massive accounting scam, the stock is not at $54 a share but 3 cents a share. The WorldCom stock in WorldCom 401(k) plans is not worth $1.1 billion, but it is now worth $20 million.

By the way, the 401(k) plan isn't guaranteed by the Pension Benefit Guaranty Corporation. It is actually imposing a cruel reduction in the security of all those 104,000 folks. I say, as an aside, this situation certainly argues for diversification in pension plans as well. The WorldCom plan started with about one-third concentration in WorldCom stock. It now has less than 1 percent in the WorldCom stock, but that is just because of the loss of value. It is really a very difficult situation for a lot of working Americans.

These are not just numbers or abstract entries on a corporate balance sheet or somebody's notification of what their 401(k) plan returns are, they represent the destruction of people's hopes and dreams for a secure retirement life, after working responsibly and contributing responsibly to their retirement.

Last week we had one WorldCom employee say:

> I put all my money in WorldCom stock, and I'm pretty sure I've lost everything. I knew what happened at Enron, but I thought we [at WorldCom] were different.

Management told them they were different, and, as most people, employees trusted the executives they worked for and wanted to be proud of their company and its leadership.

The experience of WorldCom employees, and those of hundreds of other companies—some of them, by the way, not falling prey to the whims of fraud but just simply market realities—shows that diversification is an absolute essential in pension reform. I hope we have that debate also on the floor.

When retirees lose all their money through no fault of their own, when nothing is left in their retirement portfolio, one thing, and one thing only, stands in the way of total economic devastation. Social Security. Because no matter the state of the stock market, Social Security is always there—not with enough to live in luxury but enough to make a real difference for millions who have little or no savings on which to rely. Social Security is the ultimate safety net. We must not let the administration shred it.

Privatization schemes would irresponsibly gamble with the guarantee of security for retirees, present and future. The average Social Security benefit last year was only about $10,000 a year—not the princely sums received by executives who have failed their companies—and not enough in some parts of our country to have a secure retirement. In New Jersey, for instance, $10,000 a year can only get you so far given the high cost of living in our part of the country.

Yet President Bush's Social Security Commission called for substantial cuts in guaranteed benefits. Cuts for some workers would amount to 25 percent and future cuts could exceed 45 percent. If anyone wants to apologize for privatization by disputing these numbers, I just encourage them to read the report of the nonpartisan actuaries at the Social Security Administration themselves. For more evidence, let me refer you to the recent economic analysis by Professor Peter Diamond of MIT and Dr. Peter Orszag of the Brookings Institution.

The Bush Commission parades its proposals as promoting choice. But if the Bush privatization plans were ever approved, seniors would have no choice. Their benefits would be cut. They would be cut if they shifted to privatized accounts, and they would be cut if they did not. The only choice is this: If they opted for privatized accounts, their guaranteed benefits would be cut more deeply.

The effective destruction of Social Security's guaranteed benefits recommended by the Bush Commission is bad economics and bad social policy. Fifty Senators have written the President urging him to publicly reject his Commission's proposals. So far, his response has been the same kind of silence we heard for months after the corporate scandals first broke with Enron.

Sometimes facts and reality ought to bring about a change in thinking for individuals, for corporations, and for an administration on important topics of the day.

Cutting guaranteed Social Security may have sounded like a good idea when the stock market was only going up, but now the fallacy of that assumption is clear to everybody. I hope the Bush administration will reconsider its plans to privatize and cut Social Security.

Let's not take the security out of Social Security.

Mr. President, before I leave the floor, I would like to take a few minutes to discuss a different matter but one that I believe is fundamentally important as we seek to address the structural problems facing our economy and what we need to face in the financial world to straighten out some of the problems we have. We need to better account for employee stock options.

This, too, is an issue that regardless of where one may have been historically, facts and reality ought to bring about a change in reasonable folks' thought with regard to options.

While the depth of liquidity and efficiency of our markets is still unrivaled, our markets need to make sure they are based on a presumption of integrity and accuracy in the information provided to the country. Our entire financial system depends on the broad availability of timely, truthful and transparent information. To secure that and restore the confidence of investors, it is absolutely urgent that we address this treatment of employee stock options.

The fact is, in many instances where we continue to allow this without an acknowledgment of what is going on, two things are happening: Earnings are overstated, and there is an enormous amount of dilution going on to the ownership of shares.

People may argue that you can derive this from financial statements and footnotes that are highly complicated even for the most sophisticated investor to read. But I argue that there is no common sense in making it as difficult to understand what the earnings statements of a company state and, more importantly, protecting investors from the dilution that comes from the whole premise of issuing more stock without having an understanding of when that is going to happen. This needs to be put in the context of the asymmetrical incentives it gives management that has undermined confidence in our corporate executives.

To be brief: We have a chance to address this issue in a very serious manner in the next few hours before we take our final vote on this legislation. I compliment Senator LEVIN and all those who stand to straighten out and put into responsible format what needs to be done with option accounting. We should do that not by writing option rules, at which I do not think the Senate has the capacity to be effective, but making sure that an independent body, which we will independently finance, has the ability to deal with a very complicated issue.

I hope with the help of all my colleagues, we can get around to straightening out something that, as we saw today in news reports, even corporate executives understand can lead to misallocation of resources and certainly misunderstanding of the performance of companies. We ought to get to real economic performance being reflected, not accounting performance. I am glad to see Coca-Cola take the steps they did. We need to move firmly and surely by passing the Levin amendment which would facilitate a solution that would make this permanent for everyone.

All three of these are important issues—accounting reform and corporate responsibility, the treatment of stock options, and protecting Social Security and rejecting privatization. The stakes are high for our economy. I hope we will move swiftly and certainly to reform and provide economic security to all Americans.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Reid (for Carnahan) modified amendment No. 4286 (to amendment No. 4187), to require timely and public disclosure of transactions involving management and principal stockholders.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan, Mr. LEVIN, is recognized.

Mr. LEVIN. Mr. President, I wonder if I might inquire as to how much time I have on my allotted time under postcloture rules.

The PRESIDING OFFICER. The Senator has 36 minutes remaining.

Mr. LEVIN. I thank the Chair.

I will at a later time ask unanimous consent that the pending second-degree amendment be laid aside so I can offer a germane second-degree amendment relative to stock options.

My amendment, which is at the desk, would direct the independent accounting standards board to review the accounting rule on stock options and adopt an appropriate rule within 1 year.

It should not be necessary to seek unanimous consent. The whole purpose of our postcloture rules is to allow those of us who have germane amendments such as this one to offer that amendment, to have it voted on. It is a frustration of the clear intent of our rules to not allow germane amendments to be voted on after cloture is invoked.

We have a strict rule. It is called cloture. It ends debate. When cloture was invoked, I had pending an amendment which would have given the Securities and Exchange Commission greater powers to impose civil fines administratively. It is an important addition to SEC powers. They now have that power over brokers, but they don't have it over corporate directors. They don't have it over corporate managers. They ought to have the power to impose civil fines administratively—subject, of course, to appeal to the courts—relative to corporate directors and corporate officers.

That amendment, as relevant as it is to this bill, was frustrated when cloture was invoked and when all the time up to that vote was utilized so that my SEC amendment was not allowed to come up for a vote.

Now we are in postcloture. Now we are under postcloture rules. The question is whether or not the intent of those rules is going to be carried out, which is to allow those of us who have germane amendments to have a vote on those amendments.

The amendment on which I would like to have a vote cannot be voted on because there is a pending first-degree amendment and a pending second-degree amendment. So the second-degree amendment would have to be laid aside in order to allow a vote. As long as the opponents of this stock option accounting amendment don't allow the first- and second-degree amendments that are pending to come to a vote, we are foreclosed from offering germane amendments.

That is not the intent of our postcloture rule. I believe it is an abuse of the intent of our postcloture rule. I hope it will not happen here. I am hoping against hope that there will not be an objection to my unanimous consent request so that this most critical issue can be addressed by the Senate.

If we don't address this issue, it seems to me we are leaving a significant gap in the reforms we are struggling so hard to adopt to try to restore honesty to accounting rules.

In 1994, the Financial Accounting Standards Board issued a tentative rule which said that stock options should be expensed like all other forms of compensation. That is what they decided was the right thing to do.

Well, Congress intervened. The executives intervened strongly, beat back FASB with huge pressure, all set out in the FASB account of its rule. By the way, one of the most extraordinary documents I have ever read, as a matter of fact, in 24 years in the Senate, is that Financial Accounting Standards Board history of their effort to bring honesty to accounting for stock options, in their judgment, and how that effort was beaten back by pressure from executives and from Congress so that their very existence was at stake if they proceeded in a way which they thought was right. All set forth in the record. It is quite an amazing document.

So what FASB did was, they said: We can't survive if we do what we think is right. So what we will do instead is we will urge people to expense options. We will urge corporations to expense their options, but we will not mandate it.

FASB said: If you don't expense options, at least disclose the cost of the options as a footnote in your financial statements.

That was the way they decided to survive. This body voted, put some of the pressure on FASB, basically told them to leave stock option accounting alone. So we intervened on an accounting issue with a vote of something like 90 to 10 or thereabouts.

The executives weighed in. I was at one of the meetings in Connecticut when the executives weighed in heavily on this issue. So I saw the pressure that was brought to bear on what should be an independent accounting standards board.

Now we are doing something different in this bill. We are saying to the board that we are going to give you an independent source of funding. We are not going to make you dependent directly for your funding from the very people you are seeking to regulate through your accounting standards. So we are making some progress now by giving them an independent source of funding.

What my amendment would do is take what is the most significant post-Enron issue that is left open, which is accounting for these huge amounts of stock options that go mainly to executives, and direct this board that now has an independent source of funding to review—''review'' is the key word—this matter and make an appropriate decision within 1 year.

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

Mr. LEVIN. I wonder if I can yield on the time of the Senator from Arizona, because time is so limited here that I am going to have very little. I think the Senator has a half hour and, assuming that the Senator can be recognized, I believe that I only have about 10 or 15 minutes of time remaining. I wonder if the Senator from Texas would permit that I be allowed to yield to the Senator from Arizona, if the Senator from Arizona is willing to ask a question to be taken out of his own time.

Mr. GRAMM. Reserving the right to object, the Senator started out with a unanimous consent request and then launched into a speech.

The PRESIDING OFFICER. There is no request pending.

Mr. GRAMM. Maybe if the Senator would do his unanimous consent request and then yield, that would be fine.

Mr. LEVIN. I would rather do my unanimous consent request at the end of the time, rather than at the beginning of the time. I make a parliamentary inquiry. If I make a unanimous consent—

Mr. GRAMM. I don't object to the Senator yielding. I wanted to be sure we had the time we were supposed to have.

Mr. LEVIN. I ask unanimous consent that the Senator from Arizona, if he is willing, be able to ask a question on his time. I yield to the Senator from Arizona for that question and then I retain the floor.

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

Mr. McCAIN. Mr. President, I will be very brief, due to the shortness of time. I wonder if the Senator from Michigan remembers my comments last Thursday when I referred to an old boxing term, ''the fix is in.'' There was no vote allowed on my amendment, which is a clearcut, absolutely unequivocal statement about the use of stock options for accounting. Does the Senator really believe that, since my amendment was blocked by that side, his amendment is not going to be blocked by this side?

The fix is in, I say to the Senator from Michigan. I hope he knows that. This is a terrible mistake, a terrible mistake, because we are not addressing what every observer knows is a vital and critical aspect of reforming this system, which continues to so badly erode the confidence of the American people, the investors, which is over half of the American people.

I wonder if the Senator from Michigan remembers what I said last week, that the fact is the fix is in. I didn't get a vote on my amendment and the Senator from Michigan won't get one on his. Very frankly, since that side blocked my vote, I can understand them blocking this vote. I think it is wrong on both sides.

The American people deserve to know how we stand on the issue of stock options. Does the Senator understand that?

Mr. REID. Will my friend yield for a question on my time?

Mr. LEVIN. I am happy to.

Mr. REID. The Senator will recall the Senator from Arizona talking about the fix being in, and the RECORD will clearly reflect that the Senator from Arizona asked that his amendment be in order postcloture, and, as the Senator from Michigan will recall, I objected to that because at that time we had 56 other amendments that were pending. They also wanted them to be in order.

Mr. MCCAIN. If the Senator will yield, that is not correct. Mine was a motion to recommit.

Mr. REID. I am talking about the objection about which I was involved, and does the Senator from Michigan recall that objection to the unanimous consent request by the Senator from Arizona?

Mr. LEVIN. I believe I do recall the objection to the request, and I would rather let the RECORD speak for itself as to the other matters because I think the issue before us is a somewhat different issue than we faced on the McCain-Levin amendment last week. Now we have a Levin-McCain-Corzine amendment, which is somewhat different. I supported Senator MCCAIN's amendment, and, indeed, I have been very active in trying to get this accounting rule adopted in the way the independent accounting board wants to have it adopted. That is the key emphasis.

Mr. SARBANES. Will the Senator yield on my time for a question?

Mr. LEVIN. I am happy to yield.

Mr. SARBANES. As I understand the Senator's amendment—the one he will be seeking to offer.

Mr. LEVIN. I will be seeking unanimous consent to have the second-degree amendment laid aside so that I can do so.

Mr. SARBANES. As I understand it, this amendment is not the Congress trying to legislate what the accounting standard should be; is that correct?

Mr. LEVIN. The Senator is correct.

Mr. SARBANES. I think that is important because I, frankly, do not think that the Congress should get into the business of trying to legislate accounting standards. I don't think we have the expertise or the competence to do it. And it turns established accounting standards into a straight-out political exercise, and I don't think that is wise.

As I understand the Senator's amendment, it would simply reference the issue of the treatment of stock options to the financial accounting standards board, for them to make their own independent judgment as to how this matter should be treated, is that correct?

Mr. LEVIN. The Senator is correct.

Mr. SARBANES. And I understand that the terms of reference are such that it does not presuppose a particular substantive conclusion; it is, in effect, left open, or even level, however you want to describe it—a level playing field for FASB, the expert body that has been established to make these judgments to make its own independent judgment as to how these matters should be addressed, is that correct?

Mr. LEVIN. The amendment directs FASB to review the issue and adopt an appropriate standard. Those are the words in the amendment. I must tell my good friend from Maryland, however, that there is a history here that cannot be ignored.

The history is that FASB tried to adopt a standard in 1994. They said what the right standard was. They were beaten back and brow-beaten and pressured, so they had to give up what they believed is right. That is in their own history. Then they recommended to corporations to expense options, because that is the right thing to do. But they offered an option to corporations to simply disclose the value of options in their financial statement in a footnote. They left that option open.

So I have two hopes here. One is that there will not be an objection to a vote on this amendment. For the life of me, I cannot see how anybody can object to a vote on an amendment, which simply tells the independent accounting standards board to reach an appropriate decision.

Now, we did intervene 8 years ago, and I believed it was wrong for us to intervene. Nine of us voted no; 90 voted yes. We told them: Do not change the rule; do not expense options.

In my judgment, it was wrong procedurally and it was wrong in terms of the substance. But it is my hope that, No. 1, we will be allowed to have a vote, and, No. 2, it would be my expectation, however, if it is left to the independence of FASB, that FASB would continue to do what they said was the right thing, which is to expense options.

It is left to their independent judgment to reach an appropriate conclusion under the language of my amendment.

Mr. SARBANES. So it would be FASB's call?

Mr. LEVIN. It would be FASB's call.

Mr. SARBANES. Mr. President, I simply want to say I am supportive of this amendment. I think this is the right way to go about it.

Let me repeat, I do not think the Congress itself should be in the business of legislating accounting standards, but this amendment does not do that. It references the issue to the very body that has been established to accomplish that, which has the expertise and the competence. The amendment also helps to underscore the independence of FASB and a congressional perception that they should call it as they see it. I hope at the appropriate time the Senator will be able to obtain permission to bring his amendment before the body.

I thank the Senator for yielding.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. I am sorry. I think the Senator from Michigan has the floor.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I ask unanimous consent that I yield to the majority leader for whatever time he wishes to take and that time not be taken from the few minutes I have remaining, and that the floor be returned to me at that time.

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

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take any time still allotted to the Senator from Michigan.

I hope we can get the unanimous consent request that the Senator from Michigan is propounding. I will also say that this is not a question of if he can get consent and ultimately bring the amendment to the floor. One way or the other we will have a vote on the Levin amendment. It may not be on this bill this afternoon if we fail, but our colleagues need to know we will have a vote on this amendment. This will occur. If I have to offer it myself, we will have a vote on this amendment. So we can do it this afternoon, we can do it tomorrow, or we can do it next week. We are going to have a vote on this amendment. Senators need to take that into account before they object.

Let me say as strongly as I can, this amendment belongs on this bill. This is exactly what I think we ought to be doing, and I think on a bipartisan basis there is strong support for what Senator LEVIN is proposing.

I want to speak briefly this afternoon, in my leader time, on the amendment itself. I think it is important, as my colleagues have been noting, that the Levin amendment contains precisely the right solution to the difficult problems of determining the proper accounting treatment for stock options. It reserves that judgment for the appropriate body, the Financial Accounting Standards Board. They are the ones given the authority, they are the ones with the credibility, they are the ones with the standing to make the right

decisions about this very important and complex matter.

I argue this is the heart of our ability to deal with the accounting reforms that are in the Sarbanes and Leahy bills.

It has become all too clear that accounting standards are complex and can be easily manipulated by aggressive and sometimes unscrupulous corporate executives. Unfortunately, FASB's weak, dependent condition has contributed to those manipulations. In fact, it is arguable that the undermining of FASB's independence was the necessary precondition to the crisis in confidence afflicting our capital markets today.

One of the many virtues of the Sarbanes bill is that it corrects that situation. It provides for a new, improved FASB, giving it for the first time full financial independence from the accounting industry. That certainly is the first and most vital improvement we need with respect to establishing clarity and regularity of accounting standards.

Another needed improvement is for those of us in Congress to allow FASB to do its job. In 1994—and my colleagues have referenced this—when this issue was last taken up by the Senate, I am proud to say I was one of nine Senators who voted against the Senate intruding itself on FASB's decisionmaking process. That is the only reason I opposed my colleague's amendment last week. As well intended as it is, in my view it did the same thing on the other side that they were trying to do 9 years ago. It asserts Congress's authority to undermine the independence of that board. I opposed it 9 years ago, and I oppose it today, but for obviously different results.

At the same time, the Senate was coming at the options issue from the direction of prohibiting expenses back in 1994, and as I said today the momentum is the opposite, but the right course is the same. Let the experts on the accounting standards board do their job and make the appropriate decision. Eight years ago, the technical accounting questions were essentially the same as they are today, although obviously 8 years have given us an entirely different perspective than the one we had back then. Nonetheless, the questions are still real. Accountants still debate the relative merits of the opposing sides. We still have expert opinion going both ways. On the one hand, the argument is made that if options are not expensed, bottom lines look far more attractive than they actually should be, and the investors can be deceived by the distorted financial pictures that result.

On the other hand, we hear that it is inherently impossible to value options with no concrete reality behind what the options will actually be worth when they are exercised. There is also a real debate about the incentive effects of options.

Supporters argue that they better align an employee's interests with the company's. Opponents contend they result in a ''pump and dump'' mentality, with senior executives seeking to inflate their stock prices at any cost so they can quickly and cynically enrich themselves.

In contrast to those complex questions, the Levin amendment is simplicity itself. It is one sentence. It says that FASB shall:

> Review the accounting treatment of employee stock options and shall, within one year of enactment, adopt an appropriate generally-accepted accounting principle for the treatment of employee stock options—

End of issue.

The business of setting accounting standards is lodged, by the Levin amendment, in the board that the Sarbanes bill expressly seeks to strengthen and improve. I fully support the Levin amendment and the philosophy behind it. Congress should not be engaged in setting technical accounting rules. We should be seeking to do the reverse: Establish an independent FASB that can help restore confidence in the accuracy of financial information.

I observe in this context that because of that principle, as I said a moment ago, while well intended, I believe the McCain amendment went too far and did exactly what we were trying to do in 1994 but on the flip side. Restoring independence to the accounting standards is one of the overriding objectives of the Sarbanes bill, and that is one of my main reasons for supporting it as strongly as I do. That was my primary reason for voting in 1994 against a previous attempt to direct FASB in its decision about expensing, and it is the primary reason for supporting the Levin amendment today.

So I will end on this particular issue where I began. There will be a vote on the Levin amendment. It will be today, tomorrow, next week, or at some point in the future, but Senators should not be misled. If there is an objection today, it by no means ends the debate. We might as well have it. We might as well get it. We might as well include it in the Sarbanes bill because it will be included in one fashion or another, ultimately, before the work has been done in the Senate on this very important, complex, and comprehensive challenge we face.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. LEVIN. Mr. President, I quote from a few observers what the stakes are in this vote and what the stakes have been in terms of the way in which stock options have not been expensed, have been stealth compensation, have fueled the incredible increase in terms of executive pay, and have been a driving force behind the deceptive accounting practices which have bedeviled this Nation and undermined public confidence in the credibility of our financial statements.

Robert Samuelson, an economist, said the following:

> The point is that the growth of stock options has created huge conflicts of interest that executives will be hard-pressed to avoid. Indeed, many executives will coax as many options as possible from their compensation committees, typically composed of ''outside'' directors. But because ''directors are [manipulated] by management, sympathetic to them, or simply ineffectual,'' the amounts may well be excessive. . . .
>
> Stock options are not evil, but unless we curb the present madness, we are courting continual trouble.

This is what a retired vice president at J.P. Morgan and Company said: There can be no real reform without honest accounting for stock options. A decade ago, the Financial Accounting Standards Board recommended options be counted as a cost against earnings like all other forms of compensation, but corporate lobbyists resisted and Congress did their bidding. Alan Greenspan and Warren Buffett, among others, are calling for the same change now, but it remains to be seen whether the accounting profession can act without congressional interference. Treating options like other forms of pay would make executive compensation transparent, diminish the temptation to cook the books, and make managers less inclined towards excessive risk taking.

Warren Buffett, who was quoted by Senator MCCAIN last week, said the following: If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? If expenses shouldn't go into the calculation of earnings, where in the world should they go?

A New York Times editorial of March 31 of this year stated:

> We have no quarrel with the business lobby's claim that stock options have helped fuel America's entrepreneurship, particularly in Silicon Valley. But in the interest of truthful accounting and greater financial integrity, options should be treated as what they are, a worthy form of compensation that companies must report as an expense.

Robert Felton, director of McKinsey & Company's Seattle office, said:

> Because they have so much at stake with these huge grants, options are likely to have encouraged some managers to cheat and cook the books.

Allan Sloan of Newsweek:

> . . . options are a free lunch for companies. . . .
>
> I'm all in favor of employees becoming millionaires via options—I'm an employee, after all—but I'm also in favor of companies providing profit-and-loss statements that show the real profit and loss. Ignoring options' costs and low-balling CEO packages are simply outrageous. When campaigns start expensing options and disclosing true CEO and director compensation numbers, I'll believe that they've seen the light.
>
> According to the Economist, last year, stock options accounted for 58 percent of the pay of chief executives of large American companies. So over half the compensation of our CEOs of major companies now comes from stock options. To leave that expense off the financial statements' bottom line is to distort what is going on at companies. It is

part of the reason we have not had accurately reflective financial statements at our corporations. It is part of the reason for the soup we are in right now.

Where financial statements have been giving a false picture of what a company's financial situation is, it has provided stealth compensation in huge amounts to executives, it has watered down the value of stock to the owners of a corporation. That is why now we have such tremendous support from the organizations which represent stockholders.

That is why, for instance, TIAA–CREF, the largest pension fund in the United States for teachers is supportive of changing the accounting for stock options. It is why the Council for Institutional Investors, which is the leading shareholders organization for pension funds, now favors expensing stock options in order to give an accurate reflection of what a company's financial statement is. It is why the AFL–CIO supports the amendments offered last week and the amendment which hopefully will be offered today if we are allowed to have a vote on this.

Alan Greenspan says this is the top post-Enron reform. Expensing stock options is the top post-Enron reform. That is the Chairman of the Federal Reserve. Paul Volcker, former Federal Reserve Chairman, supports a change in stock option accounting. Arthur Levitt, former SEC Chairman, supports the change; Warren Buffett, as we mentioned; and a host of economists. Standard & Poor's believes you have to expense stock options if you are going to show an accurate earnings calculation; Citizens for Tax Justice; Consumer Federation of America; Consumers Union, and on and on.

The Washington Post of April 18 says the following:

> . . . expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. . . . But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense.

That is the end of that particular quote. I would like the entire quote printed in the RECORD, and I ask unanimous consent that all the editorials and comments that I referred to be printed in the RECORD in full.

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

[From the Washington Post, Jan. 30, 2002]

STOCK OPTION MADNESS

(By Robert J. Samuelson)

As the Enron scandal broadens, we may miss the forest for the trees. The multiplying investigations have created a massive whodunit. Who destroyed documents? Who misled investors? Who twisted or broke accounting rules? The answers may explain what happened at Enron but not necessarily why. We need to search for deeper causes, beginning with stock options. Here's a good idea gone bad—stock options foster a corrosive climate that tempts many executives, and not just those at Enron, to play fast and loose when reporting profits.

As everyone knows, stock options exploded in the late 1980s and the '90s. The theory was simple. If you made top executives and managers into owners, they would act in shareholders' interests. Executives' pay packages became increasingly skewed toward options. In 2000, the typical chief executive officer of one of the country's 350 major companies earned about $5.2 million, with almost half of that reflecting stock options, according to William M. Mercer Inc., a consulting firm. About half of those companies also had stock-option programs for at least half their employees.

Up to a point, the theory worked. Twenty years ago, America's corporate managers were widely criticized. Japanese and German companies seemed on a roll. By contrast, their American rivals seemed stodgy, complacent and bureaucratic. Stock options were one tool in a managerial upheaval that refocused attention away from corporate empire-building and toward improved profitability and efficiency.

All this contributed to the 1990's economic revival. By holding down costs, companies restrained inflation. By aggressively promoting new products and technologies, companies boosted production and employment. But slowly stock options became corrupted by carelessness, overuse and greed. As more executives developed big personal stakes in options, the task of keeping the stock price rising became separate from improving the business and its profitability. This is what seems to have happened at Enron.

The company adored stock options. About 60 percent of employees received an annual award of options, equal to 5 percent of their base salary. Executives and top managers got more. At year-end 2000, all Enron managers and workers had options that could be exercised for nearly 47 million shares. Under a typical plan, a recipient gets an option to buy a given number of shares at the market price on the day the option is issued. This is called "the strike price." But the option usually cannot be exercised for a few years. If the stock's price rises in that time, the option can yield a tidy profit. The lucky recipient buys at the strike price and sells at the market price. On the 47 million Enron options, the average "strike" price was about $30, and at the end of 2000, the market price was $83. The potential profit was nearly $2.5 billion.

Given the huge rewards, it would have been astonishing if Enron's managers had not become obsessed with the company's stock price and—to the extent possible—tried to influence it. And while Enron's stock soared, why would anyone complain about accounting shenanigans? Whatever the resulting abuses, the pressures are not unique to Enron. It takes a naive view of human nature to think that many executives won't strive to maximize their personal wealth.

This is an invitation to abuse. To influence stock prices, executives can issue optimistic profit projections. They can delay some spending, such as research and development (this temporarily helps profits). They can engage in stock buybacks (these raise per-share earnings, because fewer shares are outstanding). And, of course, they can exploit accounting rules. Even temporary blips in stock prices can create opportunities to unload profitable options.

The point is that the growth of stock options has created huge conflicts of interest that executives will be hard-pressed to avoid. Indeed, many executives will coax as many options as possible from their compensation committees, typically composed of "outside" directors. But because "directors are [manipulated] by management, sympathetic to them, or simply ineffectual," the amounts may well be excessive, argue Harvard law professors Lucian Arye Bebchuk and Jesse Fried and attorney David Walker in a recent study.

Stock options are not evil, but unless we curb the present madness, we are courting continual trouble. Here are three ways to check the overuse of options.

(1) Change the accounting—count options as a cost. Amazingly, when companies issue stock options, they do not have to make a deduction to profits. This encourages companies to create new options. By one common accounting technique, Enron's options would have required deductions of almost $2.4 billion from 1998 through 2000. That would have virtually eliminated the company's profits.

(2) Index stock options to the market. If a company's shares rise in tandem with the overall stock market, the gains don't reflect any management contribution—and yet, most options still increase in value. Executives get a windfall. Options should reward only for gains above the market.

(3) Don't reprice options if the stock falls. Some corporate boards of directors issue new options at lower prices if the company's stock falls. What's the point? Options are supposed to prod executive to improve the company's profits and stock price. Why protect them if they fail?

Within limits, stock options represent a useful reward for management. But we lost those limits, and options became a kind of free money sprinkled about by uncritical corporate directors. The unintended result was a morally lax, get-rich-quick mentality. Unless companies restore limits—prodded, if need be, by new government regulations—one large lesson of the Enron scandal will have been lost.

[From the Washington Post, April 18, 2002]

MONEY TALKS

Alan Greenspan, perhaps the nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffet, perhaps the nation's foremost investor, has long argued the same line. The Financial Accounting Standards Board, the expert group that writes accounting rules, reached the same conclusion eight years ago. The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the common-sense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. Yet today's Senate Finance Committee hearing on the issue is likely to be filled with dissenting voices. There could hardly be a better gauge of money's power in politics.

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, whose bursting helped precipitate last year's economic slowdown.

It is not surprising, therefore, that the expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. But the dissenters are intimidated by neither experts nor logic. They claim that the value of options is uncertain, so they

have no idea what number to put into the accounts. But the price of an option can actually be calculated quite precisely, and managers have no difficulty doing the math for the purposes of tax reporting. The dissenters also claim that options are crucial to the health of young companies. But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense. Finally, dissenters say that options need not be so counted because granting them involves no cash outlay. But giving employees something that has cash value amounts to giving them cash.

The dissenters include weighty figures in both parties. Sen. Joe Lieberman (D–Conn.) is the chief opponent of options sanity in the Senate, and last week President Bush himself declared that Mr. Greenspan is wrong on this issue. What might be behind this? Many of the corporate executives who give generously to politicians are themselves the beneficiaries of options—often to the tune of millions of dollars. High-tech companies, an important source of campaign cash, are fighting options reform with all they've got. But if these lobbyists are allowed to win the argument, they will undermine a key principle of the financial system. Accounting rules are meant to ensure that investors get good information. Without good information, they cannot know which companies will best use capital, and the whole economy suffers in the long run.

[From the New York Times, March 31, 2002]

STOCK OPTION EXCESSES

In his Congressional testimony last month, Jeffrey Skilling, Enron's former chief executive, offered a primer on the misuses of stock options. Options, he said, are the most egregious way for companies to pump up their profits artificially. They also netted him a tidy $62.5 million in 2000 and helped Enron pay no income taxes in four of the last five years.

Stock options, in theory, aren't a bad idea. By giving employees the chance to buy a company's stock in the future at today's price, corporations can provide an extra incentive for hard work and can augment compensation. The New York Times Company awards option to its top executives. But like other rational business practices that got out of hand during the boom years of the late 1990's, options have been abused by some companies and are in need of reform.

A good place to start would be for Congress to end the conflict between how the tax laws and the accounting rules treat employees options. Alan Greenspan, the Federal Reserve chairman, has identified that as one of the most pressing post-Enron reforms affecting corporate governance.

That conflict creates a loophole that has allowed companies to treat stock options as essentially free money during the recent dotcome bubble. A company does not have to report grants of stock options as an expense on its profit-and-loss statements, as it does with other forms of compensation, but it can deduct the options as an expense from its tax liability when employees exercise them.

As a result, corporate executives can award themselves oodles of stock options without fear of denting their profit reports. Once the options are exercised, the company can treat the appreciation in the shares' value—the employees' profit—as an expense for tax purposes. At Enron, stock option deductions alone turned what would have been a federal income tax bill of $112 million in 2000 into a $278 million refund. Mr. Greenspan said last week that Federal Reserve Board research found that the average earnings growth rate of the S&P 500 companies between 1995 and 2000 would have been reduced by nearly a quarter if the companies had reported their stock options as expenses on financial statements.

A decade ago, the accounting industry proposed a sensible rule to make companies report options as expenses, but it was beaten back by fierce corporate lobbying. Now Senators John McCain and Carl Levin have proposed a bill that would end the double standard, disallowing the tax deduction for any company that fails to report options as an expense.

They are backed in that effort by investors like Warren Buffet and big institutions like pension plans, which are rightly incensed by abusive executive compensation schemes. They are tired of unseemly practices like the repricing of options to ensure that executives still get windfalls if the stock price falls. Making interest-free loans for executives to acquire stock (often forgiven if the bet does not pay off) is another dubious compensation practice.

We have no quarrel with the business lobby's claim that stock options have helped fuel America's entrepreneurship, particularly in Silicon Valley. But in the interest of truthful accounting and greater financial integrity options should be treated as what they are: a worthy form of compensation that companies must report as an expense.

Congress must end the dot-com-era notion that options equal free money. That would be a first step toward reassuring investors that top executives cannot treat publicly traded companies as Ponzi schemes created for their own enrichment.

[From Newsweek, May 20, 2002]

SHOW ME THE MONEY (ALL OF IT)

(By Allan Sloan)

Watching corporate America these days is like watching drunks at a revival meeting. They're vowing to sin no more, to tell shareholders the straight truth instead of playing accounting games, to embrace ''transparency'' so outsiders can see what's going on. But talk is cheap. When it comes to action on two key reforms—accounting for stock options, and showing the value of chief executives' compensation packages—corporations are as opaque as ever.

The accounting first. As things stand now, options are a free lunch for companies—employees place a high value on them, but companies can issue as many as they want without hurting corporate profits. That's because companies don't have to count options value as an expense. With reform in the air because of Enron, old-math types like Warren Buffett and Alan Greenspan are pushing to change accounting rules to force companies to count the value of stock options as an expense in their profit-and-loss statements. Accounting rule makers proposed this a decade ago, but backed down under political pressure generated by corporations, especially in options-happy Silicon Valley. Then there's a second, little-known aspect of the options-accounting debate. If companies have to count the value of options as an expense, they would come under huge pressure to report their value as compensation to the CEO, and to members of the board. Under current rules, a company has to show shareholders a table that includes how much it gave the CEO in salary, bonus, long-term compensation and other benefits. But the table has to show only the number of options granted to the CEO, not their economic value. To find that, you have to hunt on other pages—and you may not find it at all if the company opts to report a different way. ''The original idea was to have the value of options in the table, not the number of options,'' says Graef Crystal, a compensation expert who worked on the disclosure rules. But, he says, the SEC backed down after companies objected.

It's easy to see why companies would have been upset at having to count options as compensation. In most pay filings I see these days, the economic value of CEO and directors' options exceeds their cash payments. So counting options would more than double the typical package.

To see how this works, let's look at Dell Computer and Knight Ridder, two companies I just happen to have looked at recently. Dell's most recent statement shows that Michael Dell, its billionaire owner and founder, earned $2.6 million in salary and bonus. Not starvation wages, but not much for a big-time CEO. On a different page, you see that he got options the company valued at $26 million. That's major moolah. Dell directors were paid a $40,000 annual retainer fee, but also got options on $850,000 worth of Stock. The option's economic value: around $300,000. Note that I'm not accusing Dell of hiding anything—it's following the rules.

Dell shows why options have economic value when they're granted, even if the stock subsequently falls. The directors got their options when Dell stock was about $52, double today's price. By getting options on $850,000 of stock rather than buying 16,298 shares, directors avoided losing money—and didn't have to tie up $850,000. Meanwhile, they had the same upside as regular investors who risked $850,000. The company says its compensation packages are skewed toward options, so that employees and directors don't make out unless regular stockholders do.

Now to Knight Ridder, which has been on a cost-cutting kick for years. Last year chairman Tony Ridder got $935,720 in salary and no bonus. He also got options on 150,000 shares. Knight Ridder values the options at about $1.6 million, but by most rules of thumb, they were worth twice that much. Knight Ridder directors got a $40,000 annual fee—and 4,000 options. The options were worth about $42,500 by Knight Ridder's math, about $85,000 by conventional math. Knight Ridder says its figures are lower because it assumes its options are exercised much quicker than other analysts assume.

