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Senate

(Legislative day of Wednesday, July 10, 2002)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, the Reverend Dr. David Jefferson, Sr., Metropolitan Baptist Church, Newark, NJ.

PRAYER

The guest Chaplain offered the following prayer:

Eternal and all wise God, we assemble this morning thanking You for this opportunity that You have given us. We thank You for the abundance of Your grace, for the extension of Your mercy, and the assurance of Your protection. Help these Senators to be faithful to the higher ideals of justice, liberty, and righteousness. Speak to their collective consciousness as they endeavor to make our Nation, and, yes, even the world, a house of hope, love, and peace.

Gracious Master, hold Your ideals over the women and men of this governing body. Place a crown of righteousness above them, and encourage them to grow tall enough to wear it. Your sacred scripture says that without a vision, the people will perish. Give the Senators a vision for America—a vision that will enable this country to be a responsible citizen of the world.

Now, Lord, grant unto these Senators the courage to lead this Nation in complex and confusing times. Help them to rely on that which is greater than themselves. May they be guided by Your Spirit and Your intelligence as they seek to establish the laws of this land. Bless us all. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 11, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

ORDER OF PROCEDURE

Mr. REID. Madam President, the Senator from New Jersey wishes to make a few remarks relative to the guest Chaplain. I ask unanimous consent that following my very brief statement, the Senator from New Jersey be recognized for up to 3 minutes and that time not count against the morning business time this morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. REID. Madam President, the Senate will be in a period for morning business until 10:30 this morning. As the Chair will announce shortly, the first half of the time is under the control of the Republican leader. The Senator from Maine is here to use the first 15 minutes. She has been courteous in allowing the Senator from New Jersey to precede her. Following her time, the second half hour will be under the control of the Democratic leader or his designee.

At 10:30 a.m., we will be back on the accounting reform bill, with 90 minutes of debate prior to a vote in relation to the McConnell amendment. The first 45 minutes of that time will be under the control of Senator BYRD, and the second 45 minutes will be under the control of Senator MCCONNELL, the offerer of the amendment to be voted upon at noon today.

Cloture was filed on the accounting reform bill. Therefore, all first-degree amendments must be filed prior to 1 p.m.

Madam President, I have spoken with the majority leader today. He intends to finish this bill. We will have a vote on cloture tomorrow. So tomorrow could be a day with some votes. If anyone is planning on leaving early, they should understand there could be some votes tomorrow. We have 30 hours after that cloture motion vote has taken place. The leader has indicated he is going to finish the bill. Senators should be aware.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

THE GUEST CHAPLAIN

Mr. CORZINE. Madam President, I thank the Senator from Maine for her courtesy in allowing me the opportunity to say a few words about my

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

friend and minister who led us in prayer this morning.

I say to my colleagues in the Senate, it is an honor that we were able to have Rev. David Jefferson from the Metropolitan Baptist Church in Newark with us today. I assure my colleagues, from my own life experience, this is a remarkable man of tremendous energy, leadership, and moral character. He leads the largest Baptist church, a very dynamic community of believers, in Newark, NJ. Not only are they active in their religious life, but they make an enormous contribution to redevelopment and the support of the community, reaching out to all who are part of the community who sometimes have been left behind. Through their example, they are demonstrating that access to the American promise is true for everyone.

In his spare time, he is a senior executive at AT&T where he brings both great skills as a business person and moral character and leadership to his efforts in the business world. We need examples of people who are able to both recognize that our free enterprise system needs to be strong and powerful and have brilliant people who care about producing good services, good products at the right price but on an honorable basis. Reverend Jefferson is one who I think demonstrates we can do that, and he does it with great grace.

Most importantly, he is a moral leader for a broader community by demonstrating with all aspects of his life how important it is to recognize that we all live under a greater power than what I think we sometimes think we live under in our own lives. Sometimes we are too focused on what we are about, and he is a great teacher about the importance that we are one nation under God.

I am honored and privileged he has joined us today. I am honored and privileged that he is my friend. I thank the Presiding Officer for the opportunity to welcome Rev. David Jefferson to the Senate Chamber.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the Republican leader or his designee.

The Senator from Maine.

Ms. COLLINS. I thank the Chair. Madam President, I ask unanimous consent that I be permitted to proceed for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LAPSES IN CORPORATE RESPONSIBILITY

Ms. COLLINS. Madam President, as every Member of this Chamber knows and, more importantly, as every American investor knows, we have recently witnessed lapses in corporate responsibility unlike anything that has occurred during the past 70 years. It is our role to determine why this has happened and what can be done to prevent it from continuing to happen. I rise to offer some thoughts, as well as to lend my support, to the accounting reform legislation now on the Senate floor.

Several years ago, Federal Reserve Chairman Alan Greenspan characterized the latter stages of the great bull market of the 1990s as irrational exuberance. Although stock prices rose for a few years after that statement, they ultimately collided with economic reality and embarked upon an extended decline. It now appears that that irrational exuberance was being sustained in some instances by improper accounting. Put differently, one way of satisfying the insatiable appetite of some for ever-increasing corporate profits, as well as for rich compensation packages, was to cook the books. Many, although not all, of the recent alleged abuses have occurred in what has been the hot sectors of our economy.

Electric deregulation, the development of the Internet, new medical treatments, and the spread of broadband are all thought to hold enormous prospect for future growth. Unfortunately, for some of the companies in those areas the growth in accounting creativity outstripped the growth in business fundamentals. I make this point because I think it contains a lesson for those of us in Congress, as well as for Federal and State regulators.

During my years as a financial regulator in my home State of Maine, the advice we gave to investors, to the point where it began to sound like a broken record, was that if it seems too good to be true, it almost certainly is. The comparable message for those of us with oversight responsibility is that if one is not vigilant during the boom, when things seem too good to be true, cleaning up after the bust will be far more difficult.

During my first 4 years in the Senate, I was privileged to serve as the chairman of the Senate Permanent Subcommittee on Investigations. During that time, I held more investigations into fraud and abuse in our securities markets than on any other subject, despite the fact we were in the midst of a roaring bull market. Indeed, the roaring bull market made those investigations seem all the more necessary.

More recently, Senator LEVIN and I teamed up in an investigation of Enron Corporation, an investigation that is ongoing. In fact, we just released our first report on the failures of the Enron board of directors to exercise its fiduciary responsibilities. We found that too many of the Enron directors acted as rubber stamps rather than as watchdogs.

In short, the principal lesson of recent events for those of us in Congress may be the need to remember the importance of vigorous oversight and tough enforcement during the good times as well as the bad.

Let me now turn my attention to the conflicts of interest faced by some accountants, brokers, and corporate directors. American capitalism relies heavily on the fiduciary duty concept to protect those who entrust their money to large and often distant corporations. Accountants have a duty to investors to ensure the accuracy of financial statements. Directors have a duty to make certain that managers act in the best interest of the corporation, and stockholders have a duty to give advice that will best serve their client's needs. I believe that this structure is fundamentally sound, but I also believe we have allowed these trust relationships to be seriously eroded by conflicts of interest.

Confidence in our capital markets depends upon accurate and fair financial statements. To achieve that objective, we follow a maxim that President Reagan put forth in another context; namely, ''trust but verify.'' We trust corporate managers to give us honest financial statements but, just in case, we look to accountants to verify the numbers. Too often in the recent past accountants have let us down, principally because, in my view, conflicts of interest have undermined their fundamental fiduciary duty to investors. The source of this problem is that some accountants can depend on those whose books they examine not only for their auditing jobs but much more worrisome for lucrative consulting contracts.

In some ways, the situation for brokers can be even worse, because they frequently have a personal, as well as an institutional, relationship with those to whom they owe a duty. As the recent Merrill Lynch settlement demonstrated, when the same individuals are involved in giving advice to retail customers and securing underwriting business from the corporations they are supposed to be objectively rating, it is the investor who losses. Again, the fiduciary duty concept is not inherently flawed. Rather, it has been eroded by conflicting interests that cannot comfortably coexist.

The third component of what might be called the fiduciary duty triad is the corporate board. Frequently owing their positions to those whose activities they are to monitor, some board members suffer from the appearance, and in some cases the reality, of conflicts of interest. In my view, given

their part-time status and their dependence on management for information, the role of the independent directors, perhaps even more than the role of accountants or those of brokers, needs more scrutiny.

In our recent report on the role of the Enron board of directors in the corporation's failure, the Permanent Subcommittee on Investigations found that the board ignored countless warning signs of wrongdoing. In some cases, the board actually approved highly irregular, off-the-books partnerships that masked the company's true liabilities. The board's audit committee failed miserably to ensure the independence of the company's auditor, allowing Andersen to provide internal audit and consulting services while at the same time serving as Enron's outside auditor. In other words, in some ways, Andersen was auditing itself.

Finally, directors blessed financial deals that created conflicts of interest for the top executives of Enron Corporation. Such conflicts of interest are rotting the pillars supporting an essential element of capitalism, and that is the ability of investors to rely on those to whom they entrust their money.

Excising that rot requires two steps. First, we must redefine the roles of the accountant, the broker, and the board member. We must make it absolutely clear that their undiluted responsibility is to the investor.

Second, we must enforce those obligations with tough sanctions, such as those we approved yesterday, that will deter those who would breach these fiduciary duties. This leads logically to the role of the Government regulator. I do not see regulation replacing the fiduciary roles I have described for the simple reason that having Government verify every number in every financial statement would create a nation of regulators. The more effective role for the regulator is to make certain that others honor their obligations and to take swift and meaningful action when they do not.

I know from personal experience as a regulator in Maine that this is no easy task, and it is our responsibility to ensure that the regulators who carry it out have the necessary authority and the financial resources to do the job.

I am pleased the bill before us today incorporates provisions from legislation that I have introduced that will allow the Securities and Exchange Commission to discipline those brokers and investment advisers who have been barred by State regulators from operating within that State. As a result, the SEC will have the option of giving nationwide effect to the bans imposed by individual States, thus protecting citizens nationwide from dishonest or unethical brokers without having to undertake separate investigations. This is especially important because as we learned in my subcommittee's hearings on fraud in the microcap stock market, it is very easy for small-time crooks to move out of one State and into another, setting up shop and defrauding investors all over again.

The reforms needed to restore trust in our capital markets will require tough, effective action by government and self-regulatory organizations. I call on our Nation's business schools to examine the ethical and professional training they provide to corporate managers, accountants, brokers, and board members. The concept of a free market is one that is free from government direction but not free from the duty to act ethically, honestly, and competently. If our corporate leaders lack integrity, no amount of regulation will preserve our economy. How effectively we are conveying this message strikes me as well within the unique expertise of those running our business schools and training our future corporate leaders.

Congress, the SEC, State regulators, the exchanges, and perhaps even our educational institutions can help solve our current problem. Nowhere is the obligation to act greater than on Wall Street and in our corporate boardrooms. The American people are justifiably outraged by the breakdown in corporate ethics. This is not thievery by those lacking the resources to buy food and medicine, this is thievery by those with the resources to buy Picassos and Porsches. As a people, we do not begrudge others who earn their success, but we will not tolerate those whose success rests on breaching ethical and legal obligations.

We must also recognize that although not often mentioned, this problem has ramifications for our standing in the world community at a time when others are waging war on the American system. Our most successful exports since the end of World War II have been our political democracy and our free markets. Indeed, as China demonstrates, our economic views have prevailed even when our political ideals have yet to take root. Having persuaded the rest of the world of the vitality and the creativity of free markets, it would be tragic if we lost our way just when our economic values are gaining widespread acceptance.

A particularly ironic aspect of the current situation and one that would have Marx and Lenin spinning in their graves: Russia is taking steps to strengthen its system of corporate governance at a time when ours appears to be crumbling. While we need not worry that Moscow will replace New York as the world's financial center, it is not unreasonable to be concerned about how other nations judge our response to our current problems. Indeed, the rise in the euro and the drop of the dollar are disconcerting indications of their view to date. This is just one more reason we must act swiftly to put our house in order.

Recent corporate misdeeds have caused great harm, costing our economy and our shareholders billions of dollars and many people their retirement savings as well as their jobs. The impact on investor-employees who have lost both their jobs and their retirement savings has been especially cruel, and those responsible have forgotten that, because capitalism can survive only if people believe they can trust strangers with their money. Honesty and fair dealing are the lifeblood of our economic system.

It would also be unfair to paint with too broad a brush. We should take care not to condemn the many executives who do honor their obligations to their employees and their shareholders. Indeed, it is partly for their benefit as well as for the benefit of all Americans that we must restore confidence in our corporate sector.

In 1997, in my first statement on the floor of the Senate, I quoted the following observation from Winston Churchill: ''Some see private enterprise as a predatory target to be shot, others as a cow to be milked, but few see it as a sturdy horse pulling the wagon.''

I added that I do see private enterprise as that sturdy horse, and in the wagon it is pulling are the jobs of our constituents. I continue to hold that view. But we must recognize that the wagon has some loose wheels. It is our responsibility to the American people to make sure they are tightened and to institute the reforms that are needed to restore faith in corporate America.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

AFGHANISTAN FREEDOM SUPPORT ACT OF 2002

Mr. HAGEL. Madam President, this week I introduced the Afghanistan Freedom Support Act of 2002, S. 2712. I am pleased to be joined in this effort by the senior Senator from North Carolina, Mr. HELMS, the former chairman of the Foreign Affairs Committee in the Senate. I ask unanimous consent his name be added to this bill as an original cosponsor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HAGEL. This legislation is similar to H.R. 3994, sponsored by the chairman of the House International Relations Committee, Congressman HYDE. This bill was passed in the House of Representatives on May 16 by a vote of 390 to 22.

