEO or senior official benefits financially from tampering or cooking the books—they would be compelled to give that money back.

I mentioned earlier the legislation offered by Senator CARNAHAN of Missouri which would actually make sure there is a disclosure of sale when a CEO or senior official sells their stock; that the transaction would not only have to be reported to the SEC, but disclosed electronically.

Another provision in the bill that I think is especially good and timely, given what has gone on at WorldCom, where apparently a senior official of that company received a $360 million loan from the company—a loan which I don't believe the shareholders ever knew about—at least when they found out about it, it was too late for a lot of them. That kind of information should be fully disclosed promptly and through a medium that allows those who have some need to know—investors and shareholders—to have that information in a timely way.

Finally, a word about the employees who work for some of these companies that have gone through, or are going through, a meltdown. They need, I think, recourse when they are urged, on the one hand, by senior officials to buy company stock for their 401(k) investment plans at the very time when senior officials are bailing out of the company stock. There should be some kind of recourse for employees when that happens. In the belief of what is good for the goose is good for the gander, employees should never again face the situation that Enron employees faced where, during a lockdown period of time, employees could not sell their stock while senior officials were able to bail out and sell their stock. What is good for the goose is good for the gander. To the extent that employees in a lockdown period are not able to sell their company stock in their 401(k) plan, the senior officials of the company should not be able to enter into transactions involving their stock either.

There is one thing I don't believe we address in this bill; the others I mentioned, we do. One area we do not address—and I suspect it comes later—and a member of the staff will tell me if I am mistaken. One of the problems we have with 401(k)s for the employees, the investors, is that they don't get very good advice. The companies don't want to be held liable if they provide bad advice when all is said and done. And when we move on to other issues, I hope we will have agreed on a way to better ensure that the employees who are not getting very good advice do get that good advice.

I worry about the concentration of assets and investments. I know some people believe there should be a cap and that they should not be able to invest any more than half or a quarter in company stock for your 401(k). If I am an employee and I am buying company stock, maybe I should have to sign a form that is an acknowledgment that I am about to do something very stupid—something similar to what the employees did at Enron, where they put all their eggs in one basket—and acknowledge that is not a bright thing to do, and acknowledge that I am doing that unwise thing myself. Maybe that is needed here. In addition to that kind of disclosure, I think we do need to address the need for better advice for employees.

I will go back to where I started; that is to say, a lot is riding on this legislation—a whole lot more than we would have guessed 6 months ago. Six months ago, as we saw Enron melt down and the disclosures come forward, we thought it was one company that was poorly run, maybe fraudulently run. A lot of people were hurt who worked at that company. A lot of people who worked for the auditor, the accounting firm, Arthur Andersen, have lost their jobs and were, frankly, fully innocent, but they have been harmed. Six months ago, there was a full sense of outrage at Enron and the people who led it to its fall.

We know now that what happened at Enron may not be precisely the same as other companies, but it is symptomatic of the behavior in other companies, where the people who run those companies do not meet their obligations to the shareholders, to the employees, and where greed has corrupted too many people. While it is difficult for us to pass a law outlawing greed, we can try to outlaw fraud. But it is tough to do that; I acknowledge that.

With the developments within a whole host of other companies—disclosures of financial mismanagement and misstatements, misrepresentation of performance of other companies in recent months—the importance of what we are doing this week and next has grown. We need to get this economy moving in the right direction. I believe that, underneath, a lot of the fundamentals are pretty sound. If you look at growth, and productivity, and the manufacturing activity to which I alluded earlier, there is some good news. The troubling news is what is going on in the stock market, as investors are skittish, and that is understandable.

We can begin to restore, in a very meaningful and tangible way, the confidence of those investors in America and in American companies, and we ought to do that.

The last word I will say is this. I commend Chairman SARBANES. He is not presently on the floor. I also commend the committee staff and personal staffs for the kinds of hearings that have been held this year which have led us to this day. Chairman SARBANES is not the sort of person who is interested in rushing out and being on television every night. He is not interested so much in seeing his name or picture in the newspaper. He is interested in getting at the truth. I think the hearings that were held over many months have led us to finding the truth and, maybe just as important, to finding the right course for us to take as a nation, to be able to right some of the wrongs that have been done and to reduce the likelihood that further wrongs will occur in the future.