I'm all in favor of employees becoming millionaires via options—I'm an employee, after all—but I'm also in favor of companies providing profit-and-loss statements that show the real profit and loss. Ignoring options' costs and low-balling CEO pay packages are simply outrageous. When companies start expensing options and disclosing true CEO and director compensation numbers, I'll believe they've seen the light. Until then, I'll assume that they're still on the bottle.

[From the Wall Street Journal, May 3, 2002]

ACCOUNTING FOR OPTIONS

(By Joseph E. Stiglitz)

Déjà vu. The post-Enron imbroglio over stock options is a reminder that history—if forgotten—does indeed repeat itself. Eight years ago, while serving on President Clinton's Council of Economic Advisers, I was involved in a heated debate over information disclosure. The Financial Accounting Standards Board had proposed a new standard that would require firms to account for the value of executive options in their balance sheets and income statements.

When FASB made its proposal for what would have clearly been an improvement in accounting practices, Silicon Valley and Wall Street were united in their opposition. The arguments put forward then are the same as those put forward today, and they are as specious and self-serving now as they were eight years ago.

OUTRAGEOUS

The most outrageous argument—but the one that had the greatest impact—was that

disclosing the information would adversely affect share prices. That is, if people only knew how much their equity claims on the firm could be diluted by options, they would pay less for their shares! True, and that is precisely why the disclosure is so important. Markets can only allocate resources efficiently when prices accurately reflect underlying values, and that requires as good information as possible. If markets overestimate the value of a particular set of ventures, resources will mistakenly flow in that direction. This is partly what caused the dot-com and telecom bubbles. Irrational exuberance played its part, but so too did bad accounting—i.e., distorted information.

To be sure, information will never be perfect and asymmetries of information are pervasive. But one of the key insights of the modern theory of information is that participants do not always have an incentive to disclose fully and accurately all the relevant information, and so it is important to have standards.

This is where the second specious argument enters: Critics of FASB's proposal claimed that it is impossible to value options accurately, and accordingly, it would be misleading to include the options within the standard accounting frameworks. To better understand the falsity of this argument, let's take a closer look at how stock options really work.

The basic economics of stock options are simple. Issuing stock options does not create resources out of thin air. Executives like stock options because they have value. But the value however measured, comes at the expense of other shareholders. The right of managers to buy shares is the right to dilute the ownership claims of existing shareholders. When markets work well—when information is good—the market will value today the issuance of a right to dilute, even when that dilution may never occur, and if it does occur, would happen sometime in the future.

The existing owners of the firm will participate less in the upside potential of the market them they would have in the absence of the options. In principle, they can calculate the circumstances when the executives are likely to exercise their options, and therefore can calculate the diminution in their potential gains from owning shares in the company. That is why when this information is disclosed in ways that can easily be understood by investors, it will lead to a fall in the company's share price.

Making such calculations, however, is not easy or costless. In principle, each shareholder could go through each of the items in the firm's accounts to construct his own ''estimates'' but that would be a foolish waste of resources, and the transaction costs would put a major damper on capital markets and the market economy. That is why we have accounting standards. Such information is like a public good: Better standards—more transparency—lead to better resource allocation and better functioning markets; and if participants have more confidence in markets, they will be more willing to entrust their money to markets.

Which brings us back to the argument that it is ''impossible'' to value options. Companies do, of course, have ways of calculating the value of options and do it themselves all the time for their own internal planning purposes.

AS for the question of whether an estimate based on a publicly-disclosed formula would be misleading, because it is only an estimate, that is true of many line items that are central to our accounting frameworks, such as depreciation, 'Calculations about the value of options would be just as, or even more, accurate than standard depreciation estimates are of the market value of the declines in asset values that come with use and obsolescence—something which is a line item on every accounting framework in corporate America and most of the world. Of this much we can be sure: zero, the implied valuation used by companies now when describing the cost of options in their balance sheets and income statements, is a vast underestimate.

Those who argue against including options within the standard accounting frameworks try to have it both ways: They believe that market participants are smart enough to read through dozens of footnotes to figure out the implications of options for the value of their shares, but so dumb that they would be misled by the more accurate numbers that would be provided under the reform proposals, and unable to redo the calculations themselves.

TRANSPARENCY

There is one more reason for the U.S. to be resolute in improving our accounting standards by including better accounting for options. During the East Asia crisis the U.S. preached the virtues of transparency but then refused to do anything about regulating the murky world of offshore banking. America also preached the virtues of our accounting standards only to find that the world was laughing at Enron and Arthur Andersen. Tightening our rules on accounting of options would signal that the U.S. is serious about openness, serious about improving its accounting standards—despite the special interests opposed to changes—and willing to learn from its mistakes.

Many of the same forces that allied themselves in the 1990s against changes in accounting for options are now trying to suppress this attempt to make our market economy work better. In the earlier episode, the National Economic Council, the U.S. Treasury, and the Department of Commerce intervened in what was supposed to be an independent accounting board, and put pressure on FASB to rescind its proposed regulations. They won, and the country lost. Today, there is a risk once again of political intervention. At least this time, the voices of responsible economic leadership, such as Alan Greenspan, are speaking out. I only hope that this time they will succeed.

Mr. LEVIN. Mr. President, the Republican staff of the Joint Economic Committee put out a report called, ''Understanding the Stock Option Debate.''

They have gone through a lengthy analysis dated July 9, 2002, in which they conclude the following:

Existing accounting principles provide an unambiguous answer. Stock option awards should indeed be treated as a cost in financial statements.

It is quite clear to me that two things are true. No. 1, that how we treat stock options is an essential part of the post-Enron reform effort. That is No. 1. No. 2, it seems clear to me that there is at least a likelihood that a majority of this body, if allowed to vote on this amendment, will vote to refer this matter to an independent accounting standards board which has its own source of revenue, free from the kind of pressure which it was under in 1994 and 1995, to reach an appropriate conclusion.

Do I believe that conclusion will be the same as they reached in 1994? I do. It is very clear to me they would reach such a conclusion and should reach such a conclusion. But as our colleagues have pointed out, that is up to the board under this amendment. We would not be adopting a standard.

In all honesty, I expect they would continue on the same course they were on 8 years ago when they were violently thrown off course by people who had control over the purse strings of the organization. I would expect that would happen. But under this amendment, it is their call, not ours.

I support the McCain amendment because I believe, as I believed then, that the accounting standards board wanted to expense options and that we, in executive pressure, interfered with that decision on their part. That is why I believe Senator MCCAIN's amendment is also appropriate. But we cannot even get a vote on that amendment. Last week, we were not able to bring that amendment to a vote.

But this amendment is different. This amendment says to the independent board: review this issue. Make an appropriate decision within a year.

For the life of me I not only do not see how folks—regardless of the side of this particular issue that they are on—could vote against such an amendment when it does not tell them what to do but just asks them to review it and decide within a year as to what the appropriate accounting method is. I do not understand why, in the middle of a debate on the reforms which are essential to restore public confidence after the Enron fiasco, this Senate should not be allowed to vote on this issue on this bill.

When the majority leader announced that one way or another we will get to a vote on this amendment, I was glad to hear that. I didn't know he was going to say that, but I certainly was glad he said that. But it seems to me that adds a reason we ought to vote for this amendment on this bill.

This is the right place. Surely it is the right time. There has perhaps never been a more critical moment in our economic history in the last few decades than we are facing right now, to help us restore public confidence. It will be an additional contribution to that restoration of public confidence if we take this action. If we say yes, 8 years ago we did intervene, but now we don't want to tell the accounting standards board that they should not expense options. That was 8 years ago. What we are telling them now is: Do the right thing.

We know what they tried to do 8 years ago. It is laid out in the record by them. They wanted to do what they believed was the right thing. If they had done so, they would have been put out of business.

Now we have an opportunity, it seems to me, to do the right thing ourselves, which is to tell the board that has the responsibility to adopt accounting standards, to adopt what they believe is the appropriate standard. That is the right thing to do.

Mr. REID. Will the Senator yield for a question on my time?

Mr. LEVIN. I will be happy to.

Mr. REID. Is the Senator aware that the stock market, the Dow as of now is down 338 points as of today?

Mr. LEVIN. I was not aware of that. But it surely adds an additional urgency, if we need additional urgency, for why we should do everything in our power to restore public confidence in the financial systems in this country.

I left off one of my cosponsors before. Senator BIDEN is a cosponsor of the amendment, which is at the desk.

I will ask unanimous consent we be able to vote on that at a later moment.

I wonder if I could ask the Chair how much time I have remaining.

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. LEVIN. I understand Senator MCCAIN would like to speak at this time. I see the Republican manager on the floor, so I do not know if this fits his particular timetable or not.

I ask unanimous consent I be allowed to yield to Senator MCCAIN on his——

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, at this time I ask unanimous consent to lay aside the pending second-degree amendment, No. 4286, and call up for consideration my amendment 4283, on stock options, which is a second-degree amendment to the Edwards amendment No. 4187.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, reserving the right to object, let me say there is something on which I agree with the majority leader. That is, at some point we are going to make a judgment on this issue. But we are currently in a situation where we have 97 first-degree amendments that have been filed. We have 24 second-degree amendments. We have 3 different approaches to this issue.

Senator MCCAIN wants to make a decision and set a policy.

Senator LEVIN, as I read it, wants a fair trial and then a hanging.

And Senator ENZI and others would simply like to have a fair trial.

What is the right outcome? I think that is subject to debate. That is why I think we ought to have the debate. The idea that when we have three different approaches, we are going to decide that one of them is going to be debated on, voted on, but not all three of them is something we should not expect to happen.

I do not support Senator MCCAIN's amendment, but he has every right, it seems to me, to have it considered. And I am certainly willing to vote on it. There may be people who do not want to vote on this issue, but I am not one of them. So I certainly do object. I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. Mr. President, the only way we are going to get to debate and votes is if we allow the pending amendments which are the first- and second-degree amendments to be voted on so we can move to other amendments without having one gatekeeper denying opportunity for all the others on this floor to offer amendments and have them voted on. That is not the intention of cloture and postcloture.

I do not believe this process has been used in this way before, where, postcloture, germane amendments are supposed to be taken up and voted on, where first- and second-degree amendments have not been disposed of so they can be used, not with the consent of their sponsors, but they are used by others to block consideration of the amendments.

The Senator from Texas says he would like to have a debate and vote. There is one way to do it. Let's dispose of the second-degree amendment, take up the Carnahan amendment and vote on it, take up the Edwards amendment and vote on it.

Mr. GRAMM. Will the Senator yield?

Mr. LEVIN. I will be happy to yield on the Senator's time.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object, Mr. President, the Senator from Michigan is claiming his 1 hour. I understand he has been yielding back and forth. I assume we could, under these circumstances, have one Senator run the entire 30 hours, as long as they keep yielding to other Senators.

There are others of us, of course, who want to be heard and who want to offer amendments.

Mr. GRAMM. I think that is fair. I withdraw my request.

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think if we want to deal with this issue today, probably the way to deal with it is to have a unanimous consent agreement and have a vote on all three amendments—have a vote on Senator MCCAIN's amendment, have a vote on the Levin amendment, have a vote on Senator ENZI's amendment so that we would have the full range of choices. But to suggest that nothing is standing in the way except a few obstacles to everybody having their will is to neglect the fact that 97 amendments have been filed as first-degree amendments and 24 second-degree amendments.

So, therefore, by definition, I assume if I suggest and ask unanimous consent that each and every amendment be voted on, someone would object since our leadership has plans for this week and next week. I think it might be possible if we want to deal with this issue today to have a unanimous consent agreement where Senator MCCAIN would get a vote on his amendment, where the Senator from Michigan would get a vote on his amendment, and where Senator ENZI would get a vote on his amendment. Then we would have a range of choices.

I would be amenable to such an agreement if the Senator wanted to shop that around on his side of the aisle. We could do a hotline and see if it would fly. But in the absence of some agreement where the other two gradations on this spectrum of opinion would have their day to debate this amendment and have it voted on, I don't think we are going to be able to do that. It might very well be that we need a separate bill to deal with this issue. If a Senator were to offer this amendment in earnest, I would want an opportunity to amend it. I think having FASB look at this issue—which they are certainly going to do after this bill is agreed to because this is going to be a self-funded agency, and they are going to have greater independence—I think having them look at it is something that we ought to do. But I think we shouldn't pretend to ourselves that the Levin amendment is a neutral amendment.

Asking them to look at it when it mandates by law after having looked at it that within 12 months they adopt in appropriate generally accepted accounting principles for the treatment of employee stock options—there is nothing neutral about that; in other words, study it and within a year adopt a rule.

As I understand it, Senator ENZI and others would have the SEC do a study and make a recommendation based on their study.

If this amendment were going to be dealt with in isolation, I would want an opportunity to at least leave it to FASB as to what they determine rather than mandating that they ought to issue a new accounting principle. It may be that they would determine not to do that.

Let me reiterate that I don't have any concern about voting on this issue. Maybe I should reserve my time. I want to speak on this at some point. We have several Members here who are going to speak. I have to be here for the whole time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. I don't think this is necessary. But so there is no question about it, I ask unanimous consent that the time Senator DASCHLE used be counted against the 30 hours.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I did not hear.

Mr. REID. I wanted Senator DASCHLE's time to be counted against the 30 hours.

Mr. GRAMM. Yes.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are in a postcloture period of some 30

hours. I understand we will complete that at 6 o'clock or so this afternoon.

What is happening here is really an outrage, from my standpoint. We are in postcloture. I have a germane amendment. I have been here every single day since this bill came to the floor of the Senate prepared and ready to offer my amendment. Now, postcloture, I have a germane amendment. And the only way, apparently, that I can offer my amendment is if the Senator from Texas is willing to allow me to offer it. That is not the way the Senate should work.

I want to briefly describe my amendment.

My amendment requires the disgorgement of profits, bonuses, incentives and so on that the CEOs of corporations receive 12 months prior to bankruptcy.

That is not in the bill at the present time. It ought to be in the bill.

The bill contains a disgorgement provision requiring the return of incentives and bonus payments received prior to a restatement of earnings. I support that being in the bill, but there is nothing about the requirement to divest all those bonuses and incentive payments 12 months prior to bankruptcy. That ought to be in this bill.

Let me describe some of the problems that we are dealing with. We have been holding some hearings over in the Commerce Committee on the subject of Enron. Here is what some Enron officers got before Enron went bankrupt:

Kenneth Lay, $101 million; Ken Rice, $72.7 million; Jeffrey Skilling, $66.9 million; Stan Horton, $45 million; Andy Fastow, $30.4 million.

They did pretty well at the top. Of course, they have already filed bankruptcy with their corporation.

Should some of this be given back?

I have a constituent in North Dakota who wrote to me and said: I worked for Enron for a good many years. I built up a retirement fund of $330,000. It is now worth $1,700. That was my family's retirement fund. What am I to do? I have lost it all.

But not everybody lost it all with respect to Enron. Those close to the top made a fortune, and the folks at the bottom lost their shirts. Most of the investors and employees lost everything.

The question I ask with my amendment is, Should we include a provision in this bill that requires the give-back of this unwarranted compensation in the form of bonuses, incentives, and various things 12 months prior to bankruptcy? The answer is, of course, we should require it. We ought not to be debating this. This amendment ought to be accepted.

Let me describe some of the other folks who believe this ought to be done.

Mr. Richard Breeden, former SEC Chairman from 1989–1993 says:

> We have long required officers and directors to disgorge ''short-swing'' profits for purchases and sales within a six-month period . . . we should consider disgorgement to the company of any net proceeds of stock sales or option exercises within six-months or a year prior to bankruptcy filing.

That is Mr. Breeden, former SEC Chairman.

Henry Paulson, CEO, Goldman Sachs, who worked in the Nixon administration, said:

> The business community has been given a black eye by the activities of and behavior of some CEOs and other notable insiders who sold large numbers of shares just before dramatic declines in their companies' share prices . . . in the case of CEOs and other inside directors, we should raise the bar and mandate a one year ''claw-back'' in the case of bankruptcy, regardless of the reason.

He is right. This bill doesn't require it. There is no ''claw-back'' in this bill. There ought to be 1 year prior to bankruptcy.

I don't mean to diminish the importance of other issues that we have just discussed. The other issues are very important. On the issue of how stock options are treated, in 1994, I was one of nine Senators who voted against the proposal back then that would handcuff FASB. I come to that issue with fairly clean hands.

Let me say that while that issue is important, I have been here every single day this bill has been on the floor to offer this simple amendment on disgorgement in the face of bankruptcies. If there are people in corporations at the top of those companies who make $100 million or $70 million or $50 million, and then the company files for bankruptcy, do you not believe that some of that ought to be required to be given back? The folks at the bottom lost everything they had. They lost their life savings. They lost everything, and the folks at the top got rich. Shouldn't there be a requirement in this bill to disgorge those profits? Does anybody think that is unreasonable?

The Senator from Texas left the Chamber as I was beginning to speak. I was hoping I might get his attention. But as I understand where we are, we have a first- and a second-degree amendment. The first-degree amendment is the Edwards amendment. It is followed by a second-degree amendment, which is the Carnahan amendment.

In order for anyone to offer an amendment postcloture today, we must ask consent to set aside these amendments so we can offer our amendment. My understanding is, if someone here does not agree with that, then he can prevent that from happening. My understanding is that that is precisely what would happen.

So the result is, for the next 5 hours, we will have gatekeepers who require us to say: Captain, may I? May I offer an amendment? And they will say: No, you may not. We will not allow the setting aside of the pending amendments.

So we will limp along to the end of the 30 hours not being able to offer germane amendments to this bill. It is outrageous, simply an outrageous process that puts us here. I think there will be a good number of Members of the Senate who, in the future, will consider this and find ways to avoid our being put in this position again.

But what I would like to do is have a debate about this amendment at some point. And perhaps there are people in the Senate who want to stand up and say: Do you know what I think? I think if somebody takes home $50 or $80 million 6 months before bankruptcy, in the form of incentive payments and bonuses, they ought to be able to keep it, even if they drove this company right straight into the ground.

Is there one person who will stand up in the Senate today to support that? Does one person want to support that position? Well, we will see.

In the year before the Enron Corporation filed for bankruptcy, Kenneth Lay, the chairman of that company, and 140 other company officials received $310 million in salaries, bonuses, long-term incentives, loan advances, and other payments.

Does anybody here want to stand up and say: ''That makes a lot of sense.''? Anybody? Does anybody agree they should keep all that money? Do we hear nothing because they don't have the floor, or is it that nobody here believes the top officials of Enron should keep $310 million prior to filing for bankruptcy, where their employees lost they jobs, lost their life savings in their 401(k)s, their investors lost their money?

How about NTL, Incorporated? It is a Manhattan TV cable operator that filed for bankruptcy in May, just several months after it gave its chief executive officer $18.9 million. It made him one of the 30 highest paid CEOs in New York, putting him ahead of IBM's Louis Gerstner. That company had $14 billion in losses. And the CEO, Mr. Knapp, had a salary of $277,000, a bonus of $561,000, and stock options worth $18 million.

So does anybody here think he ought to keep all that money, just let the investors and the employees lose, but the people at the top keep it—just walk away on some gilded, golden carpet?

There are plenty of other examples, of course.

In recent months, we have heard all of these discussions about what has happened at the top in the boardroom by companies that wanted to find the line, and then go right to it, and then go across it, if they could. And there are accounting firms that were the enablers, who said: Yes, go ahead and do that. And the law firms were on the side, collecting big fees, saying: Yes, go ahead and do that—and the CEOs without moral conscience. The result is, they got rich and the little folks got broke.

My amendment is very simple. My amendment says that 1 year prior to bankruptcy, if you are getting the big bucks, big bonuses, big incentives, big stock options, and you want to take off with $50 or $100 million, and leave everybody else flat on their back, you cannot do it; you have to give it back. Very simple.

No one can misunderstand the amendment. This amendment is not strange or foreign to anyone. This bill will fall short of the mark, this bill will be incomplete, if we just proceed now to the final vote this afternoon and we are told: You cannot offer this amendment. We will not consider this amendment. And we do not want to require the give-back of millions of dollars by CEOs who receive that money prior to bankruptcy.

If that is the message this Senate sends from this bill this afternoon, this Senate has a lot of explaining to do.

We came to this debate with great promise. I have been to the floor a couple of times complimenting the Banking Committee, complimenting all on the Banking Committee who worked to put this bill together. But I said there were areas where it needed to be improved. This is one of them. This is the lightest load you will ever be asked to carry, in my judgment, to support an amendment of this type: The disgorgement of ill-earned profits by CEOs who led their corporations to bankruptcy but waltzed off with millions of dollars in their pockets and left everyone else—the bondholders, the stockholders, the employees—holding the bag.

This is not heavy lifting, to do this amendment. It is absurd if the Senate says: No, we will have nothing to do with that. Our position is, let's call this corporate responsibility. Let's change the accounting standards. But, by the way, let's let those people who essentially looted the corporation from the top—drove it into bankruptcy, and then left town—let's give them a big wave and say: So long, God bless you, and I hope your future is a good one with all those millions of dollars. If we do that, this Senate has a lot of explaining to do.

A good many corporate leaders, respected business officials in this country, have said this must be in a bill, this should be in a bill, there is no excuse for it not being in a bill.

So I have amendment No. 4214 at the desk. Let me ask unanimous consent that we set aside the Carnahan amendment, which is a second-degree amendment to the Edwards amendment, for the purpose of allowing consideration of amendment No. 4214. Let me make the first unanimous consent request first.

I ask unanimous consent that we set aside the Carnahan second-degree amendment for the purpose of considering my amendment.

The PRESIDING OFFICER (Mr. WYDEN). Is there objection?

Mr. ENZI. On behalf of the ranking member of the Banking Committee, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, let me say, again, I think the process is an outrage—an outrage. We are in a situation today where we have 4 or 5 hours left postcloture, and we are told that no one in the Senate has a right to offer an amendment because someone has set himself up as a gatekeeper saying: I will object to setting aside the Carnahan second-degree amendment.

What kind of a way is that to legislate? Is someone afraid he will lose on this amendment, that he will lose the vote? Is that the purpose of the objection, that he is afraid we will have a vote, Senators will vote for my amendment, and therefore he will lose, so the words ''I object'' become a proxy for avoiding a loss on an important amendment?

How many votes do you think would exist in the Senate for saying: We want to enable CEOs, who ran the corporation into the ground and took $20 million out and then filed bankruptcy, to keep the money; we want them to keep the bonus, to keep the stock option, to keep the commission payment, to keep the money? How many votes do you think exist for that? Ten, maybe 12? Probably zero.

I think the Senator from Virginia is correct. Probably no one would stand up and support that proposition. So the question is why are we not allowing amendments to be voted on this afternoon? I would be happy to yield to someone to answer that. Is there someone who can answer that? Perhaps we could find out on whose behalf the Senator from Wyoming objected.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Dakota has 29 minutes remaining.

Mr. DORGAN. Parliamentary inquiry: Are we entitled, as a Senator, to 1 hour postcloture, those of us who are recognized?

The PRESIDING OFFICER. The Senator from North Dakota is correct.

Mr. DORGAN. Several of my colleagues wish to speak. I want them to be able to speak. I hope they will offer amendments.

I will guarantee them this: I will not be objecting to an amendment if they want to offer them. They have a right to offer an amendment today. They have a right to get a vote on the amendment. I will not object to that.

The parliamentary inquiry is, I have just made a unanimous consent request that has been objected to. Am I prevented from making an identical request following the presentation by the two Senators on the floor?

The PRESIDING OFFICER. The Senator is not prevented from making unanimous consent requests.

Mr. DORGAN. That will give me some time then to snoop around the cloakrooms and the corners and the nooks and crannies in the Capitol to find out who won't come to the floor and answer the question I have asked.

Why will we not get a vote on the simple proposition that those corporate leaders who run their corporation into bankruptcy and who take $10, $20, $30, or $50 million out of it just prior to bankruptcy—why will we not allow a vote on an amendment that would require them to disgorge themselves of that profit? Why should that ill-gotten gain not be used to help the employees, help the investors, help others recover, who lost everything? Why should one group in this circumstance walk off into the sunset with a pocketful of gold, leaving everyone in their wake, employees, investors, and others who lost everything they had?

Perhaps in the next hour or so, I will find someone in the Chamber or in the anterooms who will say: I am the one who decided you should not get a vote because I believe that those CEOs ought to be able to get away with that money; that is the American way.

My guess is the Senator from Virginia was right when he shook his head. I think this amendment passes 100 to nothing or very close to that, and I hope he and others will help me get it to a vote before 6 o'clock.

Obviously I am a little irritated about the process. It stinks. That is not a genteel way to say that. But postcloture, if we have germane amendments, we should be able to be here to offer those amendments. That is not now the case.

I will be here the next couple of hours trying to see if we can find a way to cause enough trouble in as short a time as possible to allow these amendments to be offered.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I would like to use a portion of my 1 hour of time to say I agree with the purpose and the intent of the Dorgan amendment. I understand Senator GRASSLEY of Iowa has a similar amendment that would disgorge or claw back into some ill-gotten gains of executives for the benefit of creditors and victims of their malfeasance or illegal acts.

I wish to speak not on process. Although, process seems to drive a lot of what happens in this body.

I would like to talk to my colleagues and the American people about the merits of certain ideas or the demerits of certain ideas that have been raised. There have been several measures dealing with the issue of stock options.

Senator MCCAIN's measure was a direct hit. I don't like it, but it was an accountable approach in getting rid of or killing stock options. We had Senator LEVIN's amendment, with Senator MCCAIN, which was more of an indirect or ricochet killing of stock options by granting that study to FASB, when everyone knows what FASB's position is.

There is another option regarding stock options which I would like to discuss as the approach that ought to be taken. The majority leader, Senator DASCHLE, mentioned that we may have a vote on it today. We may have a vote on it tomorrow, but some day we will have a vote. There ought to be a full and fair discussion of the approach we ought to take as well as what the potential adverse impacts could be if either the study by FASB or the direct

killing of stock options, as far as requiring the expensing of them, were to occur.

The more wise and prudent approach is one that was chiefly sponsored by my good friend Senator ENZI of Wyoming, along with Senators LIEBERMAN, BOXER, myself, and others who joined with us, Senators MURRAY, CANTWELL, BENNETT, WYDEN, LOTT, BURNS, FRIST, CRAIG and ENSIGN. Our amendment is a more comprehensive, reasonable alternative that has the Securities and Exchange Commission review and make regulatory or legislative recommendations to Congress.

Clearly, in today's climate, with the stock market dropping again today, with the scandals from Global Crossing, Enron, the crisis at WorldCom, it is axiomatic that there is a pressing need for accounting reform to address the corporate abuses and accounting firm malfeasance. The bill, as it is presented, is a very good bill. I think it addresses the two key areas that need to be addressed.

It is focused, number one, on transparency. That means that people can readily and easily discern the true financial condition of a company in which they may want to invest.

Secondly, you need deterrence, stiffer criminal and civil sanctions for illegal actions by corporate officers. There may be a few things added to make it better, but this bill essentially addresses those two focused goals. Indeed, enhanced transparency and improved corporate governance may restore some investor confidence and foster proper disclosure for investment decisions. More stringent penalties will provide a deterrence and substantial disincentive for the corporate wrongdoing that has led to this understandable firestorm of skepticism as a fallout from the scandalous, fraudulent misrepresentations by executives in many companies.

In our effort to reform, we must not enact measures that stifle innovation and endanger the American entrepreneurial spirit. Congress should not harm future opportunities for employees to own a part of their company for whom they work. Unfortunately, the Levin-McCain amendment does just that by unjustifiably upsetting the current tax treatment of stock options. It is unnecessary and unwise to change these particular accounting policies.

It is virtually impossible to accurately determine the worth or value of a stock option.

Now, how are you going to predict the future performance of a company? How are you going to predict the future share value of a company, especially with the vicissitudes of the stock market these days? For example, somebody is granted a stock option by a company—a new company—and the stock is trading, after an IPO, at $5 a share. The option to this employee is to be able to purchase 1,000 shares of that company at $10 a share.

Now, nobody is going to exercise a stock option until the share value reaches the strike price, or $10, and it may never get to $10. It may take 5 years before that share value gets above $10 a share, where somebody would exercise the option. So it is very difficult to determine what is the actual value of that stock option when it is granted.

The amendment Mr. LEVIN has proposed will affect current law. Currently employers are not required to expense stock option grants on their financial statements. But they are permitted to deduct the employees' gains at exercise—that is, down the road—as a compensation expense.

Now, this makes good sense. After all, a stock option grant does not require a cash outlay like other expenses such as wages.

Moreover, there is no transparency problem with failing to expense stock option grants because they are disclosed on the company's financial statement. If somebody says there ought to be better disclosure, or it should be in bolder print, or it should be highlighted more and the disclosure needs to be more clear, that is fine. But I don't think it is necessary, in the midst of better disclosure and transparency, to kill this otherwise largely salutary idea and beneficial idea of stock options. Nonetheless, the amendments by Senators MCCAIN and LEVIN mandate that any company taking a deduction must report the stock option as an expense on their income statement, profit and loss statement, and the deduction may not exceed the reported expense.

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

Mr. ALLEN. I yield.

Mr. LEVIN. Is the Senator aware that the Levin-McCain amendment he is referring to is not the amendment being offered at this time? There is another amendment, and they are totally different matters involving the taxation issue. This is not a taxation amendment at all. Hopefully, it will come before the Senate today.

Mr. ALLEN. Mr. President, I say to the Senator from Michigan, I understand his amendment offered today was one to have FASB study the issue. Senator MCCAIN's amendment was one to require the expensing of stock options. I realize they are two different matters.

Mr. LEVIN. And that neither one addresses tax issues. That is a totally separate bill, not in either the McCain-Levin or the Levin-McCain accounting standard.

Mr. ALLEN. I say to the Senator that in the event you, in effect, require the expenses of stock options, that does affect the tax treatment and the desirability of stock options.

Mr. LEVIN. Thank you.

Mr. ALLEN. I thank the Senator from Michigan.

Now, the problematic aspect of these ideas is that, if you take away the current method of accounting and taxation of stock options, a company can only take a deduction up to the amount they expense at the time of the grant. Since the expense would be taken at the time of the grant, the tax deduction would be taken at the time of the exercise. If the value was too low at the time of the grant, then you are not going to get the full extent of your deduction. So the point is that if we are not careful here, with all these approaches of changing the tax treatment, changing the expensing rules, or having it be done by FASB, the result is a convoluted tax increase on companies.

Now, what will happen if these tax increases or this inability to actually determine the value of the stock option occurs, which may or may not be exercised at some unknown future date, all of this consternation, inaccuracy, unpredictability—the potential of actually a tax increase, in effect—many companies will find this tax and accounting scheme is so onerous they will discontinue offering options to all but maybe a few senior executives who can bargain for them.

I think the idea of doing away with stock options, or making them less desirable, is a substantial detrimental impact on not only companies but many, particularly those companies in the high-tech sector and small startups. New businesses have powered our economy in the last decade and, hopefully, they will do so in the future. Small companies motivate employees with stock options. That is the way they keep employees. Especially the startups who will get folks to serve on the board and pay them for that service in stock options.

I think it is a good idea for people to care about a company doing well in the future; not only looking for a paycheck, but also caring about how well a company will do.

Indeed, in the last 10 years, the number of workers who received stock options has grown dramatically—from about 1 million in 1992 to 10 million today. First, as I said, the benefits of stock options has enabled companies to recruit and keep quality workers. Absent stock options, many smaller companies lack the capital. They don't have the money to attract top-notch talent. Investors will be less likely to invest in companies that retain stock option plans because the company's earnings will be artificially deflated by this phantom expense.

Finally, and perhaps most important, stock options enhance productivity by providing employees with a greater stake in their company's performance.

Mr. President, these options are particularly important to rank and file employees who receive relatively modest salaries and wages. There is one company that has a pretty good presence in Virginia—Electronic Arts—which recently told me that stock options enabled many of its employees to purchase their first homes, to send their children to college, or to provide for their aging parents. Thus, the desirability of stock options as incentives is

readily apparent, and we should not adopt any measure that would effectively eliminate their use as a form of employee compensation.

That is not to say that I oppose all stock option reform. In fact, I fully support President Bush's proposal that requires shareholder approval for stock option plans. I think the idea of equitable treatment in the exercise of options by employees or executives is well founded. But I am joining with Senators LIEBERMAN, BOXER, ENZI, and others in offering the amendment that directs the Securities and Exchange Commission to conduct a comprehensive study and to make recommendations regarding the accounting treatment of stock options, which is the way to go.

We may introduce this proposal as a free-standing bill. Maybe we will not vote on it today but here is the approach that we ought to take. The SEC will conduct an analysis and make regulatory and legislative recommendations on the treatment of stock options in which the Commission shall analyze the following: No. 1, the accounting treatment for employees' stock options, including the accuracy of available stock option pricing models; No. 2, the adequacy of current disclosure requirements to investors and shareholders on stock options; No. 3, the adequacy of corporate governance requirements, including shareholder approval of stock option plans; No. 4, any need for new stock holding period requirements for senior executives; No. 5, the benefit and detriment of any new option expenses rules on, A, the productivity and performance of large, medium, and small companies and startup enterprises and, B, the recruitment and retention of skilled workers.

The Commission shall submit its regulatory and legislative recommendations to Congress and supporting analyses of those matters as far as any changes indicated in the treatment of stock options within 180 days.

In my view, this is the reasonable alternative we ought to be taking. I urge my colleagues to support this approach rather than adopting, whether it is today or in the future, Senator MCCAIN's measure that he introduced last week or Senator LEVIN's study today. I think either of those would be harmful and damaging to both American industry and to working men and women.

The Senator from Michigan mentioned evidence, or observations, of others as to the impact of his recommendations and his amendment. I think it is very good for us to look at what people who will be affected say about the measures that are passed in the Senate. I think it is important that we be accountable to those who are affected and we should listen to them.

I have some other observations, as far as the issue of stock options is concerned. This first I will share is the views of the Information Technology Industry Council. They expressed their support for the potential alternative amendment cosponsored by Senators LIEBERMAN, ENZI, BOXER, and ALLEN that would direct the Securities and Exchange Commission to examine the accounting treatment of stock options and make recommendations.

The Information Technology Industry Council stated that, in particular, those entrepreneurial high-tech companies that are willing to take the risk in the pursuit of technological innovation have offered stock options as an incentive to attract and retain employees.

Unfortunately, the expensing of options would end the practice of providing most employees with stock options. The result would be a reversal of the trends toward employee ownership and a significant reduction in financial opportunities for thousands of workers.

Let me share another observation, and this comes from the Telecommunications Industry Association, and I read, in part:

> This sense of personal ownership referring to stock options helps develop the innovative entrepreneurial spirit that has characterized the high tech industry over the last decade. Should the rules for options suddenly change and be treated as a cash expense, the number of employees that receive the benefit would be drastically reduced, most likely leaving only members of the top management as recipients.

They conclude with this comment:

> Adoption of this type of measure is a knee jerk reaction to situations such as occurred with Enron, which is not what we need. It is not in the best long-term interest of our country.

Another observation from a large group of trade associations: American Electronic Association, Bankers Association, Alabama Information Technology Association, the Arizona Software and Internet Association, Biotechnology Industry Organization, Business Software Alliance, Information Technology Association of America, National Association of Manufacturers, the Retail Federation, Semiconductor Equipment and Materials International, as well as the Semiconductor Industry Association, Software and Information Industry Association, Software Finance and Tax Executives Council, the Tax Council, the Technology Network, and the U.S. Chamber of Commerce wrote me and said that the stock options tax bill—not the Levin amendment but, rather, the tax treatment changes—that legislation would, if enacted, discourage broad-based rank and file access to stock options. It would lead to investor confusion, less accurate financial statements, and raise taxes on companies issuing stock options.