The Afghan Freedom Support Act commits the United States to the democratic and economic development of Afghanistan. In addition to the economic and political assistance found in title I of this legislation, title II seeks to enhance the stability and security of Afghanistan in the region by authorizing military assistance to the Afghan Government and to certain other countries in the region, including assistance for counternarcotics, crime control, and police training.

The United States must stay closely and actively engaged in helping Afghanistan through a very dangerous

and difficult transition to stability, security, and, ultimately, to a democratic government. We are at the beginning of a long process. We cannot be distracted or deterred from this objective. Our credibility, our word, and our security, are directly linked to success in Afghanistan. And there cannot be political stability and economic development in Afghanistan without security.

My legislation, and the companion legislation passed by the House, would authorize $1.15 billion over 4 years for economic and democratic development assistance for Afghanistan, as well as up to $300 million in drawdown authority for military and other security assistance. The main elements of my legislation are as follows:

It authorizes continued efforts to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries; it authorizes resources to help the Afghan government fight the production and flow of illicit narcotics; it assists efforts to achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan; it supports strengthening the capabilities of the Afghan government to develop projects and programs that meet the needs of the Afghan people; it supports the reconstruction of Afghanistan through creating jobs, clearing landmines, and rebuilding the agriculture sector, the health care system, and the educational system of Afghanistan; and it provides specific resources to the Ministry for Women's Affairs of Afghanistan to carry out its responsibilities for legal advocacy, education, vocational training, and women's health programs.

This legislation also strongly urges the President to designate within the State Department an ambassadorial-level coordinator to oversee and implement these programs and to advance United States interests in Afghanistan, including coordination with other countries and international organizations with respect to assistance to Afghanistan. In general, the Afghanistan Freedom Support Act provides a constructive, strategic framework for our Afghan policy, and flexible authority for the President to implement it. We must not allow this fragile interim Afghan government to unwind. We must put forward the appropriate investment of men, effort, and resources to complete the objective of a democratic government in Afghanistan.

If Afghanistan goes backward, this will be a defeat for our war on terrorism, for the people desiring freedom in Afghanistan and in central Asia, for America, symbolically, in this region, and for the world. It would be disastrous for our country because it would crack the confidence that people all over the world have in the United States. Afghanistan is the first battle in our war on terrorism. We must not fail.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CLELAND). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

The Senator from Michigan.

ORDER OF PROCEDURE

Ms. STABENOW. Mr. President, I yield myself 6 minutes this morning to speak, and then I ask that the distinguished Senator from Georgia, Mr. CLELAND, be yielded 6 minutes; additionally, the senior Senator from North Dakota, Mr. DORGAN, be yielded 6 minutes; and 6 minutes also to the Senator from Florida, Mr. GRAHAM; and an additional 6 minutes to the distinguished junior Senator from Georgia, Mr. MILLER.

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

PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, next week we begin one of the most important debates that we will have, I believe, as a Senate, throughout this session and possibly for years to come. That is a debate about whether or not we are going to meet two goals that the American people have been asking us to address. The first is a Medicare prescription drug benefit for our seniors, for those who have disabilities—a comprehensive Medicare prescription drug benefit. Second, we want to lower prices—lower prices for everyone.

We know in fact not only do seniors, who use the majority of prescriptions, have high prices, but everyone who has prescription drugs does. If you are paying through insurance, you are paying higher insurance rates. If you are a businessperson, you are seeing your health care premiums rising. Small businesses—many in Michigan come to me and talk about 30-percent, 35-percent, 40-percent increases. The big three automakers are juggling between being able to afford new materials for their automobiles and research and all the other costs that they have, versus health care, most of which is prescription drug increases. So everyone is paying.

We have two goals. We as Democrats are working very hard, and we invite our colleague to join with us, to provide real coverage for prescription drugs and lower prices for everyone.

It is incredibly important that we do that. I am concerned, as we move into this debate, given what was done in the House of Representatives and the efforts now on the airwaves by the organization funded by the pharmaceutical companies that are talking about how what was passed in the House was good enough, I am concerned that we really do what is necessary and not just what is in the interests of the drug companies.

The drug companies are here in force every single day. We know next week and the week after, as long as we debate issues of lower prices and real Medicare coverage, they will be here fighting everything—unfortunately. They do wonderful work in research and development. I am so pleased that we have so many that are out there doing good work. But we see, as an industry now, their efforts to fight everything.

We are talking about corporate responsibility this week on the floor of the Senate, the need for corporate accountability. We need corporate accountability and ethics in the drug industry as well. I am deeply concerned that we do not see efforts to work with us for something that provides reasonable profit. We want them to succeed, but we do not want to continue to see exorbitant price increases and profits on the backs of our seniors, those with disabilities, our families, our small businesses.

I am deeply concerned about what we were reading in the paper during the House debate. Our Republican colleagues, in fact a senior House GOP leadership aid said yesterday:

> Republicans are working hard behind the scenes on behalf of PhRMA [which is the drug industry lobby] to make sure that the party's prescription drug plan for the elderly suits drug companies.

This was in the Washington Post, June 19 of this year. They are:

> . . . working hard behind the scenes to make sure that their . . . plan . . . suits the drug companies.

I hope next week we will work just as hard in this body for a prescription drug plan that suits the American people.

I am so pleased to see my distinguished colleagues from Georgia here, one in the chair and the junior Senator who came into the Senate with me, who is one of the lead sponsors of the bill that we have in front of us along with the Senator from Florida, Mr. GRAHAM.

We have a plan. We have a plan that works, that pays the majority of the bills, that does the job, that brings together the collective buying power of 39 million seniors, and which will require that prices be lowered. We have the plan. Our plan is not the plan of the drug companies. It is not the plan which drug companies are advertising about—the pretty ads from Seniors United that are on the air from the drug company, the front senior group that thanks the Republican colleagues in the House for voting for their plan, the plan that supports the drug companies.

We have a plan for the American people.

I would like to share for a moment two stories from the Web site which I set up. I set up the Prescription Drug People's Lobby. There are six drug company lobbyists for every one Member of the Senate. I invited the people of Michigan to join with me to be part

of our people's lobby to make sure the real story gets heard. I would like to share a story from Rochelle Dodgson of Oak Park, MI. I thank her for being a part of our Prescription Drug People's Lobby.

She writes:

My mother is currently insured under COBRA after losing her job in August 2001. While she has her basic Medicare coverage, she will lose her supplemental medical coverage in January 2003. She has recently been diagnosed with Multiple Myeloma and will require treatment for this blood disorder the rest of her life. The medications she was taking before this new illness cost over $500 retail monthly. I have not checked the prices of the 'chemo' she takes monthly nor the cost of the Procrit she takes weekly. I expect her monthly out-of-pocket expenses to be around $700 a month. Her social security is just over $800 monthly. I can't imagine having to budget food and housing expenses along with medication on that kind of income. My husband and I will try to find a way to budget some of her medical costs into our own expenses but we also care for my husband's mother.

My mother is still a viable part of society. She doesn't deserve to be struggling just because she has chronic illness.

Rochelle, thank you for your story. Your mother does not deserve to struggle with $700 medical bills with a $700-a-month income.

I shared that one story today from Michigan. For those who want to get involved, please go to my Senate Web site around the country at Fairdrugprices.org. You can be involved and make your voice heard, and the right thing will happen here in the Senate.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. DORGAN). Who seeks recognition?

The Senator from Georgia is recognized.

Mr. CLELAND. Mr. President, I echo the eloquent words of the distinguished Senator from Michigan, who has done yeoman service for this body, for seniors and the disabled of America in helping put together and advocate for a meaningful drug benefit under Medicare. And special kudos go to my colleague from Georgia, Senator MILLER, and to my distinguished friend from Florida, Senator GRAHAM, for really taking the lead in articulating a Medicare supplement that we can embrace in this body and that the American people can embrace.

When I talk to my fellow Georgians about the issues that are most on their minds, that most affect their lives, the one that I hear about more often than any other is the high cost of prescription drugs. Everywhere I go, people ask me, ''When are Congress and the President going to make good on their promise to help us with prescription drugs?'' And all I can tell them is, That's a fair question; I'd like to know, too. Over the past couple of years, their comments have become increasingly urgent. The cost of prescription medications rose a staggering 19 percent in 2000, and another 17 percent in 2001. I can assure you most people's incomes didn't rise by 17 percent in 2001. It is an iron-clad law of economics that if you live on a fixed income, and one portion of your monthly expenses rises dramatically, other portions must be reduced. For many of those seniors whose budgets are already stretched as thin as they can go, an increase in prescription drug costs means that expenditures on the other necessities of life—basics like groceries or rent—must be cut. The choice between medically necessary, life-sustaining prescription drugs and the other basics of life is an impossible one—and one that no American should be forced to make.

The Medicare program has provided for many critical aspects of health care for seniors over the course of its 36-year history, and by and large it has been a great success. But it has been said that while Medicare is a Cadillac program, its model year is 1965. Indeed, if we are to claim that Medicare provides health care security for seniors, we must update it to cover the component of health care that for many has become more burdensome than any other—prescription medications. People are desperate for any help they can get. Congress and the President promised to deliver that help. If we can't, or won't, the people ought to send this Congress home and elect one that will.

There are a number of options on the table right now. Some are serious efforts to provide meaningful relief to seniors. Some are not. No one in Congress wants to admit that they are against providing a prescription drug benefit for seniors. And I don't blame them. That's an indefensible position. So some, especially in the House, write weak legislation that they call a Medicare prescription drug benefit but which allows drug companies to charge whatever premiums they want, leaves huge gaps in coverage, charges a high deductible, relies on private insurers who have already told us they will not participate, and will cover just 19 percent of seniors drug costs over the next decade, according to the CBO. Such a proposal amounts to little more than a ''legislative placebo,'' which its authors know has no chance of really helping seniors, and no chance of passing this Senate. But they draft such legislation not because they think it will help seniors but so they can go back home and say that they supported a prescription drug benefit for Medicare beneficiaries. They cynically believe that people won't pay enough attention to the substantive differences between a real proposal and theirs, enabling them to shirk the responsibility that they rightly must bear if this Congress once again fails to pass a Medicare prescription drug benefit. Where I come from, when you promise people one thing and then try to give them another, that's called a ''bait-and-switch'' scheme. And where I come from, we have a saying: ''That dog won't hunt.''

President Bush has made it clear that, in the war against terror, there are no shades of gray. Either you are for us, or you are for the terrorists. The same clarity that exists in the Bush doctrine ought to apply to the present debate on prescription drugs. Either you are for a real prescription drug benefit for seniors, or you aren't. If you are for a weak measure that purports to be a prescription drug benefit but has no chance of ever benefitting anyone, you are not for a real prescription drug benefit for seniors, and it is time to come clean and say it. It is long past time to dispense with artful dodging and equivocation. Just as no country that deals only halfway with terrorists can be considered on our side in the war against terror, so no one who proposes a halfway approach to prescription drugs under Medicare can be considered to be for real help for seniors. If you don't know whether or not the legislation you are for will provide a real benefit for seniors, let me make it real clear for you: if it was written by the insurance lobby and endorsed by the drug companies, you can bet it is not a real benefit for seniors.

People are hurting. If you need proof, go back to your state or your district and spend a day talking with seniors about their daily struggles. You will find genuine hardships, and you will see that it is the most vulnerable among us who are struggling the most. This is a serious problem, and we need serious people who will work in good faith toward a solution. In the Senate, I am pleased to have teamed up with Senators ZELL MILLER and BOB GRAHAM as an original cosponsor of the Medicare Outpatient Prescription Drug Act of 2002, which will provide a voluntary Medicare prescription drug benefit that will deliver real, meaningful help to seniors. Under this proposal, which has received high marks from the AARP, any Medicare beneficiary who chooses to participate would, for a monthly premium of $25, receive drug coverage from the very first prescription filled of the year. There is no deductible, and there are no gaps in coverage. The lowest-income seniors would receive full subsidies for premiums and co-payments, and those who earn a little more would receive partial assistance. Our proposal, if adopted, will dramatically reduce seniors' out-of-pocket costs for prescription drugs, allowing them to use their food money for food and their rent money for rent. It is with full confidence that I say that this measure is the best proposal on prescription drugs I have seen to date, and I commend Senators GRAHAM and MILLER in particular for their leadership on it. I urge my colleagues in this body and in the House to act favorably on it without delay.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, I join my colleagues in saying that the piece of legislation we are considering, authored by Senator GRAHAM, Senator

MILLER, and others, is a good piece of legislation. I am proud to support it. But let me talk just for a few minutes about this issue that brings us to the floor of the Senate, the issue of prescription drugs, and prescription drug pricing especially.

Last year, the cost of prescription drugs in the United States rose 18 percent; the year before that, 16 percent; the year before that, 17 percent. So 16, 17, 18 percent: relentless increases in the price of the cost of prescription drugs.

What does that mean to the American people? It is devastating to all Americans who must access these lifesaving, miracle prescription drugs but cannot afford them. It is especially devastating to senior citizens. They make up 12 percent of our population in this country, and they consume one-third of all the prescription drugs. They have reached those declining income years and discover that miracle and lifesaving drugs they need to take are beyond their reach.

A woman in North Dakota, at a meeting 1 day, came up to me and said: May I speak with you a moment? She was a thin, frail-looking lady close to 80 years of age. She grabbed me by the arm and said: Could you help me? I said: I'll sure try.