I know some have been impatient for us to get to this day and to take up

this legislation, pass it, and to send it to the President. I think it has been worth the wait. I acknowledge that not everything that needs to be done ought to be done by the Congress. The stock exchanges have made a number of excellent changes, and they are to be commended. Many companies and many corporate boards, that have sort of been tarred with the same brush, and senior officials and CEOs who are doing a good job in acting and behaving in a most important way, have been tarred and feathered with the same brush.

A lot of companies have said, themselves, they have taken a look in the mirror—boards of directors, audit committees, and others—and said: We can do better. And they have adopted reforms. Shareholders—market forces—have come to bear on companies, their boards of directors, as they should, and that is helpful as well.

In the end, there are some things the Congress can do and ought to do, maybe not all of them, but a lot of them are included in this legislation before us. I am proud to have participated as a member of the Banking Committee in its development and proud to be a witness to the work that is going on in this Chamber to make a good bill even better. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. Madam President, in a moment I am going to ask unanimous consent that the pending amendment be set aside and that I be allowed to call up amendment No. 4283. This amendment relates to stock options. The amendment is one line. It says that the standard-setting body for accounting principles that is set up in this bill shall review the accounting treatment of employee stock options—just review it—and shall within a year of enactment of this act adopt an appropriate generally accepted accounting principle for the treatment of employee stock options. They shall review it within a year and adopt an appropriate standard.

There has been a huge amount of debate about stock options. Recently the Republican Senate staff of the Joint Economic Committee issued a report about ''Understanding the Stock Option Debate.'' In that report, it concluded that, ''Basic principles of financial accounting imply that stock option awards should be treated as a cost in corporate financial statements, and this cost should be recognized at the time of grant.''

We have a Republican Senate staff report which, after reviewing all of the pros and cons, concludes that stock option awards should be treated as costs in financial statements. It is a very strong document. It is an analysis that I recommend to people to read.

Our amendment, however, does not do that. Our amendment, which is an amendment I am offering on behalf of myself, Senator MCCAIN, and Senator CORZINE, simply says that the board we are funding in this bill should review the accounting treatment of employee stock options and adopt an appropriate standard.

How anybody can be opposed to the proper accounting board doing a review and coming up with an appropriate standard is something beyond my understanding. I can understand the arguments, the pros and the cons. I have been through them for 10 years. I have argued that we ought to treat stock options like any other form of compensation, and I believe we should. But I do not set accounting standards. That is not my job. That is the job of this newly independent board to set accounting standards, and we should urge them to take a look at this. This is where this matter should be referred and at a minimum, Madam President, I ought to be allowed to get a vote on this amendment.

This is a germane amendment. We are in a postcloture situation, and I do not know of a time—there may be; I have not been around here as long as some—but I do not know of a time when a germane amendment postcloture has not been permitted to go to a vote.

Apparently, that is what is going to happen, from what I hear. I hope it is not true, and I do not want to be unfair to my good friend from Pennsylvania. He may not object. But I think it is a misuse of our rules now I am going to get to a process issue—to not permit a germane amendment postcloture to be voted on. And this amendment is germane.

On the stock option issue, we have everyone from Alan Greenspan to economists. Let me read the list of some of the people who support a change in stock option accounting: Alan Greenspan; Paul Volcker; Arthur Levitt; Warren Buffett; TIAA-CREF, one of the largest pension funds in the United States for teachers; several economists; Paul O'Neill; Standard & Poors; Council for Institutional Investors; Citizens for Tax Justice; Consumer Federation of America; Consumers Union; AFLCIO; on and on. They believe that stock options are a form of compensation, they have value, and they should be part of the expenses on the books of a corporation just as they are taken as a tax deduction at this point.

One of the driving factors in the corporate abuses that we have seen are the huge gobs of stock options which have been handed out to executives. Then executives push accounting principles beyond any comprehension to raise the value of the stock and then exercise their options and sell the stock. We have seen this situation repeated in corporation after corporation, and I believe we ought to try to put an end to it, but that is not what this amendment does. This amendment simply says: We are creating a newly independent board. This independent board should decide on what the appropriate standard is. That is why we are providing independent funding for it.