Now we have heard also some scholarly points of view. It is nice to hear what some of these esteemed individuals may say from time to time on the issue of stock options. Others in the body have quoted from Warren Buffett, a person for whom we all have a great deal of respect. But in another scholarly work from two gentlemen, economics professors at Princeton University and New York University, Dr. Malkiel, professor of economics at Princeton, and Dr. Baumol, professor of economics at New York University, say this:

> Warren Buffett and other critics suggest that the income statement should reflect an expense to the firm measured by the cash equivalent value of options. There are two problems with these views. First, if we were to consider the expense of options to be equivalent to that of cash wages, there is no way to measure that cost, the value of options at the time they are issued, with any reasonable precision. The Nobel Prize winning Black-Scholes model does an excellent job of predicting the prices at which short-term options trade in the market, but the Black-Scholes formula does not provide reliable estimates for longer term options such as those lasting 6 months to one year, and market prices often differ substantially from predicted values. Because employee stock options have durations of 5 to 10 years, are complicated by not investing immediately, are contingent on continuing employment and subject to various restrictions, it is virtually impossible to put a precise estimate on the options value. Moreover, employees' options cannot be sold, violating one of the key Black-Scholes assumptions.

They conclude by saying that by targeting all stock options rather than stock option abuses, politicians are risking destruction of equity compensation instruments that have been engines of innovation and entrepreneurship.

Finally, an observation today from the Software Finance and Tax Executives Council. They call themselves by the acronym SoFTEC.

> SoFTEC believes that Senator LEVIN's amendment essentially dictates a pre-determined result without requiring the FASB to analyze other relevant issues surrounding stock options. Rather than mandate FASB to achieve a predetermined result, SoFTEC believes that the SEC currently has the ability and authority to properly study all of the issues surrounding stock options and make recommendations based upon not only the technical accounting issue but the public policy implications as well.

So I will conclude my time by requesting of my colleagues, whether we vote on it today, this afternoon, this evening, or in the future, that we act responsibly. It is fine to be worrying about the details of procedure and accounting minutia, but it is important also to understand the impact of this on our free enterprise system. While we are doing a lot of good as far as greater scrutiny, greater transparency, and greater punishment for wrongdoers are concerned, let us make sure we do no harm because the way that this stock market is going to change is with more investment, more risk taking, more jobs being created, and that entrepreneurial spirit that rewards people who take risks, who are creative, who are innovative. That is what is going to improve our economy, our competitiveness as a country, as well as the stock market eventually.

The point is we do not need to come up with new, convoluted ways to increase taxes on companies that we want to invest in and improve our

country, and I hope we will support the free enterprise system and, in doing so, look at reasonable, logical, wise, and fully comprehended decision-making as we move forward in these very uncharted waters of making major changes in stock options.

The bill as it stands now is an outstanding bill. There can be improvements made to it, such as the amendments of Senator GRASSLEY and Senator DORGAN, but let us not have the perfect be the enemy of the very good, and let us make sure we do no harm. By fouling up stock options for many men and women working in this country, it would certainly do a great deal of harm.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. I think the Senator from Delaware was first to seek recognition.

Mr. BIDEN. Mr. President, I say to my friend from Iowa if he has a time constraint, I will yield to him. Just so he knows, I was in the Chamber before he came. I took a phone call and came back. But if the Senator has a time constraint, I have 10 to 12 minutes, but I will be happy to yield.

Mr. GRASSLEY. If I only have to listen to a 10- or 12-minute speech, I will be glad to wait.

Mr. BIDEN. I hope the Senator listens very closely. He may learn something. I know I learn when I listen, and I do not always listen enough.

Mr. President, let me begin where the Senator from Virginia ended, and that is that I think the bill fashioned by Senator SARBANES and this committee does exactly what the Senator from Virginia was suggesting. That would be balanced; we do not do more harm than good.

If you look at other times—and I have been a Senator for a while—we faced crises such as this, we have had occasion to overreact. We have found sometimes that the cure is worse than the disease. I note we probably did that in my early days here with Senate campaign financing and other issues.

There is a real balance that the Senator from Maryland has struck. I compliment the Senator. I cannot think of any Senator better positioned to be chief spokesman for the Senate and Congress on this issue, not only for the American people but all our allies and the investors worldwide.

The dollar now has weakened drastically. In my capacity as chairman of the Foreign Affairs Committee, I have had occasion to meet with leading government officials from European countries and from Asia, asking me, as if I were some kind of broker: Can we continue to invest in your market? Is it real? What is going on? How much more is coming?

We are fortunate to have the steady and always cautious voice of the Senator from Maryland, whose background academically as well as politically suits him well, and in this moment, as probably no one else in this place is better prepared, to take on this issue. I compliment the Senator and his quiet, reasoned voice, and his profound understanding of the problem we face as well as his determination to move ahead and try to restore confidence. It is a welcome circumstance at the moment. I compliment the Senator.

I realize from listening to him and knowing him as well as I do, as a point of personal privilege, some will discount my remarks because they know the Senator and I are close personal friends and I admire him as much as anyone I have served in all my years in the Senate. I understand there are other things that he may or may not have wanted to put in the bill to strengthen our position and the Nation's position and the economy, but he wants to make sure there is consensus and overwhelming support of whatever we do. This is not a circumstance of questioning motives and wondering whether it is more for show than for serious reconstruction of the circumstances.

I say at the outset, I have one disagreement with the President of the United States. Although there probably, pray God, are only a ''few really bad apples''—I think that was his phrase—in the corporate world, I do think we have a systemic problem. The marvel is that there are so many men and women in corporate America who have high moral standards and have overcome a fairly overwhelming temptation that exists in the way business is being done, the way in which we have loosened some of the not regulations, loosened some of the oversight on corporate America. It is a testament to the fact that there are so many honorable people running America's major corporations and multinational corporations.

The fact is, we have a systemic problem which leads me to my friend from Michigan, Senator LEVIN. Senator LEVIN, Senator MCCAIN, Senator CORZINE, Senator EDWARDS, myself, and several others, in varying degrees, think what this debate is all about is fundamental fairness and efficiency of our economy. A lot of what we read about these days is focused on corporate scandals, individual villains, their schemes, their greed. There is plenty of that and maybe more than I can remember any time in my Senate career.

I believe we need to focus on the behavior of corporate executives who have betrayed their positions of power, recklessly endangering the careers of tens of thousands of employees and the savings of millions of Americans. That is why it was so important the Senate unanimously adopted my amendment last week and the amendment which was contained in that of the Senator from Vermont for stronger penalties for corporate crime.

In the hearings I have held in my criminal law subcommittee in the Judiciary Committee, I made clear from the outset—and I try never to overpromise what criminal law can do, even though we are only now finally beginning to rectify and make our criminal justice system reflect our values more clearly—that is not a solution. It is a part of a solution. The Senator from Iowa and I conducted hearings in that subcommittee. We have asked for stronger penalties. We have passed them. One small example: If you were to violate the Federal law relating to pension security, ERISA, it is a misdemeanor that could cost someone their entire pension or 1,000 people their pensions, totaling hundreds of millions of dollars. It is a misdemeanor. All you get is up to 1 year in jail. Yet if you steal my automobile—I live 2 miles from the Pennsylvania State line, in Delaware—and you drive across the State line into Pennsylvania, you get 10 years under Federal law. Something is awry.

Criminal penalties are not the answer. They are just rectifying this incredible inequity within our system. Hopefully we are beginning to reestablish some sense of faith in the system where average people think big guys get away with it and little guys go to jail.

Punishing and deterring corporate crime, although it is a major part of our response to excesses committed by some of the most privileged and powerful corporate executives, is not enough. We face another fundamental problem. It is the loss of trust in our system, most apparent, perhaps, in the recent drop in the stock market. More than 200 off the DOW in the days following the President's speech, and when I came to the floor the DOW was down 300 points. I don't know where it is right now. I hope and pray to God it has moved up.

The fact is, there is a profound lack of confidence at the moment in our economy. There used to be a chairman of the board of the Dupont Company, a big, old farm boy from Ohio. He had great big hands. I remember, he was a wonderful guy, a first-rate chemist, first-rate scientist, as well as corporate executive. I was meeting with him one day and said: We have a problem; we are in the hole. And he turned and looked at me and said: My father always said, Joe, when you get in the hole, stop digging.

Maybe the President should stop making speeches for a couple of days. He has spoken twice and the market went down 500 points while he was speaking. It is not because of a lack of anything in the President, but people are looking for real change. They assume that if there is any rhetoric, it must not be likely to be followed by something real.

The Senator from Maryland has done something real. What the Senator from Utah and his committee has done is real. This is real. This underlying bill is real; it is positive; it is substantial. The bottom line is, no pun intended, there is a profound lack of confidence

at the moment and that our economy can be shaken right now to the very foundations of our market democracy. For a market democracy to work, we have to have faith in our economy that will continue to create opportunities for job advancement and that our Government will continue to promote, as our Constitution requires, the general welfare.

In recent months, to be reminded how much we have in common, how much of our unique blessings we have come to take for granted prior to September 11, we were reminded that in the end we are all in this thing together. Among those blessings we had come to take for granted was the most dynamic economy in the world, that had just come off the longest, strongest expansion in history. In the new economic arena, we are now reminded how much we depend on trust in each other to make our markets work.

That sounds silly. No one was using the word trust before when we talked of the market economy. We talked innovation, the new economy, productivity, et cetera, but when you cut it all aside, it is all based upon trust, which is based upon transparency. If you cannot get out there and make your judgment to invest or not invest in a corporation with a clear sense that you have been told everything that is reasonable to tell you about the state of affairs of that company, then you might as well play the lottery.

You might as well come on over to Delaware and play the slot machines at Delaware Park. You have about the same shot, unless you are on the inside.

The task we are debating today is how to restore the strength of our economy, which is to restore the trust. At the core of that task is revival of confidence that consumers and investors, including foreign investors, need to get back into the market.

This is going to turn around, Mr. President. You and I both know it. I am absolutely sure it is going to turn around. The question is, how many bodies will be littered along the way; how many pensions will be lost; how many jobs will be lost; how long is it going to take? It will turn around.

I am sure the greatest strength of our system continues to be its resiliency: Our ability to see change as opportunity. I am sure of that because we have met this kind of adversity before. Every time we have come out stronger.

I remember when the Senator from Maryland and I were on the Banking Committee in those dark days of the savings and loan crisis. We made it through. We made some very difficult decisions that, I might add, Japan and other countries have not made, and it resulted in an even stronger economy. So I am confident we can come out of this stronger.

After the glare from all the glitter during the boom phase and as our vision becomes a lot clearer, we know that our economy is, in fact, fundamentally stronger than it was, notwithstanding what is going on now. Productivity gains were real. Information technology and corporate reorganization created real growth. It was not imaginary. It was not like these profit margins that people were suggesting they had on the balance sheets that were a lie. There actually was growth.

The economy, the marketplace has created real growth. In what economists like to call the real economy where jobs are created, where goods are produced, the real economy is faster and more efficient today than it was a decade ago. Even old industries in our manufacturing sector have gained from advances in new materials, as well as improvement in information sharing and organization.

We also know that a lot of what looked like growth, particularly in the financial sector, was only paper profits and a lot of it was written in disappearing ink. Profits and paper valuations were all too often inflated by wishful thinking, by self-dealing analysts, by accounting gimmicks, and by outright fraud.

The amendment I am proud to support offered by Senators LEVIN and CORZINE and others addresses one of the most glaring problems behind those inflated profit statements that fueled the stock boom that is now unwinding.

Stock options are, as advocates tell us, a useful device. They can reward employees when companies are so young that they have little else to offer. Of course, we all want to encourage startup companies in every responsible way we can. Also, stock options in theory, and sometimes in practice, keep employees' and corporate officers' incentives tied to the growth of their companies, but unlike virtually every other kind of compensation the firm can give its employees, stock options do not have to be listed on annual reports as an expense, and that means the more stock options you give, the less compensation you have to report, the lower your reported expenses, the higher your reported bottom line.

That part is simple, and that is a big reason stock options became so attractive not only for the good things they can do, but also for the convenient way they inflated earnings statements and I would even say, if I want to go overboard and defend corporate America, even defending those corporate executives who when they take the train up to Wall Street and have some 30-year-odd or 35-year-old guy sitting around a table saying: OK, what are you going to do next quarter? And giant companies that are strong and mature would say: We are going to do as well as last quarter. That is not good enough. We are going to downgrade your stock and your company.

I remember one CEO of a major Fortune 10 company telling me, I have to do one of three things: I have to say, so be it, and keep on the long-term course or go out there and find some new product on the shelf, which I wish I had, that could increase productivity and profit, or go home and do something. The ''do something'' usually meant go home and cut the number of employees you have, cut expenses.

Guess what. I do not think these are bad, evil, and venal people. They went home, and there is an easy way to do it. Let's make sure compensation is not reflected as an expense. So instead of paying the top executives an additional $15 million in compensation, give them stock options. Guess what. The bottom line looked $15 million better than it did before.

That is not rocket science, and it may have been produced by Wall Street's desire for immediate gratification, immediate response. Whatever the reason, it turned out to be as much of a liability in the literal sense, as much as a damaging impact as the good things it could do by tying the employees' fate as well as the CEO's fate to their company.

I see my friend from Utah standing. Does he want to ask me a question?

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. BIDEN. I will be happy to yield.

Mr. BENNETT. Mr. President, the Senator is going into territory I will deal with in my statement, but to keep it all in context as he is talking, I must raise this question. The Senator is one of the historians of the Senate. He has been around a good long time and probably will be around for longer than I will.

Does the Senator from Delaware remember that in 1993 when we increased taxes in the Clinton tax increase, we also put a limit of $1 million on the total amount of deductions a company could take for salary for its employees?

In other words, that CEO could not be paid over $1 million for his or her services and have the company deduct that as a legitimate expense for tax purposes.

Mr. BIDEN. To be honest with the Senator, I do not remember that.

Mr. BENNETT. Will the Senator agree that might have been part of the reason why companies, in an effort to attract and hold the best executive talent, would have moved away from traditional compensation, that the Senator and I both understood when we were growing up and applying for jobs, and into the more esoteric area of stock options because stock options were, in fact, not deductible; whereas, good old-fashioned pay for services rendered was given a tax disadvantage as a result of the Clinton tax bill?

Mr. BIDEN. In response to the Senator, I have to check more closely. I have great respect for my friend from Utah. Based on what he says, it seems to me it would have had a negative impact rather than a positive impact. That is one of the things we talk about at the front end.

Whatever we do here should have a positive impact. There is something else stock options do, too. Because

stock options are predominantly awarded to top executives, they are a great way to give yourself a sweetheart deal, with a powerful incentive for executives to look for ways to inflate stock prices so their stock options, at least for a while, are worth millions, even hundreds of millions of dollars.

Here is what Business Week said about stock options back in March:

Options grants that promised to turn caretaker corporate managers into multimillionaires in just a few years encourage some to ignore the basics in favor of pumping up stock prices.

And pump they did. Here is how much stock options distorted the bottom line for some of the biggest and best companies in America. One study by a London-based consulting firm, Smither and Company, looked at the use of stock options by 145 of the largest U.S. companies.

They found that those firms overstated profit by 30 percent in 1995, 36 percent in 1996, 56 percent in 1997, and 50 percent in 1998.

Other analysts, including the Federal Reserve, have found the same thing.

These are huge distortions in the picture the public was given about these companies and a huge distortion in information investors were using to allocate capital. That kind of distortion was clearly a big factor, maybe in addition to what my friend from Utah says, in driving up those stock prices that are now falling back to Earth.

This is no simple problem. The 200 biggest firms now allocate more than 16 percent of their stock in options. Let me repeat that.

The 200 biggest firms now allocate more than 16 percent of their stock in options, mostly for their very top executives.

The potential for distortion and the temptation to distort is great.

Remember these stock options are predominantly given to top executives.

One study in 1998 found that 220 of the top managers at Fortune 500 firms received an average of 279 time the number of stock options awarded to each of the firms' other employees.

Two hundred and seventy-nine times what ordinary employees got.

Despite the increased use of stock options this is clearly a device top management has largely preserved for itself, and the kind of incentives they created are now all too clear.

This amendment takes what I believe is the most restrained and most careful approach to the problem of stock options.

It does not legislate accounting standards, and it does not dictate outcomes.

It tells the Financial Accounting Standards Board that it is given new resources and new independence by the underlying Sarbanes amendment. It provides for FASB to come up with appropriate techniques to account for stock options, it does not dictate a one-size-fits-all at this moment, and it gives them a year to do it.

This is not about Government intervention this is about getting us out of the way of what every expert from Alan Greenspan to Warren Buffett and FASB itself says should be done.

It does nothing to interfere with the issuing of stock options.

It is about giving shareholders and investors the information they need to reassert their control over America's corporations. That will help to promote companies' long-term value, and reduce the temptation to pump up short-term stock prices.

This amendment can help promote a stronger form of stockholder democracy, to cure a system that a greedy few have turned to their own personal advantage. That kind of democracy needs openness and clarity—honest information to make informed decisions.

This amendment is real reform, and I urge my colleagues to support it.

I thank my friend from Utah for his intervention, and I thank my friend from Iowa for listening.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield to the Senator from Virginia, just to make a unanimous consent request.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Virginia.

Mr. ALLEN. Mr. President, I yield the remainder of my hour to Senator GRAMM, the Senator from Texas, who is the Republican manager of this bill.

The PRESIDING OFFICER. The Senator has that right. Time is yielded. The Senator from Iowa.

Mr. GRASSLEY. Before I forget, Mr. President, I make the request that the unused portion of my hour that I will not be using here, I would like to also have given to the Senator from Texas.

The PRESIDING OFFICER. The Senator has that right.

Mr. GRASSLEY. Mr. President, I have five amendments I filed: (i) An amendment providing for a team of oversight auditors, (ii) an amendment providing for prebankruptcy bonuses paid to top executives be pulled back into the bankrupt corporation's estate, (iii) an amendment providing the Securities Exchange Commission with disgorgement remedies, (iv) an amendment providing that auditors who sell tax shelter products cannot opine on the financial effects of the tax shelter deal; and, (v) last, an amendment providing whistleblower protection to the accountants and others who want to disclose financial statement misconduct.

I am pleased, in regard to the last amendment I just announced about whistleblowers, Senators LEAHY and HATCH accepted that proposal as part of their amendment which has been adopted.

I am not going to speak about the other four. I am just going to speak about one of those. It is the first amendment I put on my list, an amendment providing for a team of oversight auditors.

As I said, I congratulate my colleagues, Senators SARBANES and ENZI on their hard work in moving S. 2673 out of Committee and bringing the bill to the floor for further debate. The reform bill is a great step in the right direction for tackling some of the difficult accounting problems our Nation currently faces. Nevertheless, I believe the reform bill isn't quite tough enough on several issues and should be strengthened further, consequently, the amendment.

In my view, the recent rash of accounting scandals did not result from incompetency or lack of rigorous training of accounting professionals. Neither has the problem lied principally with misguided auditing standards known as GAAS or ill-considered accounting rules known as GAAP.

The Worldcom debacle, among others, further demonstrated that the problem does not rest entirely with a company's external auditors—whose best efforts may not detect financial misrepresentations if fraud is repeatedly covered up by corporate insiders or contrived to defeat established internal controls. Instead, each of the most recent corporate accounting scandals appear to have arisen from egregiously bad behavior of corporate insiders and internal accountants—with varying degrees of complicity by those companies' external auditors.

Thus, as a matter of principle, I agree with the ''bad apples'' theory being offered by many. However, I believe addressing those bad apples requires additional oversight—and not just of a company's external accountants but of the internal accounting function itself.

To that end, I further respond to the President's call for increased oversight and would like to offer an amendment that would strengthen the provisions Sarbanes-Enzi bill by expanding the powers of the oversight board to require the performance of ''spot audits.'' The underlying bill which focuses on monitoring external auditors woud be amended to provide additional board oversight of internal corporate accounting.

Specfically, my amendment would charge the Board with responisibility for conducting oversight audits or ''spot audits'' of public companies. The board would serve in a role analogous to the Internal Revenue Service or the Federal Bank Examiner. The IRS, for example, achieves voluntary public compliance through review of a very limited number of federal tax returns each year. The IRS does not verify each and every tax return. Similarly, the Federal Bank Examiner sporadically and randomly audits various banks throughout the country. Such ''spot auditing'' has been an extremely effective oversight tool for the banking industry and one which has resulted in higher levels of regulatory compliance. In similar fashion, I believe that accountants and corporate America will prepare more carefully their financial

statements if exposed to the risk of compliance review by the board's oversight auditors.

Even in self-regulated form, the accounting industry has long recognized the need for a second level of review. To that end, 24 years ago the ACIPA established the peer review process by which one accounting firm would review audit work of another accounting firm. For example, Deloitte & Touche was for many years the assigned peer reviewer of Arthur Andersen. Industry-wide self-checking on top of industry self-regulation seems ill-conceived and has been widely critized for its effectiveness by lawmakers and the SEC.

Over the past 25 years, a Big Five accounting firm has never issued a qualified report against another Big Five accounting firm at the end of any peer review despite the subsequent discovery of numerous irregularities including numerous conflicts of interest from stock ownership in audit clients. This recognized need for a second level of review is longstanding although the mechanism originally established by the accounting industry seems to have proven largely inadequate.

Some may ask why the Board should be granted powers which may be exercised currently by the SEC. The answer is simply resources. Providing an effective mechanism for spot checking the books of various issuers requires a dedicated audit staff to carry out those purposes. Having resources dedicated to a regulatory review process would allow the oversight board to take a proactive approach in reviewing for accounting irregularities and take the SEC out of a purely reactive posture with respect to corporate accounting fraud. The SEC has done a great job of investigating corporate scandals once detected. Unfortunately, by the time many of the recent scandals were discovered, things had progressed too far. We were unable to salvage the companies and the life savings of thousands of employees and shareholders. I believe the oversight auditor would provide a deterrent to committing fraud when coupled with tougher criminal sanctions. I further believe that earlier detection could prevent the absolute destruction of companies in which fraud remains uncovered for too long a period of time.

I note that the concept of an oversight auditor within the public oversight board was rejected in the accounting reform proposal offered by the SEC and Harvey Pitt on June 20. The draft emphasized that the SEC's vision of a newly created public oversight board reassured corporate America that the newly-created oversight board would require the cooperation of audited corporations ''only to the extent necessary to further . . . reviews or proceedings regarding the [audit corporation's] accountant.'' The draft further promised that the new oversight board would not conduct ''roving investigations'' of audited corporations nor would the board sanction those corporations. It occurs to me that by shifting exclusive focus and responsibility to accounting firms, we ignore the underlying behavior of corporate wrongdoers who have principal responsibility for fair and accurate financial reporting to corporate shareholders.

Under my proposal, the newly created oversight board would be charged with reviewing the financial statements of issuers and focusing its resources on highest-risk audit areas and questionable accounting practices of which it is aware from the SEC Division of Enforcement or other sources such as whistleblowers under provisions I heartily supported.

Upon discovery, the board would refer findings of possible accounting or auditing irregularity to the Division of Enforcement with respect to issuers or other appropriate federal and state enforcement officials such as the President's newly-created Fraud Task Force within the Department of Justice. This referral mechanism would ensure that those agencies continue to have primary authority and responsibility for conducting comprehensive corporate investigations of possible wrongdoing. The oversight board, of course, would have authority to conduct investigations of possible wrongdoing with respect to the involvement of accounting firms within its jurisdiction.

That is a basic summary of what this amendment would accomplish. I urge my colleagues to support establishment of an oversight auditor as a means of improving the compliance of corporate issuers and their external accounting firms and detecting irregularities at a much earlier point in the system when a shareholder value remains salvageable.

It seems to me that my amendment comes down to just a simple case of common sense. As I think proven so many times before, auditors need to be audited in the same way the IRS does it for tax returns and in the same way bank examiners do it in the case of bank audits. If auditors know their work will itself be audited, they will think twice about looking the other way on shady deals, as we have seen.

My amendment would put some very specific teeth in the Sarbanes-Enzi bill.

At this point, I was hoping the Senator from Texas was going to be here because I have done so much for him on a lot of Finance Committee bills. I'm referring to tax bills, including the recent CARE bill and the recent energy bill. I have helped him with so many amendments that he wanted. I was sure he would be willing to help me get unanimous consent to get my amendment up, particularly in light of the fact that last week I was assured when it wasn't on the list that it would be on the list. Then I came back and found that it meant being last on the list.

Now we are getting down to the end. I would like to have what I consider kind of a commitment, although it probably is not an ironclad commitment, that I be on the list, and, obviously, I would be able to get a vote on my amendment.

At this point, I ask unanimous consent that the pending amendment be laid aside for the purpose of taking up my amendment just described, which is amendment No. 4232.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. In light of the discussions, I have to object.

Mr. GRASSLEY. Was the President going to put my unanimous consent before the Senate?

The PRESIDING OFFICER. I did.

Mr. GRASSLEY. I did not hear the President do that.

The PRESIDING OFFICER. The Senator from Wyoming objects.

Mr. GRASSLEY. Mr. President, before I yield the floor, I would like to have just a short discussion of something that bothers me. In the Senate we have a right to be, and a responsibility to be, intellectually honest about these issues with which we are faced here.

I have heard so much during this debate—not so much during the debate, because that wouldn't be fair, but more probably in news conferences held by Senators on the other side of the aisle—about the Democrats wishing to use Enron and WorldCom events very much as, I think, political issues. I think maybe the Democrats are hoping for a ''November storm'' in which our economy is weak and no progress is made on accounting reforms.

As this bill goes through the Senate, through conference, and comes back, I hope we will realize that there is enough blame to go around. But, most importantly, I think it is wrong. For instance, the distinguished majority leader on ''Face the Nation'' recently attributed the current crisis to the alleged ''permissive'' attitude in the Bush administration towards business. I didn't see any ''permissiveness'' in the President's speech last week. I don't think very many people did.

But I think we also need to remember, while a lot of this mischief was going on by corporations, that during the decades of the 1990s and now in the 21st century there were 2 years in which Democrats controlled Congress. In those two years, we had a Republican President. That was the first Bush Presidency. There was a period of time when the Democrats controlled both Houses of Congress and the White House. That was 1993–1994. Then there were 6 years that Republicans controlled the Congress—1994–2000, and the Democrats controlled the Presidency. Then there were 135 days last year that Congress was controlled by Republicans, and the President of the United States, but only 135 days out of a 12-year period of time, if you want to use the 1990s plus now. And what has happened has happened on the watch of both Republicans and Democrats.

I think that to say a President has been President 18 months and this crisis before us is because of a ''permissive'' attitude in the Bush administration towards business just doesn't hold water.

I have a chart behind me. I hope I am very clear in making this more accurate than what I just said. The yellow is the 2 years of the Bush administration going back to 1994, and the other color covers the Clinton administration. But let's forget about the Bush administration and the Clinton administration. Let's just realize what the facts are.

In the case of Enron, it became public in the year 2001, but the restated earnings and the mischief went on all the way back to at least the beginning of 1997 because 1997, 1998, 1999, 2000, and the first two quarters of 2001 were restated earnings.

Adelphia: Half of 1998, all of 1999, all of 2000—before they were public in 2001—but restated earnings for all those.

Go down to Xerox. It was found by the end of the year 2000 everything that was done wrong in Xerox. The restated earnings of 1997, 1998, 1999, and 2000 came before there was ever a President George Bush.

There were restated earnings for Rite Aid for 1998, 1999, and 2000. You can go down the list. What the chart says, better than I can say, is that it is not a permissive attitude by this President that has put us in this position. It is because of the lack of transparency that was implied in what the accounting profession and audit committees and boards of directors, who ought to be watching management, were doing, and the Securities Exchange Commission under the spirit of the 1933 law of what they should have been doing. I suppose there are a lot of others as well.

But now politics should be put to the side. We should not be making these statements. We ought to be correcting the situation so that people have confidence and so that the crooks who are running our corporations and doing these things that are evidenced here. When I say ''crooks running our corporations,'' I mean the ones who would do this sort of thing to their stockholders and to the country and to the economy—so that they cannot get away with that in the future.

That is what this bill is all about. I complimented Senator SARBANES and Senator ENZI about this bill. I think it would have been improved with my amendment. But, quite obviously, that is not the way the game is being played. So I am sorry that my amendment could not be put to a vote.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I have spent most of the afternoon in the Chamber listening to this debate, which I have found to be illuminating, occasionally informative. I want to do what I can to perhaps add to the information, if not to some of the light.

I made reference, in my colloquy with the Senator from Delaware, to the decision that was made by the Congress back in 1993 to put a limit on the amount of compensation that executives could receive in terms of traditional dollar salary. And the limit was $1 million.

I remember some of the rhetoric that flew around this floor at that time, filled this Chamber—how terrible it was that people were being paid these outlandish salaries and that somehow it would benefit the people at the bottom of our economic ladder if there was a limit placed on those salaries. And so recognizing that they could not outlaw the salaries, Congress could do the next best thing—or, if I might say, the next worst thing—and say: All right, they can pay themselves these big salaries, but, by George, we will not allow a tax deduction for anything over $1 million.

Then, recognizing that would probably produce all kinds of difficulty, Congress said: Except in a number of areas. And one of the areas of exceptions was that nonsalary compensation could exceed $1 million and be expensed if it were approved by the shareholders.

In my view, this was a strong incentive to move towards stock options. After all, if you are running a public company and your services are worth $5 million or $10 million on the open market, you are not going to stay with a company that will only pay you $1 million in cash if a competing company will come along and offer you the $5 million or $10 million you think you are worth in the form of other compensation.

So as we get lyrical around here about how terrible stock options are, and how stock options lead to all kinds of excess, we should remember that Congress, in its excess of enthusiasm for a form of wage and price controls, helped contribute to this situation.

We do not like to have institutional memory. We do not like to be held accountable for our actions 4 our 5 years after those actions are taken. But, in this case, I think it is appropriate for us to remember the past while we are getting so exercised about what it is we plan to do in the future.

If I might, Mr. President, be a little autobiographical for a moment, I would like to trace my own experience with stock options. I have reflected on this, and I think it has perhaps some value in this debate.

I was working for the JC Penney Company in the mid-1960s. I was interested, when I went to work for the Penney Company, to find out that company had a tremendously innovative and singular form of compensation; that is, no one in the company was paid more than $25,000 a year—no one. The president, the chairman of the board, none of the vice presidents—no one was paid more than $25,000 a year.

There was a pool of profits that was created, and in addition to your $25,000 salary, you were given points in the pool. It was assumed that the pool was divided up in such a way that any one point in the pool was worth $1. So when I went to work for the Penney Company in 1964, my salary was, as I recall, $10,000 a year. I was not important enough to get to the exalted $25,000 a year stage. But I was given 2,500 points in the pool, which meant that if the company met its earnings objectives, I would get another $2,500; in other words, my real salary would be $12,500.

So I did everything I could to make sure that every point in the pool was, in fact, worth $1. I did what I could to turn off the lights. I did what I could to save expenses. I did what I could to drive sales so that the company would meet its goal.

My memory is that in one of those years each point was worth 93 cents; that is, the company fell 7 percent short of its projection. And every one of us in the company who was having that kind of a salary circumstance felt that 7 percent hit. In the example I have just given, instead of getting another $2,500 at the end of the year, I would have that $2,500 shaved by 7 percent. I would get my $10,000 salary, plus 93 percent of the additional $2,500.

There were stories in the Penney Company that were legendary about managers who would get transferred from one Penney store to another. At the time, as I recall, the limit was not $25,000, it was $10,000. So $10,000 per year was the maximum anyone in the company was paid. A store manager who was transferred from a relatively small store to a relatively large one in a large city was sure he was going to get a big raise. He got his first check, and it was for $10,000 a year. And he said: But my expenses are higher. I am running a store that is two or three times bigger. It doesn't matter; you get $10,000 a year. At the end of the year, when they added up the profits of that store, he got a bonus based on the profits of the store he was managing, and the bonus was about $100,000. Well, he had an obvious incentive to see to it that store was profitable.

What does any of this have to do with stock options? That system that was followed by the Penney Company that helped drive its growth all those years—where compensation was tied to performance, not only your personal performance as in the case of the store manager I described but in the company's performance, as in my own case—that program was scrapped. We went to a more traditional kind of compensation. As part of the traditional kind of compensation, we had stock options.

I got a little comfortable with the old system because I remember 1 year where each point in the pool was worth $1.23. The company did much better than it had anticipated, and I got a 23 percent upward kick in my compensation.

I questioned: Why are we getting away from this because it seems to me this works?

The answer was: Wall Street requires it.

Well, that wasn't enough of an answer for me. I said: What do you mean Wall Street requires it?

They said: The analysts at Wall Street have said to us, until you give stock options, we are not going to believe that you are serious about the future of your company because stock options are not tied to immediate profits. Stock options are tied to future profits. And until you put some of your compensation to your executives and key employees in the form of stock options, we will not believe that you believe the future of your company is as bright as you say it is. We want them to have a stake in the future.

So as it was explained to me, in the scrapping of this unique compensation plan that I think the JC Penney Company was the only company in the country, if not the world, that followed it, in the scrapping of that plan, you had to adopt some form of stock options. So they did adopt stock options.

I didn't stay around long enough to take advantage of them. I entered the Nixon administration in 1969 and gave up my vesting in a number of circumstances at the Penney Company. Frankly, I was a little nervous about that because I thought I had a bright future financially if I had stayed at the Penney Company. And again, as I say, at the end of the year, when they sent me the money that had been accumulating in my behalf during the part of the year I worked there, each point was worth $1.23. That said to me, once again, how much more money I would have had if I had stayed with Penney instead of coming with the Government. That is a separate issue. I will not go down that road any further. I am glad I made the decision I made. I probably would not be a Senator if I had not.

The point is, the compensation of employees should be tied to the future and benefit and prosperity of the company, and stock options were created with that in mind. What we have seen them become, since 1993, when they were not available as part of an intelligent compensation mix, but they were made more valuable by tax treatment by the Congress making an accounting decision, what we have seen is that stock options have accumulated the bad name we have been hearing about here on the floor. I am not sure I agree with everything that has been said about how terrible stock options are, but I do recognize they have led to some excesses.

In the New York Times, on July 12, there was an editorial signed by Walter Cadette, senior scholar at the Levy Institute of Bard College and retired vice president of J.P. Morgan. With a background at J.P. Morgan, in my view, he has a little bit more credibility than some of the people who write editorials for the New York Times. But he made the same point that has been going around the floor here in some of the rhetoric when he says:

> Options . . . hold out the promise of wealth beyond imaging. All it takes is a set of books good enough to send a stock price soaring, if only for a while. If real earnings are not there, they can be manufactured—for long enough, in any case, for executives to cash out. This, in essence, is what happened at Enron, WorldCom, Xerox—indeed, at quite a long list of companies.

That is not congruent with the explanation about stock options I received back in the 1960s, when I had my first opportunity to participate in stock options in a Fortune 500 company. That is something that is new, that has come along.

So we are back to the fundamental question of this bill, which is, How do we account for the performance of a company in a way that will allow investors to make an intelligent judgment about the value of the company?

That is the fundamental issue here. It is fundamental enough that I think I ought to repeat it: How do we account for the performance of the company in an accurate enough manner to allow investors to make an intelligent decision about the future of that company?

Some will say to us: That is a very easy question to answer. Congressman GEPHARDT has been quoted in the press as suggesting that accounting is a science. It is a simple matter of black and white, of adding 1 and 1 and getting 2.

That is not the case, however much we would like to believe that is the case. Yes, when you are talking about some aspects of accounting for a company's performance, it is a simple matter of adding up the numbers and reporting them. But in a company as complex as today's modern industrial corporation, there are a whole series of judgment calls that must be made. It is not just a matter of adding up all of the sales. It is not just a matter of adding up all of the costs.

Back to my example of the JC Penney Company, this is a matter of a judgment call being made. What is the judgment of the value of this company if it does not trust its executives enough with stock options?

Analysts on Wall Street who are trained and experienced came to one judgment call: that the Penney Company was not worth as much without stock options as it would be with them—nothing whatever to do with the bottom line, nothing whatever to do with how many socks we sold or how many shoes we sold or how many shirts we sold. It was a judgment call on the value of the company based on accounting decisions.

Are we going to account for compensation strictly on the basis of the Penney Company's system or are we going to make a judgment call based on stock options?