She said: I have problems—diabetes, heart disease—and need to take medicine that the doctor has prescribed, but I can't afford that medicine. Could you help me?

And then her eyes filled with tears and her chin began to quiver and she began to cry.

All over this country there are men and women—particularly senior citizens, but others as well—who need access to these prescription drugs and cannot afford them.

We are going to pass a prescription drug benefit, and we are going to put it in the Medicare Program. I support that. Senator GRAHAM, Senator MILLER, and others have done wonderful work in that area.

We are going to do two other things as well. We are going to pass a piece of legislation, I hope, that deals with the issue of generic drugs, which is another way to bring down costs; for if we do not do something about driving down costs, or at least putting downward pressure on drug costs, then we will simply break the bank. We will attach a drug benefit to the Medicare Program but if we don't lower drug costs we will suck that tank dry, and break the back of the American taxpayer. We have to put downward price pressure on prescription drugs.

One other piece of legislation that we are going to consider next week is the issue of reimportation. Senator STABENOW and I, and others, have worked on the issue of reimportation, not because we want Americans to buy their prescription drugs from Canada—and that is what our bill will allow to happen; pharmacists and distributors will be able to access from Canada the FDA-approved drugs and bring them to this country and pass the savings along to the consumer—it is because we want to use this mechanism to put downward pressure on drug prices in this country and force the pharmaceutical manufacturers to reprice their prescription drugs in the United States. That is exactly what will happen.

With unanimous consent, I would like to show two pill bottles on the floor of the Senate.

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

Mr. DORGAN. This is Celebrex, widely advertised, used for pain, particularly arthritis. It is widely advertised all across this country. The company that makes this markets it successfully, and good for them for helping produce this medicine. But let me describe the pricing strategy.

If you buy this medicine, Celebrex, in Canada, you get it in this bottle, and it costs you 79 cents per tablet. Buy it in the United States, and you get it in this bottle which is essentially the same.

So 79 cents for this prescription drug per tablet in Canada, but if you are a U.S. citizen, you pay $2.22. It is the same pill, made by the same company, put in the same bottle, FDA approved. The difference? The price.

The U.S. consumer is told: You should pay nearly triple what a Canadian consumer is charged by the same company.

Question: Why should we allow that to happen? Why should the U.S. consumer pay the highest prices in the world for prescription drugs that are sold at a fraction of the cost in virtually every other country of the world?

The answer is: It should not continue to happen. We need to put downward pressure on prices in this country on prescription drugs. This is not about, as the pharmaceutical industry would allege, shutting off research and development if you put downward pressure on prices. That is nonsense.

The fact is, the Europeans pay lower prices—much lower prices—for the same prescription drugs than we do, and yet there is more research and development done in Europe than in the United States by the pharmaceutical manufacturers.

My only point is this: The pharmaceutical manufacturers are good companies. They are the most profitable companies in the world. Good for them. I appreciate, and all Americans appreciate the research and development they do. We, of course, do a substantial amount of it here in the Federal Government that is federally paid for as well.

I am not suggesting there are bad actors here. I am suggesting the pricing policy is wrong. The pricing policy is bad. It is not fair to say to the American consumer: You pay the highest prices in the world by far for the same drug. No American should have to go to Canada to get a fair price on a prescription drug made in the United States. That ought not happen. We aim to change it, even as we debate this issue of a prescription drug benefit in the Medicare plan.

Why do we want to do that? Because I believe there should be a benefit in Medicare for prescription drugs. But I believe if we do not do something to put downward pressure on prices, we simply break the back of the taxpayers and break the bank of the Federal Government. That is why reimportation goes hand in hand with the underlying legislation I am pleased to support, and I commend Senator GRAHAM and Senator MILLER and Senator STABENOW and others for their leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. Mr. President, first, I congratulate my colleague from North Dakota on that very timely and very compelling message he has just given.

I rise today, also, to speak, once again, about prescription drugs and the struggle our seniors are facing each and every day.

We are on record as saying we will have a vote in this Senate before the August recess on a prescription bill. I have always hoped that meant adding a prescription drug benefit to Medicare. We must stick to that schedule. We must honor that commitment.

We have kept our seniors waiting in line for too many years, and we have bumped them too many times in the past. We have disappointed them time and time again. We cannot make them wait through another election cycle for who knows how many years. If that happens—and a lot of political pundits are predicting it will—then we should be ashamed of ourselves.

I am telling you, our seniors are not going to accept just a shrug of the shoulders and a ''well, I tried'' explanation. I don't think that is going to get it this time around.

There is a lot we can do to help seniors with the cost, as the Senator from North Dakota has discussed, and also about the coverage of their prescription drugs. I will work hard to make sure the bill we pass in the Senate offers real help for our seniors, especially our neediest seniors.

I recently saw the results of a new study that were shocking to me. It said nearly 1 in 5 American women ages 50 to 64 did not fill a prescription for needed medication because they could not afford it. That is ages 50 to 64. Think what the number must be for those over 65.

Those are our mothers and our grandmothers. They are those women who gave us life and tended to our needs who are now foregoing their needs because they cannot afford medication. They are putting their health in jeopardy. Their very lives are being endangered. Their years on this Earth are being cut short. Make no mistake about it, if we allow that to continue,

this Congress is an accessory to that crime.

I believe the bill I am a cosponsor of, along with Senator GRAHAM and Senator KENNEDY and Senator DASCHLE and the senior Senator from Georgia who is presiding, and about 30 other Senators, fulfills our promise to all seniors and offers the most for our neediest seniors.

Our bill gives our neediest seniors their medicine for free. For those who earn less than $11,900 a year—and that is about 12 million seniors out there—there is no premium, there is no copayment. They receive 100-percent coverage from the first prescription filled.

To that widow with trembling hands who is trying to cut that pill in half so her medicine will last a little longer, I hope the Senate will send a message to her that help is on the way. To that old man, proud and self-sufficient all his life, who has to whisper to his pharmacist that he doesn't have quite enough in his checking account and he will have to come back later, I hope the Senate will send the message to him that help is on the way.

I look forward to debating this provision of our bill and many others when we take up the prescription drug legislation next week. I urge my colleagues in both Houses and in both parties to keep this in mind: Our duty to seniors is not to just debate an issue. They have heard all that before. Our duty is to pass a bill, a meaningful bill.

I yield the floor and 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. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. GRAHAM. Mr. President, I am pleased to join my colleagues today in the discussion of pending legislation, as of next week, which will relate to the long-held desire of senior Americans to have within the Medicare Program a prescription drug benefit.

One of the key issues in the debate we will begin next week will be, How will this benefit be administered? As we answer that question, we need to ask some questions about what do older Americans want. Older Americans want a plan that is straightforward, simple, a plan with which they are familiar. Even more important, they want a plan that actually works, that they can take to the local pharmacy or, if they use a mail order pharmacy, that they can take to the post office box and get their drugs.

That is why the Senate Democratic bill, which I am sponsoring with Senator MILLER, Senator KENNEDY, and others, including the Presiding Officer, uses the exact same system that America's private insurance companies use. As an example, this happens to be the Blue Cross Blue Shield service benefit plan, a plan which many of us as Federal employees utilize. If you turn to page 119, you will see the outline of what Blue Cross Blue Shield provides and how they provide it. It is exactly the same structure we are proposing in our plan. It is a structure with which older Americans, most Americans, are extremely familiar. It is the same system that predominates in not only Blue Cross Blue Shield but virtually every other major private insurance plan.

These plans are based on the concept of using a pharmacy benefit manager, or PBM, as the intermediary between the beneficiary and the pharmaceutical companies.

What do these PBMs do? They negotiate directly with the pharmaceutical companies in order to achieve the lowest prices. They are held accountable for containing costs and providing quality care and service. If they fail to do so, their payments are reduced or can be eliminated.

To America's seniors, this plan would be like a pair of comfortable old shoes, shoes they have been wearing for most of their lives. Would it be fair to ask Medicare beneficiaries at the time of retirement to suddenly change shoes? Even more significant, would it be appropriate to ask them to put on shoes that don't fit very well? But even more than that, is it fair to ask them to put on shoes of a design which has never been worn by another American anywhere, any time?

That is what the House Republican plan runs on: An untried, untested delivery system that would force our seniors to be the guinea pigs for a social experiment.

Their plan would give to a different set of insurance companies taxpayers' dollars as a subsidy to lure them into the market since insurers have already said they don't intend to offer this benefit. They do not believe it is an appropriate use of the insurance system.

Our plan would be easy and familiar. Let me briefly mention some of the features of our plan. It would ask seniors who voluntarily elect to participate—no senior would be required to participate unless they chose to do so—to pay a $25 monthly premium. There is no deductible. There will be coverage from the first pill purchased after you sign up. There would be a copayment of $10 for generics, $40 for formulary necessary drugs, and $60 for other drugs. There would be a maximum payment out of pocket of $4,000 per year. Beyond that, there would be no more copayments.

The plan says what it means and it means what it says for all seniors all over America. Seniors with incomes below 135 percent of the poverty level would not pay premiums or copayments. Beneficiaries with incomes between 135 and 150 percent of poverty would pay reduced premiums. That is the plan.

We would allow all seniors a choice of which PBM to use. It would be required that there be multiple PBMs within every section of the country. Those of you who live in Georgia would have a choice. Those of us in Florida would have a choice. Those in North Dakota and Vermont would have a choice.

The PBMs would be accountable to the Medicare Program, would be required to prove their ability to contain costs, or else they wouldn't be awarded a contract to participate. In fact, they would not even get paid if they were unable to contain costs and provide the high-quality service which our older Americans deserve. That is in the language of the Graham-Miller-Kennedy-Cleland, and others, legislation.

The House Republican plan would leave all these choices in the hands of an insurance company. The companies would be allowed to choose the benefit for seniors. Why is that? The House plan only requires that the individual plan meet a vague standard of actuarial equivalence. It does not provide the certainty which American seniors deserve and which they will receive in the Graham-Miller-Kennedy-Cleland, and others, plan.

I look forward to a full discussion of this beginning next week.

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

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

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 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.

Gramm (for McConnell) amendment No. 4200 (to amendment No. 4187), to modify attorney practices relating to clients.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, this has been cleared by both managers of the bill. We have had a number of inquiries about the need for more time to talk on various issues. As the Chair knows, from 12:30 until 2 o'clock, we have our policy luncheon, and normally we don't have votes.

I ask unanimous consent that the previously scheduled order, which provided that Senator ENZI be recognized at 12 noon today to make a motion to table the McConnell amendment No. 4200, be modified to provide that the recognition of Senator ENZI occur at 12:45 today, with the additional 45 minutes, from 12 to 12:45, equally divided and controlled between Senators SARBANES and GRAMM, or their designees, and that all other provisions of the previous order remain in effect.

Mr. DORGAN. Mr. President, reserving the right to object, I would like to engage in a brief discussion with my colleague from Nevada under my reservation of an objection, if I might. I shall not object to the specific request of the Senator, but I have just visited with the chairman of the committee and you know there exists a list of amendments that Members of the Senate wish to offer to this legislation.

As I have watched this process over the last couple of days, it appears to me that we have set up a gatekeeper of sorts for determining who will offer amendments and whether there will be votes on the amendments, and it appears to me we are not making very much progress. I would like to get some sense of whether we have a clear process beginning this afternoon, so that this afternoon and this evening we might be able to move through 6, 8, 10 amendments and get time agreements so Members of the Senate have the opportunity under the rules to offer and have considered amendments that they consider important in this legislation.

Mr. REID. Mr. President, I say to my friend, the chairman of the committee has worked for hours and hours trying to get movement so people could offer relevant amendments. We have been not very successful, to be very candid with the Senator from North Dakota. I have stood by the Senator from Maryland and coerced, urged, and we haven't gotten to the debating point yet. We have done everything we can.

There are a number of Senators, not the least of whom is the Senator from North Dakota, who have amendments. There is the Senator from Michigan, the Senator from New York, and others who have spent a lot of time wanting to offer amendments. We are doing everything we can. We hope the Enzi motion to table will break some of this loose.

I say to my friend from North Dakota that we understand how he feels. The only thing I will say is there is no gatekeeper. On one bill the two managers said they would oppose any amendment that was not relevant, but that is not the case now. The Senator from Maryland has expressed to me that there are some relevant amendments which should be offered. He has done everything he can to——

Mr. BYRD. Mr. President, who controls time?

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia controls the next 45 minutes. There is a unanimous consent request pending.

Mr. BYRD. Mr. President——

Mr. DORGAN. Mr. President, reserving the right to object.

Mr. REID. If I can ask my friend to let me finish. I ask unanimous consent that the time in the colloquy between the Senator from North Dakota and the Senator from Nevada not take away from the time of the Senator from West Virginia.

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

Mr. DORGAN. Mr. President, continuing on my reservation—and it is not my intention to delay the Senator from West Virginia—I want to try to understand what is happening.

First, my comments should not in any way suggest that the chairman of the committee hasn't done an extraordinary job. I have great respect for him. But it has been difficult to get amendments up and get votes on them in the last day or two. There are a good number of very important amendments.

Under the reservation, I say that we know what has happened to the stock market in the last few days. We know this is a critically important issue—this legislation and the amendments to it. We ought not to treat this lightly. This piece of legislation ought to be on the floor and open for amendment, having a robust discussion on the very important issues dealing with corporate responsibility.