I want to read a part of a Washington Post editorial of April 18, 2002:

> Alan Greenspan, perhaps the nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffett, perhaps the nation's foremost investor, has long argued the same line.

Skipping down:

> The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the commonsense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. . . .

Why does this matter? Because the current rules—which allow companies to grant executives and other employees millions of dollars in stock options without recording a dime of expenses—make a mockery of corporate accounts. Companies that grant stock options lavishly can be reporting large profits when the truth is that they are taking a large loss. In 2000, for example, Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profits; the real number was a $2.7 billion loss. By reporting make-believe profits, companies may have conned investors into bidding up their stock prices. This is one cause of the Internet bubble.

Then this editorial goes on:

> But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense.

Madam President, that is what most of the accounting profession, economists, and business people, other than those executives who are taking such huge amounts of stock options, want to do. This is what the Accounting Standards Board wanted to do in 1993, but then were beaten down so badly that they had to come up with an alternative instead called disclosure.

Even when the accounting board decided to do that—which was not an independent accounting board because it did not have an independent source of financing, unlike this accounting board will have after we enact this bill—and now to read their report of 1994. The board issued an exposure draft called, ''Accounting for Stock-Based Compensation,'' and they decided that stock option values should be expensed. Then they said the draft was extraordinarily controversial, and the board not only expects but actively encourages debate on issues. Then they pointed out in the FASB document that the controversy escalated throughout the exposure process.

Then in paragraph 60 of their findings, the FASB board said the following, that ''the debate on accounting for stock-based compensation unfortunately became so divisive that it threatened the board's future working relationship with some of its constituents. The nature of the debate threatened the future of accounting standards-setting in the private sector.''

This is an extraordinary document and everybody should read it so people understand the kind of pressure that not only that board was under—hopefully, the newly independently funded board will not be under—but the kind of pressure which exists in this Congress. We have, in essence, a new board, because it has an independent source of funding. We ought to let that board reach an independent conclusion on one of the most controversial, contentious issues we have before us.

This is a tremendous bill we are voting on. But it can be strengthened. It is not a perfect bill, and from the point of view of pure fairness and deliberation, this Senate should be allowed to vote on a germane amendment postcloture.

I will read one additional paragraph from the FASB document report to set out the extent of the pressure which exists in this area and why it is so important there be a review of this whole matter by an independent board.

In December 1994, the board said it decided that ''the extent of improvement in financial reporting that was envisioned when this project was added to its technical agenda was not attainable.''

Why was it not attainable, the FASB said? Because the ''deliberate, logical consideration of issues that usually leads to improvement in financial reporting was no longer present.'' These are incredible words. This is from the board that is supposed to set accounting standards in this country. They wrote in their report that when their proposal to expense stock operations was issued, it was not attainable because the ''deliberate, logical consideration of issues that usually leads to the improvement in financial reporting was no longer present.''

Why was it no longer present? Because the debate had become so divisive, in their words, that it threatened the board's future working relationship with some of its constituents.

The nature of the debate, they wrote, threatened the future of accounting standards-setting in the private sector.

Finally, the board, beaten down, threatened with extinction, said this: ''The board chose a disclosure-based solution for stock-based employee compensation to bring closure to a divisive debate on this issue, not because it believes the solution is the best way to improve financial accounting and reporting.''

That was in 1994. We have seen what has happened in terms of stock option abuses because this board, if it had proceeded in the way it thought best, would have gone out of existence.

This bill creates a newly independent board, a board that has an independent source of revenue. This bill, it seems to me, is not complete, is not strong, unless we now say to this country that the newly independent board should review this accounting standard and reach an appropriate conclusion.

This amendment, which is cosponsored by Senators MCCAIN and CORZINE, does not say what that conclusion is. It does not, unlike the McCain amendment which was not allowed a vote yesterday, conclude that stock options should be expensed. It does say we have an independently funded board which should review this matter and reach the appropriate conclusion.

Mr. REID. Will the Senator yield for a question?

Mr. LEVIN. I would be happy to.

Mr. REID. I am just curious. I am not sure I should get involved at this stage because the Senator knows the subject so well, but this board that is set up in this proposed law, they would not have authority to do that on their own?

Mr. LEVIN. They would.

Mr. REID. Why do we need your amendment?