Well, the Penney Company did what it believed it had to do under those circumstances and, of course, went forward in its history.

The point here is that there are judgment calls to be made every day in every circumstance with respect to accounting, and they will determine how the public, the investing public, will respond to the company that makes them.

That raises the question of what should those calls be and who should determine what those calls should be.

There is a term we use. It is called GAAP. It stands for generally accepted accounting principles. The very phrase itself defines what it is we are talking about. If we want to make an accounting decision as to what something is worth, we should make the decision within the parameters of GAAP; that is, we should make the decision on the basis that is generally accepted.

Let me give an example of what happens when you go outside the basis of what is generally accepted accounting principles. I was involved with an investor and he put out appropriate balance sheets, accounting information, profit and loss statements, and so on. He got a very angry call from one of the subinvestors. This was the kind of man who would sell shares in his overall project primarily to doctors and dentists.

He said to me once:

> I will not sell shares to lawyers.

I said:

> Why not? Isn't a lawyer's money just as good as a doctor's or a dentist's money?

He said:

> No, because lawyers are trained to find problems and I don't want sub-investors who spend all of their time looking for problems.

Well, he got a phone call from a physician who said to him:

> I have looked at your financial information and you are lying to me.

He said:

> What do you mean I am lying to you?

He said:

> It is right here in your documents. You said this particular venture made X hundreds of thousands of dollars last year. Now you have given me your financial statements and I have found out you didn't make a penny.

The man said:

> What are you talking about?

He said:

> I have it right here. Here is a list of your assets and a list of your liabilities and they match each other to the exact cent. You didn't make any money.

Well, generally accepted accounting principles say that a balance sheet always has to balance, that the number on one side and the number on the other side must equal each other to the penny. This man did not understand generally accepted accounting procedures, he wanted to keep books a different kind of way, and he was misled. The solution, of course, was to educate him on what those generally accepted accounting procedures ought to be. Once he generally accepted what those procedures were, he could read the profit and loss statement, the balance sheet, and he could discover that the man, in fact, was not lying to him and that, in fact, the venture had made several hundreds of thousands of dollars that year.

Now, let's come to Wall Street, let's come to Enron, let's come to all of the things that we are talking about here. One of the things we have heard in many of the hearings that I have attended on this subject is that if you were a sophisticated analyst of financial statements, you could, in fact, find all of the information that you needed in the footnotes of the various financial statements that were published. You did not need the kinds of disclosure that this bill is calling for.

Well, I examined that, listened to that testimony, listened to the people who made that point, and came to the conclusion that they are right. If you are sophisticated enough to be able to go through every single footnote, examine every single side comment, and plow through all of the boilerplate that makes up a standard financial release, you could create an accurate picture of that corporation—except in those cases where there was outright fraud. In my opinion, Enron was a case of outright fraud, not a case of hiding things in footnotes; it was a case of lying.

Quite frankly, there is nothing we can do in this Chamber, or anywhere else in a legislative forum, to stop people who determine that they are going to lie, who are determined they are going to commit fraud. That will happen no matter what kind of a bill we pass. We can raise the penalty and thereby discourage it a little more—and there are proposals to do that—but we cannot stop it. If someone is determined he is going to break the law, and he thinks he can lie and get away with it, he will still do it regardless of the bills that we pass here.

But what we can do, what we should do, and what this bill is crafted to do is to make it easier for the ordinary investor to understand what a company is worth, make it so that the generally accepted accounting principles conform with generally understood activities with respect to the business world.

The question is, how can we establish accounting rules that will make it possible for the ordinary investor to understand what is going on and not restrict understanding to those who can read the footnotes, who can decipher all of the boilerplate. I don't think we will ever get there in a perfect world. Life being what it is, with the lawyers coming in and requiring careful terms of art to be spelled out, we will never get to the point where someone who does not have any kind of legal understanding of the terms of art can read this as easily as he or she could read Harry Potter. However, we can move in that direction, and I feel this bill does so move.

The one thing that we should be most careful of, however, is to avoid having Congress set the accounting rules. Why? If Congress sets the accounting rules, it will—to use a phrase we use here derisively sometimes—take an act of Congress to turn that around. And having set the rules, Congress is very reluctant to come back in an act of Congress and change them. But if the rules are set by the regulatory bodies over which Congress exerts some oversight responsibility, they can be changed much more easily as more information comes along and as people begin to discover that what they did previously maybe doesn't make as much sense.

I offer as exhibit A Congress's action to outlaw the deductibility of cash compensation above a million dollars—something that, in retrospect, now looks like it was a pretty stupid thing for us to have done. But we have done it, and the chances of trying to get a bill through that would undo it are very slim. If we stay out of the business—we in Congress—of making these kinds of accounting decisions, we will be better off, the economy will be better off, more people will keep their jobs, et cetera.

Let me close on that particular subject with that particular idea in mind, and that is that Congress from time to time wants to step into the marketplace, repeal the law of supply and demand, and assert our judgment over the judgment of the marketplace. I have said many times, and will say many times hence, if I could add to what we have carved in marble around here, I would say: ''You cannot repeal the law of supply and demand.'' But we keep trying to do it with wage and price controls. We keep trying to repeal the law of supply and demand.

We tried to do it in 1993 when we said we will do something about the excessive compensation of executives. We won't say that the marketplace and the law of supply and demand will determine what people get paid; we will legislate it. We will legislate it with tax policy. We will do some social engineering through tax policy. We keep trying to do that all the time, and it almost always produces a perverse effect.

Let me address this question of overwhelmingly big salaries and compensation—as if there was something really evil about that, really corrupting about that. Maybe there is, in terms of the impact that that sort of compensation has in the lives of an individual, but it is the marketplace at work.

Let me give an example with which I think everybody might be familiar. I am not talking about Jack Welch, the CEO of GE. I am not talking about Ken Lay at Enron. Let's talk about somebody with whom most people can identify. Let's talk about Wayne Gretzky.

Wayne Gretzky has been called, accurately in my view, the greatest hockey player who ever lived. Along with that, Wayne Gretzky is the highest paid hockey player who ever lived. At the time the decision was made by the hockey team that brought Wayne Gretzky into the United States and paid him an incredible sum of money, there was a great hue and cry: How can one individual be worth this much money? For what? Knocking a solid piece of whatever hockey pucks are made out of around on the ice, for that he is worth $20 million, $30 million, $50 million—whatever it was—a year?

The owner of the team came out of some obscurity long enough to say: Yes, he is worth that much money, and let me explain to you why. Then he outlined what the ticket sales for his team were the year before he hired Wayne Gretzky and what the ticket sales for his team were the year he announced the hiring of Wayne Gretzky. The number was several times the total amount that Wayne Gretzky was being paid.

The owner said: On a percentage basis, he is a bargain. He is a steal at the price I got him.

These numbers are representative rather than absolute, but they stick in my memory that they were paying Gretzky something like $40 million or $50 million and the increase in ticket sales was going to be something like $120 million to $150 million.

The owner said: If I had to, I would pay him twice as much because I am getting the benefit.

People say: But that is measurable. Michael Jordan did the same thing for the Washington Wizards. We can figure that out with accounting. But what these chief executive officers are being paid is obscene.

If you are a shareholder of General Electric, Mr. President, and you looked at what Jack Welch, the CEO of General Electric, did with that company during the time he had it in his stewardship, would you look back on that total period and say we paid Jack Welch too much money? Or would you look back on the amount of the value of General Electric that was generated under his stewardship and say he was a bargain; he was a steal; we could have paid him twice what we paid him and still come out well ahead?

You say: But look at all of the executives who flew their companies right into the sea. Look at the executives who destroyed their firms. Yet they got this same amount of money.

If I may go back again to the sports world, have we not seen sports teams pay very large salaries, responding to the law of supply and demand, for coaches who had losing seasons? For quarterbacks who ended up being on the waiver list? Those of us in the Washington, DC, area have had a lot of experience with quarterbacks. Does that mean we are going to stop trying to get the right quarterback for the Washington Redskins by saying we will pay them average salaries in the National Football League so that there will not be any more of these obscene salaries and failures?

Several things will happen if the Washington Redskins take that point of view. No. 1, they will start to lose even more than they have lost in the past. And, No. 2, the fans will stop coming and the savings that you will make in buying a quarterback that you can get for $400,000 or $500,000 a year, compared to the one that you are gambling $10 million or $20 million on will

all disappear as the ticket sales fall off, the television revenue disappears, and people do not want to come anymore.

Yes, there have been corporate executives who have been vastly overpaid. There have been CEOs who have been hired on the basis of their reputation, just as football coaches who have been hired on the basis of their reputation, who, to lure them into the company, have been given great packages and then failed to deliver. But there are also the Jack Welches of this world who have turned out to be bargains no matter how much they were paid.

Who should make the decision as to how much they should be paid? The answer is, The marketplace should do it. The law of supply and demand should do it. Someone who has demonstrated that he or she has the capacity to build, maintain, and expand a corporation with tremendous value for the shareholders is someone who can demand very high salaries because he or she is in very short supply.

We can complain all we want to about the social inequity of a CEO who is earning $20 million, $30 million, $40 million a year and someone who is working in that company for minimum wage, but it is the same principle as saying: Look at the difference between Wayne Gretzky down on the ice earning $20 million, $30 million, $40 million a year and someone selling hot dogs in the stands. If Wayne Gretzky were not on the ice, there would not be anybody in the stands to buy the hot dogs. Wayne Gretzky and his skills are in much shorter supply than someone who can stand in the stands and sell hot dogs.

We should not in our frenzy in this whole debate get so carried away with our desire to deal with those who have damaged the system by their failure to live up to their responsibilities that we, once again, make any statements that would cause us to try to repeal the law of supply and demand.

I see my colleagues are seeking recognition. I have carried on long enough. I leave with this one last thought: If we are going to deal with these issues, we should deal with them in the way this bill deals with them and not in the proposal that Congress itself should set accounting standards or should set wages or caps or compensation.

Past history tells us Congress can act in a hurry but repent at great leisure.

Mr. GRAMM. We have a unanimous consent request and a request for the yeas and nays that I want to make while we have at least a handful of Members here. I ask for the yeas and nays on the Edwards amendment.

The PRESIDING OFFICER. It is not in order to request the yeas and nays.

Mr. GRAMM. I ask unanimous consent that it be in order to request the yeas and nays on both pending amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is in order to seek the yeas and nays at this point.

Mr. GRAMM. I ask for the yeas and nays on the pending Edwards amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. I now ask for the yeas and nays on the Carnahan amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. The Democrat floor leader had a unanimous consent request he wants to propound.

Mr. REID. Mr. President, we are in the process of working that out now. I think we will be able to do that later.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business, with the time consumed counting against the postcloture debate.

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

The Senator from Nevada.

Mr. REID. Mr. President, it is also my understanding that the Senator from Nevada is going to yield an hour to the manager of the bill; is that right?

Mr. ENSIGN. If you require the 50 minutes that will be left against.

Mr. REID. Or whatever time is left.

Mr. ENSIGN. Yes.

Mr. REID. Mr. President, I understand he has a right to do that; is that true?

The PRESIDING OFFICER. The Senator has a right to yield time. The manager of the bill may receive up to 44 additional minutes. The Senator from Nevada.

Mr. ENSIGN. Mr. President, at the end of my remarks, I will yield whatever time the Senator from Texas can receive.

Mr. President, I want to talk about something a little different than what we have been talking about today, although I have very strong feelings about the bill and think that both the managers of the bill, along with Senator ENZI from Wyoming, have done a terrific job in addressing some very serious problems out there. I still believe there are a few problems with the bill we need to clean up in conference.

I do think the overall legislation has some positive reforms that must be implemented to try to restore some confidence back in the investing public.

PRESCRIPTION DRUGS

Mr. ENSIGN. Mr. President, what I want to talk about is something we are going to be dealing with later this week—as early as tomorrow from what I understand—and that is the whole idea of prescription drugs within Medicare. Earlier today, Senators HAGEL, GRAMM, LUGAR, INHOFE, and I all introduced a new prescription drug bill. It is the compilation of work mainly that Senator HAGEL and I have been doing for the last couple of years. We think it is a proposal that deserves the attention of our colleagues, and I encourage them to study this proposal.

I want to start by reading an e-mail I received from a senior citizen back in Nevada. This e-mail came in at 11:21 p.m. Pacific standard time, so obviously this person was up late at night thinking about the whole issue of prescription drugs. Let me read it:

I urge you to ponder very honestly the proposed prescription coverage with Medicare. Many social problems arise due to the fact that many persons who need medication to maintain some sort of life existence are not able to purchase the needed medications. Must we continue to choose housing or our medications? Please step back and consider if an elderly or disabled person in your own family were in this precarious situation. Would you not step up to the moral plate and fight to find funding for Medicare covered prescriptions?

I think this person summed up very well what a lot of seniors are feeling: They are having to choose sometimes between the type of food they eat and prescription drugs; sometimes between whether they can turn their air-conditioner on in the summertime or their heat on in the wintertime and prescription drugs; sometimes between rent and prescription drugs.

There are several proposals, and I commend the people who have been working on their proposals, but, frankly, the reason we decided to introduce this bill is that some of the other bills, especially when one looks into the outyears, are so costly that they literally could bankrupt the Medicare system in and of itself.

Our bill does a few things. First, it is available to every beneficiary, and it is also available faster than any of the other prescription drug proposals. Our bill can be implemented as early as January 1, 2004, whereas the earliest the other proposals can be implemented is 1 full year later.

Our bill is also the most affordable bill, especially to the taxpayer. We are waiting for the final score from CBO, but we think it is going to come in somewhere around $150 billion over the next 10 years. The next cheapest proposal, that we are aware of, is around $370 billion, and when one looks at the full cost of a 10-year program, other programs can be up to a trillion dollars.

A trillion dollars is not something this country can afford, especially under current economic conditions, and especially when we think about young people who would like to see Medicare as a benefit to them someday.

So we must enact a reform that not only America can afford but also senior citizens can afford, and we think we

have come up with that balance. Basically, the way the program would work is, every senior on a voluntary basis would be able to get a prescription drug discount card. For a $25 annual fee, they would sign up and get this prescription drug discount card. They would then go buy their prescription drugs, and all seniors would save because of volume discount buying. We would use the private sector to do this. They would save, on average, 25 to 40 percent on their drugs. That is a huge savings right upfront that every senior could achieve.

On top of that savings, seniors up to 200 percent of poverty would next spend, on average, about $100 a month out-of-pocket; then after that, other than a very small copay, the Federal Government would cover the rest of their prescription drug costs.

This is what seniors are looking for. In my campaign in the year 2000, I took this plan all over the State of Nevada and talked to low-income, moderate-income, and higher income seniors groups about it. I told them that people who are in the lower income bracket are going to get most of the benefit, and for people in the higher income bracket, it is going to cost them more money, as it should.

In some of the other programs, no matter whether one is a lower income or higher income senior, they basically are treated the same. I personally do not think Ross Perot or somebody in his income category should be treated the same as somebody who makes $15,000 a year. There should be some difference. Under our bill, there is a great difference in the way those two categories of people would be treated.

The reason our bill is less costly to the taxpayer is one simple fact: All the other bills give a percentage of first dollar coverage. Whether it is 50 percent or whatever the coverage, after a very small deductible, they all start covering right away. Our bill says the senior is going to pay about the first $100 a month out of pocket, and then after that, our coverage kicks in.

About 50 percent of the seniors do not have $1,200 worth of prescription drug costs per year, so about half the seniors, other than the discounts they will get because of the prescription drug discount card, actually will not use it. But, frankly, most seniors can afford about $100 a month for prescription drugs. It is for that diabetic patient or that heart patient or that cancer patient who has maybe about $500, or $300, or $400, or whatever it is, a month that they are paying in current prescription drug costs. These are the people that really cannot afford their prescription drugs, and our bill helps that person much more than most of the other plans.

The reason our bill saves so much money is that we keep the patient accountable for the drugs they are getting. They do not have somebody else paying for it and as they get the benefit. That is one of the biggest problems we have with our current health care system: There is no accountability with patients. They are receiving the benefit regardless of the cost, and so they do not think about shopping because somebody else is paying the bill.

We do not have market forces working in the health care field today, and if we enact a prescription drug benefit without utilizing market forces, someday we are really going to regret it because we will have severely out of control costs.

The bill we have introduced, we believe, is more fiscally responsible and targets most of the benefit for those who truly need it the most. We can enact it a lot more quickly than some of the other programs, and it is permanent. It is because of those factors that we believe this bill is the bill that our colleagues should take a look at supporting.

We would be happy to meet with anybody to talk to them about the bill and possibly about cosponsoring the bill. Do not be turned off because one political party may be offering one bill and the other party offering another bill. We are offering an alternative to either of those bills, and we think this bill, with its fiscal responsibility to the taxpayer, is the bill that people should support.

In closing, I look forward to engaging in a meaningful debate on prescription drugs after we deal with this accounting reform issue—and this issue is so important, and I see my friend from Wyoming who has done so much work on the bill, and I applaud him and the others who have worked on this bill. But later in the week as we are debating this prescription drug benefit proposal, we need to take a serious look and not play politics because seniors cannot afford for us to play politics with the prescription drug issue. We need to work together in a bipartisan, rather, in a nonpartisan fashion, so seniors can get the help they so deserve.

I ask unanimous consent that under the provisions of rule XXII, I may yield whatever time I can yield back to Senator GRAMM. I understand it is 44 minutes, and I yield that amount of time to Senator GRAMM.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator has that right.

The Senator from Georgia.

Mr. KENNEDY. Will the Senator yield?

Mr. CLELAND. I am happy to yield.

Mr. KENNEDY. We have had two speakers from the other side. I ask unanimous consent to follow the Senator from Georgia.

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

The Senator from Wyoming.

Mr. ENZI. Reserving the right to object, and I will not object, some of us have been on the floor all this time waiting to speak, as well. We hope for a chance to speak before we reach the end of the day.

I will not object.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CLELAND. Madam President, I ask recognition to discuss my amendment No. 4236. This amendment addresses the accountability of corporate officers and directors. I strongly support the legislation before us which addresses the critical need to create an environment of accountability within corporate America. We need to send a strong message to corporate executives that the days of living large while lying, cheating, and stealing from the American people are over. Control of a company certainly has its advantages, but it also carries important obligations and duties. My amendment would address a situation like Enron where officers cashed in on bonuses, severance packages and millions of dollars in stock sales as they saw the light of the train coming through the tunnel. Unfortunately for thousands of Enron employees and investors, they had no similar warning and were not able to bail themselves out before many lost not just their jobs, but their life savings as well. My amendment would make sure that officers and directors who know what is happening, who know that financial reports are being manipulated, can't cash in on this knowledge while leaving employees and investors holding the bag. It is the duty of officers and directors to know what is happening in the corporation and to blow the whistle when they know there is wrongdoing.

In the case of Enron, 10 executives or directors joined CEO Ken Lay and Chief Financial Officer Andrew Fastow in siphoning off company proceeds and reaping millions of dollars when they sold their Enron shares high. Together these 12 individuals made stock profits totaling more than $30 million before the company took a public nose dive at the end of last year. These corporate high rollers were reaping huge profits at the same time thousands of hard working Americans were losing more than a billion dollars in retirement savings, including $127 million in lost retirement savings in my home State alone by teachers and State employees.

Corporate greed, should not be rewarded. The underlying bill requires that when a corporation has to file a restated financial report because of misconduct in the original report, the CEO and CFO have to give back any profits they have made from bonuses and stock sales for a year after the original report. My amendment would expand on the bill by calling into account all officers and directors who know about the misconduct in filing the financial report and through that knowledge abuse the company's trust and the trust of their employees. It would also mandate that officers and directors who have knowledge of wrongdoing in their financial reports would not only have to give up bonuses and profits but also their severance packages. Why should someone like

Jeff Skilling get a parachute as he bails out of a disaster he helped to create?

This amendment, my amendment, deserves support. It is endorsed by Arthur Levitt, one of this nation's most distinguished financial authorities. It is high time we call corporate executives on the carpet and hold them accountable. It is time we create an atmosphere that encourages responsible behavior and restores the confidence of the American people in the economy of this country.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is to be recognized.

Mr. KENNEDY. I am happy to yield.

Mr. REID. I will take a couple of minutes.

Mr. KENNEDY. I guess I just yielded the floor.

I yield to the Senator and ask recognition afterwards.

Mr. REID. We have had some very long speeches by those on the other side and I thought it appropriate we respond.

The ranking member of the Finance Committee had all these charts indicating that all the problems were not the problems of this administration. The fact is, we realize there is a lot of blame to go around. With do not try to whitewash this issue.

The fact is, the President of the United States appointed the SEC Commissioner, who stated in the hearings he wanted a friendlier, a more gentle Securities and Exchange Commission.

That statement speaks for itself.

We also have to understand that actions speak louder than words. What I mean is, we have a Federal Government today, this administration, that is basically run like corporate America. That has to change. That is what this legislation is all about.

When there is a situation where the President of the United States is being written up in editorials all over the country and news articles throughout the country over his dealings with stock, borrowing money that basically he did not have, to pay back the principle until you sell your stock—no one else gets deals like that. The commentators are looking at that, as they should. Of course, the dealings that the Vice President had with Halliburton, we would like to know more about that. But the Vice President is treating that like he treated his energy task force: in complete secrecy, contrary to how we should be running this Government.

I believe we have a situation that cries out for passing this legislation as quickly as possible. This administration must step forward and recognize they are part of the problem, until they start talking about supporting this legislation, as I understand the President did today. I think that is wonderful. I understand he is going to help us get this through conference. I think that is important. I would like to see it before the August recess. It is important this legislation move forward.

Actions speak louder than words. This administration has to do more than talk about what needs to be done. They have to work with us in solving the problems of corporate America today.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, there are many important provisions in the legislation before the Senate to increase corporate accountability. I had hoped to offer an amendment to make workers' retirement plans whole again when the corporate executives cheat.

After the collapse of Enron—the largest bankruptcy in U.S. history—the President and many Republicans in Congress suggested that it was an isolated example of corporate wrongdoing. Since that time, the nation has witnessed a continuing series of corporate scandals which have demonstrated otherwise.

The lack of corporate responsibility in the United States has undermined the credibility of our markets and devastated the retirement savings of millions of Americans. This widespread abuse of corporate power has also jeopardized our nation's economic recovery and hurt the legitimacy of our fundamental institutions. We must take bold action this week to ensure that corporations are made accountable and that workers and investors are protected against these abuses.

In the past month, we have seen a jury criminally convict the Arthur Andersen accounting firm for engaging in the obstruction of justice to cover up the Enron debacle. We have seen WorldCom admit that it wrongly reported its true financial condition by nearly $4 billion. Just last week, the Wall Street Journal reported that Merck recorded $12.4 billion in revenue from a subsidiary that it never actually collected.

In response to these scandals the President gave a speech last week, which the White House likened to the words of former President Teddy Roosevelt. Unlike our nation's great trustbuster, the President failed to lay out a comprehensive plan to restore America's confidence in our economic system.

Hard-working Americans and their families have suffered immensely as a result of these scandals and the failure of the Administration to take decisive action. Workers have lost their jobs, their health benefits, and their retirement savings. Today, over 47 million workers rely on 401(k) plans and the stock market for retirement security. We can't wait for the next report of corporate fraud, the next round of layoffs, and retirement losses before we take serious action.

This wave of corporate scandals is undermining the confidence of investors in the U.S. economy. Mutual fund investors have lost about $700 billion in just the last 15 months. In May of this year, new investments in stock funds declined by nearly two-thirds from the previous month. As foreign investors lose confidence in the transparency of U.S. corporations, these investors are pulling out of the U.S. market and the value of the dollar is now falling against foreign currency. With an unemployment rate of 5.9 percent, America's workers can ill afford to have their economic prospects dimmed by corporate corruption.

Its time—in fact its long past time—to pass tough new laws to prevent future abuses of corporate power. We must reform our accounting system, enact criminal penalties for corporate wrongdoers, and pass new protections for workers.

Senator SARBANES' accounting bill is critical to reforming our public accounting system and ensuring transparency and accountability for corporations in the United States. The legislation creates an independent oversight board; it restricts the non-audit services than an accounting firm can provide to the public companies that it audits; it holds corporate executives responsible for the accuracy of corporate financial statements; it requires corporate insiders to report stock sales and corporate loans to the SEC; and it provides additional resources to the SEC to improve its investigation and enforcement capabilities. We all owe a debt of gratitude to our colleague, Senator PAUL SARBANES, for shepherding this legislation through the Banking Committee and bringing it before the Senate.

In addition to these accounting reforms, we must hold corporate executives accountable when they mislead workers and undermine their retirement security. At Enron, executives cashed out more than a billion dollars of stock while Enron workers lost nearly a billion dollars from their 401(k) retirement plans. Thousands of Enron workers lost virtually all of their retirement savings. Enron executives got rich off stock options even as they drove the company into the ground and systematically misled workers about the true financial state of the company. Ken Lay now has a pension of nearly half a million dollars a year for life. Many Enron workers have nothing at all.

These are all statements that were made by Mr. Lay. Ken Lay's lies encouraged workers to buy Enron stock at $49. He ''never felt better about the prospects of the company.'' He predicted to employees a ''significantly higher stock price,'' saying it was ''an incredible bargain'' as it was going down. Mr. Lay has a pension of nearly half a million dollars a year. At WorldCom, the workers lost more than half of their retirement savings as the stock dropped from $60 to just 6 cents. Workers across the country also lost big as a result corporate wrongdoing at WorldCom. The brave firefighters and police officers of New York City lost $100 million from their pension fund.

Over 20,000 workers have been laid off in the last few weeks because of the actions of WorldCom executives. Yet, those same executives made out like bandits. Former WorldCom CEO Bernie Ebbers is guaranteed a million and a half dollars for the rest of his life while WorldCom workers face a bleak financial future.

Sadly, Enron and WorldCom are not just isolated tales of corporate greed that hurt America's workers. At Kmart, 22,000 workers were laid off. At Lucent, 16,000 workers were laid off. At Xerox, over 13,000 workers were laid off. At Tyco, almost 10,000 workers were laid off. At Global Crossing, over 9,000 workers were laid off.

These corporate debacles reveal a much deeper crisis of corporate values. In America, people who work hard all their lives deserve retirement security in their golden years. It is wrong—dead wrong—to expect Americans to face poverty in retirement after decades of working and saving.

For far too long, corporate executives have been obsessed with their own compensation instead of the long-term health of the companies they lead. Executives, like those at Enron and Wordcom, should not put their own short-term gain ahead of the long-term interests of workers and shareholders. They must not be rewarded for doing so. At Enron, workers were systematically misled by Enron executives about the financial situation of the company. For years, Enron, like many other companies, pushed its workers to buy company stock with their own 401(k) contributions.

Until the bitter end, Enron executives continued to promote Enron stock to workers in a series of e-mails. On August 14, Enron CEO Kenneth Lay told workers that he ''never felt better about the prospects for the company.'' On August 27, Lay predicted to workers a ''significantly higher stock price.'' And on September 26, Lay called Enron stock ''an incredible bargain.'' Even as they promised the moon, Lay and other executives were cashing out their stock for a billion dollars.

If Enron and WorldCom scandals teach us anything, it's that we must stop rewarding corporate misbehavior.

Our amendment—it is cosponsored by Senator Gregg of New Hampshire—makes it clear that executives who give workers misleading information about the company stock in their 401(k) plans face serious penalties. The amendment is the civil law parallel to the Leahy criminal provisions, which punish executives for defrauding investors. The amendment is also the ERISA civil law parallel to the Biden amendment, which increases the ERISA criminal penalties. When executives lie and mislead workers about company stock, they must face real penalties.

Under current pension law, Enron executives, like Ken Lay, and Arthur Anderson, cannot be held responsible for workers' losses in their 401(k) plan. The amendment makes a corporate ''insider''—an officer or director or the independent public accountant—responsible under pension law if the insider misleads workers about the company's stock.

America's workers need this amendment to hold Ken Lay and other executives engaged in wrongdoing accountable. The amendment empowers workers to seek restitution when executives knowingly abuse workers' pensions. If workers lose their retirement savings due to deliberate corporate mismanagement, then they should have the right under our laws to hold those top executives accountable in a court of law, and recover what they lost. This right could make the difference for a family between an impoverished retirement and a comfortable retirement that they earned.

The economic health of our nation depends on reigning in the abuses of corporate power which we have witnessed in recent months. Restoring the credibility of accounting standards, as the Sarbanes bill would do, is critical to restoring confidence in our markets. At the same time, we must also restore basic fairness to our system.

When corporations like Enron fail because of executive wrongdoing, corporate executives get golden parachutes but workers are left with a tin cup when it comes to their retirement. Corporate criminals must be made to pay for their misdeeds.

We see from this chart what has happened: Ken Lay, $457,000 a year for life, retirement savings were decimated, 4,200 layoffs; former WorldCom CEO, Bernard Ebbers, $1.5 million a year, retirement savings decimated, 20,000 layoffs; Richard McGinn, $12.5 million lump sum pay for Lucent, retirement savings decimated, layoffs for 16,000; Charles Conway, $9 million lump sum pension, retirement savings decimated 22,000 layoffs.

This has to stop. Today we have a critical opportunity to protect workers and investors against future abuses of corporate power. We must not let these hard-working Americans down.

Madam President, I ask unanimous consent to temporarily lay aside the pending amendment in order that I may offer the Kennedy-Gregg amendment, which I send to the desk at this time.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts retains the floor.

Mr. KENNEDY. Madam President, I have heard objection. We tried to get this amendment up during the period of the last week and were closed out. It is a simple amendment. It is an amendment that can do more to protect workers' interests than many other proposals. I think we ought to have some accountability for those who willingly mislead, willingly and knowingly mislead workers, and then benefit from insider information.

It would just give them a cause of action, a specific case, no punitive damages. It would be a factual situation which would have to be decided in the courts of law. But it does seem to me to offer a real meaningful opportunity to protect workers and the savings of workers from the kind of gross abuse we have seen currently here in the Senate.

Mr. DORGAN. Madam President, will the Senator yield for a brief question?

Mr. KENNEDY. I am glad to yield for a question.

Mr. DORGAN. Madam President, the Senator from Massachusetts has just propounded a unanimous consent request on an amendment that makes good sense to me, and it certainly should be added to this bill. I assume it is a germane amendment. We are postcloture. At the very least, he should have gotten a vote on the amendment. But I wonder if the Senator from Massachusetts knows that this has gone on all afternoon. I offered an amendment a couple of hours ago that was simple and germane. It should have had a vote. It said that if the CEOs and directors of a corporation waltz out the door with millions of dollars of bonuses, stock options, and incentive pay, and then the company goes bankrupt, they have to give it back. I couldn't get that amendment up for a vote because of the same objection.

I wonder if the Senator from Massachusetts might conclude from this that the things here in the final hour which are germane have a right to be considered and heard on behalf of the workers and the shareholders and the folks who didn't get rich but the folks who lost everything. I wonder if there is not a pattern here that the Senator from Massachusetts sees and that others see to shut down those amendments and protect the folks at the top while the folks at the bottom lost everything.

Mr. KENNEDY. Madam President, this amendment is relevant. But under the strict rules of the Senate, it would not be considered germane, although I think a commonsense evaluation or review of the amendment's purpose and what the underlying bill is about would certainly appear to I think most people to be an important strengthening provision if we are interested in corporate responsibility and protection for workers. It is certainly relevant, but under the technical rules it is not germane.

But I think anyone who knows what this bill is really all about understands what is happening in these circumstances. This would certainly be a very strengthening provision in the underlying provisions. We were unable to get the opportunity to have the consideration because we were foreclosed from that opportunity at the end of last week and we are getting objections this week.

I think that is unfortunate. As I understand it, the most current support for this is overwhelmingly among Republicans and Democrats alike across

this country. They understand. It doesn't take a lot of debate or discussion to understand what accountability is all about. Under the existing laws, they can only have accountability, not for those who are at the CEO level, who are really the ones making these judgments and decisions upon which workers are relying, but they would only be able to sue lesser figures in the corporate ladder. Therefore, this is not an effective remedy for workers.

We are trying to provide an effective remedy for workers who are being shortchanged. It makes eminently good sense. It is eminently fair. It is eminently responsible. It is eminently relevant. But there has been objection to it.

I want to give assurance to the Senator that we look forward to offering this amendment at another time at the first opportunity.

Mr. REID. Madam President, I ask unanimous consent that Senator BYRD be recognized today at 5 until 15 after the hour to speak.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

INSIDER TRADING

Mr. GRAMM. S. 2673 includes provisions prohibiting insider trading of company stock during so-called blackouts—or periods during which pension plan participants are unable to exercise control over the assets in their accounts. In order to implement the insider trading prohibition, it was necessary to provide a definition of a blackout period. The Banking Committee also provided a 30-day notice requirement prior to a blackout, so workers and executives alike would know when the insider trading prohibition would be effective.

Mr. GRASSLEY. Mr. President, there appears to be broad consensus that pension plan administrators should be required to provide 30 days' notice to affected plan participants before limiting their ability to exercise the rights provided through their pension plans. These advance blackout notices will become integral requirements for how pension plans will operate in the future. Because of this, notice requirements were included both in the pension bill reported by the Health, Education, Labor, and Pensions, HELP, Committee on March 21, and in the bill reported by the Finance Committee unanimously on July 11.

Mr. GREGG. I agree with the Senator from Iowa. Although the general concepts are agreed upon, however, there are differences between these provisions in all three bills that affect the operations of pension plans, and will clearly need to be worked out before the bill is sent to the President's desk. Harmonizing these requirements will require a careful balance between the rights of pension participants and the financial burdens on plan administrators.

Mr. KENNEDY. I certainly agree with the remarks of my colleagues. My bill provides pension plan participants with written notice 30 days before a plan blackout begins, and prohibits blackouts from continuing for an unreasonable time. This important disclosure to pension plan participants is within the jurisdiction of the HELP Committee.

Mr. BAUCUS. I also agree with the remarks of my colleagues. As chairman of the Finance Committee, which also has jurisdiction over pension plans, I join the chairman of the HELP Committee and the ranking members of both the Finance and HELP Committees in urging the chairman and ranking member of the Banking Committee to work with us as you go to conference on S. 2673, to ensure that the blackout provisions are drafted in such a way as to ensure the proper operation of the pension system.

Mr. SARBANES. I look forward to consulting with both the Finance Committee and the Health, Education, Labor, and Pensions Committee as we go to conference to make sure the provisions are appropriately drafted.

CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS

Mr. GRAHAM. Section 302 of S. 2673 involves Corporate Responsibility for Financial Reports. I am concerned that in subsection (b), where the CEO and CFO sign documents to verify the accuracy of financial reports, the bill's language says they shall ''certify'' the accuracy of the financial documents. In my view, this language should read ''certify under oath'' in order to be consistent with current Securities and Exchange Commission, SEC, regulations. You can clearly see that the SEC currently requires that these statements to be under oath. Let's not create a lower standard in this bill than currently exists in regulation.

Mr. SARBANES. I appreciate the Senator's interest, and I hope his concerns can be addressed in conference.

Mr. GRAHAM. I thank the Senator for his assistance on this issue and his leadership on this legislation.

I ask unanimous consent that Exhibit A of the order be printed in the RECORD.

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

[From SEC website www.sec.gov, June 27, 2002, OMB Number: 3235–0569; Expires: January 31, 2003]

Exhibit A—Statement Under Oath of Principal Executive Officer and Principal Financial Officer Regarding Facts and Circumstances Relating to Exchange Act Filings

I, [Name of principal executive officer or principal financial officer], state and attest that:

(1) To the best of my knowledge, based upon a review of the covered reports of [company name], and, except as corrected or supplemented in a subsequent covered report: no covered report contained an untrue statement of a material fact as of the end of the period covered by such report (or in the case of a report on Form 8–K or definitive proxy materials, as of the date on which it was filed); and no covered report omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report (or in the case of a report on Form 8–K or definitive proxy materials, as of the date on which it was filed).

(2) I [have/have not] reviewed the contents of this statement with [the Company's audit committee] [in the absence of an audit committee, the independent members of the Company's board of directors].