Instead, what is happening is we have a couple people on the floor who seem to want to stall this process and prevent amendments from being considered in order. I hope—and I will come back after lunch today—to offer at least two amendments. I want to debate them and get them voted on. At least as a Senator I have a right to do that.

It is very important to me that I be able to add these amendments. If the Senate doesn't like them, fine, we will vote. But it is important to me to have that opportunity. I shall not object to the unanimous consent request with respect to the tabling motion.

I wanted to say to the Senator from Nevada and the Senator from Maryland, who have done everything humanly possible to try to make this process work, that there are others in the Chamber who are trying to drag this process out and prevent others from offering amendments. I am going to assert my rights, to the extent I can, to say that before this bill is completed we need to have the best ideas everyone in the Senate has to offer about how to do this job.

The economy in this country is in significant trouble. We know it. The confidence the American people have in this economy and corporate governance has been shattered in many ways. It rests upon the shoulders of this institution to pass this legislation and do everything we can to make it the best piece of legislation possible to restore that confidence and give some lift to this economy. I wanted to make that point.

I appreciate the indulgence and the patience of the Senator from Nevada. If the Senator from Maryland will give me a chance to say this once again: In no way am I saying the chairman hasn't done everything humanly possible to move this along. He wants to move quickly. I shall not object.

Mr. GRAHAM. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I express my great admiration for what Senator SARBANES has done in presenting to America such a meaningful piece of legislation to deal with one of the great scandals that has occurred in the history of our free enterprise system, and taking a step toward restoring the confidence of the public in the investment community.

But as Senator DORGAN, I have an idea which, in fact, in one instance, is parallel to Senator DORGAN's; that is, I believe we need to be very clear that we are applying the same standards to corporations that have their corporate headquarters inside the United States as we do to corporations that take advantage of our capital markets and have chosen to locate or relocate their headquarters outside of the United States.

Mr. REID. Mr. President, I am reclaiming my time.

Mr. GRAHAM. Reserving the right to object, there are enough incentives to do that already in the Tax Code and otherwise. We should not be creating additional incentives for companies to run from their responsibilities within the United States. My specific——

Mr. REID. Mr. President, I want the floor back.

Mr. GRAHAM. I am raising this today——

Mr. REID. Mr. President, I have the floor.

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

Mr. GRAHAM. Mr. President, I am reserving my right to object.

Mr. REID. Mr. President, I have the floor.

Mr. GRAHAM. I will conclude my comments in short order.

The PRESIDING OFFICER. The Senator can either object or not. Reserving the right to object occurs at the indulgence of those who have the floor.

Mr. REID. Mr. President, we have built in time for people to speak. It is not fair to Senator BYRD and others who have been waiting to speak. I have no problem with Senator GRAHAM coming. I agree with his position. There is

time to be allowed under this unanimous consent agreement. Otherwise, the time will be all gone, and there are two Senators who have an hour and a half, by virtue of a unanimous consent agreement entered into last night.

It is not fair to use the extra half hour with these speeches that are taking away from Senator BYRD and Senator MCCONNELL.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object, just for the purpose of concluding my remarks.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I will be happy to yield to the Senator when I get the floor. We cannot make long speeches on reservations to object. We either object or we don't. I object and then I will be happy to yield to the Senator. I want to be fair. Am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. How much time does the Senator wish?

Mr. GRAHAM. Just 1 minute.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Florida for 1 minute, reserving my right to the floor.

Mr. GRAHAM. I appreciate the courtesy of the Senator. I want to bring to your attention an article from the Washington Post today. I ask unanimous consent that this article be printed in the RECORD.

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

SEC CHAIRMAN PITT A POTENTIAL LIABILITY TO ADMINISTRATION

(By Dana Milbank)

While President Bush was delivering his long-awaited speech on corporate governance Tuesday, Securities and Exchange Commission Chairman Harvey L. Pitt was exactly where many Bush aides wanted him to be: on a week-long beach vacation.

''We were not surprised that the chairman was not included in administration plans for public appearances,'' SEC spokeswoman Christi Harlan said. ''The commission is an independent agency.''

White House officials, though calling it a coincidence, acknowledged they had no desire for Pitt's presence.

The arms-length treatment of Pitt underscores a dilemma for Bush and his radioactive SEC chairman. Many Democrats and even a few Republicans have called for Pitt's resignation because of his alleged conflicts of interest and ties to the accounting industry. There is no sign that Bush is even thinking of dropping Pitt. But whether Pitt stays or goes, he is a potential liability.

Dismissing Pitt would violate the Bush code of loyalty and would be viewed as validating Bush's critics, from Senate Majority Leader Thomas A. Daschle (D–S.D.) to Bush's Republican nemesis, Sen. John McCain (Ariz). ''Dropping Harvey Pitt right now would be an acknowledgment of wrongdoing where there's been no wrongdoing,'' said GOP lobbyist Ed Gillespie, a former Bush campaign aide.

Forcing Pitt out would also open the White House to charges of interfering in the SEC's investigation of Halliburton Co.'s activities when Vice President Cheney was its chief executive Underscoring that danger, Halliburton shareholders yesterday filed a fraud lawsuit in Dallas against the company and Cheney. White House press secretary Ari Fleischer said the suit is ''without merit.'' That prompted Larry Klayman, whose group, Judicial Watch, represents the shareholders, to accuse the White House of seeking to influence the SEC's investigation.

Yet Pitt's presence as the government's top securities watchdog carries dangers for Bush, too. Even some Pitt defenders say his close ties to the accounting industry limit his credibility as a reformer. In his first speech as SEC chairman last year, Pitt told an audience of auditors that the SEC would be ''a kinder and gentler place for accountants.''

''Pitt has been in hot water since day one and WorldCom turned it into a full boil,'' said GOP operative Scott Reed. Because Bush will not drop Pitt, Reed said, ''McCain and the Democrats have turned him into a political piñata, and that will continue ad infinitium.''

Democrat Chris Lehane, who defended Bill Clinton and Al Gore during that administration's scandals, said Bush is making the wiser political choice in keeping Pitt, even though Pitt could undermine faith in Bush's reforms. ''Pitt could do everything right and nobody's going to give him credit for it,'' he said.

Pitt's foes point to his past legal work for executives of now-sullied corporations, including MCI, Merril Lynch & Co., Arthur Andersen LLP and other accounting firms. He has also been criticized for meeting in April with a former client, KPMG Consulting Inc., while KPMG's audits of Xerox Corp. were being investigated by the SEC. Critics also say that as a lawyer, Pitt favored restricting federal oversight of auditing firms. Over the years, Pitt has represented figures such as Ivan Boesky and Michael Saylor in SEC actions.

Bush, in his Monday news conference, generously defended Pitt. ''I support Harvey Pitt—Harvey Pitt has been fast to act,'' Bush said. Later, Bush added: ''I'm going to give him a chance to continue to perform.''

Privately, Bush has expressed amazement at the conflict-of-interest charges. ''It's only in this town that people want someone who doesn't know what they're talking about to lead an agency,'' he told congressional Republicans visiting the White House yesterday.

Pitt has an unlikely defender in Lanny J. Davis, one of President Clinton's scandal handlers. ''The attack being made by Democrats could be made on most anyone for having conflicts from prior positions,'' he said. But Davis said the administration has been making matters worse. ''The more you bottle up Harvey Pitt, the more you allow Democrats to make him an issue,'' Davis said.

Observers on both sides expect Pitt to make a public effort to build his credibility by demonstrating that he can be hard on his old friends. Indeed, some in the administration joke that Pitt will come to resemble a model Democratic SEC chairman, one heavy on regulations.

The White House has distributed evidence of Pitt's activity on the job: requiring chief executive and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures; seeking to bar 54 officers and directors; and issuing a long list of new reporting rules and regulations.

Pitt was not Bush's first choice for the SEC job, and officials say he continues to be far from Bush's inner circle. The reforms Bush announced Tuesday were developed largely by Treasury Secretary Paul H. O'Neill and White House deputy staff chief Joshua Bolten, with help from Bush economic advisers Lawrence B. Lindsey and R. Glenn Hubbard.

But Bush is stubborn about demonstrating loyalty to his aides, which enables him to claim reciprocal loyalty. Officials say he continues to defend Army Secretary Thomas E. White, embattled because of his Enron Corp. ties and personal travel, because White has been faithful to Bush.

But when underlings act disloyal, Bush can quickly cut them loose. Linda Chavez was dropped as Bush's nominee to be labor secretary when it appeared she had misled those vetting her background. Michael Parker, the civilian chief of the Army Corps of Engineers, was ousted for complaining about administration budget cutting.

Pitt so far has demonstrated fealty to Bush, and Bush aides remain loyal to him. ''The best thing to do is vigorously enforce the law, and that's what he's doing,'' Lindsey said.

Mr. GRAHAM. In this article, the President of the United States has given as one of his reasons to continue his support for the Chairman of the Securities and Exchange Commission, Chairman Harvey L. Pitt, the fact that Mr. Pitt has required chief executives and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures.

What was left out were all the American companies which have their corporate headquarters outside the United States of America. Apparently, the Chairman of the SEC believes he can discriminate and apply a principle only against those corporations which are sited in the United States and exclude corporations outside the United States.

That is an irrational and unfair distinction and one that we should correct as promptly as possible in this legislation.

I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, will the Senator yield for a unanimous consent request?

Mr. BYRD. Gladly.

Mr. REID. Madam President, I renew my unanimous consent request.

The PRESIDING OFFICER (Ms. LANDRIEU). Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Madam President, since the revelation last month of yet another corporate accounting scandal—this time involving the second largest telecommunications provider, WorldCom—the Bush administration seems to have lost its patience with corporate America. In fact, from the rhetoric we have heard from the administration in recent weeks, I expected to hear the President tell corporate America this week that his top advisors had been in the White House basement planning, not just a corporate fraud task force, but a new Department of Corporate Security.

The President said last month at the G8 summit in Canada, ''The revelations

that WorldCom has misaccounted [$3.8] billion is outrageous.''

In his June 29 weekly radio address, the President warned corporate America that ''no violation of the public's trust will be tolerated. The Federal Government will be vigilant in prosecuting wrongdoers to ensure that investors and workers maintain the highest confidence in American business.''

The President apparently is so miffed with these corporate ''wrongdoers'' that he has elevated them in his rhetoric to a bad-guy level that is almost, but not quite as bad, as al-Qaeda's ''evildoers.'' Almost the same level; perhaps not quite.

WorldCom president and CEO John Sidgmore, in a June 28 letter to President Bush, joined the President in expressing his outrage. ''I want you to know that we, the current management team, are equally surprised and outraged . . . about past accounting irregularities at WorldCom,'' he said.

So the Bush administration and the CEO of WorldCom now both agree that American corporations teaming up with unscrupulous (or incompetent) accountants to mislead shareholders about how much money the company is making is an ''outrageous'' practice.

Madam President, how comforting it is. As Jackie Gleason used to say: ''How sweet it is.'' How sweet it is. How comforting it is to know that we have finally reached a consensus on that issue.

Despite the excuses and the explanations, I find little credibility in the argument that certain corporate executives lacked sufficient knowledge to ask the right questions about their companies' accounting practices.

If CEOs are worth their generous pay, one would think they could take the time to make sure that the company's chief financial officer is not padding earnings by omitting costs from the balance sheet.

In fact, one finds disconcerting the acute lack of shame—the acute lack of shame—S-H-A-M-E—on the part of some of these corporate executives. Former Enron CEO Jeffrey Skilling told the House Energy and Commerce Oversight Subcommittee that Enron had tight control on financial risk, but that he could not be expected to oversee everything and ''close out the cash drawers . . . every night.''

Can you imagine that kind of statement? I think it was Wordsworth who said: No matter how high you are in your department, you are responsible for what the lowliest clerk is doing.

Let me repeat that. Wordsworth said: No matter how high you may be in your department, you are responsible for what the lowliest clerk is doing. That was William Wordsworth. Let's take that statement and put it beside the statement of former Enron CEO Jeffrey Skilling when he told the House Energy and Commerce Oversight Subcommittee that Enron had tight controls on financial risk but that he could not be expected to oversee everything and ''close out the cash drawers . . . every night.'' Oh, that poor man. What a heavy burden he carried. That poor man. We can all shed crocodile tears for someone who is put into that very difficult position and then consider the kinds of salaries these people draw down.

Shakespeare said: ''The quality of mercy is not strain'd, it droppeth as the gentle rain . . . upon the place beneath.'' I will tell you, it does strain gentle mercy when we read about these scandals that have swept over this country and how these people plead the fifth amendment when they are called up before Senate committees and House committees—plead the fifth amendment. That is a stunningly irresponsible attitude for a chief executive.

It is something that you might hear from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. You might hear that from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. But we are not talking about a handful of change. We are talking about the American public. Those eyes that are peering—they are peering at this Senate floor at this very minute through the lenses of those cameras. They are the taxpayers out there. I see them looking through those cameras. I see them in West Virginia. I see them in Texas. I see them in Wyoming. I see them in New York looking through those cameras.

We are talking about them, the American public having lost by some estimates tens of billions—not millions—tens of billions of dollars of invested savings in companies that issued false—the Ten Commandments, I keep them on my walls; some of these CEOs should keep them on their walls—financial reports and tens of thousands of workers who have lost their jobs, and many have lost their meager earnings that they, too, invested, that is what we are talking about.

So here is an individual who tells a House committee he cannot be expected to oversee everything and close out the cash drawers every night—such a stunning, irresponsible, arrogant attitude on the part of a chief executive. I say again it is something that you might expect to hear—you might—from the teenage manager of a fast food restaurant who could not account for a handful of change missing from the cash drawer at the end of the night.