Mr. LEVIN. Because this Congress has been on record as saying what the accounting standard should be. In the early 1990s we took a position. This neutralizes that position. This says, the accounting board is the right place. The Senate is on record by a vote of 88 to 9 as saying there should not be the expensing of stock options. What this amendment says is that the board should decide. It should review this matter. It takes a neutral position, thereby clearing the record as to what the position of this Senate is.

As of now, all we have on record is that stock options should not be expensed. What this amendment would say is, you should review this and reach an appropriate standard.

Mr. REID. My question to the Senator was, If we did not have the Senator's amendment, would the board not have that authority anyway?

Mr. LEVIN. They could do it, but all that there would be on the record would be our last statement saying they should not expense. That same kind of pressure we put on them would still be on the record, and I think that should not be the last statement this Senate should make on this subject.

The last statement we ought to make on this subject is that the accounting board is the appropriate place to make that decision, not the Senate.

Mr. REID. I still ask my friend for the third time, if we have no Levin amendment, it would seem to me this newly created board would still have authority to do what the Senator is talking about.

Mr. LEVIN. Under the cloud we created in 1994. I would refer my friend to the debate in this body back on May 3, 1994, where the Senate reached a conclusion that it is the sense of the Senate, that was approved by, again, a vote of 88 to 9 or something like that, that the Financial Accounting Standards Board should not change the current generally accepted accounting treatment of stock options.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. SARBANES. I asked the Senator to yield because I do want to underscore that the legislation that is before us takes a major step in trying to guarantee the independence of the Financial Accounting Standards Board in terms of how it provides for its funding, and that is a dramatic improvement of the situation because heretofore the standard board had to seek voluntary funding. So the standards board ended up going to the people for whom it was establishing the standards in order to get money to fund its operations. Well, when it came to the crunch—and this issue was one such crunch as far as the Financial Accounting Standards Board was concerned—the people from whom they were voluntarily getting the money said we are not going to give you any money. You are not going to be able to carry out your activities.

So we moved in this legislation because one of the things we require is that the issuers pay a mandatory fee. If you are an issuer, you are registered with the SEC and you have to pay a fee. That goes into a fund and that fund pays for the budget of the Public Accounting Oversight Board and the budget of the Financial Accounting Standards Board, so they are assured a revenue source.

I urge people to stop and think about that because it is a very important step to ensuring the independence of both boards. But here we are talking about the Financial Accounting Standards Board, and the dramatic change from its previous situation.

So it really will have, at least on the budget side, the independence to go ahead and make these decisions as they choose to call them. The issue that becomes involved in all of this otherwise is the question, Should the Congress of the United States be itself actually establishing accounting standards? Of course, as the Senator indicated, when an opinion was voiced on that a few years ago, it went in one direction. And now people want the Congress to come along and express an opinion in another direction. I have some sympathy. Obviously, we have seen things happen. Most people might have sympathy.

But we come back to the basic question, whether the Congress should be doing this. We set up this accounting standards board so it could make independent judgments. Unfortunately, there is no question about the fact that previously the standards board was subjected to tremendous pressure which affected its ability to make an independent judgment. It got tremendous pressure from industry groups, pressure from Congress reflecting the pressure of industry groups, and of course this exposure on its budget.

We have tried in the legislation to address this very basic question of making sure this board has its independence. That does not reach to the specific issue the Senate is now addressing, but I wanted that on the record. It is important that be understood.

Mr. REID. Mr. President I ask unanimous consent I be allowed to speak using my own time for up to 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I will conclude, but I need to reclaim the floor because apparently all time otherwise is counted against my allotted time postcloture.

Mr. President, I ask unanimous consent the pending amendment be set aside and that I be allowed to call up the amendment I filed at the desk relative to this subject which I understand has been ruled germane.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Reserving the right to object, I want to make a couple of points.

No. 1, the Senator from Michigan suggested that all amendments that are germane postcloture should be allowed to be offered. I wish that were the case. I wish we had the opportunity to do that in all situations, but that has not been the case in this Senate, or has not been necessarily the history of the Senate. There have been many instances where germane amendments have not been allowed to be offered postcloture.