(3) In this statement under oath, each of the following, if filed on or before the date of this statement, is a ''covered report'':

[identify most recent Annual Report on Form 10–K filed with the Commission] of [company name];

all reports on Form 10–Q, all reports on Form 8–K and all definitive proxy materials of [company name] filed with the Commission subsequent to the filing of the Form 10–K identified above; and

any amendments to any of the foregoing.

GUIDANCE TO STATE REGULATORY AUTHORITIES

Mr. ENSIGN. Mr. President, the purpose of this amendment is to ensure that State regulators do not automatically apply the provisions of this bill to accounting firms, particularly small accounting firms and firms that service small businesses without first looking at the possible harmful unintended consequences to those small businesses. The standards applied by the board under this act could create undue burdens and cost if applied to nonpublic accounting companies and other accounting firms that provide services to small business clients.

Mr. GRAMM. I agree with my friend, the Senator from Nevada, and want to add that what we need to avoid is a possible cascading effect, starting with the Federal Government, that could eventually hurt the small accounting businesses in this country.

Mr. ENSIGN. Many of these small businesses rely on their CPA or auditor to provide objective, trusted advice and counsel on a broad range of tax and business related issues. Without this amendment, we will end up harming thousands of American accounting firms and their small business clients.

Mr. GRAMM. Mr. President, I think the Senator from Nevada is right about the harmful affects this legislation could have on small businesses, not only the small accounting firms in this country, but also the small business clients of those companies. This

amendment says to the State regulators to look very carefully at the effects this legislation could have for smaller and medium-sized firms, and also on small businesses that may rely on larger firms for their audit work.

Mr. ENSIGN. I thank the Senator from Texas for his comments.

Mr. KOHL. Mr. President, as a businessman, I have been deeply concerned about the reports of fraudulent and even criminal behavior at prominent American corporations. When I worked in business on a daily basis, this is not the kind of behavior I saw or expected from my peers. It is imperative that we respond to the corporate malfeasance which has been roiling our markets. The impact of these acts, all for the sake of boosting short-term profits, has been broad, costing many their jobs and others their savings.

The free market is the underpinning of our economic system, the key to the growth and development of our Nation in the last two centuries. The many creative and dynamic businesses which make up our democratic capitalism make important contributions in the form of good paying jobs and the taxes which pay for critical services, such as our national defense. Above all, these businesses are good citizens in their communities. As a result, businessmen are important and highly valued people in our society. The vast majority of businessmen act in good faith and with integrity. It is the bad apples who give the rest a bad name.

Our system has been abused. Unfortunately, those who have raped the system have reaped financial gain, while the rest have lost jobs, savings and pensions. They and their boards violated the public trust.

Those who are lucky enough to be in positions of leadership have an enormous responsibility to enhance and not damage our economy. Unfortunately, the current system of regulation has not been sufficient to prevent bad actors from abusing their positions. That is why we are taking action today. We must build more accountability into our economy because the bad actors—even if they are not in great numbers—have impacted our whole economy. The stock market is no longer the playground of the rich: We are now in an era when as many as 50 percent of the American people have some of their assets in the stock market, meaning enormous repercussions if companies are misrepresenting their financial positions.

I agree with the President that ethical behavior and corporate responsibility are essential if we are to restore the confidence of the American people in our free markets. However, the colossal corporate wrongdoing we have seen uncovered—in 2001 alone, 270 public companies had to restate the numbers in their financial statements—requires that we step up to the plate and address some of the structural problems which have allowed these frauds to occur.

That is why I support S. 2673, the Public Accounting and Corporate Reform Investor Protection Act of 2002.

There are those who have said this legislation is too strong. I disagree. This legislation will not have a negative impact on people doing their jobs as they should. We have an obligation to protect investors, employees, citizens. We are saying to CEOs, their fellow executives, and their boards: We expect you to do your jobs correctly, with integrity, and if you don't, you will be held accountable.

It is not enough to challenge corporate America to do better. We must make clear that there is a cost to engaging in accounting and securities fraud. That is why I supported the Leahy amendment, a version of the Corporate and Criminal Fraud Accountability Act. This amendment strengthens existing criminal penalties for corporate crime, creates a securities fraud felony punishable by up to 10 years in prison, and creates a new crime for schemes to defraud shareholders. The amendment also would establish a new felony antishredding provision and would protect corporate whistleblowers.

The strength of the Sarbanes bill is not in the penalties alone. The bill addresses conflicts of interest which have permitted these crimes to occur and is a balanced approach which will help prevent corporate fraud from occurring in the first place.

The bill sets up a strong, independent, and full-time oversight board with broad authorities to regulate auditors of public companies, set auditing standards, and investigate violations of accounting practices. The Public Accounting Oversight Board proposed in the bill is a better alternative to the part-time board currently being pushed by the SEC. That board would leave standard setting to the accounting profession and would most likely perpetuate the status quo. It is the lack of clear standards coming from the current system of self-regulation which has been the root of many of the frauds being revealed today.

The Sarbanes bill also restricts the nonaudit services a public accounting firm may provide to its clients that are public companies. These consulting services are clear conflicts of interest for independent auditors. We cannot rely on auditors to serve as the watchdogs of publicly traded companies if they are deeply invested in these same companies. If we cannot rely on the auditors, than how are we to rely on the markets?

Finally, the Sarbanes bill addresses the problem of stock analyst conflicts of interest. The Merrill Lynch case recently settled in New York is an egregious example of stock analysts pushing stocks that they actually thought had little value. Most often the motive for pushing stocks of questionable value is to boost their own investment banking departments which are underwriting these stocks. The bill before us today addresses this problem and requires the SEC to adopt rules designed to protect the independence and integrity of securities analysts.

I have no illusions that one bill will be the panacea for all that currently ails corporate America. For example, I believe there is more we should do, beyond the corporate disclosures in this bill, to address problems with corporate boards. We have a responsibility, however, to restore confidence in our markets and in the solid businesses which make up these markets so that our economy can thrive. Only decisive action can prevent this fraud on the American people from happening again.

Mrs. MURRAY. Mr. President, over the past year as Americans have worked hard to restart our economy, we have been hit by report after report of irregularities, misconduct, and blatant conflicts of interest by corporate executives, auditors, and brokerage firms.

The current corporate and auditing scandals are hurting American families. Thousands of jobs and retirement accounts have disappeared. Millions of current investors have watched their gains evaporate. Our economic recovery looks more distant. And most importantly for our long-term prosperity, investors are no longer confident that the financial information provided by public companies and their auditors is accurate.

Congress cannot restore the jobs and retirement savings caused by this wave of corporate and auditing scandals. It can act to strengthen oversight of the accounting industry, to demand greater responsibility from corporate executives, and to address conflicts of interest in brokerage firms.

Today I am voting for reform. We need to send a strong message to working and retired Americans, to investors, and to the executives and auditors of publicly held companies that this Senate will act to restore accountability and faith in our free market system. The Senate's bipartisan accounting reform bill will do just that.

First, the bill limits its scope to publicly held companies. The bill does not attempt to federalize accounting oversight. Instead, it strengthens the Federal Government's historic role of regulating publicly traded companies and their auditors. The State boards of accountancy will continue their important role of regulating accountants who audit private companies.

Second, the legislation establishes a strong, independent Public Company Accounting Oversight Board. The board is empowered to set auditing, quality control, and ethics standards, to inspect registered accounting firms, to conduct investigations, and to take disciplinary actions. As a check on the board's power, its decisions are subject to oversight and review by the Securities and Exchange Commission, SEC.

Third, this bill seeks to ensure that auditors are fulfilling their public duties by ending potential conflicts of interest. Large accounting firms typically provide both audit and nonaudit services to their public company clients. The legislation would prohibit auditors from performing specific nonauditing services, unless those services are approved on a case-by-case basis by the Public Company Accounting Oversight Board. All legal nonaudit services would need to be approved by a public company's audit committee.

Fourth, the Senate legislation demands that corporate leaders take greater responsibility. The bill requires that chief executive officers, CEOs, and chief financial officers, CFOs, certify financial reports, outlaws fraud and deception by managers in the auditing process, prevents CEOs and CFOs from benefitting from misstatements made in their financial reports, and prohibits corporate decisionmakers from selling company stock at a time when their employees are prohibited from doing so.

Fifth, the Senate bill would limit the growing pressure and conflicts of interest that affect the independence of stock analysts. Just as investors need to know that a company's financial reports are accurate, so should investors expect objective opinions from stock analysts.

Finally, the bill would authorize additional funding for the SEC and would establish independent sources of funding for the new oversight board and FASB. As a member of the Senate Appropriations Committee, I will support full funding for the SEC.

We need to work to prevent future scandals. We also need stronger criminal laws and penalties to address fraud and abuse by corporate executives and auditors. During last week's debate I voted for three amendments, including an amendment by Senator LEAHY, that would close gaps in current law.

I know some of my constituents in the accounting and business communities are concerned by a few of the steps in the Senate bill. As I talk to certified public accountants in my State, they have emphasized that it is critical to encourage greater competition in the public accounting field. I agree investors would be better served by more competition. The bill requires the Comptroller General, in consultation with various agencies and organizations, to identify the factors that have led to the consolidation of public accounting firms since 1989, the impact of consolidation, and ways to address it. While a study does not guarantee action, I look forward to reviewing its findings.

It is time to restore confidence in corporate financial statements. It is time to hold people accountable who violate the public trust. I urge my colleagues to join me in supporting this legislation.

Mrs. BOXER. Individual investors, saving for their retirement or their children's education, count on business leaders to play by the rules. They also count on financial industry professionals including accountants and research analysis to produce reliable, professional, and honest work.

But recent business scandals at Enron, Tyco, Merrill Lynch, WorldCom and others are proving that without strong government oversight and regulation, greed will lead executives, accountants, and investment analysts to abuse the trust that American workers and investors have placed in them.

We have to restore that trust. This bill is a good first step. It has the necessary teeth to clamp down on corporate irresponsibility. First, it creates a full-time independent board to set ethical auditing standards. Second, it prevents companies from providing most consulting services for the very same companies that they audit. Third, if enforced, it would send corporate executives who mislead shareholders to jail. Fourth, it forces Wall Street investment research analysts to disclose any conflicts of interest that they or their financial institution might have in the investment recommendations that they make. And finally, it protects whistleblowers who reveal unethical acts by the companies for which they work.

I support this bill and would have supported even stronger legislation. I remain concerned that the public members on the board created in this bill are not chosen according to specific independence standards. I am also concerned that disclosure requirements do not include the holdings of family members of influential research analysts on Wall Street. And most importantly I had hoped we could do more to get funds to workers who lose their jobs as a result of executive misconduct. Those concerns aside, this bill is a good first step in restoring confidence in the system.

Unfortunately, the House recently passed a bill that is weak and will not get the job done. It fails to establish a full-time board to design and enforce auditing standards, does not mandate jail time for securities fraud, and fails to protect whistleblowers. On the conflicts of interests that investment analysts are forced to disclose in the Senate bill, the House bill calls only for a study of the issue.

I urge the President to go beyond rhetoric and endorse the Senate accounting reform bill so that we can get a strong bill out of conference. I also urge the President to join us in fighting for meaningful pension reform to ensure that American's retirement savings are protected.

Mr. SMITH of Oregon. Mr. President, I rise today to take a few moments to praise the Banking Committee for bringing the Public Company Accounting Reform and Investor Protection Act of 2002 to the floor and all the hard work they have done in the past week. In the weeks before this bill came to the floor I thought that what we needed was some type of Investors' Bill of Rights.

I had worked with colleagues on both sides of the aisle to come up with bipartisan goals to prevent corporate abuse and protect investors. I feel that much of the bill on the floor fulfills these goals. I feel that there are a few things that investors should see happen when we pass this bill. I believe that much of this bill will help, and in other areas we may have to work further.

I believe that investors must have access to information about a company. We should ensure that every investor has access to clear and understandable information needed to judge a firm's financial performance, condition and risks. The SEC will have the power to make sure companies provide investors a true and fair picture of themselves. A company should disclose information in its control that a reasonable investor would find necessary to assess the company's value, without compromising competitive assets.

I believe that investors should be able to trust the auditors. Investors rely on strong, fair and transparent auditory procedures and the concept of the Oversight Board in the Sarbanes bill is a sound one.

I believe investors should be able to trust corporate CEOs. Unlike shareholders or even directors, corporate officers work full-time to promote and protect the well-being of the firm. A CEO bears responsibility for informing the firm's shareholders of its financial health. I support the concept of withholding CEO bonuses and other incentive-based forms of compensation in cases of illegal and unethical accounting. Further, I do believe that CEOs must vouch for the veracity of public disclosures including financial statements.

I believe that investors should be able to trust stock analysts. Investors should be able to trust that recommendations made by analysts are not biased by promises of profit dependent on ratings. It is only common sense that there should be rules of conduct for stock analysts and that there must be disclosure requirements that might illuminate conflicts of interest.

Finally, I believe that we should be able to rely on the Securities and Exchange Commission to protect investors and maintain the integrity of the securities market. Current funding is inadequate and should be increased to allow for greater oversight, ensuring investors' trust in good government.

During the debate on this bill my attention has been called to the plight of public pension systems, such as Oregon's Public Employment Retirement System, known by the acronym PERS. PERS you see was invested in both Enron and WorldCom stock and has been hit hard by the debacles that occurred in each company. The PERS system lost about $46 million after Enron self-destructed and another $63 million following the WorldCom scandal.

These losses occurred because false profits were inflated and corporate books were doctored. Under the PERS system, an 8 percent rate of return is guaranteed for the 290,000 Oregon active and retired members of PERS. Oregon taxpayers have to make up the difference following an ENRON debacle or WorldCom scandal, and my State's budget is not prepared for this kind of loss.

While this bill goes far in creating accountability, I am interested in finding out if there is more we can do and am asking the General Accounting Office, in consultation with the Securities and Exchange Commission and the Department of Labor, to report to Congress on the extent to which Federal securities laws have led to declines in the value of stock in publicly traded companies and in public and private pension plans.

I believe this study is necessary because many public and private pension plans continue to rely on the continued stock growth in publicly traded companies, much like the PERS system. I hope this study will provide the needed information so public and private pension plans can reevaluate future investments in publicly traded companies.

We cannot stand by and watch our hard working Americans ruin their pension systems while corrupt corporate executives take advantage of investors. I am proud of the work the Senate has done in the last week in creating accountability and responsibility in corporate America and look forward to working on this issue in a way that will help the investors and pensioners in the PERS system in Oregon.

Mr. AKAKA. Mr. President, I rise today to express my support for the Public Company Accounting Reform and Investor Protection Act of 2002. I thank Chairman Sarbanes for his leadership and the Banking Committee's staff for their efforts which have resulted in a measure which is fair, realistic, and protects investors. The steady disclosure of accounting scandals and corporate misdeeds underscores the need for legislation to protect investors and to restore public trust in the accounting industry and financial markets. Chairman Sarbanes has been the leading voice for reform. Our Banking Committee held ten hearings on accounting and investor protection issues in February and March. These hearings produced extremely valuable information from which S. 2673 was developed.

Public confidence has been shaken by the incidences of fraud and misrepresentations revealed in the financial statements of companies. Enron, Xerox, and WorldCom are just a few examples of corporations which have misled investors with their financial statements. Since 1997, there have been almost 1,000 restatements of earnings by companies. Investors have suffered substantial financial losses and are unsure of the validity of the audits of public companies. There is a lingering fear that there will be additional revelations of corporate fraud or misrepresentation. This has already harmed investor confidence and could continue to have an adverse impact on the financial markets.

I support this bill because it takes the appropriate steps to help restore public trust in the accounting industry and financial markets. S. 2673 would create an independent Public Accounting Oversight Board to provide effective oversight over those in the accounting industry responsible for auditing public companies. Previous attempts at regulation have been complex and ineffective. As the numerous auditing failures demonstrate, there is a need for an independent Board with authority to adopt and enforce auditing, quality control, ethics, and independence standards for auditors.

The legislation also requires additional corporate governance procedures to make Chief Executive Officers and Chief Financial Officers more directly responsible for the quality of financial reporting made to investors. After the numerous misstatements and corporate abuses that have occurred, this is a necessary step to ensure that corporate executives are held accountable for the financial statements of their companies. A particularly important provision in the bill would require that CEOs and CFOs forfeit bonuses, incentive-based compensation, and profits from stock sales if accounting restatements result from material noncompliance with SEC financial reporting requirements.

Rules to limit and disclose conflicts of interests for stock analysts are included in the legislation. There is a concern that firms pressure their analysts to provide favorable reports on current or potential investment banking clients. This provision would provide protection to those individual investors who often depend on analysts for making investment decisions without being aware of the potential conflicts of interest that the analysts may have with companies whose stock they evaluate.

The Public Company Accounting Reform and Investor Protection Act also authorizes additional appropriations for the Securities and Exchange Commission in order to provide the resources necessary to protect investors. According to the General Accounting Office, approximately 250 positions were vacant last year because the Commission was unable to attract qualified candidates. Additional funding is needed to attract and retain qualified employees. S. 2673 would authorize appropriations of $776 million for the Commission, which is much greater than President Bush's original budget request of $467 million. I am pleased that the President is moving closer to supporting the dollar amount included in the bill.

I also want to thank Chairman Sarbanes for including an amendment in the bill which I have worked closely with the Committee staff in developing. The amendment would require the General Accounting Office, GAO, to conduct a study of the factors that have led to consolidation in the accounting industry and the impact that this has had on the securities markets. Since 1989, the Big 8 accounting firms have narrowed down to the Big 5 and may soon become the Final 4. This study is necessary to evaluate the impact that consolidation has had on quality of audit services, audit costs, auditor independence, or other problems for businesses. In addition, the study is necessary to determine what can be done to increase competition among accounting firms and whether federal or state regulations impede competition.

I am pleased that the Senate has worked in a strong bipartisan fashion to strengthen this bill. Extremely valuable amendments have been added to the original committee bill. In particular, the Leahy and Biden amendments strengthen penalties for corporate fraud. These two amendments will help provide much needed additional protection for investors and retirement plan participants.

I encourage my colleagues to support the Public Accounting Reform and Investor Protection Act of 2002 to restore public trust in the accounting industry and the financial markets.

Mrs. FEINSTEIN. Mr. President, I rise to offer my support and cosponsor an amendment to S. 2673 offered by the senior Senator from New York, which would prohibit all loans by a corporation to its directors or executive officers.

Among the abuses committed by senior executives and directors at companies such as WorldCom, Enron, and Global Crossing is the practice of issuing large, favorable loans to those executives and directors.

Those loans can create conflicts of interest that limit that the ability of outside directors, in particular, to voice their criticism of the institution.

Many years ago, I served on the board of directors of a bank, and noted that at the time, several of the directors had hundreds of thousands of dollars worth of outstanding loans at that bank.

At the time, this occurred to me to be wrong, and I could not understand why these directors did not take out loans at another bank, thereby avoiding any conflicts of interest.

The only conclusion I could draw was that the loans to these directors were either easier to procure or made on more favorable terms than loans from another bank would be.

I see no justification for providing loans to corporate directors or executive officers. The goal of the reforms that we are currently debating should be to create an environment in which outside directors and major corporate officers act in as pure and honest a manner as possible.

They should not enter into any appearance of conflict, such as the conflict that occurs when the corporation that they serve extends them a personal loan.

When an individual investor chooses to buy a stock, he or she does so with the full knowledge that it might turn out to be a bad investment. The stock may appreciate in value, but it might also go sour.

Anyone who makes that investment knows that the only way to be sure not to lose any money is to keep the money in cash or buy a T-bill.

But that is not the way it worked for the CEOs and directors of some of the largest public companies in this country.

For example, Bernard Ebbers, the former CEO of WorldCom, took out $430 million in loans from his company between September 2000 and the end of 2001.

When the SEC began investigating WorldCom earlier this year, $343 million in loans were still outstanding, most of which may never be recovered by WorldCom's investors.

Those loans to Ebbers are far from unique in corporate America today. One of the most egregious examples of this type of abuse recent months is the disclosure of $3.1 billion in loans extended to family members and affiliated business interests of the Rigas family by Adelphia Communications, a publicly traded company controlled by the Rigas family.

These loans were never disclosed to shareholders, and were apparently used to shore up a wide variety of business deals involving Rigas family members, including a golf course and an infusion of cash into the Buffalo Sabres hockey team.

On July 9, President Bush went to Wall Street and called for, among other things, ''an end to all company loans to corporate officers.''

I believe that the President was right, and have cosponsored this amendment with that goal in mind.

Investors have a right to know exactly how much of their dividends are going to pay for excessive pay packages. They also have a right to expect that the board of directors is truly independent and that no directors are tied too closely to the corporation they serve because of loans they have received from it.

Ms. SNOWE. Mr. President, I rise today to speak in support of the legislation we are considering, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

Last fall, we watched as a company once in the top 10 of the Fortune 500 imploded from the weight of its own complex efforts to mask debt and hide losses. We watched as the company stock-laden retirement plans of Enron's loyal employees dwindled by $1 billion. Meanwhile, company executives cashed out their own shares while these employees were barred from doing so. And finally, in congressional hearings, we watched and listened as former Enron executives either chose to remain silent, or pointed fingers of blame at everyone's actions except their own.

Tragically, the bankruptcy of Enron was no anomaly in the business sector. Rather, it was only the beginning. It ultimately proved to be a watershed event, as several other companies have reevaluated their own business and accounting methods, and found significant indiscretions. Global Crossing, a telecommunications company, is being investigated by the SEC and FBI in regard to questionable accounting practices used to artificially inflate revenue. Adelphia Communications, a cable company, is now in bankruptcy proceedings due to investigations by the SEC and two federal grand juries for off-balance sheet loans to the company's founders.

More recently, Xerox announced that it would restate 5 years of results which could affect the true nature of what had been reported as $6 billion in revenues. And on June 25, WorldCom announced that it had misrepresented $3.8 billion in expenses over five quarters, therefore allowing the company to report financial gain, when in reality, the company was experiencing a net loss.

While the downward spiral of each of these companies was unique, common threads are woven through each of their failures. First, the insistence by executives that, above all else, stock price remain high was an integral part of the creation of the financial woes of each company; in essence, this short-term focus compromised the long-term viability of these entities.

What has also been disturbing as these revelations have come to light is the role played by the so-called independent auditors of the companies under investigation. While the accountants are not the sole perpetrators of the financial deception that has occurred, the apparent lack of scrutiny of the financial statements of the aforementioned companies has created an inherent mistrust in the accuracy and integrity of the true nature of corporate earnings.

Furthermore, the practice of allowing auditing companies to perform non-audit services can have the ultimate effect of allowing such companies to audit the work of their own personnel. This practice defeats the purpose of having an unbiased entity objectively reviewing the merits and accuracy of financial statements.

The legislation we are considering in the Senate includes crucial provisions that will play a pivotal role in restoring confidence in our market system, and enhancing the public and private sector controls that are in place to monitor the relevant entities. The legislation creates a Public Accounting Oversight Board, which will be an entity solely focused on companies that audit and account for publicly traded firms. This oversight authority will include the ability to investigate and punish any wrongdoing by companies under SEC jurisdiction as well as their auditors. The bill also disallows simultaneous auditing and consulting, while providing for the Board to approve certain exceptions to non-specified non-audit services under this rule.

The pending legislation also makes important strides in ensuring that any gain made by company executives be subject to retrieval if the company has to prepare an accounting restatement due to certain noncompliance with SEC regulations. As Treasury Secretary Paul O'Neill so aptly states in response to the actions of Enron executives, ''I really do believe that the CEO is in effect the steward for all the people who work in their organization. And that with that responsibility goes a commitment that the people come first and that the practices are open and above board and without reproach.'' These executives should not be able to leave their beleaguered companies, pockets stuffed with profits from cashed out stock options, while investors and employees suffer the consequences of questionable company practices.

With the unanimous passage of the Leahy amendment, the Senate recognized the need to strengthen penalties for the punishment of those involved in corporate crime. For example, the amendment created a new felony for persons involved in the destruction of evidences—to address in the future such indiscretions as the document shredding perpetrated by Arthur Andersen's Enron Audit team. In addition, the Leahy amendment grants important whistleblower protections to company employees—like Enron's Sherron Watkins—who bravely report wrongdoing occurring within their own corporation.

The bottom line is that integrity and trust are at the core of a successfully functioning market system. These recent business scandals have severely damaged this foundation. And as with any foundation in disrepair, leaving unaddressed the damage caused by lost faith in the system will lead to continued instability, or worse.

Therefore, we in Congress have an obligation to do what we can to maintain and build investor confidence and faith in our free market system. I believe that the legislation we are considering today is a crucial first step toward that end, as well as ensuring the full rebound of our floundering economy.

Mrs. FEINSTEIN. Mr. President, I rise in support of S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

Nearly every day, it seems, the front pages of our newspapers are awash in stories about the latest corporate accounting scandal. Just 3 weeks ago we learned that WorldCom hid $3.8 billion in expenses in the last five quarters alone.

And WorldCom is merely the latest member of an increasingly large group of public corporations that have knowingly deceived shareholders, directors,

and, in some cases, their own auditors. WorldCom, Enron, Tyco, Global Crossing, Xerox—the list goes on and on.

Much attention has been focused on the huge sums that CEOs and other senior executives have extracted from these companies in the form of incentive pay, but even those large sums pale in comparison to the total shareholder value that has been destroyed as a result of these disclosures. At its peak, WorldCom's market capitalization exceeded $190 billion, making it, for a time, the most valuable telecommunications services company in the world. Now, WorldCom shares are effectively worthless.

Despite a slowdown in the telecom industry, some of the value of those shares might have been preserved had its executives relied on sound management, instead of deceptive accounting, to make their numbers.

Who will suffer most from the immense value decline associated with WorldCom and other companies that have deceived their investors? Not the senior executives, most of whom have stashed away enough of their pay to let them spend the rest of their days in comfort. The people who will really suffer are the thousands of employees whose retirement savings were proudly invested in company stock; or the millions of public employees whose pension funds held shares in these companies. Those are the people who will bear the brunt of this value decline.

CalPERS, the pension fund set up to invest the retirement savings of 1.3 million public employees in my home State, has estimated that it suffered a $580 million loss on WorldCom stocks and bonds. That means that the average California public employee lost over $440, not including any investments in WorldCom they may have held independently.

To give you some perspective on that amount, the amount of money lost by California public employees due to the WorldCom fraud alone is likely to exceed the entire sum of the tax rebate checks they received as part of the President's tax cut last year.

In fact, every American who invests in our stock markets will suffer as a result of these scandals, because every scandal further tarnishes the reputation of American corporate honesty for investors around the world. In recent months, those investors have pulled billions of dollars in investments out of our country, further reducing the value of stocks and weakening the dollar.

The only way that we can turn this culture around is by fostering a corporate environment that rewards honest management by senior executives and severely punishes fraudulent activities. That is exactly what would be achieved by the bill proposed by Senator SARBANES.

The Sarbanes bill tackles many of the major problem areas associated with recent corporate scandals. Most importantly, the bill would make it much more difficult for public companies to bypass or trample over auditors in attempt to produce inaccurate or deceptive financial statements.

For the first time, the Sarbanes bill creates a truly independent accounting oversight board, staffed with objective, unbiased overseers, who can enforce rules and prosecute violators without having to vet their decisions elsewhere. Unlike the Public Oversight Board, which depended on fees from the very auditors it was meant to regulate, this new board will be funded by mandatory fees paid by all public companies. These are fees that cannot be withheld at the whim of those who have the greatest interest in undermining the work of the board.

The Sarbanes bill does not stop at the creation of this new board, however. Rather, the bill strengthens areas of the law that have proven inadequate to prevent the fraudulent corporate behavior that has become so prevalent today.

The Sarbanes bill prevents auditors from controling the entire financial reporting system at an individual company by both designing the internal audit system, and then purporting to offer an unbiased external audit. The bill will also stiffen the resolve and oversight of board of director audit committees by requiring, among other provisions, that all committee members be independent and that they be given free reign to question auditors without executive officers present.

But rather than rely solely on increased oversight, the bill moves to reduce conflicts of interest at their source, by requiring the CEO and CFO of a company that has had to restate its financial accounts to disgorge any bonuses or other incentive pay they received in the year prior to the misstatement.

Moreover, under an amendment sponsored by Senator SCHUMER and myself, company loans to executive officers are now prohibited, sharply limiting the types of ''hidden'' compensation that can be offered to executives without being fully disclosed to shareholders. Our amendment passed by a voice vote and will go a long way toward preventing the types of loan-related abuses prevalent at WorldCom, Global Crossing, and other companies now under investigation by the SEC for loan-related abuses.

When Senator SARBANES drafted this bill, he focused on the single reform that matters most: increased transparency. Unfortunately, we may witness more corporate failures like those of Enron or WorldCom. These are failures that are brought on by over-investment, the accumulation of excessive debt, or an ill-conceived belief in markets or services that never live up to expectations.

What we cannot abide by, and what the Sarbanes bill goes a long way toward preventing, is the ability of senior executives to hide those bad decisions in misleading financial statements. By ensuring true auditor oversight, creating meaningful penalties for senior executives who defraud investors, and putting in place new disclosure requirements, this bill will dramatically increase the quality and timeliness of the information available to individual investors.

The United States is blessed with the best-regulated markets in the world, and for that we have been rewarded with tremendous foreign investment and a leadership position in world financial markets.

A vote in favor of this legislation is a vote to strengthen our position and avoid a wholesale loss of investor confidence that would be perilously difficult to restore.

Mr. HATCH. Mr. President, I wish today to express my support for S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002. I am pleased that the Senate is acting decisively to impose harsh, swift punishment on those corporate executives who exploit the trust of their shareholders and employees while enriching themselves. The recent corporate scandals demonstrate just how important it is to hold corporate executives accountable. I believe it is equally important for prosecutors to be provided with the tools necessary to aid in the investigation of these forms of fraud.

During this debate, our colleagues on both sides have consistently called for increased penalties for corporate fraud offenses. This week, as the Dow Jones index plummeted nearly 300 points—representing the biggest single day point drop since the week following the attacks of September 11 we voted unanimously to adopt a series of amendments that will strengthen criminal fraud penalties and create new criminal fraud offenses. I cosponsored an amendment with Senator BIDEN to enhance white collar penalties. And I supported an amendment offered by Senator LOTT, which incorporated the President's proposal by enhancing white collar penalties, supplementing existing criminal laws, and increasing the Security and Exchange Commission's administrative powers to enforce this nation's securities laws. I also supported Senator LEAHY's amendment, a measure I worked to improve in committee. This amendment includes new criminal and civil provisions that I believe will also assist in deterring and punishing future corporate wrongdoing.

Further, I am glad to see the Senate finally considering legislation that will overhaul government regulation of the accounting industry. I agree with my distinguished colleague from Maryland that there is an inherent conflict of interest between internal and external auditing. The same people should not be installing the internal control system, performing the internal audits, and then reporting on the financial statements. The external auditor sometimes has to be tough as nails, and willing to disagree with its client's top

executives. It is hard to be the bad cop when you are also the personal trainer.

However, Congress cannot always second-guess the desires of investors. In some cases, stockholders, bondholders, and other stakeholders will be worse off if Congress imposes too strict a barrier between consulting and auditing. This is especially true for small businesses that may not be able to afford to hire both a consulting firm and a separate accounting firm. And, as the President has noted, in our fast-changing economy, Congressionally-imposed barriers between different business practices can end up becoming Congressionally-imposed barriers to productivity growth.

I think the bill before us represents an effort to strike a good balance between these two competing goals of auditor independence and business innovation. It prevents internal and external audit work from being done by the same firm, and it establishes clear lines of responsibility and accountability. At the same time, the corporation's independent audit committee will be permitted to authorize certain consulting services if they are convinced it is in the shareholders' best interest. This audit committee, consisting of members of the client's board of directors, will be required by law to be completely independent of the corporation itself. This will mean that if the CEO and other top corporate officials believe it is in their company's best interests to have their accounting firm help with, for example, tax consulting and preparation, the corporate officials will have to argue the merits of their case before the independent audit committee. That kind of independence makes good sense, and it makes good law.

The Federal Government needs to help investors whether banks, pension funds, or individual investors in their quest for accurate information about the financial condition of America's businesses. Doing so is crucial for our economic long-term health. While Enron's and WorldCom's financial shenanigans contain many differences, the similarities are far more important. These were both firms that borrowed too much money during the expansion years of the late 1990s. And when it started getting tough to make the debt payments, both firms tried to hide their financial difficulties through creative bookkeeping, cooked up at company headquarters. They succeeded for a time, but the combination of investor vigilance, media investigations, and government scrutiny are eventually bringing the facts to light.

If there had been real financial transparency, both current stockholders and potential investors could pierce the veil of bookkeeping to immediately see these companies' true financial situation. This may not have prevented the painful layoffs and tragic loss of retirement assets by thousands of employees. However, with more accurate and timely information, investors, directors, analysts, financial institutions, and others could have intervened earlier and helped to restructure these firms before all-out catastrophe threatened. When it comes to business information, knowing sooner is always better than knowing later.

And even more importantly, if corporate officials had faced the threat of serious jail time and the certain knowledge that their financial and accounting capers would be exposed to the world, they would have been much less likely to have overborrowed and underdisclosed in the first place. Mr. President, the bill on which we will vote today, on which Senator SARBANES and many of our colleagues have worked so hard, contains solid provisions that I believe will put real fear of serious consequences into the minds of corporate wrongdoers.

Does this bill represent a perfect solution to the corporate accountability issues presently facing our country? Of course not. I would have written a different bill in several respects. However, I believe that the bill is a good attempt to balance competing interests and different political philosophies. As the bill goes to conference with a House-passed bill that has some significant differences, I expect the balance to improve even further.

Strengthening corporate accountability is crucial to our nation's long-term welfare. If Congress and the President can act together to help increase corporate transparency and restore investor confidence, then businesses will be better able to raise investment capital. Greater access to capital will enable U.S. businesses to fund the groundbreaking research and to purchase the high-tech equipment that is the foundation of America's long-term prosperity. And Americans from all walks of life will reap the rewards.

Mr. MCCAIN. Mr. President, I rise today as a proud cosponsor of amendment No. 4283 that is being offered by Senator LEVIN. The amendment 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 and shall within a year of enactment of this act adopt an appropriately generally accepted accounting principle for the treatment of employee stock options.

Unfortunately, this body is not going to get the opportunity to vote on this reform or the reform I proposed last week requiring the expensing of stock options. We want to help restore investors' confidence for the long run, but we are being denied an opportunity to do this. A simple vote on this amendment is all we ask. And yet, we are being denied, and that is truly regrettable. I see no reason that a vote should not be permitted on this amendment, but let's face it—the fix is in.

I want to talk more about the expensing of stock options.

Americans have heard from the President and practically every Member of the Senate about the vital need to restore trust and transparency in business practices so we can begin to repair investors' faith in the honesty of our companies and in our markets. We need more transparency on a company's books so that any person wanting to invest their hard-earned money has a true financial picture of the company they are planning to invest in.

This issue of expensing stock options is not going to go away. Look at what has just happened. Coca-Cola, a Fortune 100 company, just announced that it will begin in the fourth quarter to treat all employee stock options as an expense. And I believe more companies will follow Coca-Cola's lead. It is only a matter of time.

Before I yield the floor, I would like to read a quote from a July 22, 2002 Weekly Standard article, ''Big Businesses Bad Behavior,'' in which economist Irwin Stelzer, Director of Regulatory Studies at the Hudson Institute, eloquently explains why governmental action is needed to restore faith in our financial institutions. The ''opposition of important segments of the business and accounting communities to reform,'' he writes, ''means that government must take on the burden of revising the institutional framework within which business operates—setting the rules of the game that will allow markets to do their job of allocating human and financial capital to its highest and best uses. As Milton Friedman, no fan of big government, has written, society needs rules and an umpire 'to enforce compliance with rules on the part of those few who would otherwise not play the game.' '' I couldn't agree more.

I ask unanimous consent that the following articles be printed in the RECORD.