We are not talking, let me say again, about a handful of change. We are talking about the American public, those people out there, Republicans and Democrats and Independents, in the Alleghenies, along the eastern coast, on the storm-beaten coast of Maine, the fishermen on the mighty deep, the people in the Plains and the Rockies and beyond. These are the people, north and south, the public. We are talking about the American public having lost, by some estimates, tens of billions of dollars of invested savings in companies that issued false—and they knew they were issuing false—financial reports. Tens of thousands of workers who have to wash the grime from their hands and their faces, workers in the fields, in the mines, in the shipyards, those are the people we are talking about, the public, tens of thousands of workers who have lost their jobs.

Even after these corporations' fraudulent accounting, somebody ought to go to jail, and the doors should be locked and the keys thrown away. Throw away the keys. It really would not be too severe a punishment for some of these four-flushers.

Even after these corporations' fraudulent accounting methods are exposed, the accounting games seem to continue. After telling the Securities and Exchange Commission that it hid nearly $4 billion in expenses last year, WorldCom submitted revised financial reports to the SEC which the SEC Chairman, Harvey Pitt, immediately called wholly inadequate and incomplete. Apparently, WorldCom's revised financial statements included additional accounting errors dating back to 1999 and 2000. That, Chairman Pitt said, could add at least $1 billion to the company's financial revision.

No wonder the trust of those people is broken. No wonder the public's trust in corporate America has eroded. What kind of trust can the public have in companies that hide information in an effort to pull the wool over the eyes of American investors?

After WorldCom's announcement, the Bush administration sharpened its rhetoric and is now working to assure the American public that it recognizes the importance of transparency and disclosure. The Chairman of the White House Council of Economic Advisers, Glenn Hubbard, said in an interview last month that the President wants to reassure investors about the economy while also delivering a shot across the bow to leaders of corporations that abuses of the public trust will not be tolerated.

In the midst of congressional hearings last March, after the collapse of Enron, the President lectured corporate America about how to regain the public's trust. He said corporations must disclose relevant facts to the investing public and they must focus on the interests of shareholders, who are the real owners of any publicly held enterprise, to properly inform shareholders and the investing public that we must adopt better standards of disclosure.

That is nice rhetoric, but this administration hardly sets the model for openness and transparency. In fact, this is an administration that prides itself on operating in secrecy and governing by surprise. Remember the secret government that was being set up? In fact, this is an administration, let

me say again, that prides itself in operating in secrecy and governing by surprise.

I find it difficult to watch this administration lecture corporate America about virtues of disclosing information to the public while at the same time it is restricting the public's access to information about its own executive actions.

Last October, Attorney General John Ashcroft issued a memo encouraging Federal agencies to withhold unclassified records under the Freedom of Information Act, the law that gives the American public the legal right to certain Government information. The Attorney General even told the Federal agencies that the Justice Department would defend agency decisions to deny FOIA, Freedom of Information Act, requests.

Last November, the President issued an Executive order to limit access to Presidential papers that, under the Presidential Records Act of 1978, would normally be made available to the American public. The Executive order allows a former or a sitting President to block the release of records requested under the law by invoking ''constitutionally based privileges.'' The words ''constitutionally based privileges'' are in quotation marks.

The American people would have to go to court to challenge the privilege claim. The order could even permit a former or incumbent President to impede requests for old records simply by withholding approval for their release, effectively negating the need for the Chief Executive to even make the claim of executive privilege.

We have had our own little taste of this side of the coin from the executive branch as we on the Appropriations Committee, Senator STEVENS and I, tried to have the administration let Tom Ridge come up before the committee and testify.

Then we see this creation of this mammoth reorganization of Government that sprang like Minerva, fully clothed and armed, from the forehead of Jupiter.

When this administration's chief executive talks about adopting better standards of disclosure, I hope that these executive actions are not what he has in mind. These are just examples of the administration directly restricting the public's access to government information. The administration has also moved to limit access by Members of Congress, who are elected by the people and responsible for the oversight of executive actions in the public's behalf.

Last December, the President gave notice that he was unilaterally withdrawing the United States from the Antibalistic Missile Treaty, allowing the administration to begin development of a new antibalistic missile defense system. Soon after, the Pentagon began to exempt missile defense projects from traditional reporting requirements and Congressional oversight, an overt attempt to keep the Congress and the American people in the dark about the progress of that system. As the administration requests additional defense funds, the Pentagon is taking further steps to shield cost estimates and time tables from the Congress, making it harder to keep the administration accountable for technical and budgetary assessments.

The Dark Ages were supposed to have ended in about 1000 A.D. They lasted 1,000 years, the Dark Ages. Reminiscent of the Dark Ages, an administration that believes in keeping a Congress in the dark, the American people in the dark, and we are hearing a lot of sword rattling about it. An attack on Iraq—the administration should level with the Congress. It is an equal branch. It is not a subordinate branch to the Government. It never has been, and I hope never will be. Let's hear more about this plan to invade Iraq. Watch out for August when Congress is out of town, or before the election. Who knows?

This reorganization of Government sprang like Aphrodite from the ocean foam, and she was carried on a leaf to the island of Crete. She later appeared in full dress before the gods on Mount Olympus. They were stunned with her beauty.

This is what we see. These ideas sprang from where? This idea to reorganize the Government—and I am concerned it will also reorganize the checks and balances of the Constitution unless we are watchful—sprang from the bowels of the White House, the creation of four individuals who are named in the public press. Not exactly the equal, perhaps, of that committee that wrote the Declaration of Independence—Thomas Jefferson, Benjamin Franklin, Roger Sherman, John Adams, and Livingston, those five. Not exactly.

But look at all the commotion that ideas has created. Look out, the Congress is being stampeded into putting its imprimatur on that idea. Well, some parts of the idea may be OK, but we should not be in too big a hurry.

And that is to say nothing of the fact that these executive actions toward secrecy have occurred during a period in which the President has refused to allow Tom Ridge, in his capacity as the Director of Homeland Security, to testify before the Congress, and in which the Comptroller of the General Accounting Office was forced to sue the Vice President of the United States to obtain information about the White House energy task force and its connections to Enron.

These are not the actions of an administration that believes in the virtues of disclosing information to the public. This is an administration that not only embraces the idea of operating in secrecy, but flaunts its abilities to hide information from the Congress and the American public.

Upon announcing its proposal for a new Department of Homeland Security, the administration bragged to the media about how the plan had been pieced together by just four men and a few trusted aides in the basement of the White House. As the work became more detailed and the working groups expanded, the code of silence was gravely explained to each new arrival. At the end of each meeting, all papers were collected: nothing left that room, we've been told. The work was completed before any member of the Congress was briefed on the plan. White House Chief of Staff Andrew Card even arrogantly proclaimed, ''We consulted with agencies and with Congress, but they might not have known we were consulting.''

Now, get that. I can hardly believe my eyes, except my eyes have seen this prior to my having stated it on the floor. White House chief of staff Andrew Card even proclaimed—I used the adverb ''arrogantly,'' I will put it back in—White House chief of staff Andrew Card arrogantly proclaimed, ''We consulted with agencies and with Congress but they might not have known we were consulting.''

What a reflection on Congress. What is he saying about Congress? That is hardly a model of transparency that I want corporate America to follow.

We don't want to hear corporate CEOs saying we shared information with the American public, but they might not have known we were sharing it with them. The administration's euphoria for secrecy seems motivated in large part by its desire to implement a political agenda. That is what it is. A political agenda, regardless of whether it has the support of the American people.

Mr. REID. Will the Senator yield?

Mr. BYRD. I would be glad to yield.

Mr. REID. Mr. President, I have been listening to the Senator from West Virginia give his speech, and I am of the opinion maybe the reason all that secrecy takes place is they are running the White House like people run corporations. Rather than having a public institution as the administration and White House should be, maybe they are running the White House like a corporation.

I say to my friend that the White House, this administration is covered with corporate America. Maybe they think the White House is to be run like a corporation.

Mr. BYRD. The distinguished Senator from Nevada introduces an interesting idea. Maybe they do. Maybe anything goes. All is fair in love and in war they say. Now we can add, big business. Big business.

That is not a fair thing to say about many big businesses really because many of the people in big business are honest and try to do the right thing. They are open, they are transparent. It is too bad a few bad apples reflect on the whole barrel. I used to sell produce. I was a produce boy, married, with children coming on, and I found that a few bad peaches would quickly ruin the whole bushel. The same thing with apples and other fruits and so on.

When the administration's polls suggest opposition to certain policies from the American public, it limits access to information about that policy. I fear that the American public, and their elected representatives in Congress, at times are viewed by this administration as some sort of obstacle or hurdle that is to be avoided. There is a contempt, there is an arrogancy in this administration, there is a contempt for Congress. They hold Congress in contempt.

This kind of executive mentality can only emanate from the arrogance of an administration that believes the White House is the fountain of wisdom in Washington. Wisdom is the principal thing. Such a mentality is dangerous, it is absolutely dangerous. I was here in the Nixon administration. I remember what happened to that administration. Such a mentality is dangerous. We need only look to the corporate accounting scandals which this administration has so harshly criticized in recent weeks to see why.

Most economic pundits seem convinced that the hyperactive stock market of the late 1990s was the catalyst for a slow, steady deterioration in professional and ethical standards in corporate America. The pressure on CEOs and companies to produce earnings, quarter after quarter, resulted in a kind of competitive behavior that encouraged companies to push the accounting envelope. Rising profits and stock prices provided cover for underlying ethical lapses. The longer the boom lasted, the more brazen these corporations became in cutting corners and taking a little more off the top.

By the end of the boom, many companies appear to have been engaged in the kind of fudging, gamesmanship and ethical corner-cutting that, while legal in some cases, was certainly less than ethical. Unfortunately, it was only after the stock market began its inevitable decline and great piles of money were lost that people began to ask the critical, penetrating questions that should have been asked earlier to prevent this kind of behavior in the first place. Those harder questions are now leading to accounting revisions, executive resignations, lawsuits, and criminal investigations.

So far, the reflexive instinct of the business community and the Bush administration largely has been to blame a ''few bad apples,'' but that assertion is hardly consistent with the fact that the SEC opened 64 financial-reporting cases between January and March of this year, and that almost a thousand companies, not just a handful, have been asked to recertify to the SEC their financial statements through the last fiscal year.

It is somewhat ironic that the actions of chief executives were protected by soaring stock prices, since the administration finds itself in a similar position. Just like soaring stock, as long as the President's approval ratings remain high, presumably propped up by the American public's understandable desire to support the war on terrorism, the more latitude the administration will be granted in restricting information about its executive actions under the guise of national security. This kind of culture can be extremely dangerous. It was allowed to flourish in corporate America during the late 1990s, and now threatens the public trust.

The administration would do well to take some of its own medicine and make itself more transparent to the American public. For all of its expressed concerns about the public's loss of confidence in corporate America, this administration seems to have given little, if any, consideration to the loss of the public's trust in government. That is the most basic of commodities in republican government. I do not refer to it, as many politicians who ought to know better glibly refer to this, our system, as a democracy. They ought to go back and read Madison's 10th and 14th essays in the Federalist Papers. They will finally learn the difference—or be reminded of the difference. They probably have forgotten the difference between a democracy and a republic.

The public's trust in government—when the public loses its trust, when the public's trust is eroded, all is lost: The public trust. And sooner or later, high poll numbers will tumble, as they always do. We have seen them do it before.

Don't read the polls, I say to my colleagues, so assiduously, read the Constitution—which I hold in my hand. Read the Constitution. I say to the administration, I say to the executive branch, read the Constitution. Don't be so enamored with the polls. They are fleeting. Read the Constitution.

This administration's Chief Executive came into office touting himself as the first President to earn a master's degree in business administration. That is certainly more than I have. He announced that he would run the White House like a modern-day corporation. Ha-ha-ha; watch out.

To be fair, the President probably didn't realize at the time that he would be faced with the exposure of a corporate culture—not all his. The President probably didn't realize at the time that he would be faced with the exposure of a corporate culture which encouraged shoddy auditing, negligent or criminal management, and impudent and secretive corporate CEOs.

In hiding its own actions from the public view, this administration is fostering the same kind of arrogant, arrogant culture in which these corporate accounting scandals were allowed to flourish. This administration would do well to take preventive measures to keep the nasty, nasty little seeds of arrogance and secrecy that have affected corporate America from taking root in the executive branch and threatening the public's trust.

I close with a Biblical parable: Pride goeth before destruction, and the haughty spirit before a fall.

I ask unanimous consent to have printed in the RECORD an article from today's Washington Post titled ''Bush Took Oil Firm's Loans as Director''; and an article from today's Washington Times titled ''Cheney named in fraud suit.''

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

[From the Washington Post, July 11, 2002]

BUSH TOOK OIL FIRM'S LOANS AS DIRECTOR

(By Mike Allen)

As a Texas businessman, President Bush took two low-interest loans from an oil company where he was a member of the board of directors, engaging in a practice he condemned this week in his plan to stem corporate abuse and accounting fraud.

Bush accepted loans totaling $180,375 from Harken Energy Corp. in 1986 and 1988, according to Securities and Exchange Commission filings. Bush was a director of Harken from 1986 to 1993, after he sold his failed oil and gas exploration concern to the company. He used the loans to buy Harken stock.