No. 2, I make a point and reiterate the point that the chairman of the committee has made. The Senator from Michigan has made the point that FASB has been compromised because it wanted to do things and it felt constrained by the constituency which funds it. We have set up an independent funding source for FASB now, and I think that would allow a lot more independence to be able to deal with these accounting issues, such as the way we treat stock options, in a way that allows an independent judgment.

Finally, while we do have a sense of the Senate that is 8 years old on this issue, the Congress has never directed FASB to study an issue of accounting. This is precedent setting. There is nothing in this bill that directs FASB to do anything. It is an independent board. It sets up the accounting standards. I think there is no question that it will in all likelihood review this issue.

For the Congress to begun to weigh in—even 8 years ago, we did not direct FASB to do this; we simply expressed our opinion. To direct FASB to do something would be a very bad precedent to set.

I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I see no reason that a vote should not be permitted on this amendment. That is what this objection leads to. I urge we come back on Monday, or whenever we do come back, and I will make this motion again because this is a critical issue, that is not addressed in this bill, which is a big part of the lack of credibility we have right now in our markets. It needs to be addressed in some way. This is a neutral way to do it.

The arguments given by our friend from Pennsylvania are reasons to vote no on an amendment. They are not reasons to prevent an amendment from being called up and being offered.

I will say again, I don't know where an amendment that is ready to be offered is not permitted to be offered because postcloture one side of the aisle has decided it is going to leave a first- and second-degree amendment standing out there without a vote in order to prevent other germane amendments from being voted on. I don't think that has ever happened. Obviously, we have reached the end of the 30 hours at times and there are still germane amendments that are pending. But this is not that situation.

There is no further debate on the Carnahan amendment that I know of. Why not vote on the Carnahan amendment? There is no further debate—or if there is, let the debate take place so that other people can offer their germane amendments. That is being precluded here. I believe it is a misuse of postcloture rules to do that.

That being the situation, I will be offering a unanimous consent at this time that my amendment be made in order at 2 p.m. on Monday.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. I object.

Mr. LEVIN. I thank the Chair, and I will make a unanimous consent request again on Monday that we be allowed to offer germane amendments in the time that remains on Monday and that we not be precluded by a blocking action which, it seems to me, is a distortion and a misuse of the postcloture rules which are intended to allow 30 hours to consider germane amendments. If that 30 hours is being used up and either being sworn off or not used, it seems to me that then precludes consideration of highly relevant—indeed, germane—amendments which are important to strengthening this bill.

I thank the sponsors of this bill. It is a strong bill. There is no reason we should not be able to vote on a way to make it stronger.

I yield the floor.

Mr. GRAHAM. Mr. President, I appreciate the chance to speak about the Public Company Accounting Reform and Investor Protection Act. I would like to strengthen section 302 of this legislation which is entitled, ''Corporate Responsibility For Financial Reports.''

I have discussed several ideas with Senator SARBANES and greatly appreciate his leadership on this legislation. He has been tireless in his efforts to strengthen corporate accountability and protect the American investing public.

My first area of concern involves companies that have chosen to move their headquarters overseas. This legislation requires that CEOs and CFOs sign a statement saying that the financial documents they have filed are fair and accurate. This is consistent with an order just issued by the Securities and Exchange Commission, SEC, that requires CEOs and CFOs to attest to the accuracy of their company's most recent financial statement.

But there is a glaring omission to this recent SEC order. Only companies that are U.S.-based would be required to send in these signed documents. If a company once based in the U.S. has fled our shores and gone overseas for tax reasons, they now just received a reward for leaving our Nation. Those CEOs and CFOs would not have to sign financial documents and attest to their accuracy.

The SEC has also overlooked the accuracy of future financial documents by non-U.S.-based companies. Under a proposed rule, that is in the ''open comment period,'' foreign based companies are again enjoying a lesser standard of accountability. This is wrong, and unfair to American companies.

In the proposed rule, the SEC does invite comments on how to cover overseas-based companies. However, this could be a case of ''too little too late.'' If companies are being publically traded in the United States, regardless of where their headquarters are located, they ought to be required to meet the same level of accountability that we are establishing for everyone else in this legislation.

Let's not give U.S.-based companies one more reason to leave our Nation and incorporate someplace else. We need to hold all companies in our markets to the same high standard—there should be no reward of a lower standard if your company leaves the U.S. for a new overseas headquarters.