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

[From the Weekly Standard, July 22, 2002]

BIG BUSINESS'S BAD BEHAVIOR

(By Irwin M. Stelzer)

No sensible person can quarrel with what the president told the Wall Street biggies he addressed last week. Crooks should be forced to disgorge their ill-gotten gains, and should go to a jail for extended periods. Enforcement agencies should be given adequate resources. Corporate executives should be held responsible for the accuracy of what they tell shareholders, disclose their compensation in annual reports ''prominently and in plain English,'' and explain what their ''compensation package is in the best interest of the company'' Board members should be independent and ''ask tough questions.'' Shareholders should speak up. Most important, chief executive officers should crate a ''moral tone'' that ensure the company's top managers behave in accordance with the highest ethical standards.

The quarrel comes not with what the president said, but with what he didn't say. In the game of matching his laundry list of reforms against the inevitably longer list generated by the Daschle-Leahy-Sarbanes-Gephardt crowd the president inevitably loses, as last week's unanimous vote of Senate Republicans for the Democrat's bill proves. Longer

sounds better if you're just compiling a laundry list of items aimed at punishing politically unpopular corporate bad guys. Only if there is a conceptual framework within which specific reforms can be created and defended is there any hope that a sensible corporate governance system will emerge from the congressional legislation factory.

Start with the fact that it is important to distinguish the role of government from that of the private-sector institutions that monitor corporate America. The latter can be relied upon to act when the integrity of the system is threatened, not because these private sector players are a bunch of goodie-two-shoes, but for the more reliable reason that honest markets and accurate profit reporting are in their interest. Just as gamblers won't put their bets down when they know a wheel to be rigged, so investors won't put their money into shares if prices can be manipulated by inflated profit reporting or special treatment of insiders.

Hence we have a stream of quite sensible reforms proposed by the Business Roundtable and the New York Stock Exchange, some going beyond those being pushed by the president. And we have companies scrambling to adopt governance rules and accounting practices that will reassure investors that the game is not rigged against them. No CEO wants to see his company's stock battered by investors who fear that share values will evaporate as profits are restated to eliminate the imaginative counting of revenues (claim them now, before the customers pays or even considers paying) and of costs (capitalize rather than expense every outlay, regardless of the life of the item purchased). Plummeting share prices are dangerous to the careers of chief executives.

But, as the president recognized when he called for higher ethical standards, self-interest cannot be relied upon to produce honest business dealings unless that self-interest includes what Adam Smith called a "desire to be both respected and respectable," and such esteem is seen to flow not from "wealth and greatness" but from "wisdom and virtue." Which may be what Bush had in mind when he said that we need "men and women of character, who know the difference between ambition and destructive greed" to lead our major corporations. And it may be what he had in mind when, immediately after delivering talk, he returned to Washington to award the Presidential Medal of freedom—America's highest civilian honor—not to the nations' richest (Intel founder Gordon Moore may have been the one exception), but instead to folks who have enriched our national life with their sharp iconoclasm (Irving Kristol), gentle humor (Bill Cosby), and quiet devotion of family and good causes (Nancy Reagan).

Still, neither self-interest reform nor a new emphasis on business ethics can be relied upon to save capitalism from the capitalists. Immediately after the president's speech the White House was bombarded with calls from CEOs protesting his demand that they disclose their compensation packages in easily accessible terms. I well recall the reaction when, several years ago, I made a similar suggestion at a think-tank-sponsored meeting of top business and government officials. One captain of industry replied that he would not tell his shareholders how much he earns lest he encourage kidnappers (as if they would only become aware of his affluence if he revealed it in his company's annual report).

Nor did anything the president said persuade the accountants to call off their lobbyists, who continue to oppose reforms that would make their devotion to the accuracy of their audit statements unambivalent. Or convince CEOs of Silicon Valley and other high-tech companies to bow to Alan Greenspan's call for them to report their share options as the expenses they most certainly are. Again, I recall a discussion that followed a similar proposal I made several years ago. One CEO said that he couldn't place a value on these options for purposes of reporting to shareholders, even though he could value those same options for the purpose of deducting their cost from his profits for tax purposes. Another claimed that if he treated options as an expense, he would wipe out his entire reported earnings, an argument, I suppose, for refusing to account for almost any expense that constitutes a threat to reported profits—what might be called the WorldCom excuse. (For the economy as a whole, experts estimate that expensing of options would reduce aggregate corporate profits by about 8 percent.) Note that the issue is not whether companies, especially start-ups, should be allowed to use options to attract talented staff, but whether they should have to treat this compensation as an expense when reporting profits. As Greenspan points out, refusing to deduct the cost of options diverts capital and other resources from truly profitable to only apparently profitable firms.

This opposition of important segments of the business and accounting communities to reform means that government must take on the burden of revising the institutional framework within which business operates—setting the rules of the game that will allow markets to do their job of allocating human and financial capital to its highest and best uses. As Milton Friedman, no fan of big government, has written, society needs rules and an umpire "to enforce compliance with rules on the part of those few who would otherwise not play the game."

To keep rules to a Friedmanesque minimum, we need a conceptual framework for reform rather than competing laundry lists. The first step is to understand the limits of criminal sanctions. Yes, it makes sense for the Senate to insist, as it did unanimously last week, that the crimes perpetrated by some corporate managers and accountants be defined as precisely as possible. Yes, criminal sanctions can be used to make life miserable for those caught with their fingers in the till and to deter from evildoing those for whom Adam Smith's "desire to be respectable and to be respected" is insufficient inducement to decent behavior. But, as law professors David Skeel and William Stuntz recently pointed out in the New York Times, "Criminal laws lead people to focus on what is legal instead of what is right. . . . In today's world, executives are more likely to ask what they can get away with legally than what's fair and honest." The Senate was pleased with itself for toughening the laws under which executives will operate, but criminalizing bad behavior is no guarantee of future good behavior—behavior that is not merely indictment-avoiding, but is efficiency- and wealth-enhancing.

Instead, policymakers should turn to that trusty guideline, "Get the incentives right." The problems we are facing stem from the fact that we have provided the four guardians of shareholder interests—auditors, analysts, directors, and corporate managers—with the wrong incentives.

Auditors know that success or failure in their profession depends not so much on the accuracy and realism of their audits, as on their ability to conduct themselves so as not to imperil the flow of consulting fees to their firms. Enron paid Arthur Andersen as much or more in consulting than in auditing fees; Andersen's $12 million in consulting fees from WorldCom dwarfed its $4 million audit fee. It would have taken a brave auditor indeed to fly in the face of these clear incentives and tell Enron's management that placing some item off-balance-sheet might be technically legal, but would obscure the company's true financial condition, or to insist on access to documents that might have revealed WorldCom's recording of current expenses as capital investments. Rather than rely on such strength of character, some 70 percent of the directors surveyed by McKinsey & Co. now say they will in the future oppose the granting of such contracts, a policy that Arthur Levitt, Bill Clinton's SEC chairman, was unable to push through over the massed opposition of the accountants' lobbyists. All of which makes Bush's silence on this subject rather odd, and the Senate Democrats' insistence on a broader prohibition on consulting than is contained in the House Republicans' bill more likely to get the auditors' incentives lined up with shareholder interests.

Once those incentives are in place, other provisions of the House and Senate bills become unnecessary. Both bills call for still more regulation of auditors, and create still another regulatory body to set and oversee accounting standards. One need not be an apologist for the accounting profession to suggest that such a move would merely continue the failed practice of attempting to control auditors by closely supervising them. There is no reason to believe that such supervision will be any more successful in the future than it has been in the past, especially since in the end auditors are required only to say that they followed often complex and arcane rules that necessarily involve the exercise of judgment.

Instead of such ongoing regulation, including half measures that merely restrict auditors from engaging in some specified form of consulting activity, let's get the incentives right by complete, mandated separation of the audit and consulting businesses, as John McCain proposes. Lead the CPAs not into temptation, and reliance on porous Chinese walls becomes unnecessary. Auditors will compete for business on the basis of their ability to provide a product that gives investors confidence in the transparency and accuracy of the company accounts, with the uplifting effect that will have on the prices of their clients' shares. (Audit firms are unlikely to compete on price, since the risks associated with the audit business have risen. There are only four major firms, and rotation of auditors on something like the five-year basis favored by Senate Democrats, although necessary to prevent over-identification between client and auditor, is a classic cartel market-sharing arrangement—all legal, in this case.)

Analysts are another group who now face perverse incentives. Investors may have been naive to believe that these students of income statements, balance sheets, and other economic data would provide honest advice about a company's financial condition and prospects. But they had a right to such a belief, since the commissions they pay their brokers are supposed to be in return for such advice. Along comes New York State Attorney General Eliot Spitzer and revelations that some of these supposed agents of the shareholders' interests are recommending stocks they know to be "shitty" in order to win investment banking business for their partners and increased compensation for themselves. All of this in the presence of Chinese walls erected to separate bankers from analysts. It took no Joshua-plus-trumpet to bring these walls down; the prospect of hefty banking fees was quite enough. Jack Grubman, the Salomon Smith Barney (a division of Citigroup) analyst famous for his enthusiastic recommendations of WorldCom stock, last week told the House Financial Services Committee, "No one can sit here on Wall Street and deny to anybody on this

committee that banking is not a consideration in the compensation of analysts of a full-service firm.'' Forget the double negative: Grubman was conceding that part of his salary, which reached $20 million per year, came from the $140 million in underwriting fees that his firm received from WorldCom over the past five years.

Again, get the incentives right. One way, now preferred on Wall Street, is to write contracts that make analysts' compensation independent of the fees flowing into the investment banking divisions of the large firms. But just how analysts can prosper if the banking division isn't earning enough to pay the rent is unclear. Besides, unless analysts suddenly become willing to issue ''sell'' recommendations just when their investment banking partners are pitching a company for business, this proposed reform is unlikely to be effective, especially after the current heat is off and congressional attention turns to other matters. True or not, bankers believe that CEOs, being human (yes, most are), are likely to take into account what a firm's analysts are saying about their stock when selecting an investment banker. It would be an unusual CEO, indeed, who would cheerfully receive an investment banker after reading in the morning papers that the banker's analyst-partner had just downgraded his company's stock from a ''buy'' to a ''sell.'' Many investment bankers—not all, but many—will find ways to persuade their partner-analysts to be team players. Banking fees are large enough to give them an enormous incentive to do just that.

So, let's get the incentives right and mandate a separation of the investment banking and stock-picking businesses, another McCain proposal. Analysts would then have an unambiguous incentive to make the best ''buy'' and ''sell'' recommendations they possibly can, so as to build reputations that will attract investors to them. And investors will get something in return for their commission dollars—honest advice from men and women expert in the analysis of corporate financial data, competing with one another to attract clients by creating a track record of picking winners.

Which brings us to Directors. Again, we have a case of skewed incentives. Directors are hired by managers to protect shareholders from, er, those same managers. To make sure the directors remain friendly, executives often shower them with perks and consulting fees, the continuation of which depend on the goodwill of the CEOs they are supposed to be supervising. It is the rare director who chooses to feast on the hand that feeds him, not merely because he is venal, but because the courtesies lavished upon him genuinely persuade him that the CEO is a decent chap, deserving of every million he is paid.

To get the incentives right, directors must be selected by vigorously participating shareholders, most especially institutional shareholders, from a slate of demonstrably independent people who, although well compensated, have reputations worth protecting. Nominations for that slate should come from sources other than the company management, to avoid a you-sit-on-my-compensation-committee-and-I'll-sit-on-yours, selection process. The directors should not accept anything within the gift of the CEO; their directors' fees should be compensation enough, and high enough to provide an incentive to accumulate a record that will persuade shareholders to reelect them at reasonably regular periodic intervals—perhaps throwing in term limits to make sure that directors and management don't develop too cozy a relationship.

Finally, we come to the CEO's and top managers. How to create incentives to induce managers to act in the interests of the shareholders who own the business has bedeviled students of corporate governance ever since 1932, when Adolph A. Berle Jr. and Gardiner C. Means published their classic ''The Modern Corporation and Private Property,'' detailing the potential for managerial abuse created by the separation of ownership from control of large corporations. Managers placing self-interest above the interests of owners were immune to retaliation by far-flung and essentially powerless shareholders. That situation was partially corrected when Mike Milken and his debt-financed corporate raiders snatched control of many companies from the worst abusers of shareholders' interests, grounded fleets of corporate jets, sold off hunting lodges, and generally sweated the fat out of expenses—a wonderful example of markets working to correct abuses that seemed beyond the reach of regulators.

But nowadays there aren't many people who want to be like Mike, so it is incumbent on policymakers to get managers' incentives right. President Bush's proposal for publication of compensation arrangements in an accessible format would be a step in the right direction, its effectiveness attested to by the howls of outrage it produced from some CEOs. Truly independent boards, created along the lines described above, would be another advance, since compensation committees not beholden to corporate managements are more likely to relate pay to performance than the supine committees that now exist on some boards. Add in the requirement that options be treated as profit-reducing expenses—another McCain proposal that so horrified senators that it has for now been derailed—and you will have a new parsimony that will keep salaries to levels commensurate with effort and performance. Under such a regime, executives would have a clear incentive to spend their time creating efficiencies and new markets, rather than figuring out how to cash in options, and how to persuade their boards to revalue options if poor company performance has driven the stock price below the price at which the options may be exercised, rewarding executives whether or not they have delivered long-term value for shareholders.

This may sound like an awful lot of regulation. But it is of a special, self-liquidating sort. If we adopt policies that get the incentives of all the players right, government can then get out of the way so that the various actors can do their thing—audit, advise on investments, monitor management performance in the interests of owners, and manage the company in a world in which managers' interests coincide with those of shareholders. The right kind of regulation can be a model of minimal—and effective—government.

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LEADING THE NEWS: COKE TO EXPENSE EMPLOYEE OPTIONS

MOVE MAY SPUR OTHERS TO FOLLOW AND COULD SHAPE CURRENT TALKS IN SENATE

(By Betsy McKay)

Atlanta—Coca-Cola Co. said it will begin in the fourth quarter to treat all employee stock options as an expense, a move that could accelerate debate in corporate boardrooms over whether to adopt that accounting practice.

The beverage company's decision also could shape the outcome of discussions today in the Senate over whether to instruct a new accounting-oversight board to study the fate of stock options—in particular, whether they should be expensed as other forms of compensation.

Republicans tried Friday to block the measure, offered as an amendment to an accounting-overhaul bill. But Democrats say they will try again before final passage of the underlying accounting bill, expected late today.

''We are in a new environment,'' Gary Fayard, Coke's chief financial officer, said in an interview. ''There had been a loophole in the accounting, and we thought it was the right time to step up to the plate.

''There's no doubt that stock options are compensation,'' he added. ''If they weren't, none of us would want them.''

Coke said its decision, announced yesterday morning, will reduce earnings only slightly—by about a penny a share—for 2002. That reflects the fact that Coke doesn't grant options as extensively as do some other companies. And while Coke isn't the first public concern to make the accounting change—Boeing Co. and Winn-Dixie Stores Inc. in recent years began calculating stock options as an expense—its high profile could prompt other businesses to consider calls from investors, regulators and politicians for greater financial candor.

Last week, AMB Property Corp., a San Francisco-based owner of industrial real estate, also said it would record stock options as an expense.

Proponents of expensing say options are compensation and should be treated as such, especially since generous option awards dilute the value of shares outstanding. Opponents say options are difficult to value and argue that expensing would confuse investors, not enlighten them. Changing accounting rules would reduce earnings at some companies.

In 1993, the Financial Accounting Standards Board tried to mandate the expensing of options but retreated in the face of stiff opposition from business leaders and Congress. The issue flared up again after Enron Corp's demise late last year and has taken on new life with recent disclosures of earnings misstatements at WorldCom Inc.

Coke's Chairman and Chief Executive Douglas Daft raised the idea of recording stock options as an expense about two months ago, Mr. Fayard said, as news of financial scandals continued to unfold. About 10 days ago, with lawmakers calling for tougher accounting standards, Mr. Daft fielded the idea in phone calls to Warren Buffet and some other Coke directors. Mr. Buffett, Coke's largest shareholder, for years has been an outspoken proponent of expensing options.

Mr. Daft pressed ahead with his proposal to make the accounting change last week after President Bush called in a speech for better corporate governance. Mr. Bush didn't embrace the idea of forcing companies to expense options, but numerous economists and financial experts, including Federal Reserve Board Chairman Alan Greenspan, have endorsed the move, and growing investor unease sent stocks plummeting last week.

Mr. Daft convened a meeting at 7 a.m. Thursday in Sun Valley, Idaho, where he and several other directors were attending a conference. The discussion, over breakfast in the condominium of director Herbert Allen, was short. It wasn't hard to win the directors' support; Mr. Buffett, in particular, applauded the move.

''Our management's determination to change to the preferred method of accounting for employee stock options ensures that our earnings will more clearly reflect economic reality when all compensation costs are recorded in the financial statements,'' Mr. Daft said in a statement. A spokeswoman said he wasn't available for further comment.

''I'm delighted,'' Mr. Buffett said in a telephone interview. ''This tells shareholders what really happens in terms of costs.'' The new plan, he said, also eliminates bias in structuring compensation packages, encouraging Coke to design packages that fit its and employees' needs without regard for accounting.

While Mr. Buffett said he never pushed Coke to treat stock options as an expense, he said he did encourage the company last week to take a further step and use independent investment banks to determine the fair value of stock options that Coke grants. The move is intended to ease concerns over whether options that are expensed are being properly valued. Coke will ask two investment banks, Goldman Sachs & Co. and Citibank, to price options, and will expense the option value based on the average of those firms' quotes.

Coke said stock options will be expensed over the period in which they vest, based on the value the day they are granted. Coke's 2002 options plan authorizes as many as 120 million shares, or 4.8% of the company's share outstanding. The company usually issues 25 million to 30 million shares a year, however.

For 2001, Coke's top five officers received options on 3.7 million shares, including options on one million shares for Mr. Daft. About 8,200 of Coke's 38,000 employees received options during 2001.

Mr. Buffett predicted Mr. Daft's move could make him ''unpopular'' among other CEOs, but he also said that while business leaders had managed to quash efforts in 1993 to force expensing of stock options, the current environment could force them now to accept it.

''I'm sure a few others will do it,'' he said. ''It may be that good practices drive out the bad.''

Sen. John McCain (R., Ariz.) issued a statement applauding Coke's decision and expressing hope that ''other companies will follow suit.''

Judy Fischer, managing director of Executive Compensation Advisory Services, in Alexandria, Va., said she believes other corporations will follow Coke. ''If a corporation can do it without a lot of problems to their bottom line, I think a lot will follow suit,'' she said.

However, it wasn't clear how other companies will react, particularly high-tech businesses that rely heavily on stock options. A spokesman for Santa Clara, Calif., semiconductor maker Intel Corp., where all employees are eligible for stock options, said he couldn't comment on Coke's move. One lobbyist was skeptical. ''I doubt just because one company made this decision that other companies will follow suit,'' said Ralph Hellmann, top lobbyist for the Information Technology Industry Council, a high-tech trade association in Washington. ''Each individual company is going to make its own determination.'' Looking beyond 2002, Coke's Mr. Fayard said earnings per share will be reduced by about three cents in 2003, with the reduction gradually increasing to about nine cents a share by 2006, he said. But the change won't affect the company's cash flow, he said.

Mr. DOMENICI. Mr. President, I rise first in support of our free market economy. The revelations over the last few months of corporate officials having betrayed the trust of their employees and their investors is simply unacceptable. These corporate officials must be prosecuted to the full extent of the law and if additional penalties are required, then we should enact them.

But let us not forget, that despite these terrible, unconscionable acts perpetrated by some CEOs on their workers and investors, the principles of our free market economy remain the envy of the world. These principles have allowed our economy to be the most productive, most innovative, most creative system, that has created income and employment only dreamed of in other parts of the world.

One of these principles is property rights. But it seems that some corporate managers have forgotten that the companies they run are not their personal property to operate however they see fit or for their own benefit. The exuberance of the 1990s that Chairman Greenspan warned us about and the extraordinary income and wealth generated during that period, allowed for unethical persons in our business sector to exploit this time of growth for their own selfish purposes and to bend the rules for their own benefit.

So as we pursue new rules to punish those who have betrayed a trust—and we must—let us not allow the pendulum to swing so far that it jeopardizes the innovation and vitality of our economic system for the future. Rather than working against the principles that make our economic system so great, our actions should affirm these principles.

I am angry, shocked and extremely concerned about the revelations that have emerged in the past 6 months concerning the accounting practices of a number of public companies. To operate efficiently our free market system requires a high level of honesty and trustworthiness among its participants, especially among its key decisionmakers.

In the long run our economy—our stand of living—reflects not only our inventiveness and hard work but our moral character. Corporate executives have to be worthy of the key role they play. With all their wealth and high position comes responsibility. Sadly, some executives were not worthy of this responsibility.

Restoring the public's trust is of paramount importance. America's system of corporate governance and its trust in our financial reporting mechanisms have been shaken and restoring this trust is of critical importance. It will take more than words to restore that confidence and trust. It will take something that I, Senator DODD and others have been lecturing on for many years, and this is something not easily legislated. It will take a renewed awareness of the ethics of responsibility. It will take a reaffirmation that ''Character Counts.''

Reaffirming that ''Character Counts'' means not only encouraging our young people to live by the six pillars—trustworthiness, respect, responsibility, fairness, caring, and citizenship—but expecting that our corporate leaders adhere to these traits and conduct themselves accordingly.

Cooking the books has hurt thousands and thousands of hard-working Americans. American companies must adhere to the highest standards of public accounting ethics. Despite these abuses, as I have said our economy remains strong and the vast majority of CEOs are honest and abide by the rules. Unfortunately, a few bad characters have tainted the reputation of our enterprise system.

The President and the Congress are addressing reform. I will support these reform efforts that are aimed at regaining trust and confidence in our Nation's financial markets and ensure that American workers are protected from unscrupulous corporations. No violation of the public's trust can be tolerated.

But I also believe more can be done, and this bill before us moves us in that direction. I support:

Full and accurate disclosure: I endorse the SEC's proposals to require CEOs to certify that their financial statements completely and accurately reflect the true condition of the company.

Trust and accountability: Corporate leaders must be held accountable for any abuse of public trust. I believe that executives should be required to return moneys they received as a result of fraudulent accounting practices, as embodied in the Senate bill.

Independence: Boards of directors must exercise independent judgment and a substantial majority of board members must be independent of management.

Auditing reform: Strong oversight of the accounting profession is essential if we are to ensure independence of auditors and credibility of the auditing process.

Pension protection: I fully support steps that will protect the retirement savings of American workers. Workers should have freedom to diversify and monitor their own retirement funds, giving confidence that their investments will not fall prey to unethical executives.

I urge the SEC to move forward with the implementation of its proposed reforms. And, I strongly believe that the NYSE and the NASDAQ must proceed to improve their listing standards. I support the reform that works to strengthen our free enterprise system. It is our obligation as a Congress and as a country to ensure that the unethical few that are causing hardship for so many hard-working Americans, be swiftly brought to justice and face jail time. We will restore faith in our economic system for it is the greatest in the world. I support passage of the Senate bill.

Mr. COCHRAN. Mr. President, while I support the passage of this bill, I think we ought to recognize the role the Administration is already playing to deal with these serious problems of corporate responsibility.

I was pleased that President Bush announced last week his suggestions for corporate accounting reform. The President forcefully argued that higher

ethical standards are an imperative to restore confidence in corporate America. Those standards should, in his words, ''be enforced by strict laws and upheld by responsible business leaders'' and that ''corporations should not be disconnected from the values of our country.''

I also support the President's executive order to create the Corporate Fraud Task Force. Combined with new criminal penalties for corporate fraud, this taskforce can help bring stability to our Nation's economy. The President has also asked the Securities and Exchange Commission to adopt new rules to make sure that auditors are truly independent from the businesses which they audit.

We also need to be sure the SEC has the resources it needs to carry out its other important responsibilities.

I am hopeful that the Appropriations Committee will be able to provide the necessary amount of funding for the SEC to hire the enforcement officers it needs and to acquire state-of-the-art technology that is necessary for the performance of its duties.

With the passage of this bill by the Senate, we will be able, in conference, to work with the other body to produce a good bill that deals effectively with the problems in this area of very legitimate concern to our country.

Mr. LEAHY. Mr. President, I want to compliment the majority leader for turning to the Sarbanes bill and the issue of corporate responsibility. I also want to thank Chairman SARBANES for his leadership on the impressive bill that he has produced in the Banking Committee.

So many times all that the public hears about Congress is about turf and partisanship. This comprehensive reform effort disproves those claims. Thanks to the leadership of the Majority Leader and Senator SARBANES, the bill that we are about to vote on is a tough, comprehensive reform package that enjoys broad bipartisan support in the Senate. It brought together the best ideas from many Senators, from many Committees, and from both parties.

From my standpoint, as Chairman of the Judiciary Committee, this has been an opportunity to benefit once again from the wonderful partnership that we have forged between the Banking Committee and the Judiciary Committee. After September 11, our two Committees worked together to write the anti terrorism provisions of the USA Patriot Act that dealt with money laundering. Here, with the 97–0 vote to adopt of the provisions of the Corporate and Criminal Fraud and Accountability Act, as a Leahy-McCain amendment to this bill, Senator SARBANES and I have again united the forces and expertise of our Committees. This time we have done so to craft comprehensive laws to deal with financial wrongdoing, and again done so with bipartisan support in both Committees. I think that the final product is better and more complete because of our joint work. Thank you Chairman SARBANES.

But the joint effort did not stop with Senator SARBANES and myself. Senators BIDEN, HATCH and the Minority Leader offered provisions that were also adopted by the Senate, adding aspects of the President's recent proposal. That is an impressive show of bipartisanship because those proposals were only made after the Senate had already begun debate on this bill. Despite the White House's refusal to help us shape our more comprehensive proposal, we did not hesitate to include the President's suggestions in our final product.

The bill was further perfected by Senator EDWARDS' thoughtful amendment dealing with the conduct of corporate attorneys. Once again, we were able to draw on the expertise of a particular Senator to enlist the help of lawyers in stopping corporate fraud, not designing it. In short, we started with a fine bill from Senator SARBANES, and have strengthened even further, never losing our strong bipartisan support.

We need to remind ourselves of the underlying reasons for the bipartisan support behind these measures. Enron brought it to light, but it goes deeper. It's about a basic fairness and equity that transcends party lines. It's about rewarding people who play by the rules and punishing people who don't. It's about the basic American ideal of treating all people equally under the law.

We cannot have a system where a pickpocket who steals $50 faces more jail time than a CEO who steals $50 million. The integrity of our financial system depends on accountability. The mounting scandals and declining stock market have damaged the integrity of our public markets and we must restore it.

I was proud that the Judiciary Committee, joined by the Majority Leader and a bipartisan group of Senators including Senator MCCAIN and others was able to make such an important contribution to this effort by contributing the provisions of S. 2010, the ''Corporate and Criminal Fraud Accountability Act,'' as it was unanimously reported out of the Judiciary Committee in April, as an amendment to the Sarbanes bill. Both in Committee in April and again last week on the floor, not a single Senator from either party has voted against the provisions of the Corporate and Criminal Fraud Accountability Act.

We worked hard to reach across party lines on this measure, and I hope that the House of Representatives acknowledges that fact. I was glad to see in last Friday's newspapers that Speaker HASTERT also endorsed the joint Sarbanes-Leahy measure after its adoption. I hope that the President can follow the leadership of Speaker HASTERT and support the Senate measure as this bill moves forward.

Recent events have served as a stark reminder that we need to reexamine our laws to make sure that they reflect our important and shared values of honesty and accountability. Enron has become a symbol for the torrent of corporate fraud scandals that have hit the front pages and battered our financial markets. Tyco, Xerox, WorldCom, Adelphia, Global Crossings, the list goes on.

The things that happened at Enron did not happen by mistake. They were not the result of one or two ''bad apples.'' Senior management at Enron, assisted by an army of accountants and lawyers spun an intricate web of deceit. They engaged in a systematic fraud that allowed them to secretly take hundreds of millions of dollars out of the company. This kind of fraud is not the work of a lone fraud artist. Rather, it is symptomatic of a corporate culture where greed has been inflated and honesty devalued.

Unfortunately, as I have said and as the experts warned at our February 6 hearing, Enron does not appear to have been alone. Each week we read of corporation after corporation that has engaged in misconduct, and these are not small or marginal corporations. These are major mainstays of corporate America. The web of deceit woven by such publicly traded companies ensnares and victimizes the entire investing public who depend on the transparency and integrity of our markets for everything from their retirement nest eggs to their children's college funds. That is why this comprehensive reform is urgently needed to restore accountability in our markets.

The Leahy-McCain amendment to the Sarbanes bill, approved 97–0 by the Senate, provided important provisions to ensure just such accountability.

The Corporate and Criminal Fraud Accountability Act which I authored provides tough new criminal penalties to restore accountability and transparency in our markets. It accomplishes this in three ways:

punishing criminals who commit fraud, preserving evidence to prove fraud, and protecting victims of fraud.

Here are some of its major provisions as adopted by the unanimous Judiciary Committee in April and the unanimous Senate last week: It establishes a new crime of securities fraud, with a tough ten year jail sentence. It breaks the ''corporate code of silence'' by providing, for the first time, federal protection for corporate whistleblowers who report fraud to the authorities or testify at trial. It closes loopholes and toughens penalties for shredding documents as we learned had occurred at Arthur Andersen. It requires audit documents to be preserved for 5 years and provides tough criminal penalties for their destruction. It protects victims the right to recoup their losses by preventing fraud artists from hiding in bankruptcy or concealing their crime and using an unfair statute of limitations to hide.

With these bipartisan provisions and others incorporated, this bill we have produced is truly a comprehensive measure. It tightens regulation of corporate misconduct, but it now also provides an important deterrent to fraud artists. This bill is going to send wrongdoers to jail and save documents from the shredder, which sends a powerful and clear message to potential corporate wrongdoers ''dont do it.'' As a former prosecutor, I have discovered that nothing focuses attention to morality like the prospect of a long prison sentence.

In the Senate, as we have been debating and shaping specific and comprehensive reform proposals, we had been trying for months unsuccessfully to get the President's support. The Administration had stayed on the sidelines during this important debate .

For whatever reason, perhaps the mounting scandals or the declining market, the President decided last week to speak out against corporate fraud. He spoke again today on our economy. I welcome his participation and hope that he will follow up his speeches by supporting real reform. It is amazing to me that with such broad bipartisan support and now on the verge of Senate passage, that the Administration has still not given a clear statement supporting the bill on which we are now about to vote.

Although I now understand that a White House official reportedly said that they agreed with the ''goals'' of this reform bill, I was disappointed that the President has not yet voiced his support for this bipartisan measure about to pass the Senate. Supporting the ''goals'' is a good first step but it is nonetheless a baby step. I read in the paper last week that the President does not want to ''tip his hand.'' This is not a game of poker, however. This is the time for Presidential leadership with the integrity of our markets at stake. When there are specific proposals passing the U.S. Senate by an overwhelming majority of Senators from both parties and the Speaker of the House is supporting the measures as well one wonders what it will take for the President to express his opinion.

For those of us in the Senate, like myself, Senator SARBANES, Senator MCCAIN, Majority Leader DASCHLE, and others who have worked hard to come up with specific and bipartisan reform proposals, the ''goals'' have been clear for a long time. It is now time for comprehensive action.

While the President's proposal was short on details, some of it did sound familiar to those of us on the Judiciary Committee. Three of the President's proposals are found in S. 2010, the Corporate and Criminal Fraud Accountability Act, which we adopted 97–0 in the Senate: One, The President advocates for strengthening the laws punishing document shredding and obstruction of justice. That is in our bill. Two, The President wants the Sentencing Commission to raise penalties for corporate misconduct. That is in our bill. Three, The President wants the Sentencing Commission to raise the penalties for the existing fraud laws. That is in our bill as well.

I am glad the President adopted three proposals from my bill, even if he will only say that he supports the '' goals.'' As I said, we were also quick to write up his ideas into concrete proposals and include them in our bill. Unfortunately, the President's proposal failed to include many of the important provisions in the bipartisan Leahy amendment. It fails to create a new crime to punish securities fraud to directly punish corporate wrongdoers. It fails to provide whistleblowers with protection that will break the corporate code of silence. Remember, you can put whatever criminal laws you want on the books but unless there are witnesses who are not scared to help prosecutors prove what happened no one will be held accountable. It fails to protect victims of fraud by allowing them to recover their losses from a fraud artist who declares bankruptcy. It fails to establish a realistic statute of limitations to allow victims to recoup their losses when a fraud artist can manage to conceal his crimes for long enough, a change that has received strong bipartisan support dating back to the SEC under former President Bush.

As I said, I was glad to hear the President finally join this reform debate. Now is not the time, though, for half measures. We need comprehensive action. We were glad to include the President's proposals in the Senate bill, but we unanimously agreed to more comprehensive reform, including the Leahy bill.

Now I hope that the President will support such comprehensive reform as is found in this bill. I hope that his rhetoric is backed by action and that his generalities are backed with specifics.

Speaker HASTERT has now publicly supported the Sarbanes bill and the Leahy amendment. I hope that the President will support the bill's provisions as it moves forward to conference and will appeal to other Republican House members not to water it down. That will be the true test of his resolve to restore accountability to our markets.

It is time for action, comprehensive action that will restore confidence and accountability in our public markets. The Sarbanes bill, including the unanimously approved Leahy-McCain amendment incorporating the Corporate and Criminal Fraud Accountability Act, provides just such action.

Let's pass this comprehensive bill and send the President a strong measure to sign into law. Congress must act to restore integrity in our capital markets to strengthen our economy.

Mr. REID. Madam President, I ask unanimous consent that at 5:45 p.m. today all time postcloture expire, and that all the time available, not counting the time available for Senator BYRD, be equally divided and controlled between the two managers or their designees; that without further intervening action, the Senate proceed to vote on or in relation to the Carnahan amendment No. 4286, to be immediately followed by a vote in relation to the Edwards amendment No. 4187, as amended, if amended; that upon disposition of these amendments, the bill be read a third time, and the Senate vote on passage of the bill; that upon passage, the Banking Committee be discharged from further consideration of H.R. 3763, the House companion, and that the Senate then proceed to its consideration; that all after the enacting clause be stricken and the text of S. 2673, as passed, be inserted in lieu thereof; that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; that upon passage of H.R. 3763, the Senate insist on its amendment, request 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; that all succeeding votes in this vote sequence, after the first vote, be limited to 10 minutes; that there be up to 2 minutes of explanation prior to each vote, with no further intervening action or debate, with the 2 minutes equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Madam President, reserving the right to object, I would like to propound a parliamentary inquiry. Under this agreement, when 5:45 comes, we would begin to vote on the two amendments, and then vote on final passage, and no other amendment would be in order under the agreement; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAMM. Madam President, I do not object. I think under this agreement we will have time to go back and forth. I would say that if it saves anyone time, we do not need a vote on the two pending amendments. We could do them by voice vote and proceed to final passage.

Mr. REID. We will be happy to discuss that after the UC is entered.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. REID. Madam President, I ask unanimous consent that upon disposition of H.R. 3763, passage of S. 2673 be vitiated and the bill be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I want to begin by very briefly responding to Senator KENNEDY. I was somewhat taken aback at his suggestion that we set aside the two amendments and allow a nongermane amendment to

be offered when, in fact, on a bipartisan basis, earlier this week, we decided not to deal with pension reform.

So I want to make it clear to my colleagues that I am perfectly happy to deal with pension reform. I think a bipartisan consensus is evolving on pension reform. But we made a decision, on a bipartisan basis, earlier this week, not to put pension reform on this bill. Its day will come. I want to make that clear.

Madam President, let me try to respond to several points that were made earlier today. I will try to be brief so that my other colleagues will have an opportunity to speak on my side of the aisle.

I want, first, to talk about stock options. Then I want to talk about the bill before us and where we go from here. And I will try to be brief on all of them.

First, let me make it clear that stock options are pretty important to the American economy. More than 6 million nonexecutive workers in America receive stock options every year. So when we finally get around to having a policy set on stock options—which I hope will be done by FASB, the accounting board, based on logic and reason—we need to take into account that 6 million people who are not executives of companies get stock options every year.

We want to be sure that we are not endangering their ability to own a piece of America with the reforms designed to deal with a few people who violated the law in some cases, who did not act honorably in some cases.