Corporate loans to officers came under scrutiny after WorldCom Inc., the long-distance carrier that last month reported huge accounting irregularities, revealed it had lent nearly $400 million to Bernard J. Ebbers to buy the company's stock when he was chief executive. He resigned in April as the stock price tumbled.

Bush attacked corporate loans during his speech on Wall Street on Tuesday, when he offered proposals to tighten the accountability of corporate executives while stopping short of the tougher measures headed toward passage in the Senate. ''I challenge compensation committees to put an end to all company loans to corporate officers,'' he said.

A senior administration official, briefing reporters on Bush's plan, said Tuesday that Bush wants public companies to ban loans to their officers, including directors. ''Corporate officers should not be able to treat a public company like their own personal bank,'' the official said.

The contrast between Bush's record as a business executive and his rhetoric in the face of corporate scandals underscores the challenge his administration faces in trying to credibly foster what he calls ''a new era of integrity in corporate America.''

Bush was investigated by the SEC in 1991 for possible illegal insider trading, although the SEC did not take action against him, and he has admitted making several late disclosures to the agency, which regulates public companies.

Harken's loans to Bush—at 5 percent interest, below the prime rate—were reported several times in filings to the SEC in the years before the debt was retired in 1993 and were noted in news accounts at the time. The loans were for the purchase of Harken stock, which was then held as collateral.

Rajesh K. Aggarwal, a Dartmouth College professor who specializes in executive compensation and incentives, said such loans ''are not unique, but are by no means widespread.''

White House communications director Dan Bartlett said Harken offered the loans to directors to buy shares in the company as part of an incentive for board members ''to have a long-term commitment with the company.'' Bartlett said the loans to Bush were ''totally appropriate—there was no wrongdoing there.''

''This is a common practice in small, medium and large companies,'' Bartlett said. ''These recent abuses of certain types of loans led the president to believe that the government should draw a bright line concerning loans going forward. This is one of the main things that undermined the confidence of investors and shareholders.''

Bartlett said the loans were for $96,000 in 1986, for 80,000 shares, and $84,375 in 1988, for 25,000 shares. He said that in 1993, Harken changed its compensation policies and discontinued the loan program. He said Harken converted to a program giving directors stock options, allowing them to buy stock later at a fixed price.

Bartlett, asserting that Bush did not profit on the loans, said Bush traded the 105,000 shares being held as collateral for the loans, retiring his debt. Bush then received 42,503 options under the new compensation plan, Bartlett said, The options were never exercised and expired after Bush left the board, Bartlett said.

With adminsitration officials privately expressing concern about the impact of so much fresh attention to old questions about Bush's career, the White House yesterday distributed talking points headlined ''If you get asked about Harken'' to Bush loyalists who might be contacted by reporters. Bartlett said the fact sheets were sent to members of Congress after they asked for them.

White House press secretary Ari Fleischer said aides to Bush have ''talked to the private accountants and private counsels who are involved in the president's private transactions'' while preparing answers to reporters' question during the growing debate over corporate responsibility.

Vice President Cheney also is receiving unwanted attention to his corporate past. The SEC is investigating an accounting practice begun by Halliburton Co., the Dallas-based energy services company, when Cheney was chief executive before joining Bush's campaign ticket.

Also yesterday, the White House refused to release records of Bush's service on Harken's board. Bush had pointed to those records during a news conference on Monday when asked about his role in the sale of a subsidiary. The transaction later was used by Harken to mask losses.

''You need to look back on the director's minutes,'' Bush said.

Bartlett said the administration does not have the minutes and does not plan to ask Harken for them. ''He personally would not have access to them,'' Bartlett said. ''These are company documents. I can't release something I don't have.''

Harken has declined to release board records ever since questions about Bush's record on the board were raised during his first campaign for Texas governor, in 1994.

Bartlett also said the White House would not accept a challenge by Senate Majority Leader Thomas A. Daschle (D-S.D.) on Sunday to ask the SEC to make public the records of its investigation into whether Bush had engaged in illegal insider trading of Harken stock.

Daschle said on CBS's ''Face the Nation'' that Bush would do well to ask the SEC to release the file. ''We've had different explanations as to what actually occurred,'' Daschle said. ''I think that would clarify the matter a good deal.''

Bartlett said Bush will not do that. ''Those are documents in the possession of an independent regulatory agency,'' Bartlett said. ''I'm not in a position to call on them to do that. We've made available every relevant document we have in our possession.''

Administration officials said they would take the same position about an SEC investigation that resulted in Harken's restating its earnings to show a $12.6 million loss for a quarter instead of an earlier reported loss of $3.3 million. Bush was a member of the board's audit committee.

[From the Washington Times, July 11, 2002]

CHENEY NAMED IN FRAUD SUIT

(By Patrice Hill)

Vice President Richard B. Cheney was named yesterday with the energy company he headed in a lawsuit by investors that cited bookkeeping practices under investigation by the Securities and Exchange Commission.

The lawsuit arranged by Judicial Watch, a government watchdog group, charges that Halliburton Inc. overstated its revenue by $534 million between 1998 and the end of last year by illegally booking revenue from oil construction projects that were in dispute and had not been collected from its clients. The suit says the accounting fraud resulted in overvaluation of Halliburton's stock, deciving investors.

Mr. Cheney was Halliburton's chief executive from 1995 until August 2000, after he joined the Bush presidential campaign. The White House and Halliburton yesterday said the suit was without merit but both acknowledged that the SEC investigation is continuing.

''We are working dilgently with the SEC to resolve its questions regarding the company's accounting practices,'' said Doug Foshee, Halliburton's chief financial officer. The claims in this lawsuit are untrue, unsupported and unfounded.''

SEC Chairman Harvey L. Pitt has vowed to pursue the investigation. ''We don't give anyone a pass,'' he told ABC's ''This Week'' on June 30. ''If anybody violates the law, we go after them.''

President Bush on Tuesday called for stronger SEC enforcement and longer prison terms for corporate executives found guilty of the kind of accounting fraud charged in the lawsuit. The suit was filed in the U.S. District Court in Dallas, where Halliburton is based.

A unified Senate approved harsh new penalties yesterday for corporate fraud and document shredding, adding enforcement teeth to Mr. Bush's plan to curb accounting scandals. In a series of unanimous votes, senators added the penalties to an accounting oversight bill moving toward passage.

Also named as a defendant in the lawsuit is the Arthur Andersen firm, Halliburton's former auditor, which was fired in April after the accounting firm was charged with obstructing an SEC investigation of Enron Corp. Andersen was convicted of the obstruction charge last month and is no longer permitted to audit public companies.

The suit says Andersen was a champion of ''aggressive'' accounting tactics and masterminded the bookkeeping maneuvers that defrauded Halliburton investors.

As evidence of Mr. Cheney's knowledge and approval of these maneuvers, the suit refers to his appearance in a promotional video for Andersen in which he said he got ''good advice'' from the firm, advice that went ''over and above just the normal by-the-books auditing arrangements.''

The lawsuit cites a critical accounting change made by Halliburton and Andersen in late 1998. Halliburton was facing losses because of a recession in the oil industry and cost overruns on construction contracts in which the company had negotiated fixed, or lump-sum, payment plans.

Before the accounting change, which was never formally disclosed to investors, Halliburton had booked the cost overruns as losses on such projects as long as they were in dispute and customers had not agreed to pay them.

But starting in 1998, the company booked payment for the cost overruns as revenue if it believed the disputes would be resolved and the customers would pay the bills.

As a result of this change, Halliburton showed a profit for several quarters in 1998 and 1999 when it otherwise would have posted losses, the suit charges. In some years, the disputed revenue appears to account for as much as half of the company's reported profits.

''Halliburton overstated profits that many American citizens relied upon,'' said Larry Klayman, chairman of Judicial Watch. ''That's fraudulent security practices, and it resulted in those Americans suffering huge losses.''

The suit says Halliburton and Andersen violated securities laws when they did not disclose and justify the accounting change in a letter to investors. Halliburton's financial statements starting in 1998 do note, however, that it was booking uncollected revenue from cost overruns.

Mr. REID. Madam President, if the Senator will yield for a parliamentary inquiry.

Mr. BYRD. Yes. I yield.

Mr. REID. The Senator was allocated 45 minutes. Of course, we have other time. We have an extra 15 minutes. It is my understanding there are 4 or 5 minutes left. Is that right?

The PRESIDING OFFICER. There are 3½ minutes remaining.

Mr. REID. If the Senator so desires, we could also allocate 15 minutes to the Senator from West Virginia if he has more to say.

Mr. BYRD. Madam President, I thank the distinguished majority whip for his courtesies and generosity, and for his characteristic ways of helping his colleagues. I think I will let my remarks remain today as they are. I thank him.

I yield the floor.

Mr. REID. Madam President, while there are a couple of minutes remaining of the Senator's time, I am sure the chairman of the committee joins with me in expressing our pleasure at being able to listen to such a profound statement which the Senator made. I think it again is what this is all about. By ''this,'' I am talking about the legislation.

I talked with a friend of mine. We played football together as young men. He runs a company in Las Vegas. He said: HARRY, I took all of my money out of the stock market. I will never invest in the stock market until something is done. He said: I am afraid. I said: We all feel that way.

I think the Senator really condensed what is going on in corporate America. It needs to be changed, and hopefully this legislation will help that.

Mr. BYRD. Madam President, let me express my gratitude to the distinguished Senator for his comments.

And with respect to the manager of this legislation, let me state without any equivocation that this is one of the finest minds I have seen in the Senate. I have been here 44 years. I have seen the equivalent of the entire Senate come and go, and I have never seen a sharper intellect. I have seen some

sharp ones—John Pastore, Herman Talmadge, and there are others. I have never seen any sharper than that of PAUL SARBANES, in my judgment. I don't know a great deal about the intelligence quotients. I don't know what the high range is. I assume it could be 150, or 155, or 160—whatever it is. PAUL SARBANES is the brightest.

Also, he has a way about him of not flaunting his intellect in front of others. Most of us—not because of that kind of intellect—have been inclined to speak more often—maybe too much, and perhaps I do already, but not because of that kind of intellect. But I salute the manager and commend that kind of intellect. He applies it. I watch him in the committees, and I watch him on the floor as he manages a bill. He is never a man to act in haste, or to be too rhetoric in haste. I admire his patience. He is plotting; he is studying; he is working; and he is extremely effective.

When I was majority leader, there were certain Senators I would call into my office from time to time. I would try to pick their brains as to what we should do on this or that. Scoop Jackson was one. PAUL SARBANES is always there.

Mr. REID. Madam President, will the Senator yield for a comment?

Mr. BYRD. Yes.

Mr. REID. What the Senator is saying is that the Rhodes Scholar Committee a number of years ago made a good choice in selecting PAUL SARBANES to be a Rhodes scholar. Is that what the Senator is saying?

Mr. BYRD. I am saying exactly that. I am happy the distinguished Senator put it that way.

This bill before the Senate is the product of that kind of mind, that kind of attention, and that kind of dedication.

I hope we can pass this bill with an overwhelming vote, and, also in conference so that when put on the President's desk he can sign it. I am eager to support it in any way I can.

Before I yield the floor, let me say that when we talk about intellect and sharp intellects, this man from Texas, PHIL GRAMM, is another. He is sharp. I have talked to my staff many times about that kind of intellect. He can talk about anything. He doesn't need a script. I have prided myself on working with him on several challenges, and I have found him to be fair and straightforward.

I admire people—like these two—having that kind of sharp intellect.

I was told by an old Baptist pastor, former chief chaplain in the Army during the war—I don't remember which war it was. But he always said: The mark of brilliance is to surround yourself with brilliant people.

I am really proud to look around this Chamber and see people such as PAUL SARBANES and PHIL GRAMM. Sometimes I say that North Dakota has the highest overall quotient, perhaps of all, with its two Senators—Senators CONRAD and DORGAN. I don't know whether they are Rhodes scholars or not. I am not a Rhodes scholar. I was not fortunate enough. I just barely made it by working at night for 10 years just to get a law degree. But these people make me proud to serve in this body.

Let me yield to the Senator from Maryland.

Mr. SARBANES. Madam President, I thank the distinguished Senator for his extraordinarily generous remarks. I am very appreciative of them.

I want to echo what the very able Senator from Nevada said about the Senator's eloquent address just a few minutes ago, which is reflective of the pattern that he has established—which is to go on the floor of the Senate and go to the very fundamentals of what our system is all about. His constant reference to the Constitution draws us back to those fundamentals. The Senator has always put before the Senate this broader and deeper vision of why we are here, what we ought to be doing, and calling us back to our basic principles as a nation—right back to the Founding Fathers—as the Senator pointed out in his talk today. Important aspects of that are being challenged today in a very serious way.

I echo what my colleague said and express my appreciation to the Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator. I am going to yield the floor.

Before I yield it, I apologize to the distinguished Senator from Kentucky, Mr. MCCONNELL. He is a Republican and I am a Democrat.

I have been known to go down into Kentucky at his invitation and speak, and I value his friendship. I apologize to him for imposing on his time.

Mr. GRAMM. Before the Senator yields, if he would yield very briefly to me, I thank him for his very sweet comments. I am very happy to be named along with PAUL SARBANES. And someday when I am talking to my grandchildren about the fact that their grandpa actually was a pretty important guy in his day—though his mind, I am sure, at that point will have seemed to have largely slipped away—I will say: I got to serve with the great ROBERT C. BYRD.

Mr. BYRD. I thank the Senator.

AMENDMENT NO. 4200

The PRESIDING OFFICER. The Senator from Kentucky will now be recognized for up to 45 minutes.