My staff placed a call to the SEC to uncover the reason why foreign based companies were excluded from their recent order. To the credit of the SEC, they wanted to act quickly. They thought that the quickest way to promulgate this order was to cover only U.S. based companies. However, in doing this quickly, they ended up sending the wrong message. U.S. based CEOs and CFOs are ''on the hook'' in signed statements. Foreign-based CEOs and CFOs, simply put, are not.

Senator DORGAN and I want to change this. We want it to be clear in the statute that no matter where your company is based, you must comply with this obligation. Senator DORGAN has filed an amendment to correct this, amendment No. 4125.

I appreciate the consideration that the floor managers, Senator SARBANES and Senator GRAMM, have given our amendment and I encourage all my colleagues to support us in this effort. I look forward to seeing it in the final legislation.

Mr. JOHNSON. Mr. President, I rise today to urge my colleagues to take swift and decisive action to stem the tide of corporate greed that is eroding the integrity of America's capital markets. I am a strong believer in the free

enterprise system, and I am proud of America's leadership in creating tremendous economic opportunity for all investors, big or small, domestic or foreign. However, it is time that Congress curb the appalling corporate excesses and misinformation that have hurt investors, employees and taxpayers. Passage of the Public Company Accounting Reform and Investor Protection Act is a critical step in addressing these concerns.

It is tempting to blame the problems corporate America is facing on just a few bad actors. For the most part, America's business men and women are industrious, innovative, and honest people who work hard to build our economy and provide jobs for our communities. However, we simply cannot ignore the shocking number and size of failed or failing companies, the marked increase in earnings restatements, and the profound toll this has taken on hard-working Americans. In fact, state pension funds have plummeted more than $1 billion from the WorldCom restatement and billions more from other companies involved in the scandals.

In light of these inexcusable revelations, it is hard to believe that these problems are just isolated instances. Almost daily discoveries of accounting irregularities at some of America's largest and most highly respected companies, such as Enron, WorldCom, Tyco, and Xerox, to name just a few, clearly demonstrate the need for systemic accounting and corporate governance reform. Just recently, in fact, the Wall Street Journal reported that the drug company Merck may have understated revenue by over $12 billion.

We must address systemic problems that are undermining the efficiency and transparency of our free market system, and which are eroding the faith of everyday Americans in the fundamental fairness of American business practices. We must clean up the current corporate culture that rewards misleading financial reporting and lax or corrupt corporate governance. We need strong legislation that will end the conflicts of interest and lack of disclosure that have misled investors and shaken their faith in America's financial markets. And we need to ensure that the SEC has the tools and money it needs to become a strong and formidable enforcer of securities laws. A kinder and gentler SEC serves only those corporate executives who have something to hide.

The Public Company Accounting Reform and Investor Protection Act addresses these problems in a way that limits regulatory burden but provides affirmative measures to restore the integrity of our free market system. I support the bill's creation of a strong Public Company Accounting Oversight Board and restrictions on non-audit services accounting firms can provide to public company audit clients. Further, the bill imposes tough new corporate responsibility standards and implements controls over stock analyst conflicts of interest. Also, the bill requires public companies to quickly and accurately disclose financial information, so that high-level executives don't have a head start over small investors in bailing out when a company is in trouble. Finally, the bill ensures that the SEC has the resources to accomplish its mission of regulating the securities markets.

On this last point, I was disappointed that President Bush's budget did not include money that the Banking Committee authorized last year that would have strengthened the SEC. The SEC has long been hobbled by its inability to compete for top-notch employees because of a pay scale that was out of line with other financial regulators. Late last year, Congress passed, and the President signed, H.R. 1088, which provided pay parity for SEC employees. Unfortunately, the President's budget did not allocate additional funds, making it difficult if not impossible for the SEC to carry out its enforcement mission. I am pleased that President Bush is now calling for additional funding for the SEC, which should be better able to police public companies with adequate resources.