We want to be sure we do not deprive or preclude 6 million workers who are not executives—or people who did not violate the law, did not act dishonorably—from the ability to get stock options.

Let me also say, in areas such as biotechology and the computer programming industries, that 55 percent of rank and file employees get stock options.

So I just want to urge, as we are going about our business here, with all this talk about people who have made millions, that we do not forget that millions of Americans benefit from this, and we need to be careful about what we are doing.

Let me say, secondly—and Senator BENNETT made the point today; I made it last week—if you listen to what is being said in this debate, a big point is made of the fact that in 1994 we saw an explosion in the use of stock options and low-interest loans and other nonconventional forms of executive compensation.

What happened to trigger that is in 1993, as a gratuitous provision in the 1993 tax bill, we changed the law so that if you are compensating an executive in corporate America and you pay that executive more than $1 million a year, you cannot count that compensation as a business expense. Of the top 30 companies in America, the level of compensation at that point was already substantially above the million-dollar mark. So because of what Congress did in 1994, having passed a law that said you could not pay people with a paycheck above a certain level and have it count as a business expense, we should not have been surprised that accountants and financial planners and people who were smart enough to make over $1 million a year found other ways to receive compensation.

So I want to make it clear that the point I am making is, if you are looking for somebody to point the finger of blame at here—and many people are trying to do that—I think Congress is a good institution to point at because Congress eliminated the ability of companies to pay their executives the old-fashioned way.

A lot has been made about who is at fault in all this. I would just simply make the following points. If somebody said to me: I know you don't know what caused all these current problems, but tell me; I am going to force you to tell me what you think the cause was. I would say: The inadequacy of GAAP accounting, which, in its current incarnation, works very well for old-style companies with assets that are written off.

GAAP accounting fits the steel industry perfectly. It fits the automobile industry pretty well. But the problem in the 1990s—when productive power became knowledge, when companies with relatively little in the way of assets gained huge market caps because of people's assessment of their know-how and the technology embodied by the company—was that GAAP accounting did not keep pace with the reality of the world that we live in today and that we lived in the 1990s.

It is very complicated to try to figure out what the values of these companies actually are by any conventional method where you are adding up their acquisition cost of assets and depreciating those assets.

This created a giant void in GAAP accounting in the 1990s, and people pushed the envelope within that void. In some cases, it appears they violated the law; in other cases, they have certainly violated standards of ethics.

Nothing we are doing in this bill is going to solve the problem in GAAP accounting. I am confident that over time we will find new ways of developing generally accepted accounting principles that don't rely on concepts such as goodwill, which don't make a lot of sense economically. But I do believe the bill before us is a step in the right direction.

There are differences of opinion. Before we go to final passage, I want to make clear what those differences are. Senator SARBANES and I both believe that we should have an independent accounting board. We both believe that that board should set and enforce ethics standards. We both believe that part of setting ethics standards is looking at auditor independence.

Senator SARBANES believes that we should write in law in some great detail what is entailed in auditor independence. I believe the problem with that is that while the law might fit General Motors, there are 16,254 publicly traded companies in America, and I am concerned that there is no law that Congress can write that will fit all 16,254 companies.

My second problem is, if you make a mistake in writing the law, then you have to go back and pass another law to correct it. If we had set out Glass-Steagall, separating banking and securities, by regulation, my guess is that by the mid 1950s, we would have concluded that that was a mistake, and we would have fixed it. But since it was written into law, it couldn't be fixed by regulation. Regulators tried to make marginal changes. We ended up with a very unstable system, and we were only able to fix it by law in 1999.

A second problem with writing the details of these different standards such as auditor independence into law is if you make a mistake, it is hard to fix it; whereas if you set up a board and, based on their expertise, they set out a regulation, if they make a mistake, they can fix it.

My final point on setting these standards by law is, one size fits all never works. What we need is the flexibility for this board to set a standard and then determine, based on the circumstance of the individual company, what makes sense.

I intend to vote for the bill on final passage. There are probably 10 things in the bill I am opposed to. But we are going to conference with a House bill that is very different. I am confident that in conference we can write a bill that will be supported by both Houses of Congress and signed by the President. I think we can strengthen the bill where it needs to be strengthened. I think we can provide flexibility where it is needed to bring in reason and responsibility.

Our objective has to be to fix what is broken in American capital markets and do it while minimizing the cost we impose on businesses, investors, and workers that did not violate the law and did not act in a nonethical manner.

The sooner we can get to conference, the sooner we can write this bill and see the bill signed into law. We have reached the point where we have a bill before us that addresses the major issues that we decided to address.

I know people have been unhappy about the inability to offer amendments today. The plain truth is, we have 97 first-degree amendments that have been filed and 24 second-degree amendments, and there was never any possibility that those amendments could be offered. We tried to come up with amendments that were agreed to and in the process, ended up excluding some people.

Let me conclude my remarks, at least for the time being, by congratulating Senator SARBANES on his leadership on this bill. Overall, he has done a

good job. I do not agree with him on each and every part of it, but he has always been open. We have had many good discussions. I am confident that in the end we will write a bill that will be broadly supported and that will be in the interest of the country.

The PRESIDING OFFICER. Under the previous order, the hour of 4:55 having arrived, the Senator from West Virginia is recognized.

SUPPLEMENTAL BILL

Mr. BYRD. Madam President, there is a game being played with the critical issue of homeland security. It is a political game which could have disastrous consequences.

The White House is talking big about homeland security, exhibiting strong presidential interest in homeland security, trotting out proposals for a whole new Department of Homeland Security, and publicizing alerts.

It is strange, then, strange indeed that despite its public pronouncements on homeland security, the White House refuses to back the rhetoric up with resources.

Twice—once last year, and currently—large bipartisan majorities in both Houses of Congress have withstood veto threats from this administration and insisted on significant funding increases for homeland security.

President Bush's own appointees have all but begged the President's OMB Director for additional funds to fight the war on terrorism here at home. Many of these requests are urgent and quite compelling, yet the OMB has continually rejected a surprising number of these pleas. It is as if this administration has delivered an internal unfunded mandate to its own cabinet secretaries and Federal workers. Fight the war on terrorism on every front here in the homeland. Fight vigorously. Spare nothing, but make sure you do it on a shoestring. Protect our people here at home, but protect them on the cheap.

The Department of Energy proposed a total of $380 million to fund projects to enhance the security of radioactive materials here at home and overseas, including: better security measures to safeguard the transport of nuclear weapons within the United States; improvements in the ways in which we secure and store plutonium; cleaning up, transporting, and protecting low-level radioactive materials that could be used in a ''dirty bomb.''

For these and similar activities $380 million was asked for by the Secretary of Energy. But do you know what? That request fell on deaf ears at the Office of Management and Budget. Despite all of the worrying and nail biting about what would happen if some lunatic obtained radioactive material and detonated a ''dirty bomb'' on the mall in Washington or in some other large city, the OMB provided less than $27 million or about 7 percent of the Energy Department's request. Let me say that again: The OMB provided less than $27 million or about 7 percent of the Energy Department's request. This urgent supplemental bill contains $361 million for the Department to dedicate to securing these dangerous and vulnerable materials. That is $334 million above the amount requested by the President.

Another striking omission from the Bush supplemental request for homeland security involved efforts to deport those individuals who entered the country on visas that have now expired. Currently there are an estimated 8 million undocumented immigrants in the United States and only 2,000 interior immigration enforcement officers nationwide. This is a very dangerous situation. We know that terrorists live and plot their crimes among us. The Immigration and Naturalization Service requested $52 million for analysts to help find, arrest and deport high-risk individuals who have disregarded the departure dates on their visas.

OMB said no, nada, nix. It denied the entire request. The supplemental bill, now stuck in conference because of the administration's latest demands, contains $25 million that the Appropriations Committee believes the INS can usefully spend this year to address the need to locate some of these individuals. We also include $88 million for construction and equipping of border facilities, and for improved border inspections.

Last fall, OMB denied $1.5 billion in funding which the FBI requested in the wake of the attack on the twin towers in New York. Part of the FBI's funding request was for acceleration of a new computer system that will be at the heart of all communications within the bureau. Also included in the request were funds to enhance the internal security of the FBI's systems and procedures; for ''cyber cops'' and for hazardous materials personnel. The Congress provided $212 million above the President's request to permit completion of the new computer system much earlier than would be allowed under the Bush plan. In addition, we have included—the Appropriations Committee—$175 million for cyber security and counter terrorism in the supplemental that the White House is now delaying—delayed at the last minute last Thursday evening.

I could go on, but suffice it to say that this administration talks a good game about homeland security but it is unwilling to put its money where its mouth is.

Over this past weekend, during his radio address, the President said that, ''Strengthening our economy and protecting the homeland and fighting the war on terror are critical issues that demand prompt attention.'' I agree. I only wish that the same message would be made clear to the Office of Management and Budget.

We have worked diligently in the Congress to get these critical homeland security monies out to federal and local personnel charged with protecting our people. Yet, we have been met by objection after objection by this administration.

In March, the President insisted he needed more money for national defense in an urgent supplemental. We gave him every dollar he requested. In addition, the House and Senate provided more money for critical homeland defense needs.

Instead of letting the House and Senate work out our differences and get the funding out, the White House started issuing veto threats before the Senate bill was even off of the floor. And last Thursday evening, just as all differences appeared to be worked out, the White House bomb throwers blew up the agreement with new demands.

It makes one wonder how much the White House really needs that defense money and it certainly causes one to wonder how serious this administration really is about homeland security.

Senator STEVENS and I have beseeched the White House over and over again to have the Homeland Security Director come before our Committee to tell us about the needs for Homeland Security. Our requests were denied. We held days of hearings with administration officials, local firefighters, policemen, mayors and governors. We did our best and funded the needs as testimony we heard indicated.

We wrote a good bill, and we were ready to convene the conference Friday. But our efforts were blown up by the OMB Director, suddenly and completely and with no warning until the very last minute, Thursday evening.

So needs go wanting in our military and in our homeland defense effort. There is no excuse for such irresponsibility. Such tactics are not in the best interests of our people. Hollow rhetoric on homeland security will never replace solid funding for these needs.

Political gamesmanship over issues so critical to our Nation and our people is irresponsible, arrogant and totally out of line.

I deplore the arrogance with which the good faith efforts of both Houses of Congress have been treated by this White House. Apparently the security and safety of this nation and its people have taken a back seat to gamesmanship by a White House that has no respect for the people's representatives or for the people's urgent needs.

Under OMB Director Mitch Daniels' stewardship, the Federal budget has gone from a surplus of $127 billion in FY 2001 to an estimated deficit for the current fiscal year of $165 billion. This is a swing of $292 billion in just one year.

The President is now threatening to veto the urgent national defense and homeland defense supplemental appropriations bill based on Mr. Daniels recommendation. Why? Because Mr. Daniels asserts that the bill spends too much money. Yet the conference report's spending levels that have been

agreed to on a bipartisan and bicameral basis would increase the deficit by only about $600 million compared to the President's request.

Mr. Daniels believes that the critical port security, border security, firefighting, law enforcement, nuclear security and other homeland defense programs funded in the supplemental can wait because the bill would increase the deficit by about $600 million, when his failed fiscal policy has resulted in a $292 billion swing in the deficit.

The OMB Director seems to have forgotten, or perhaps never learned, that the appropriations process is about more than just numbers. Maybe at OMB, they can be bean counters, but here in Congress we are responsible for understanding what the numbers mean for the American people.

Mr. Daniels is cynically focused only on the bottom line. In an effort to make the supplemental bill look smaller, he has proposed rescinding the balance of funds under the airline loan guarantee program. He asserts that this would produce $1.1 billion of savings. Yet these funds under the law can not be spent. There are no real savings here. The Congressional Budget Office would not score savings for this proposal. This is the kind of phony accounting that is getting our nation's corporations in trouble.

This phony accounting is proof that Mr. Daniels does not care about homeland defense or about our national defense, or about fiscal discipline. This phony accounting proves that the President's veto threat is only about proving that he can force the Congress to hit some arbitrary bottom line. And the unmitigated gall of a high White House official coming to the Congress with an accounting gimmick at a time when that same White House is decrying phony accounting practices and scandals in the business community is beyond belief.

We should not delay this conference one more day. There are some in Congress who suggest that we should throw our hands up on this bill and wait until the next fiscal year to address these priorities. Such statements ignore the critical needs facing the nation for defense and homeland security. Our fighting men and women need this money to prosecute the war on terrorism. Dr. Dov Zakheim—the Defense Department comptroller—said in a briefing on Friday that the Defense Department is hitting a wall and that our people in uniform cannot be paid if the Supplemental Bill is not enacted by the August break. He said in that briefing that there is good will on Capitol Hill, and he is right. We are trying to do the right thing for our people here at home and our fighting men and women in the field. It is deplorable that good will, hard work, and good intentions can be trashed by OMB Director with reckless abandon. I do not think this President or this nation are well-served by tactics and gamesmanship when the stakes are so high.

Mr. President, I ask unanimous consent that a memorandum be printed in the RECORD which sets forth the highlights of the $7.2 billion for homeland defense in conference funding levels.

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

HIGHLIGHTS OF $7.2 BILLION FOR HOMELAND DEFENSE IN CONFERENCE FUNDING LEVELS

The tentative conference funding levels are $1.9 billion above the President's request. A summary of the $1.9 billion increase with examples of changes to the President's homeland defense proposal follows:

$701 million for first responder programs, $343 million above the President's request, including:

$150 million for firefighters, with the funds going directly to the local firefighters. The President did not request supplemental funds despite the fact that over $3.0 billion in applications from 18,000 fire departments were received for the $360 million currently available.

$100 million for State and local governments for improving interoperability of communications equipment for fire, police and emergency medical technicians, none of which was requested. The funding flows through existing FEMA and Justice program, rather than the new, centralized program at FEMA, proposed by the President for FY 2003. In addition, we are directing the National Institute of Standards and Technology to take the lead in developing uniform standards for interoperable State and local law enforcement, firefighting and emergency medical communications equipment.

$151 million for the Justice Department, $151 million above the President's request to give to State and local governments for improved training and equipment for law enforcement personnel (rather than through FEMA). Funds would also be used to improve the processing of security clearances for state and local first responders so that State and local governments can have information on potential security risks and to promote mutual aid agreements to coordinate the response of State and local governments to a terrorist attack.

$193 million, $134 million below the request for FEMA grants to State and local governments to update their emergency operations plans and to improve State emergency operations centers. $25 million is approved for a new, unauthorized program requested by the President, $25 million below the request. The proposal establishes a Citizen Corps within FEMA to promote volunteer service for emergency preparedness.

$54 million, $22 million above the President's request for FEMA's search and rescue teams. Currently, there are 28 FEMA search and rescue teams around the country that can be deployed to major disasters to assist local first responders in search and rescue operations. Funding will be used to upgrade equipment and training for responding to events involving a biological, chemical or radiation attack.

$37.1 million of unrequested funding for the National Institute of Standards and Technology for developing uniform guidelines for chemical, biological and radiation detection equipment ($17.1 million) and for developing best practice guidance for homeland security technologies ($20 million).

$15.9 million for the Federal Law Enforcement Training Center to expand training capacity for law enforcement personnel of the new Transportation Security Administration.

$739 million for port security programs, $465 million above the President's request, including:

$125 million for port security grants through the Transportation Security Administration. Last Fall, Congress approved $93 million of unrequested funds for port security grants. DOT received $692 million of applications for the $93 million we provided. Despite this, the President did not request additional funds.

$528 million for the Coast Guard for port and maritime security, $273 million above the President's request. Increased funds would be used to: expedite vulnerability assessments at our nation's ports, rather than follow the Administration's current plan to do the assessments over the next five years; add two new maritime safety and security teams; purchase a total of six homeland security response boats; and expand aviation assets as well as the shore facilities to support them.

$39 million for Customs to target and inspect suspect shipping containers at overseas ports before they reach U.S. ports. The Administration requested no funds for this activity.

$19.3 million, as requested for 34 additional personnel for improved background checks for truck drivers, for improved fraud detection for truck licensing and for improved fraud detection for driver's licenses.

$28 million of unrequested funding for the Safe Commerce program to develop better procedures for securing the contents of the 6 million containers that enter U.S. ports each year.

$251 million for bioterrorism funding, $251 million above the President's request, including:

$251 million for the Centers for Disease Control for improved and secure facilities, including toxicology and infectious disease labs, an emergency operations center and for information technology security.

$235 million, $209 million above the President's request to improve security at our nuclear weapons facilities (Energy requested the funds, but the White House did not request them). Funding would be used to improve security of the nuclear weapons stockpile, the national nuclear labs and our nuclear weapons plants. Funds are included to establish a 911 system for local first responders to call when confronted with nuclear hazzards, enhanced funding for the National Center for Combating Terrorism, expansion of radiological search teams, and establishment of a National Capital Area Response Team at Andrews Air Force Base. Funds would also be used to consolidate nuclear materials sites so fewer locations need to be protected. Several requested items that are approved include funds to improve security on the electrical grid and funds to improve our capability to detect radiation.

$147 million, $128 million above the President's request for cyber security to help deal with the threat to Federal and private information systems. $82.6 million is provided to Justice to improve the investigation and prosecution of cyber crime, research to improve the detection of cyber crime, ''data warehousing'' and ''data mining'' to help expose cyber crime and for information sharing. $20 million is provided to Commerce to develop unified Federal guidelines and procedures for system security certification and to develop guidelines and benchmarks for secure information systems. Funding is also provided to improve wireless intrusion detection systems. $25 million is provided to the Energy Department to improve cyber security at our nuclear weapons plants and labs. $19.3 million, as requested, is included for NSF for scholarships to develop cyber security skills.

$120 million for border security, $78 million more than requested by the President, including $32 million for Immigration and Naturalization Service Construction to improve

facilities on our nation's borders, $25 million for better equipment for the additional personnel that are being hired with the funds Congress provided at Fall and $5.7 million for the Justice Department to deploy to 30 more ports the IDENT/IAFIS system for rapid response criminal background checks by the INS of suspect aliens prior to their admission into the country. $57 million for INS for identifying and removing immigration felons from the country and for information technology enhancements.

$140 million of unrequested funding for the Department of Agriculture to enhance our nation's food safety capabilities and to protect against devastating plant and animal disease; to increase support for the Food Safety and Inspection Service, especially to ensure the safety of imported products; for improved security at USDA labs in order to secure bio-hazardous materials; funding for the Extension Service to provide emergency training for first response in rural areas; for FDA to improve the ability to inspect imported products such as medical devices that contain or are susceptible to being contaminated with radiation; and for vulnerability assessments and security improvements to protect rural water systems.

471 million of unrequested funding for airport security, including $150 million to insure that all small and medium hub airports have all of the funds necessary to implement the FAA's new airport security guidelines and that large airports have some additional funding to meet those requirements; $225 million is provided above the President's request for explosives detection equipment; $42 million is provided to improve the security of the FAA air traffic control system; $17 million is provided to improve airport terminal security for our nation's airports; and $7.5 million is provided to FAA to repair long range radar systems that the Department of Defense believe must be continued for several years because these assets are the only FAA radar capable of continually tracking aircraft with disabled transponders. In addition, $15 million is provided for improved air to ground communications for the air marshals, $4 million for radiation detection equipment for air cargo and $10 million is included for improved technology for air cargo safety and other cargo modes.

$100 million for unrequested nuclear nonproliferation programs. The best opportunity to stop a potential "dirty" bomb is to minimize the opportunity for terrorists to get their hands on nuclear material. Funds are included to protect fissile material abroad, purchase radiation detectors and to establish international standards for securing fissile material.

$108 million of unrequested funding for the Corps of Engineers to improve security at Corps water projects.

$92 million, $82 million above the President's request for the FBI for counter terrorism and information technology enhancements. In total, FBI receives $175 million when cyber security funding is included.

$50 million of unrequested funds for EPA to provide funds to local governments to conduct vulnerability assessments on our drinking water systems.

Examples of the remaining $273 million, most of which was unrequested include: $12 million for security at the Smithsonian; $17.7 million for the National Park Service for installation of bollards at the Jefferson Memorial and an in-ground retaining wall at the Washington Monument (requested by the President in FY 2003); $26 million for the US Geological Survey for high resolution mapping and imagery of the nation's major cities for use in developing vulnerability assessments of infrastructure and for expanded data storage capacity; $28.5 million to expand Secret Service capacity to combat electronic crimes; $23.6 million for the Legislative branch for Capitol Police and for the Library of Congress to cover part of the lost copyright fees from the slowed mail and for costs associated with cleaning up the Hart building after the anthrax attack; $19 million to improve response capacity to chemical attacks and for research on the impact of the release of toxic substances at the World Trade Center; $15 million for improved bus safety; $7.2 million for NOAA to develop back-up capacity for the supercomputers that support our weather forecasting system; $17 million for security and renovations of the Federal courts, $3 million above the request; and $44 million for the District of Columbia and the Washington Metro to improve security; consistent with the congressionally-mandated District emergency operations plan and FEMA's emergency plan for the National Capital Region, and to construct decontamination and quarantine facilities at Children's Hospital and the Washington Hospital Center.

The conference funding levels include $4.1 billion for the new Transportation Security Administration, $331 million below the request ($439 million of which is for unrequested items highlighted under port security and airport security).

The conference funding levels also include the $87 million President's Budget request for the Postal Service to improve protection of postal customers and postal employees from a bioterrorist attack, the $52 million President's Budget request for improved security of Federal buildings and $3.8 million for the Office of Homeland Security, $1.2 million below the President's request.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I yield 10 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank the chairman of the committee. Let me begin by stating that which I have said on several occasions: We are all deeply indebted to the Senator from Maryland for the tremendous work he has done as the chairman of the Banking Committee in fashioning this legislation. He has worked with many of us to put this bill together. My guess is that, within an hour or so, we will overwhelmingly pass this bill before us. The chairman will be largely responsible for the result.

I also commend my colleague from Wyoming, Senator ENZI, and others who have worked very hard and have made it a bipartisan bill. Without his leadership, I don't think that would have happened. We may have had a partisan vote coming out of committee. That would not have bode well for the handling of this matter on the floor. So I commend him and others for reaching an accommodation that made this a strong, good bill.

Mr. President, I want to take a few minutes toward the close of this debate to urge our colleagues to be supportive of this bill, and I hope Members of the other body will support what we have done in the Senate.

The House passed legislation a number of weeks ago, prior to a lot of the events that have unfolded over the last 2 or 3 weeks. The argument today for a stronger Senate bill hardly needs to be made in light of events that occurred over the past number of days. Just today, the Dow is down some 40 points; Nasdaq is even. But over the last week, we have seen a continued decline in investor confidence and, of course, how that is reflected in the stock markets.

Investors, both domestic and foreign, are losing confidence in our financial markets. Investor trust is contagious. I also point out the corollary to that: Investor mistrust is also contagious. What we are watching is an erosion of trust that has begun and is almost impossible to stop once it gets rolling. Obviously, a lot of factors will contribute to stemming this tide of continued erosion of investor trust and confidence.

One of the things we can do is what we are doing today. Other people will have to add their voices to the debate. In my view, the President still has to be stronger than he has been. The House will have to rise to the occasion as we have endorsed in large measure what we have accomplished here, but our step, the first step, is the one we are taking this afternoon. Therefore, I think this is critically important.

This is not just another bill we are passing. This is far more important. In fact, the impact of how people react may be more important than the actual wording and language of the bill. It is critically important we have as strong a vote as possible.

If we fail to enact serious reforms—and this bill is serious reform—then I believe we endorse dangerous and discredited accounting practices that we have seen in the last 7 months alone cost shareholders and workers billions of dollars in their savings and pensions.

The Nasdaq has fallen over 37 percent, and the Dow has fallen 17 percent since the beginning of the year. Both Nasdaq and the Dow have dropped over 10 percent each in the past week alone. So Congress must act today, Mr. President, and act with a very strong voice to stem the rising tide of investor apprehension.

Passage of this bill will not and cannot of itself restore investor confidence. More must be done to win back consumer faith, but this bill is a critical piece of the overall effort and, therefore, it is essentially important we adopt it.

The part of the rationale of the original securities law in the 1930s was to increase public trust in America's financial markets and reliability of disclosed corporate financial information. Those laws over the past 70-plus years were a part of the modern economic foundation of our Nation, and they were designed to promote market efficiency and inspire investor confidence.

The resulting market confidence in the statements of financial health of publicly traded companies has paved

the way for America's rise as an economic superpower.

I could make a strong case that the vote we are going to take today is for one of the most important bills impacting the Nation's financial markets since the 1930s. I say that because this legislation will fundamentally change the way publicly traded companies will do business and how the accounting profession performs its statutorily required audit function.

Much has been said about what this legislation does not accomplish. Briefly, I wish to focus my remarks on what it does do and repeat, we are not solving every problem with this bill. There are a lot of other issues that need to be addressed, but we have to begin the process, it seems to me, by getting the accounting part of this equation right, and we will not know ultimately whether we have done all we could, but I think this is a major step in that direction.

The bill, we now know, creates a new independent regulator for the accounting profession. The new body will act as a strong, independent, full-time board with significant authority to regulate auditors of public companies. The independent board will have clear authority for setting auditor standards and important investigative standards. It strengthens audit reporting standards for the accounting profession and contains significant prohibitions for accountants performing nonaudit services for audit clients, and it addresses the growing conflicts of interest that have been too pervasive throughout the accounting profession.

It provides for the first time an independent funding source for the Financial Standards Accounting Board, which I think is also extremely important and one of the major reforms in this bill.

There are additional dollars to provide the SEC with more firepower, if you will, to have more cops on the street so we might avoid some of the problems that have occurred in the past.

It also improves corporate governance requirements and improves corporate disclosures. The bill grants additional authority and responsibility to the audit committees of publicly traded companies.

Those are very important steps. The provisions contained in the legislation were carefully considered. We had 10 hearings, and by a vote of 17 to 4, the committee—the Presiding Officer being one—passed out this very fine legislation.

Additionally, during floor consideration of this bill, Senator LEAHY of Vermont added new criminal penalties for securities fraud. I commend him and strongly endorse the provision that won the overwhelming support of the Members. I hope it will add to our efforts of restoring investor confidence.

One of the last issues I would like to address, because it has been talked about so much, is the stock options issue, which involved a lot of debate and discussion of the last number of days. I commend our colleague from Michigan, Senator LEVIN, who has made an extraordinary effort to find a resolution to this issue we all can support. Obviously, this question inspires more questions than answers in many ways, but I commend him for his thoughtfulness and energy that he has brought to this debate.

The issue of whether or not stock options should be expensed is not an issue that is going to go away. It has to be addressed. I must admit, I am swayed by those who have a great deal of expertise in this area: Alan Greenspan, Warren Buffett, Paul Volcker, all of whom support the expensing of stock options.

I also recognize the danger when Congress begins the process of legislating accounting standards.

My friend from Texas and I have been involved in the past when there have been efforts by people who wanted to have us vote on some of these matters. I recall 3 or 4 years ago the debate was over pooling and purchasing accounting standards. I was very sympathetic to the arguments made by those advocating pooling. Certainly, if I were a member of FASB, I think I would have voted to allow that accounting standard to go forward, but the idea that the Senate might vote by 51 to 49 to pick one accounting standard over another is just ludicrous on its face. We do not want to set a precedent, in my view, of the Congress of the United States deciding what accounting practices ought to be. That is why we set up these boards to do the job.

The approach taken by having the Accounting Standards Board, the SEC, and others look at these matters and get back to us with their recommendations is the appropriate and proper way to go. Despite the temptation of others to want to legislate these matters explicitly on the floor, I remind my colleagues who have done that in the past, we inevitably regret doing it when we set precedents such as those and are only duplicated by other ideas that temporarily may be very popular, may be politically attractive, but may be terrible economics as well.

I applaud the effort to approach the stock option issue in the manner in which it has been addressed. I mentioned Senator ENZI. I mentioned my colleague from Texas as well. He and I worked many years on a lot of matters affecting the financial services sector of our economy. He does not have that many days left with us, and I am going to miss him. I told him that privately, and I tell him publicly that he is a valued Member of this institution. Whether we agree or disagree on matters he always brings a great deal of thought to the debate. He has been a fine member of the Banking Committee, and I have enjoyed my service with him for many years. I do not want to be too complimentary. I will reserve any final glowing accolades for when we have completed the process. We have a conference to go through yet.

Again, my compliments to Senator SARBANES.

What we are doing is important. This is extremely important legislation. I said earlier it may be more important what message it is we are sending; that we are not sitting in the bleachers, we are not just standing by as these events unfold. All Members of this Chamber can take great pride that the Senate of the United States has responded with a responsible bill we think is going to make a difference. I yield the floor.

Mr. SARBANES. What is the time situation?

The PRESIDING OFFICER. The Senator from Maryland controls almost 14 minutes, and the Senator from Texas controls just under 12 minutes.

Mr. SARBANES. I yield 4 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 4 minutes.

Mrs. CARNAHAN. Mr. President, my amendment requires that when corporate insiders, such as CEOs, trade the stock of the companies they manage, they must take reasonable steps to disclose those transactions to their shareholders. Current law requires that insiders file disclosure forms with the Securities and Exchange Commission. However, almost all of these forms are filed on paper and average investors have no practical way of seeing these disclosures. My amendment requires that these disclosure forms be filed electronically and that the SEC make these disclosures available to the public over the Internet.

This amendment also requires that corporations disclose insider transactions on their own Web sites. Investors have a right to know if corporate officers are dumping their stock. However, it is meaningless to require these disclosures if investors have no practical way of ever seeing these disclosures. Without this amendment, the disclosure forms simply sit in a file cabinet at the SEC in Washington. My amendment ensures that investors have access to this important information.

In the 3 years leading up to its bankruptcy, as Enron's top officers touted the company's stock, they sold more than $1.1 billion worth of their own holdings. Ken Lay alone sold more than $100 million worth of Enron stock while telling others to buy it. Enron's vice president of human resources, Cindy Olsen, was asked by employees if they should invest 100 percent of their retirement funds in Enron. She replied: ''Absolutely.'' But within 3 months she personally unloaded $1 million worth of Enron stock. Had Enron employees only known, they might have been skeptical about this advice.

Investors are entitled to know how executives are acting with their own shares of their company's stock, and my amendment will ensure they will.

I yield my remaining time back to the Senator from Maryland.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield 8 minutes to Senator ENZI, and might I say on my time, not his 8 minutes, that I want to thank Senator ENZI for his contribution to this bill, for his work from beginning to end. He has been a major contributor to the bill. He has proven that knowledge sometimes is a nice thing to have.

Our standard in Washington for objectivity is that you came in off the turnip truck and you know absolutely nothing and therefore you are objective, but I would say that Senator ENZI proves that it is nice every once in awhile to have somebody who knows what he is talking about. I think in many ways, large and small, the good things in this bill he has had a very positive impact on and the bad things in the bill he could not do anything about anyway—that was a joke, I would say to the Senator from Maryland.

In any case, I do want to congratulate Senator ENZI for all the contributions he has made.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 8 minutes.

Mr. ENZI. I thank the Senator from Texas for his gracious comments.

It has been mentioned several times today that there is nervousness in the stock market. There has been since we started debating this issue. I am very convinced that some of that is because people may read some of the amendments that have been suggested and recognize the legislative principle that, if it is worth reacting to, it is worth overreacting to. That ought to be enough to scare anybody.

We have had extensive debate. In fact, one reporter I talked to asked me if we were going to pass the McCain bill. The reporter talked about the accounting reform, and I had to say, no, that is the Sarbanes bill we have been working on. It is not stock options, in spite of the threat we had the other day.

We usually do bills the way we have done this one—with a lot of cooperative talk. We then make arrangements to develop the best possible outcome. The accounting reform bill before us is designed in such a way that we set up processes that people with accountability and responsibility and knowledge have to oversee. This bill does not tell them exactly how to do the details of accounting. It gives a fair process for accountants to be able to do the details of accounting.

In past years, we have decided we knew more than the people who had the expertise in the area of accounting and we have given them direction on how to do it. We almost made that mistake again. For instance, the McCain amendment was very simplistic. In one paragraph it told people how to do accounting that may actually take about 500 pages to explain. It would have caused the most massive restatements in the history of the United States, and restatements right now make everybody nervous. People ought to realize that some restatements are caused by changes in rules, not by people doing things wrong. So investors should always review restatements and determine the actual cause. I certainly hope it is never Congress, but I suspect it very well could be.

Another proposal that was going to be put before us was one telling FASB, this Financial Accounting Standards Board, exactly what they were supposed to examine next and what they were supposed to resolve in the next year. I have to say, FASB is working on some important things because they have been examining what Congress has been debating and they know in greater detail than we do what caused the massive restatements. I have to say, I do not believe it was stock options. It was likely a number of other things that need to be investigated.

This Financial Accounting Standards Board is diligently looking at these issues. They are looking at some high-profile rules in the areas of accounting for intangibles and accounting for special purpose entities. We have talked a lot about special purpose entities, and our hearings showed that they may have been a cause for the Enron collapse. Also, they are looking at accounting for guarantees and examining a final rule on liabilities and equity. They are also studying whether to create a rule on revenue recognition.

Those five things probably put one to sleep, but they are important to have resolved to make sure we do not have problems with companies in the future. We have to be careful now and in the days to follow that we ensure we use all of FASB's expertise, knowledge, and staff to resolve high publicity problems of accounting.

In this bill, we have made the Financial Accounting Standards Board more independent. We have provided them with independent funding so they no longer must beg for donations and perhaps encounter a conflict of interest. Through this process, we should not insert ourselves and say we are going to tell them exactly what is important.

I would like to thank Senator SARBANES and Senator GRAMM for the extraordinary work they have put into the process. Last week was an extremely difficult week. I thank them for the careful work and review they have done on every single one of the amendments that has been submitted, and the process they established to make sure this bill would not get out of hand, that it would not be an overreaction, and that when we finish it tonight and we can reassure America it is still okay to invest in the stock market.

We are fortunate on the Banking Committee to have these two people I consider to be the finest public servants in Congress. They have worked long and hard to assure that the product that came out was bipartisan and reflected the views of as many Members as possible. I also thank the members of the staff who worked diligently on the bill.

From my own staff, Katherine McGuire, Kristi Sansonetti, and Michael Thompson. From Senator GRAMM's staff, Wayne Abernathy, Linda Lord, Stacie Thomas, and Michele Jackson. And from Chairman SARBANES' staff, Steve Harris, Steve Kroll, Dean Shahinian, Marty Gruenberg, and Lindsey Graham and Vince Meehan. All of these staffers have spent many late nights and weekends working to build this legislation.

This legislation is badly needed. The markets have been in a steady decline for several months now. While I do not believe it is Washington's job to step in every time the market is in a decline, I do believe that when markets move as a reaction to illegal or unethical acts, then we have obviously not made penalties severe enough to dissuade this type of behavior. Congress had to act in this climate.

However, I would also like to comment on a few things happening outside of the real debate—namely the attacks on SEC Chairman Harvey Pitt. I have to say that Chairman Pitt and I may not always agree, but I believe the recent attacks on him to be unwarranted. Mr. Pitt has come under fire for having represented some of the accounting firms who have been criticized in recent restatements. I believe Chairman Pitt's work in the private sector is a great asset to investors. We need individuals who are willing to work in government who know and understand the industries they regulate. I do not want lifelong government bureaucrats monitoring these companies.

These restatements did not all of a sudden appear when Chairman Pitt was confirmed. In most cases, they begun during the late 1990s when companies became intent on not seeing the Internet bubble burst. I have to ask what was going on at the SEC while these companies were filling all of these false financial statements? What I imagine happened was that the companies, who are very familiar with who is at the Commission and where the resources are being devoted, thought they could take advantage of the situation because no one was paying attention.

Look at what has happened since Chairman Pitt has taken office. He has opened a record number of investigations of restatements filed by public companies. He has taken steps to break the relationship between research analysts and investment bankers. He has supported legislation that will increase penalties on corporate executives engaged in fraudulent behavior. And, he has indicated his support of this legislation, which by the way, I anticipate to be supported by the majority of the Senate later today.