Mr. MCCONNELL. Thank you, Madam President.

I rise to speak on behalf of the McConnell amendment which will be voted on sometime in the not too distant future. It is my understanding that my own colleague, Senator ENZI, may make a motion to table at the end of the debate. So let me, at the outset, say I support the Edwards-Enzi amendment.

The second-degree amendment that is pending at the desk, which I will shortly discuss, does not, in any way, change or diminish the Edwards-Enzi amendment. I think it is a good idea. However, I think it simply does not go far enough.

I also supported the Leahy amendment yesterday after my amendment to combat union fraud was defeated. I will continue to support responsible corporate accountability measures in this bill.

My only point is, corporations do not have a monopoly on misconduct, deception, and fraud. As long as we are addressing professional misconduct, deception, and fraud, we ought to recognize this is a problem in our entire professional culture, not just in corporate culture. Let me repeat that. This is a problem in our entire professional culture, not just in corporate culture.

I understand the mood at the moment is to beat up on corporations. And they deserve it. That is what the underlying bill is about. On the other hand, to ignore other areas of abuse, it seems to me, is to miss an opportunity to address the problem in a broader way.

The Senator from North Carolina raises real problems with the ethics and conduct of corporate lawyers. I commend him for that. And I commend the Senator from Wyoming for that. But I have long sought to curb similar and well-documented abuses in the general practice of law, specifically in the case of personal injury law.

Let me say at this point that the McConnell amendment applies only to Federal claims and Federal courts. We are talking here about Federal claims and Federal courts. My point in offering this amendment is not to obstruct but to extend and enhance our debate on professional conduct.

We ought to set standards for corporate attorneys. I favor that. And we ought to set standards for personal injury lawyers as well. Corporations and corporate attorneys do not have a monopoly on misconduct. We are doing a real disservice to the American public if, during this important debate on professional misconduct, we turn a blind eye to abuses in our society that have been piling up way before—long before—Enron, WorldCom, and Global Crossing.

All too often we hear stories about lawyers who take advantage of their clients by not informing them of the legal fees and costs those clients will incur. This sad practice results in consumers of legal services receiving next to nothing in personal injury and other claims.

Let me recount the story of Diana Saxon. Ms. Saxon was a victim of, among other things, attempted forcible rape. The defendant was convicted, and Ms. Saxon brought a personal injury action against that defendant. The attorney she hired said the fee he was going to charge was 40 percent, plus costs.

Ms. Saxon received an award of $25,000. Of that, per her agreement,

$8,300 went to her lawyer in attorney's fees. But an additional $20,716 went to her lawyer for expenses. However, none of those costs was made known to Ms. Saxon during the course of the litigation. She was only informed of them after her case was concluded.

Now, it gets even better—or, for Ms. Saxon's unfortunate situation, it gets worse. After her lawyer charged her his costs, she ended up owing her attorney $4,000—$4,000. That is right. For poor Ms. Saxon, she was actually left over $4,000 in the hole, in debt.

Now, to be fair, Ms. Saxon's lawyer was actually magnanimous in that he waived a few costs and a small portion of his fee so that she was actually able to walk away with the princely sum of $833—$833.

In his letter to her, where he agreed to offer her these few hundred dollars from her award of $25,000, he wrote:

I'm agreeable to pay the sum of $833. This is the only money you will receive from your $25,000 settlement.

So, in sum, even though Ms. Saxon's lawyer told her that the lawyer would get 40 percent of her award, plus costs, in reality, after including these costs, he got 96 percent—96 percent—of her award. That is right, 96 cents on every dollar that Ms. Saxon received.

We need to make sure that consumers of legal services are not duped by this type of inaccurate and incomplete information.

Let me quote Ms. Saxon. She has put the problem better than I could. Here is what she had to say:

This is not how our civil justice system is supposed to work. What happened to me should never happen to anyone again. You have a chance today to make a difference by passing a law to protect people from the kind of thing my attorney did to me. Had I known in advance or at some point along the way how little of my lawsuit was going to benefit anyone but my lawyer, I might have thought different about enduring 2 years of emotional trauma during the litigation.

Summing up what she had to say: Had she had any idea how little of the money she might get, she might not have wanted to endure the trauma of this litigation for 2 long years.

Now, Ms. Saxon, in a sense, was lucky in that at least her lawyer told her she would be liable for costs, although he obviously did not tell her the magnitude of the costs she was looking at and, thereby, completely misled her.

But as these excerpts from the Yellow Pages here in the District of Columbia area phonebook indicate, some lawyers are not even that candid.

So let's take a look at the first chart out of the DC phonebook. On this first chart, we have an ad with the big banner entitled ''AUTOMOBILE ACCIDENTS.'' There is a line almost as big—the fourth line down—proclaiming: ''No Recovery, No Legal Fees''—''No Recovery, No Legal Fees.'' It does not say anything about the cost the plaintiff is going to have to bear and, therefore, does not paint an accurate picture.

Let's take a look at the second chart, again out of the DC phonebook. It has a big banner down the right side entitled ''PERSONAL INJURY.'' At the top is says: ''Personal Injury Lawyers Who Put You First.'' ''The Firm Boasts an All-Star Roster of Top Personal Injury [Lawyers].'' And it makes the point: ''No fee if no recovery.'' But, again, like the last ad, it does not mention at all anywhere in the ad—nowhere in all of this ad—that the client will be liable for costs.

Let's take a look at chart No. 3. This ad is marginally—marginally—better. At the top of the ad there is a headline, in bold, saying: ''Legal Problems Require a Lawyer.'' Obviously, legal problems require a lawyer. About midway down is a line item saying: ''Call Me. I can help.'' ''Call me. I can help.'' And right below this line, another line says: ''No Legal Fee If No Recovery.'' In a little bit smaller print you will notice, ''No Legal Fee If No Recovery.'' But this lawyer, at least, to his credit, has an asterisk by this line. If you look very carefully, you see an asterisk; and way down here at the bottom of the ad, in minuscule print—which might require you getting your glasses adjusted or to get a magnifying glass—it says: ''Cost May Be Additional.''

This lawyer at least gets credit in his ad for mentioning that there might be some cost, although you better have your glasses adjusted in order to find it.

Chart No. 4 is a familiar pitch, that there be ''no legal fees unless recovery.'' This lawyer, to his credit, at least has it in print large enough to where you might actually see that line. But there is, of course, an asterisk; down here at the bottom, again, in tiny, minuscule print, ''Clients may be responsible for reasonable fees.''

This lawyer, at least, gets some credit—be the print ever so small—for pointing out that there could be a cost involved, and maybe a careful client would see that in the ad.

Chart No. 5, really my favorite one, it has a big banner at the top, ''accidents,'' all the way across the top. You wouldn't have any trouble missing that. Underneath, ''No legal fee if no recovery.'' Very enticing observation to an injured client, potential client, and there is an asterisk after it.

Going to the bottom of the page, below the Visa and MasterCard logos, it says, ''excluding costs.'' That is about the smallest print on the ad. But a careful potential client might be able to find that there could conceivably be a cost attached to this.

Frankly, I am not sure if this phrase means that costs are excluded and, therefore, you don't have to pay for these either, or if it means that costs are excluded from the exclusion, which means you do have to pay for them. A consumer of legal services should not be enticed by the prospect of free legal services, including what appears to be an exclusion of cost from the charges for which he is responsible.

As I will shortly describe, the amendment I am offering would help prevent people from being duped by incomplete and misleading representations such as these. Let me repeat that the scope of my amendment is not every court in America but only applies to Federal claims and Federal courts.

Shifting gears for a moment, we also hear stories of ambulance chasers who take advantage of grieving families when they are most vulnerable. For example, at the scene of a 1993 collision between two commuter trains in Gary, IN, witnesses reported seeing lawyers' business cards being passed around at the scene of the accident. And the injured were being videotaped as they were removed on stretchers.

After an August 1987 crash of a commercial airline flight in Detroit, a man posing as a Roman Catholic priest, Father John Irish, appeared at the scene to console families of the victims. He hugged crying mothers and talked with grieving fathers of God's rewards in the hereafter. Then he would hand them the business card of a Florida attorney, urging them to call the lawyer, and then the father would disappear.

We should make sure that misleading ads and shameless ambulance chasing do not occur. I propose a clients' bill of rights for consumers of legal services. We have talked a lot in recent years about a Patients' Bill of Rights to make sure patients are treated properly by health maintenance organizations. We need a clients' bill of rights to make sure consumers of legal services are treated fairly.

This clients' bill of rights would do two things. The first thing it would do is require consumers of legal services to receive basic information at the beginning, during the course, and at the end of the case so that all along the way the client, the consumer of legal services, has a clear understanding of what the financial relationship is between the lawyer and the client.

As the old saying goes: Knowledge is power. My amendment empowers consumers by giving them the knowledge they need to make informed decisions about their legal representation. As I pointed out earlier in one of my examples, there was a lady who had no earthly idea, because of not receiving proper information about the extent of the cost that could be involved in her case, that after getting a $25,000 settlement she would essentially get nothing. The lawyer then benevolently gave her $833.

So clients need information all along the way to make informed decisions about legal representation.

At the initial meeting before they are retained, under the McConnell amendment, attorneys would have to provide would-be clients with the following things—and this is not unreasonable; it's elementary justice—No. 1, the estimated number of hours that will be spent on the case; No. 2, the hourly fee or the contingent fee that will be charged; No. 3, very importantly, the probability of a successful

outcome; next, the estimated recovery reasonably expected; next, the estimated cost or expenses the plaintiffs will bear; and whether a client will be subject to fee arrangements with other lawyers.

This is elementary consumer protection. Let me say to my friends in the Senate who are close to and allied with the plaintiffs' lawyers in America: We are not talking about capping anybody's fees. This is not about capping fees. The fee arrangement could still be whatever astronomical amount the lawyer believes he can charge. But we are talking about providing basic information to the client so the client can understand what the fee arrangement is going to be. There are no fee caps in this amendment.

Monthly statements: My amendment would also require lawyers to provide their clients with monthly statements so that consumers of legal services will be informed on a regular basis of the basic progress of their case. Specifically, the lawyers would have to tell clients how much time they are expending on their case, what they are spending their time doing, and what expenses they are incurring in the case. Again, this is basic information clients should receive so they know how their case is progressing and how in essence their money is being spent.

Then an accounting at the end of the case: Clients should receive basic information at the end of the case so they know exactly what they paid for during their representation. To this end, my amendment provides that within 30 days after the end of the case, attorneys shall provide clients with the number of hours expended; the amount of expenses to be charged; the total hourly fee or the total contingency fee in a contingency fee case; the effective hourly fee charged, which would be determined by dividing the total contingency fee by the total number of hours expended.

Again, this is elementary, reasonable information, no fee caps, just providing reasonable information to the client at the end of the case so they can understand just what the legal services have provided.

Madam President, in the age of disclosure, I cannot believe that my colleagues would not support some basic disclosures that the first part of my amendment would provide. It does not limit—I say again—attorney's fees in any regard. There are no fee caps of any sort in this amendment. Frankly, I would like to see that. We have had fee caps under the Federal Tort Claims Act for years, and I am told there is no dearth of lawyers prepared to bring tort claims against the United States. But there are not any fee caps in this legislation. That is something a large number of Members of the Senate do not support. The first part of my amendment simply enables consumers of legal services to make informed choices.

The second thing my amendment does is establish a bereavement rule. A bereavement rule means the provision for a period of mourning, or a period of bereavement, during which lawyers would have to be respectful of injured victims or their families. As I mentioned, this provision is important because there are disturbing stories of ambulance-chasing lawyers who prey upon victims and their families when these people are the most vulnerable.

To address this problem, my amendment simply provides that there will be no unsolicited communication by lawyers to victims, or to their families, regarding an action for personal injury, or wrongful death, for 45 days from the date of death or personal injury—just 45 days to give the victims, or their families, an opportunity to begin to get their feet back under them before they start considering which lawyer, if any, they want to retain to pursue the legal action to which they may be entitled.

Let me repeat. This amendment applies only to unsolicited communications. If the victims or their families are feeling like it 2 days after the event, they are certainly free to call whomever they choose. This only applies to unsolicited communications to victims or their families. Injured parties and their families are free to contact whomever they want whenever they want.

Madam President, there is precedent for this respectful, considerate principle in existing Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Let me say it again. There is precedent for a bereavement rule already in Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Just 2 years ago, in 2000, we extended this prohibition to 45 days from the date of an airline crash. That prohibition is codified at 49 U.S.C. section 1136(g)(2).

The point I am making here is that there is precedent in Federal law already for a bereavement rule, and this simply expands upon that preference and provides this protection for additional victims during a period of mourning.

Madam President, someone who has been killed or injured in a train crash or a shipping accident is just as dead, or just as injured, as someone who is killed or injured in an airline crash. These victims and their families deserve the same type of respect and consideration. All these types of victims and their families are in a vulnerable state where it is easy for them to be pressured or taken advantage of.

The second part of my amendment would afford victims of other tragedies the same protection that we afford victims of airline disasters. The language in my amendment that we used to do so is virtually identical to current Federal law. It would guarantee these people a reasonable period of time to grieve, collect their thoughts, and to think clearly about what action they want to take and who they want to take such action on their behalf.

As I said, there is current precedent for it in Federal law, and I hope my colleagues will support it, along with the disclosure provisions in my amendment.

Madam President, what is the time situation?

The PRESIDING OFFICER. The Senator has 20 minutes remaining.