Without the threat of real consequences, however, dishonest corporate executives have little to fear from being caught with their hands in the cookie jar. For this reason, Congress must implement a plan to hold irresponsible corporate executives responsible for their actions. We must not allow these criminals to hide behind the corporate veil, while stealing millions of dollars from hard-working Americans. In that vein, I support provisions contained in the Corporate and Criminal Fraud Accountability Act, sponsored by Senator LEAHY. The bill would provide stronger criminal penalties for corporate managers who defraud investors of publicly traded securities, criminal prosecution of persons who alter or destroy documents related to investigations, and protection for corporate whistleblowers against retaliation by their employers, among other provisions designed to protect investors from corporate greed.

Finally, I believe that we should take a strong stance against another form of corporate greed: corporations that profit from American consumers, yet intentionally dodge U.S. taxes by moving their headquarters abroad. It is outrageous that these so-called ''American'' companies take advantage of the benefits of operating in this country and yet shirk even the most basic responsibilities of corporate citizenship. That's why I strongly support the Tax Shelter Transparency Act, sponsored by Senator BAUCUS, which would close the loopholes that allow corporate executives to use evasive accounting tactics to enrich themselves on the backs of American taxpayers.

Before I close, I would like to thank Chairman SARBANES for his leadership on this important issue. I also want to thank the Chairman as well as the Banking Committee staff for conducting a series of ten inclusive and comprehensive hearings on the issues addressed in his bill. The content of those hearings provided a conceptual foundation for our subsequent discussions of Senator SARBANES' bill and a previous bill proposed by Senators DODD and CORZINE. In addition, our work has been enhanced by the fine contributions of Senator ENZI, who is the Senate's only Certified Public Accountant. The deliberative process used to develop this legislation has led to an appropriate, thoughtful, bipartisan bill that makes great strides in addressing the problems in our financial markets and restoring investor confidence.

Ms. LANDRIEU. Mr. President, I would like to voice my strong support for S. 2673, the Public Company Accounting Reform and Investor Protection Act. This legislation will bring accountability to our corporate boardrooms and end the accounting abuses that threaten to undermine the free enterprise system.

The hallmark of our economic system is free, fair, and open competition. The system rewards innovation, efficiently, and hard work. It allows individuals to take an idea, a dream, or an invention; build a business around it; and turn it into a livelihood. Some of our greatest corporations today started with just one idea.

The recent revelations from Wall Street have thrown much of this in doubt. For the Enrons, and WorldComs of the world, success was based on hiding losses, misstating earnings, destroying documents, and getting cozy with their so-called ''independent'' auditors and the stock analysis who are supposed to give the stock buying public objective information. Instead of winning through open competition, these companies and others won through accounting sleight-of-hand.

The price of this deception has been too high. While much has been made in the media about how far the Dow, the NASDAQ, and the S & P 500 have fallen on Wall Street, the real pain is being felt on Main Street—in retirement plans, pensions, and the investment portfolios of hard working people in our country. The pain is being felt by the very wealthy and people with modest means. Fortunately no Louisiana-based corporation has been caught up in this mess and hopefully that will remain the case, but many Louisiana investors were not so lucky.

Many have said that all of these problems have been caused by a few bad apples. But when we hear about corporations hiding losses, creating off-book partnerships, insider trading, and inside loans to corporate officers, it means that something may be wrong with the whole tree: the tree is rotten because of loopholes in regulations and limited oversight.

My State of Louisiana is home to a large number of small businesses—94,000 of the employer businesses in my state employ fewer than 500 people—

and they employ about 54 percent of the state's workforce. This does not include the estimated 135,000 self-employed people in my state. I find myself wondering what small business owners think of all of the news reports about these big, sophisticated corporations and their crooked accounting?

Small business owners work hard to keep clean books. They do not have a team of creative accountants that turn losses into gains. The small business does not create sham, off-book partnerships to hide losses. I have never heard of a small business being forced to restate its earnings. Small business grow by playing by the rules. Many small business owners dream of taking the honest approach to turning their ideas and dreams into big businesses. How disheartening must it be for them to see that in the world of big corporate business the way to get ahead is by cheating.

The bill before us today will help restore faith in the free market. It creates a strong oversight board that will set auditing standards for public companies backed up with the power to investigate abuses. It gets rid of the inherent conflict of interest faced by accounting firms that provide management consulting services to their auditing clients. Here on the floor we have added tough criminal penalties to this bill and given greater protections to whistles blowers. The whistle blower protections are an especially needed reform. We want the honest people in business to know that there is still a place for them.