The numbers are clear. In Chairman Levitt's last year as Chairman, 503 total enforcement actions were filed. Already this year, Chairman Pitt has

filed 415. Officer and Director Bars for 2000 were 38—this year so far 71. Subpoenaed enforcement proceedings in 2000 were 9—this year 18. The numbers go on and on. My point is that Chairman Pitt seems to be left cleaning up the mess his predecessor left in corporate America.

I offer my support for these actions taken by Chairman Pitt. Instead of attacking him, I am more concerned about what was happening at the SEC that bred this climate where executives felt compelled to engage in this unethical behavior. Why weren't some of these actions taken three or four years ago? Did the SEC Chairman not see the potential conflicts that could arise out of research analysts getting compensation based on investment banking business?

Therefore, I would say that I commend Chairman Pitt for the work he is doing. From what I understand, the actions he is taking at the SEC have struck fear throughout the corporate community that they had better get their act together.

This legislation before us now will also go far in restoring faith in the markets. It will provide assurances to investors that we will not sit by and watch executives shatter the retirement dreams of workers while leaving themselves with millions of dollars. It will show the American people that we will work to make financial statements transparent and accurate to make sure they know as much about the company's financial state as possible.

The legislation builds an accounting oversight board to oversee the accountants who prepare financial statements of public companies. This board will have broad authority to enforce and discipline rules by which accountants must live. The board will have full access to accounting firms' records and policies to require uniformity throughout the industry when it comes to ethics and independence. Accountants must know that someone is watching over them to require that their work is in the best interest of investors. This legislation will also provide for the SEC to have the resources they need to enforce the law.

However, I also do not want this legislation to provide a payday for the trial lawyers. The competitiveness of the accounting industry is at stake and we can ill afford to lose another firm solely because we didn't offer proper protections in this legislation. I am in no way indicating that accounting firms should have new, special protections. The only thing I am asking is that accounting firms aren't exposed to more liability after this bill is enacted than they were before.

I am not sure some Members truly understand the situation facing accounting firms. We are down to the final four firms. These are the only firms that have the expertise and resources to audit companies such as Microsoft, Coca Cola, and the thousands other large companies. If we subject them to the will of the trial bar, it will only be a matter of time before we lose the rest of the firms one by one.

I know that, given what has happened recently with the restatements, it is easy to be critical of accountants and easy to legislate them. I agree we do need legislation, but what also needs to be understood is that over-legislating could be drastic to the economy. In the long run, if we over-legislate, it could be detrimental for the future of capital formation in this country.

Once again, I thank the Chairman for all of the work he and his staff have done with this legislation. I think it is a good bill, and I do intend to support it. I also think it will continue to improve through the Conference process and when all is said and done, investors will respond positively to passage of this legislation.

I wish to speak about the Financial Accounting Standards Boards, known as FASB, which has been referenced many times throughout the course of discussion on the underlying accounting bill, the Public Company Accounting Reform and Investor Protection Act of 2002.

Some of the pending amendments have referenced FASB and directed or mandated it to change how companies must expense stock options or to perform a study on how to expense stock options. In addition, the McCain amendment sets the accounting standard for expensing stock options, without allowing FASB to set rules on this form of expensing. The Levin amendment mandates FASB conduct a one-year study on expensing stock options, and then adopt a rule based on a narrow set of external parameters. The Levin amendment implicates a desire to have such expensing done.

In order to understand some of the problems with these types of amendments, it is important to understand exactly what FASB does. Since 1973, FASB has been the designated organization in the private sector for establishing standard of financial accounting and reporting. In short, those standards govern the preparation of all financial reports.

The mission of FASB is ''to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information.''

To accomplish this mission, FASB acts to improve the usefulness of financial reporting; keep standards current to reflect changes in the methods of doing business and the economic environment; consider any significant areas of deficiency in financial reporting; promote the international convergence of accounting standards together with improving the quality of financial reporting; and improve the common understanding of the nature and purposes of information contained in financial reports.

FASB follows certain precepts in its activities. One is to be objective in its decision making. Another is to carefully weigh the views of its constituents in developing concepts and standards. But its ultimate determination must be the Board's, based on research, public input and careful deliberation. It also aspires to promulgate standards only when the expected benefits exceed the perceived costs.

Overall, FASB was created to serve as an independent agency with an independent agenda. However, FASB is currently funded by companies and accounting firms. The long standing concern was that FASB did not act wholly independently, and succumbed to industry pressures in order to get the funding it needed to operate. Back in 1993 and 1994, when expensing of stock options was an issue, some critics say FASB succumbed to pressure by industry and Congress when it created a dual method of either expensing stock options at the time of grant, or placing the information in a footnote as a form of public disclosure of possible stock dilution.

The underlying accounting reform bill fixes this perceived problem of independence and autonomy by providing FASB with funding from both issuers and the accounting firms. Because of this change, FASB will be completely independent from the very companies it will set standards for in the future. This is a good start.

It is also important to understand that, historically, FASB has never been directed by Congress through legislation to adopt one particular standard for accounting, including expense accounting. It has also never been directed by Congress to perform a study. FASB's role is not to perform studies for Congress and they should not be bogged down performing them for political purposes.

Following that precedent, the Senate Banking Committee made certain nothing in the bill directs FASB to take any particular action. In other words, there is no federal mandate to FASB, nor should there be, if it is to remain an independent authority. In addition, why should Congress, a body without expertise in accounting standards for publically traded companies, set these standards?

I, and many other members, as well as Federal Reserve Chairman, Alan Greenspan, believe that Congress has no business setting accounting standards. Instead, the Securities and Exchange Commission and FASB are the entities with the expertise needed to make these types of determinations.

Ordinarily, FASB establishes plans with milestones it works towards. Congress should not dictate what plans and milestones it should work towards or address. FASB also never sets artificial deadlines on when to reach a conclusion. As an independent agency, it carefully and deliberately makes its determinations and sets rules, without adhering to outside pressures or timetables. Just as Congress should not set

accounting standards for FASB to follow, it also should not set artificial deadlines for FASB to adhere to either.

Nevertheless, some members have filed amendments asking FASB to not only take a specific action, but instructing it as to a specific timetable. One amendment actually sets an accounting standard, thereby instructing FASB to immediately change expensing standards. Another mandates FASB complete an expensing study within a year. These amendment set unrealistic timetables and mandates.

It is important to remember that FASB already has its hands full with important projects to help improve financial standards and reporting. It is currently working towards promulgating high profile rules in the areas of accounting for intangibles; accounting for special purpose entities; accounting for guarantees; and a final rule on liabilities and equity. FASB has also added to its agenda a project to research and create a rule on revenue recognition.

Let us not forget that the improper use of special purpose entities played a role in the downfall of Enron. Stock options had nothing to do with Enron's bankruptcy.

The projects FASB is concentrating on are important projects which will help clarify financial statements for investors. FASB itself needs to cue up and prioritize its projects based on what is more important to financial accounting and reporting. Congress should not dictate what those priorities should be or the timetable it must adhere to.

If some of the amendments we are looking at are accepted, Congress will establish a bad precedent of setting up a timetable and prioritizing projects for FASB. Congress will be putting stock option expensing—an accounting standard which did not cause the collapse of Enron or the demise of other big companies—at the front of the cue.

And another question we need to ask ourselves is whether FASB has the manpower to perform the mandates and timetables Congress would be providing through the McCain and Levin amendments. Already, FASB is shifting its personnel to different projects to try to timely promulgate needed rules. While the underlying accounting bill will help these staffing problems by providing independent funding, in the short term, FASB cannot possibly perform the mandates of some of the amendments within the time frames given.

I hope I have given members some solid reasoning on why Congress should not begin setting accounting standards. Should we really be doing something we do not fully understand? There are already agencies to perform this type of rulemaking, and they are the SEC and FASB. They are fully aware of the debate surrounding stock options. We don't need to mandate FASB to make a new rule. I am certain if FASB deems it appropriate, it will be looking at this issue in the future.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, I yield 4 minutes to the junior Senator from North Dakota.

Mr. DORGAN. Mr. President, in the final moments, I hope again to persuade my colleagues to accept by unanimous consent my amendment dealing with corporate bankruptcy. Let me again say what this amendment is.

It says that during the 12 months preceding a bankruptcy, CEOs who have received stock options, bonuses and other performance-based payments shall not be able to keep that kind of compensation. If they ride a company down to bankruptcy, they know the inside details of that company and got incentive-based compensation, including stock options, they ought not ride off in the sunset with a pocketful of gold while the employees and investors lose everything they have. That is not the right thing. A bankruptcy disgorgement proposal ought to be part of this bill. Everyone in this Chamber knows it should be part of this bill. Former SEC Chairman Breeden, a Republican, says it ought to be in this bill. I quoted other CEOs who say it should. Pass this bill without it and this bill is incomplete.

My colleague said he thought maybe the market, which has been so volatile recently, has been frightened by amendments that have been considered by Congress. I don't think so. I think the market has been volatile, up and down like a yo-yo, because we have story after story on the news in this country about financial crooks. These are crooks who have cooked the books of their corporations, cheated investors, pulled the rug out from under their employees, and ruined some good companies. They did it in broad daylight, under the nose of their accounting firms and law firms.

It seems to me those CEOs who made millions, in some cases over $100 million prior to bankruptcy, ought to give that money back. That money ought to go to help those who lost their live savings and those who lost their jobs.

We have in this bill a provision that says if there is a restatement of earnings, you have to give back some of these incentive-based compensation packages. However, the bill is silent on the issue of bankruptcy. What about top executives who ride their company right into the ground and run off with $50 million in their pockets and leave everyone else flat on their back? How about asking those executives to disgorge themselves of their ill-gotten gains? How about telling them in this legislation that they must give that money back? That is what my amendment would do.

I want to talk about the SEC, but I don't have time at the moment. I will save that for another day.

This process has been a travesty of the Senate, in my judgment, having someone as a gatekeeper and preventing us from bringing up germane amendments. It does not make sense. That is not the way the Senate is supposed to work.

I ask unanimous consent to lay aside the Edwards and Carnahan amendments so I may offer amendment 4214 on bankruptcy disgorgement.

Mr. GRAMM. I object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. How much time remains?

The PRESIDING OFFICER. Forty seconds.

Mr. DORGAN. Mr. President, this is, of course, the last chapter on amendments, and a pretty sad book. I know people will go up to the gallery—and I understand someone is at a press conference from the other side—claiming credit for this bill. I want to know who wants to run up to the press conference and claim credit for preventing an amendment that says you must disgorge ill-gotten gains, incentive-based compensation, if you ran a company into bankruptcy. I want somebody to go to the press gallery and take credit for blocking that kind of legislation. Tomorrow I want to read about it. Who takes credit? Someone ought to take credit for blocking an amendment that ought to be passed in the Senate by a 100 to zero vote.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I will not get into a debate with the Senator. There is nothing ill-gotten in this amendment. This amendment does not belong in this bill.

We have a provision in this bill. If you violate the law, then you have to give back what you have earned from the company in terms of any kind of incentive in bonus.

But to say that people who work for a company that goes bankrupt has to give back compensation is to guarantee that a company that is in trouble would never get anybody to go to work for them. They would never have an opportunity to be saved. That amendment does not belong in this bill. It makes no sense in the logic.

Mr. DORGAN. Will the Senator yield?

Mr. GRAMM. I will not yield.

If you did something wrong, making you give back what you earned belongs in this bill. And it is in this bill. Not only belongs, it is here.

But to simply say because somebody worked for a company that goes broke, that they have to give back compensation, that sounds great in the environment we are in, but, look, I have a company, we are in deep trouble, and we try to go out and hire a top-notch person to come in and save us, and we pay him a compensation to try to do it. To say we will take it back if he fails, as if that is an ill-gotten gain, I am sorry, I don't think that is good economic policy. I don't think it is smart. It has nothing to do with the provisions of this bill.

Mr. DORGAN. Mr. President, perhaps the Senator from Texas would like a explanation.

Mr. SARBANES. I yield 1 minute.

Mr. DORGAN. I deeply appreciate the Senator from Maryland yielding.

What the Senator from Texas misses is we are talking about incentive-based compensation. Should someone who gets incentives for running the corporation into bankruptcy be able to keep that? I don't think so for somebody that gets a big bonus while he runs the company into bankruptcy, or for someone that gets big stock options while she runs the company into bankruptcy.

The Senator tried to win a debate we were not having. He says we will take compensation away from someone who is engaged in working for a corporation that went into bankruptcy. No, this is about incentive-based compensation and profits. It is not about taking away their salary. It is about saying if you are paid on an incentive basis and you are running that corporation into bankruptcy, you ought not to be getting the bonus. If you did, you ought to give it back. You ought not get stock options; if you did, you ought to give it back.

This is simply about something my friend has missed. It is about incentive-compensation and the fact that you ought not walk out of a corporation you ran into bankruptcy with a pocketful of gold while you left the employees and the investors flat on their back. This is not an amendment that is hard to understand.

I regret very much it has been blocked. I regret especially we were not allowed to vote on this amendment. That is the travesty, in my judgment.

Mr. GRAMM. Mr. President, I think you could debate whether the amendment is understood or not. I think I understand it perfectly. In fact, there are people in this country who are turnaround specialists, who are hired to try to save companies. If somebody did something wrong, if they violated the law, then make them give back compensation. You put them to death, if you want to put them to death. But to simply say, if you hire somebody with an incentive package to save the company, and the company goes broke, that you are going to take it back, that is up to the bankruptcy court to decide.

So this ill-gotten gain business is good rhetoric, but it has absolutely nothing to do with this amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Just 29 seconds remain to the Senator from Texas, and 5½ minutes remain to the Senator from Maryland.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 5 minutes remaining, the Senator from Texas has 30 seconds.

Mr. GRAMM. Mr. President, the Senator from Maryland should have the right to end the debate.

I think we have two bills: One in the Senate, one in the House. We can come up with a better bill than either. I think America will survive under either bill. Given the environment we are in, that represents some achievement, and I am proud of it.

I think we will come out of conference with a better bill than the House bill and a better bill than the Senate bill. I think people will be proud of what we did.

If I were an investor today, and I had a lot of money, I would invest in the stock market today.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Maryland has 4 minutes 45 seconds remaining.

Mr. SARBANES. Mr. President, we have been trying to clear amendments. We have yesterday—not yesterday, but on Friday we adopted three amendments on the basis of a unanimous consent request. We have worked through two additional amendments. I am going to offer them now.

One is an amendment by Senator SHELBY for a study with respect to aider and abettor violations of the Federal securities law. I ask unanimous consent that the pending amendment be set aside; that the Shelby amendment, No. 4261, be called up and modified with a modification that I send to the desk; that the amendment as modified be agreed to; and then we then return to the regular order which, as I understand it, would be the Edwards as modified by the Carnahan amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 4261, AS MODIFIED

Mr. SARBANES. I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maryland (Mr. SARBANES) for Mr. SHELBY, proposes an amendment numbered 4261, as modified.

The amendment is as follow:

(Purpose: To require the SEC to conduct a study and submit a report to the Congress on aider and abettor violations of the Federal securities laws)

On page 108 after line 15, insert the following:

"(c)(1) The Commission shall conduct a study to determine based upon information for the period from January 1, 1998 to December 31, 2001—

"(A) the number of "securities professionals," which term shall mean public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

"(i) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (hereinafter collectively referred to as "Federal securities laws"), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such actions or proceedings (referred to hereinafter as "aiders and abettors") and

"(ii) who have been found to have been primary violators of the Federal securities laws;

"(B) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

"(i) the specific provisions of the Federal securities laws violated;

"(ii) the specific sanctions and penalties imposed upon, such aiders and abetters and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

"(iii) the occurrence of multiple violations by the same person or persons either as an aider or abetter or as a primary violator; and

"(iv) whether as to each such violator disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

"(C) the amount of disgorgement, restitution or any other fines or payments the Commission has (i) assessed upon and (ii) collected from aiders and abetters and from primary violators.

"(2) A report based upon the study conducted pursuant to subsection (c)(1) shall be submitted to the Senate Committee on Banking, Housing, and Urban Affairs no later than six months after the date of enactment of the "Public Company Accounting Reform and Investor Protection Act of 2002.".

Page 78 strike lines 15–24 and insert the following:

In supervising non-registered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

The PRESIDING OFFICER. Without objection, the amendment as modified is agreed to.

The amendment (No. 4261), as modified, was agreed to.

Mr. SARBANES. Was the Ensign amendment also on that amendment?

I urge the adoption of the amendments.

The PRESIDING OFFICER. The amendments have been agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, in the regular order we are back with the Edwards and Carnahan amendments pending?

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. I have a couple of minutes?

The PRESIDING OFFICER. There remains 1 minute.

Mr. SARBANES. Mr. President, I think the Senate is about to take a major step to contributing to the restoration of investor confidence.

This legislation establishes a strong independent board to oversee auditors

of the public companies. The board can set standards, investigate, and discipline accountants. It will be overseen by the SEC, but it will have independent funding and membership. I think this marks the end of weak self-regulation with respect to public company auditors.

It addresses pervasive conflicts of interest by ensuring auditor independence by restricting them from providing a defined list of consulting services. Other consulting services on the part of the auditor can be permitted if preapproved by the company's audit company.

This legislation strengthens corporate responsibility. It establishes safeguards to protect investment/analyst conflicts, and it gives the SEC expanded staff resources so it has the resources to carry out its mandate of protecting investors in this critical time.

It is no exaggeration to say the crisis in our markets has put the plans and hopes and dreams of millions of Americans at risk. To restore market integrity on which investor confidence depends, we should move expeditiously to move this legislation into law.

I want to express my deep appreciation to my colleagues with whom we have worked for many weeks: To Senator GRAMM, the ranking member of the committee with whom we interact in an interesting and, on occasions, exciting fashion; to Senator ENZI, who made a major contribution; to Senators DODD and CORZINE on our side of the aisle who played an essential role and introduced vital legislation on this issue very early on; to Senator DURBIN who also introduced significant legislation on this subject, and to many other colleagues; and to Senator REID, who has been extraordinarily helpful here on the floor of the U.S. Senate.

Mr. REID. Mr. President, I ask unanimous consent the 1 minute Senator CARNAHAN has—she is not going to be using it—that it be given to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland has an additional minute.

Mr. SARBANES. Mr. President, we don't do this work by ourselves. We all know that very well. We rely very heavily on dedicated, absolutely dedicated staff members. I am going to take the closing time I have to simply read their names into the RECORD: Dean Shahinian, Steve Kroll, Lynsey Graham, Vincent Meehan, Sarah Kline, Judy Keenan, Jesse Jacobs, Aaron Kline, Marty Gruenberg and Steve Harris of the Banking Committee staff; Wayne Abernathy and Linda Lord of Senator GRAMM's staff on the committee. There has also been the staff of the individual Members.

I particularly want to acknowledge Mike Thompson and Katherine McGuire of Senator ENZI's staff, and Alex Sternhell and Naomi Camper, Jon Berger, Jimmy Williams, Catherine Cruz Wojtasik, Leslie Wooley, Margaret Simmons, Mat Young, Roger Hollingsworth and Matt Pippin.

I express my very deep appreciation. The dedication these staff members demonstrated over the last few months was just extraordinary: Long nights, weekends, day in and day out. I hope very much they will take a measure of satisfaction in the sense that they have made a very important and significant contribution to better public policy in this country.

I yield the floor.

VOTE ON AMENDMENT NO. 4286

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 4286. The yeas and nays have been ordered. The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAIG), the Senator from Idaho (Mr. CRAPO), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—97

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—3

Craig
Crapo
Helms

The amendment (No. 4286) was agreed to.

Mr. DASCHLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mrs. LINCOLN). The majority leader.

Mr. DASCHLE. Madam President, under an earlier agreement, the next four votes will all be 10-minute votes. I urge Senators to stay in the well. We are going to cut it off at 10 minutes. If you are not here in 10 minutes, you have lost the opportunity to vote. I urge Members to move forward, and we will take on the next vote.

VOTE ON AMENDMENT NO. 4187, AS MODIFIED, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4187, as modified, as amended.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAPO), the Senator from Idaho (Mr. CRAIG), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 175 Leg.]

YEAS—97

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—3

Craig
Crapo
Helms

The amendment (No. 4187), as modified, as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall it pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAPO), the Senator from Idaho (Mr. CRAIG), and

the Senator from North Carolina (Mr. HELMS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea''.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—97

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—3

Craig
Crapo
Helms

The bill (S. 2673), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Banking Committee is discharged from further consideration of H.R. 3763, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause will be stricken and the text of S. 2673, as passed, is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 3763), as amended, was passed, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Public Company Accounting Reform and Investor Protection Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Sec. 101. Establishment; administrative provisions.
Sec. 102. Registration with the Board.
Sec. 103. Auditing, quality control, and independence standards and rules.
Sec. 104. Inspections of registered public accounting firms.
Sec. 105. Investigations and disciplinary proceedings.
Sec. 106. Foreign public accounting firms.
Sec. 107. Commission oversight of the Board.
Sec. 108. Accounting standards.
Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

Sec. 201. Services outside the scope of practice of auditors.
Sec. 202. Preapproval requirements.
Sec. 203. Audit partner rotation.
Sec. 204. Auditor reports to audit committees.
Sec. 205. Conforming amendments.
Sec. 206. Conflicts of interest.
Sec. 207. Study of mandatory rotation of registered public accounting firms.
Sec. 208. Commission authority.
Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

Sec. 301. Public company audit committees.
Sec. 302. Corporate responsibility for financial reports.
Sec. 303. Improper influence on conduct of audits.
Sec. 304. Forfeiture of certain bonuses and profits.
Sec. 305. Officer and director bars and penalties.
Sec. 306. Insider trades during pension fund blackout periods prohibited.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

Sec. 401. Disclosures in periodic reports.
Sec. 402. Enhanced conflict of interest provisions.
Sec. 403. Disclosures of transactions involving management and principal stockholders.
Sec. 404. Management assessment of internal controls.
Sec. 405. Exemption.
Sec. 406. Code of ethics for senior financial officers.
Sec. 407. Disclosure of audit committee financial expert.

TITLE V—ANALYST CONFLICTS OF INTEREST

Sec. 501. Treatment of securities analysts by registered securities associations.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

Sec. 601. Authorization of appropriations.
Sec. 602. Appearance and practice before the Commission.
Sec. 603. Federal court authority to impose penny stock bars.
Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

Sec. 701. GAO study and report regarding consolidation of public accounting firms.
Sec. 702. Commission study and report regarding credit rating agencies.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

Sec. 801. Short title.
Sec. 802. Criminal penalties for altering documents.
Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
Sec. 804. Statute of limitations for securities fraud.
Sec. 805. Review of Federal sentencing guidelines for obstruction of justice and extensive criminal fraud.
Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

Sec. 901. Short title.
Sec. 902. Criminal penalties for conspiracy to commit offense or to defraud the United States.
Sec. 903. Criminal penalties for mail and wire fraud.
Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
Sec. 906. Corporate responsibility for financial reports.
Sec. 907. Higher maximum penalties for mail and wire fraud.
Sec. 908. Tampering with a record or otherwise impeding an official proceeding.
Sec. 909. Temporary freeze authority for the Securities and Exchange Commission.
Sec. 910. Amendment to the Federal sentencing guidelines.
Sec. 911. Authority of the Commission to prohibit persons from serving as officers or directors.

TITLE X—CORPORATE TAX RETURNS

Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term ''appropriate State regulatory authority'' means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term ''audit'' means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term ''audit committee'' means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) AUDIT REPORT.—The term ''audit report'' means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term ''Board'' means the Public Company Accounting Oversight Board established under section 101.

(6) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(7) ISSUER.—The term ''issuer'' means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78o(d)), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) on or before the end of such fiscal year.

(8) NON-AUDIT SERVICES.—The term ''non-audit services'' means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'') and ''associated person of a public accounting firm'' (or of a ''registered public accounting firm'') mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term ''professional standards'' means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term ''public accounting firm'' means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term ''registered public accounting firm'' means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term ''rules of the Board'' means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term ''security'' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term ''securities laws'' means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting ''the Public Company Accounting Reform and Investor Protection Act of 2002,'' before ''the Public''.

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended

(A) in subsection (a)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(B) in subsection (d)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(C) in subsection (e), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,''; and

(D) in subsection (f), by inserting ''or the Public Company Accounting Oversight Board'' after ''self-regulatory organization'' each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by inserting ''registered public accounting firm (as defined in section 2 of the Public Company Accounting Reform and Investor Protection Act of 2002),'' after ''government securities dealer,''.

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission

to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or

other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

''(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe the scope of the auditor's testing of the system of internal accounting controls of the issuer required by section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such system of internal accounting controls—

(aa) complies with the requirements of that section 13(b)(2); and

(bb) provides reasonable assurance that receipts and expenditures of the issuer comply with applicable law, and are being made in accordance with proper authorizations of the management and directors of the issuer; and

(III) a description of significant defects in such internal controls, and of any material noncompliance, of which the auditor should know on the basis of such testing; and

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) INDEPENDENCE STANDARDS AND RULES.—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

(1) IN GENERAL.—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) EVALUATION OF STANDARD SETTING PROCESS.—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take appropriate disciplinary action, if any, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report

that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) REFERRAL.—The Board may refer an investigation under this section—

(A) to the Commission;

(B) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(C) at the direction of the Commission, to—

(i) the Attorney General of the United States;

(ii) the attorney general of 1 or more States; and

(iii) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—All information referred to in subparagraph (A) may, in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, be made available to the Commission, the Attorney General of the United States, to the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator, to State attorneys general in connection with any criminal investigation, and to any appropriate State regulatory authority, which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including

the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term ''foreign public accounting firm'' means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act.

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term ''proposed rule'' means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a ''registered securities association'' for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase ''consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization'' in section 19(b)(2) of that Act shall be deemed to read ''consistent with the requirements of title I of the Public Company Accounting Reform and Investor Protection Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors''; and

(B) the phrase ''otherwise in furtherance of the purposes of this title'' in section 19(b)(3)(C) of that Act shall be deemed to read ''otherwise in furtherance of the purposes of title I of the Public Company Accounting Reform and Investor Protection Act of 2002''.

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a ''registered securities association'' for purposes of that section 19(c), except that the phrase ''to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title'' in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read ''to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Public Company Accounting Reform and Investor Protection Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board''.

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to ''members'' of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase ''consistent with the purposes of this title'' in that section 19(e)(1) shall be deemed to read ''consistent with the purposes of this title and title I of the Public Company Accounting Reform and Investor Protection Act of 2002'';

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

''(b) RECOGNITION OF ACCOUNTING STANDARDS.—

''(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body—

''(A) that—

''(i) is organized as a private entity;

''(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

''(iii) is funded as provided in section 109 of the Public Company Accounting Reform and Investor Protection Act of 2002;

''(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices;

''(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

''(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

''(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.''.

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains. The budget of the Board shall be subject to approval by the Commission.

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e).

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (h), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (f), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (f), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(g) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting the following: ''; and

''(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Public Company Accounting Reform and Investor Protection Act of 2002.''.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the

Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

''(g) PROHIBITED ACTIVITIES.—It shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Public Company Accounting Reform and Investor Protection Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

''(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

''(2) financial information systems design and implementation;

''(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

''(4) actuarial services;

''(5) internal audit outsourcing services;

''(6) management functions or human resources;

''(7) broker or dealer, investment adviser, or investment banking services;

''(8) legal services and expert services unrelated to the audit; and

''(9) any other service that the Board determines, by regulation, is impermissible.

''(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).''.

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(i) PREAPPROVAL REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

''(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

''(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor;

''(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

''(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved by the audit committee prior to the completion of the audit, by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

''(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

''(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

''(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.''.

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead audit partner (having primary responsibility for the audit) or the audit partner responsible for reviewing the audit that is assigned to perform those audit services has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.''.

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

''(1) all critical accounting policies and practices to be used;

''(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

''(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.''.

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

''(58) AUDIT COMMITTEE.—The term 'audit committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

''(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

''(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 3 of the Public Company Accounting Reform and Investor Protection Act of 2002.''.

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm'';

(2) by striking ''the independent public accountant'' each place that term appears and inserting ''the registered public accounting firm'';

(3) in subsection (c), by striking ''No independent public accountant'' and inserting ''No registered public accounting firm''; and

(4) in subsection (b)—

(A) by striking ''the accountant'' each place that term appears and inserting ''the firm'';

(B) by striking ''such accountant'' each place that term appears and inserting ''such firm''; and

(C) in paragraph (4), by striking ''the accountant's report'' and inserting ''the report of the firm''.

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking ''independent public accountants'' each place that term appears and inserting ''a registered public accounting firm''; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm''.

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking ''DEFINITION'' and inserting ''DEFINITIONS''; and

(2) by adding at the end the following: ''As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of this title on or before the end of such fiscal year.''.

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer or any person serving in an equivalent position for the issuer was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.''.

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) DEFINITION.—For purposes of this section, the term ''mandatory rotation'' refers to the imposition of a limit on the period of years in

which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

(a) COMMISSION REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title.

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(ii) be an affiliated person of the issuer or any subsidiary thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

''(4) COMPLAINTS.—Each audit committee shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).''.

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) CERTIFICATION OF PERIODIC REPORTS.—Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, shall be accompanied by a written statement by the chief executive officer and chief financial officer (or the equivalent thereof) of the issuer.

(b) CONTENT.—The statement required by subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

(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.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking ''substantial unfitness'' and insert ''unfitness''.

(b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.''.

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security), during any blackout period with respect to such equity security, in accordance with any exception provided by rule of the Commission pursuant to subsection (d).

(b) EFFECTIVENESS.—

(1) NOTICE REQUIREMENTS.—Except as provided in paragraph (2), no blackout period may take effect earlier than 30 days after the date on which written notice of such blackout period is provided by the plan administrator to the participants or beneficiaries.

(2) EXCEPTION.—The 30-day notice requirement in paragraph (1) shall not apply, and notice under paragraph (1) shall be furnished as soon as is reasonably possible, in any case in which—

(A) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) of the Employment Retirement Income Security Act of 1974, and a fiduciary of the plan so reasonably determines in writing; or

(B) the inability to provide the 30-day notice is due to events that were unforeseeable, or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan so reasonably determines in writing.

(3) WRITTEN NOTICE.—The notice required to be provided under paragraph (1) shall be in writing, except that such notice may be in electronic form to the extent that such form is reasonably accessible to the recipient.

(c) REMEDY.—

(1) IN GENERAL.—Any profit realized by a director or executive officer referred to in subsection (a) from any purchase, sale, or other acquisition or transfer in violation of this section shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(2) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this section may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(d) RULEMAKING AUTHORIZED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(e) DEFINITIONS.—For purposes of this section—

(1) the term ''blackout period'', with respect to the equity securities of any issuer—

(A) means any period during which the ability of not fewer than 50 percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan, is suspended by the issuer or a fiduciary of the plan; and

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction; and

(2) the term ''individual account plan'' has the same meaning as in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that is required to be prepared in accordance with generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

''(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Public Company Accounting Reform and Investor Protection Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''.

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(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.

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

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) by striking ''security, shall file,'' and inserting the following:

''(1) shall file''; and

(2) by striking ''beneficial owner, and'' and all that follows through the end of the subsection and inserting the following: ''beneficial owner; and

''(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 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 time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible, 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.''.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS.

(a) CODE OF ETHICS DISCLOSURE.—The Commission shall issue rules to require each issuer,

together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer, comptroller or principal accounting officer, or persons performing similar functions.

(b) CHANGES IN CODES OF ETHICS.—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics of the issuer.

(c) DEFINITION.—In this section, the term ''code of ethics'' means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING ''FINANCIAL EXPERT''.—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term ''financial expert'' for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS.

(a) RULES REGARDING SECURITIES ANALYSTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by adding at the end the following:

''(n) RULES REGARDING SECURITIES ANALYSTS.—

''(1) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this subsection, rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

''(A) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

''(i) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

''(ii) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

''(iii) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

''(B) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

''(C) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

''(D) to address such other issues as the Commission, or such association or exchange, determines appropriate.

''(2) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this subsection, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

''(A) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

''(B) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this subparagraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

''(C) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

''(D) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

''(E) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

''(3) DEFINITIONS.—In this subsection—

''(A) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

''(B) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.''.

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by inserting ''15A(n),'' before ''15B''.

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15A(n) of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

''(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

''(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

''(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.''.

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

"SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

''(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

''(1) not to possess the requisite qualifications to represent others;

''(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

''(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

''(b) DEFINITION.—With respect to any registered public accounting firm, for purposes of this section, the term 'improper professional conduct' means—

''(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

''(2) negligent conduct in the form of—

''(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm knows, or should know, that heightened scrutiny is warranted; or

''(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

''(c) STUDY AND REPORT.—(1) The Commission shall conduct a study to determine based upon information for the period from January 1, 1998 to December 31, 2001—

''(A) the number of 'securities professionals', which term shall mean public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

''(i) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (hereinafter collectively referred to as 'Federal securities laws'), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such actions or proceedings (referred to hereinafter as 'aiders and abettors'); and

''(ii) who have been found to have been primary violators of the Federal securities laws;

''(B) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

''(i) the specific provisions of the Federal securities laws violated;

''(ii) the specific sanctions and penalties imposed upon, such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

''(iii) the occurrence of multiple violations by the same person or persons either as an aider or abettor or as a primary violator; and

''(iv) whether as to each such violator disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

''(C) the amount of disgorgement, restitution or any other fines or payments the Commission has (i) assessed upon and (ii) collected from, aiders and abettors and from primary violators.

''(2) A report based upon the study conducted pursuant to subsection (c)(1) shall be submitted to the Senate Committee on Banking, Housing, and Urban Affairs no later than 6 months after the date of enactment of the 'Public Company Accounting Reform and Investor Protection Act of 2002'.

''(d) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.''.

(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.''.

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

''(7) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

''(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

''(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;''; and

(2) in subparagraph (G), by striking the period at the end and inserting the following: ''; or

''(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended by striking paragraphs (7) and (8) and inserting the following:

''(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser; or

''(8) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F)), by inserting '', or is subject to an order or finding,'' before ''enumerated'';

(B) in each of sections 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o–4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o–5(c)(1)) by striking ''or omission'' each place that term appears, and inserting '', or is subject to an order or finding,''; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q–1(c)), by inserting '', or is subject to an order or finding,'' before ''enumerated'' each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended, by inserting ''or (3)'' after ''paragraph (2)''.

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the role of credit rating agencies in the evaluation of issuers of securities;

(B) the importance of that role to investors and the functioning of the securities markets;

(C) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the study required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 180 days after the date of enactment of this Act.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 10 years, or both.

''§ 1520. Destruction of corporate audit records

''(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

''(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies.

''(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) arises under a claim relating to—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results, in relation to any claim described in subparagraph (A), from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) two years after the discovery of the facts constituting the violation; or

''(2) five years after such violation.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) documents and other physical evidence are actually destroyed, altered, or fabricated;

(B) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(C) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(5) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(6) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 901. SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 902. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

SEC. 907. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five" and inserting "ten".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five" and inserting "ten".

SEC. 908. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(2) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

shall be fined under this title or imprisoned not more than 10 years, or both.".

SEC. 909. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)) the following:

"(3) TEMPORARY FREEZE.—(A) Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

"(B) If the individual affected by such order is charged with violations of the Federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.".

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking "This" and inserting "Paragraph (1) of this".

SEC. 910. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 911. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Securities Exchange Act of 1934, add at the end a new subsection as follows:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

(b) In section 8A of the Securities Act of 1933 add at the end a new subsection as follows:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

The PRESIDING OFFICER. The Senate insists on its amendment and requests a conference with the House.

EXECUTIVE SESSION

NOMINATION OF LAVENSKI R. SMITH OF ARKANSAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

The PRESIDING OFFICER. The Senate will proceed to executive session.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 903, the nomination of Lavenski R. Smith, of Arkansas, to be United States Circuit Judge for the Eighth Circuit:

Zell Miller, Fritz Hollings, Kent Conrad, Byron L. Dorgan, Harry Reid, Jeff Bingaman, Debbie Stabenow, Jack Reed, Barbara Boxer, Patrick Leahy, Barbara Mikulski, Blanche R. Lincoln, Bob