We must take this opportunity to restore confidence in the free market. I urge my colleagues to vote in favor of this legislation and I want to commend the chairman of the Committee, Mr. SARBANES, for bringing this legislation to the floor.

VOTE EXPLANATION

● Mr. KERRY. Mr. President, due to a longstanding commitment I was necessarily absent for the vote on cloture on the Public Company Accounting Reform and Investor Protection Act of 2002 (S. 2673). Although my vote would not have affected the outcome, had I been present, I would have voted for cloture on the bill.●

ANDEAN TRADE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives on H.R. 3009.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Presiding Officer (Mr. BAUCUS) laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 3009) entitled ''An Act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House.

From the Committee on Ways and Means, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Mr. Thomas, Mr. Crane, and Mr. Rangel.

From the Committee on Education and the Workforce, for consideration of section 603 of the Senate amendment, and modifications committed to conference: Mr. Boehner, Mr. Sam Johnson of Texas, and Mr. George Miller of California.

From the Committee on Energy and Commerce, for consideration of section 603 of the Senate amendment, and modifications committed to conference: Mr. Tauzin, Mr. Bilirakis, and Mr. Dingell.

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment, agree to the request for a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate with the ratio being 3 to 2.

The PRESIDING OFFICER. Without objection, it is so ordered.

TO AMEND FOREIGN ASSISTANCE ACT AND THE GLOBAL AIDS AND TUBERCULOSIS RELIEF ACT

Mr. REID. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of H.R. 2069 and the Senate proceed now to that matter.

The PRESIDING OFFICER (Mr. BAUCUS). Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2069) to amend the Foreign Assistance Act of 1961 to authorize assistance to prevent, treat, and monitor HIV/AIDS in sub-Saharan Africa and other developing countries.

There being no objection, the Senate proceeded to the immediate consideration of the bill.

AMENDMENT NO. 4297

(Purpose: To amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria; to amend the Public Health Service Act with respect to the authority of the Department of Health and Human Services to act internationally with respect to HIV/AIDS, tuberculosis, and malaria; and for other purposes)

Mr. REID. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KERRY, Mr. FRIST, Mr. KENNEDY, Mr. BIDEN, and Mr. HELMS, proposes an amendment numbered 4297.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments''.)

AMENDMENT NO. 4298

Mr. REID. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KERRY, Mr. FRIST, Mr. KENNEDY, Mr. BIDEN, and Mr. HELMS, proposes an amendment numbered 4298.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the title)

Amend the title to read as follows: ''An Act to amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria; to amend the Public Health Service Act with respect to the authority of the Department of Health and Human Services to act internationally with respect to HIV/AIDS, tuberculosis, and malaria; and for other purposes.''.

Mr. REID. I ask unanimous consent both amendments at the desk be agreed to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, all with no intervening action or debate; and any statements be placed in the RECORD at the appropriate place as if read.

Mr. SANTORUM. Reserving the right to object—and I will not object—this is a very important piece of legislation for the continent of Africa and has to do with AIDS relief, tuberculosis, and other infectious diseases. There is a provision in this legislation that Senator BIDEN and I have offered on debt relief for Third World countries. This is a vitally important piece of legislation that dovetails very well with the President's initiative in trying to stem the scourge of AIDS in Africa and provide some hope for some of these heavily debt ridden countries.

I am very pleased we were able to do this in wrap-up today. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4297) was agreed to.

The amendment (No. 4298) was agreed to.

The bill (H.R. 2069), as amended, was read the third time and passed.

Mr. DASCHLE. Mr. President, I am very pleased that we have just passed a bill that will give the President and his team the tools they will need to back up their words about fighting the scourge of HIV and AIDS with action.

The omnibus HIV, AIDS, TB, and malaria authorization bill vastly increases our focus on treatment, giving hope to the millions of people already infected with this virus. It intensifies our ongoing prevention efforts. And it makes a new commitment to training local health care workers so that underdeveloped nations can create modern health infrastructures.

The bill also authorizes nearly $5 billion over 2 years so that this commitment is matched with the resources to get it done. But unless we work in a bipartisan fashion to see that money appropriated, this bill offers little more