Mr. MCCONNELL. Madam President, let me sum up what the McConnell amendment is. There are essentially two parts to it. First, it would require that lawyers provide to their clients all along the way, from initially being retained until the conclusion of the case, adequate consumer protection information so the clients will have a sense at every stage of the case how the case is moving along, what the likelihood of success is and, very importantly, what kind of costs the client may be incurring in the course of the litigation.

Secondly, we provide for a bereavement rule of 45 days to give the victims and their families an opportunity to get back on their feet during an atmosphere in which unsolicited efforts to retain these victims are put off. If, however, the family at any point during that 45-day period decides it is ready to move on and wants to look at its legal options, there is nothing in the amendment that would prevent the victim or victim's families from retaining a lawyer at any time. All this does is protect them from unwanted solicitations for a brief period of 45 days following the occurrence of the event.

As I pointed out, there is already precedent in Federal law for such a bereavement period of 45 days. That applies in the wake of airline disasters.

Finally, let me repeat this because I know this is something that is offensive to many Members of the Senate, particularly on the other side of the aisle. As much as I would like to see fee caps established, this amendment has no fee caps in it. Even though, under the Federal Tort Claims Act, since the late 1940s, we have had a fee cap of 25 percent in tort actions against the Federal Government, no such fee cap is in this amendment.

So I think this is a modest proposal to provide consumer protection to victims of accidents as they contemplate their futures and determine, first, which lawyer to hire, and after hiring the lawyer, have adequate information along the way to make sure they understand what the fee arrangement is.

I yield the floor and retain the remainder of my time and now urge—and I will also do so later—the Senate to adopt this amendment.

The PRESIDING OFFICER (Mrs. CLINTON). Who yields time?

Mr. SARBANES. Madam President, can I inquire as to what the allocation of time is? Let me make a parliamentary inquiry. I understand the vote on a motion to table that will be offered by Senator ENZI is scheduled to take place at 12:45.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. Can the Chair inform us as to the allocation of time from now until quarter to 1?

The PRESIDING OFFICER. The unanimous consent agreement provided that the time between the conclusion of Senator MCCONNELL's remarks and the 12:45 p.m. vote will be evenly divided between Senators GRAMM and SARBANES, and Senator MCCONNELL has a remaining amount of time of 16 minutes.

Mr. SARBANES. Sixteen minutes?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. Madam President, is it the Senator's thought we move up the vote?

Mr. SARBANES. Staff has made an announcement, and people have planned accordingly. I understand that is the situation on both sides of the aisle for that matter. It was announced earlier on. People, therefore, made plans accordingly.

The PRESIDING OFFICER. If Senator MCCONNELL used all of his remaining time, each side would have approximately 10 minutes.

Mr. MCCONNELL. I say to my friend from Maryland, I will be happy to hear from the other side on the amendment. I am reluctant to yield back my time until I know the extent of the debate in which we are going to engage. In any event, the vote, Madam President, occurs at quarter to 1?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. I retain the remainder of my time until such time we decide otherwise. I have not heard from the other side.

Mr. SARBANES. As I understand the agreement, I do not think others can use time until the Senator from Kentucky uses his time.

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. MCCONNELL. I suggest we divide the remainder of the time between now and the vote. Will that be acceptable?

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I ask unanimous consent that the remaining time between now and quarter of 1 be divided equally to the manager of the bill, to Senator ENZI, and to Senator MCCONNELL. That will give us about 10 minutes each, I think.

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

The Senator from Maryland.

Mr. SARBANES. Madam President, I will speak briefly to the McConnell amendment which has been added as a second-degree amendment to the Edwards-Enzi amendment. Before I address that amendment itself, let me again indicate my very strong support for the underlying first-degree amendment, the Edwards-Enzi amendment, which was very carefully worked out and I believe represents a constructive suggestion. I am hopeful we can get to that amendment and have a vote on it sometime in the near future.

Obviously, the way things are now structured, we have to dispose of the McConnell second-degree amendment in order to get to the Edwards-Enzi amendment, but I think the Edwards-Enzi amendment warrants both the attention and the support of this body. I hope at some point we will be able to do that.

I am not going to address the substance of the McConnell amendment, or perhaps I will discuss it only in passing. I simply wish to observe that it is not relevant to this bill. It is talking about a client's bill of rights which may or may not be a worthy subject to examine.

How we regulate the lawyers is a complicated problem, obviously. It has mostly been done at the State level. The Senator from Kentucky has some sweeping proposals on a national basis, and they may warrant examination, but I certainly do not think they warrant coming into this debate on a very different issue. I do not know that there has been any study of it. I do not think this represents the recommendation or the report of any committee that is putting this forward, having undertaken an appropriate series of hearings in order to examine the subject. I have not had the benefit of testimony from the proponents and opponents. In fact, if the Senator from Kentucky will yield for a question, has a committee of the Senate recommended anything like this?

Mr. MCCONNELL. I say to my friend from Maryland, no committee of the Senate recommended the energy bill on which we spent 6 weeks in the Senate, and the majority leader has bypassed committees consistently throughout the last year. So I do not know that the Senate was constrained in any way—

Mr. SARBANES. It may be a response to say to me it was done somewhere else. I have a very specific question: Has a committee of the Senate recommended this proposal?

Mr. MCCONNELL. I would like to provide my own answer. If the Senator is asking for an answer from the Senator from Kentucky, I would like to be able to express myself, if that is OK with the Senator from Maryland.

Mr. SARBANES. The Senator from Kentucky is very skilled. I watched him on these television programs. I know he is very good when the question is put to him to give the answer he wants to give, even though it is not directed to the question. Obviously, I will have to go through that same experience on the floor of the Senate now.

Mr. MCCONNELL. I thank my friend from Maryland for his compliment and respond, as with many other bills over the last year that we dealt with on the floor of the Senate, it has not been reported by a committee. But many worthwhile ideas have been adopted and made a part of law that have been recommended by both Democratic and Republican Senators that, in the years my friend and I have been here, were not officially reported out of a committee.

Mr. SARBANES. Have any hearings been held on these proposals—the bereavement period and the fees proposal? Have hearings been held on those issues?

Mr. MCCONNELL. I am unaware of any hearings to that effect, but I ask my friend from Maryland why he thinks something as elementary as this, something as obviously as fair as this, and in the case of the bereavement rule, which we adopted in Federal law for families and victims of airline crashes, would not be an appropriate thing to do with or without hearings?

Mr. SARBANES. It seems to me there are complicated issues that are raised by Senator MCCONNELL's proposal, and they certainly should have been preceded by hearings in which the pros and cons could have been carefully examined.

Madam President, I reiterate my point, this amendment is not relevant to the issue before us. It does not come to us on the basis of any hearings that back up or buttress the proposal. It has not worked through any committee. It certainly has not been recommended by any committee, and there have not even been any hearings, as I understand it, by any committee.

At the appropriate time, I will be very strongly supportive of the motion to table that will be offered by the able Senator from Wyoming. This is, of course, the second McConnell second-degree amendment we have had to deal with on this legislation.

I hope the Senator from Kentucky does not view this as a kind of fair hunting game to bring forth at each step along the way, whenever there is an opening for a second-degree amendment, whatever sort of pet project he has been harboring in his office for whatever period of time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I yield myself some of my time to respond to my friend from Maryland.

As I listened carefully to my friend from Maryland, he is straining to think of a good argument against this worthwhile amendment. It has been my experience over the years in the Senate that when we start saying there has been no committee action, there have been no hearings, we are having a hard time thinking of a good argument against the proposal on the merits.

So let me repeat again what the merits are. It seems to me we do not need committee hearings or committee action to convince us that a 45-day bereavement rule for victims and their families, which we have already adopted in Federal law for victims and families of plane crashes—we do not need committee action to tell us this is a fundamentally appropriate thing to do.

Do we need hearings and committee action to tell us that in Federal claims and in Federal cases it is appropriate and only right that lawyers provide information to their clients at the beginning, during, and at the end of their handling of the case as to the possible costs involved? That is what is before us, not the issue of whether or not we should have hearings on this or whether or not the committee should act. My goodness, we spent 6 weeks on an energy bill that the committee did not pass out of the Energy Committee. We do that frequently. The Senate is not known to be constrained by tight rules of germaneness, nor by official committee action.

So I urge my colleagues to look at the amendment itself, not these rather extraneous arguments seeking to divert our attention away from what the amendment itself provides, which is protections for consumers of legal services.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, on the energy analysis, I simply point out that the Energy Committee held extended hearings over a long period of time on the energy issue. Then, they did not actually evolve a bill, but they had a very full set of hearings and a lot of recommendations available to be included in an energy package.

On the other, I say to my colleague, I forbore from discussing the substance because I did not want to prejudice the Senator on some future occasion by having to go substantively into the weaknesses and deficiencies of the proposal that is before us. Since the time is limited and that would take quite a while to do, I intend to continue to do that out of a sense of consideration to my colleague because presumably, if this amendment is tabled, he will be back visiting with us on another day, perhaps on an appropriate vehicle. I do not know. One would have to wait and see whether that would be realized.

Out of some deference of respect for my friend from Kentucky, I simply thought I would not undertake to go into this point by point on the substance because it is really not appropriate. We ought to recognize that and go ahead and table the amendment, and maybe when it finally comes up in an appropriate context, we can then address its substantive weaknesses or strengths. Perhaps at that time it would have evolved into a different animal.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. ENZI. Madam President, I yield myself such time as I may consume. At 12:45, I will be making a motion to table the McConnell second-degree amendment to amendment No. 4200. We are working on a bill that I have spent hundreds of hours on, part of them in hearings, much of the time in drafting my own legislation, then working with Senator GRAMM to come up with an even better bill, and then working with Senator SARBANES to come up with the bill we have before us.

There is a crisis in the stock market. Two days ago, it dropped by 185 points. Yesterday, it dropped by 285 points. Some suggest that is because Congress is working on this issue and it is scaring the heck out of the people of the United States. I hope that is not the case. I hope it is a sign that they do want to have a solution, and they want to have a solution quickly. We do have the solution that, combined with the House bill, can serve the purpose of restoring the confidence of American investors.

The McConnell amendment is a clients' bill of rights to reform the way attorneys treat their clients. It is not about securities and exchange. It is all about attorneys. Senator EDWARDS and I modified our amendment so it applies only to action before the Securities and Exchange Commission. That was so that if this debate draws out with multiple second-degree amendments well beyond the time we have the cloture vote, our amendment will still be germane.

A standard that the Senator from Texas, Mr. GRAMM, has put on amendments is that they be germane. He did an extensive speech last night about the need to do germane amendments and get this finished.

This amendment is good and well intended. It requires attorneys to do a number of things in representing those who put their trust in attorneys' hands, and this includes requiring attorneys to provide written disclosure to their clients on the number of hours that will be spent on their case, the attorney's hourly or contingent fee, the probability of successful outcome, estimated recovery of costs, and bereavement.

Under normal circumstances, I probably would be very excited about this bill. The reason I am opposing it is simply because it does not have anyplace in the accounting reform bill that we are debating today. I realize it does not change anything in my amendment. It is not a substitute amendment, but it is an addition that will cause problems further down the road. It will delay actually getting accounting reform into place. The accounting reform bill is being used as a vehicle to provide a free ride for a nongermane, unrelated amendment. I will probably use that same line again on a number of other amendments that come up later—it is nongermane.

The McConnell amendment needs to hitchhike on a different road with a different vehicle at a different time.

Over several months, I and my esteemed colleagues on both sides of this aisle have worked hard on the accounting reform bill. We have worked hard to keep out surplus, nonrelevant issues so we can get through the process of getting accounting legislation through in a timely fashion and in a bipartisan manner. We have been very successful at keeping out exact amendments even that deal with how to do accounting and have set up a process where people who are knowledgeable on that can figure out the right way to do it and the right way to do it faster than before.

I strongly believe this bill cannot afford to be held up any longer just for Members on both sides of the aisle to score political points on hot button issues. A lot of us have pet projects and issues we would have liked to add on, but we resisted and we encouraged our colleagues on the Banking Committee to do the same thing.

We are now in the amendment process, but amendments should be germane to the contents of the underlying bill and amendment. That is not a requirement until after cloture, but we need to get the bill done. There is no reason we even need to go to cloture if we would get the germane amendments done and get this into a conference committee so we can get the work done.

The McConnell second-degree amendment, while well intended, is not germane. It does not deal solely with securities laws or those attorneys appearing and practicing before the SEC. It does not deal solely with attorneys working for publicly traded companies but to any attorney and any client practicing any form of Federal law. It does not deal with an attorney's professional responsibilities of reporting Federal securities law violations to its corporate client. It is much broader than the underlying amendment which does deal strictly with Federal securities laws, attorneys appearing and practicing before the SEC, and internal reporting by an attorney within a publicly traded company.

In addition, the McConnell amendment is going to require study and debate, meaning more time spent diverting passage of the much needed accounting reform bill. We are running out of time before the next recess and have several important bills yet to consider, including Homeland Security Department legislation.

While the McConnell amendment is well intended, the timing is simply wrong. I respect my colleague from Kentucky and his constant support and earnest effort to make attorneys play it straight with their clients. But I must respectfully oppose this amendment at this time. I hope we will be able to debate and vote on it on another day. When the time is appropriate under the agreement, I will make a motion to table the amendment.

I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, let me say first with regard to whether this is appropriate to be added to this bill, the ranking member of the Banking Committee, the manager of the bill

on this side, supports my amendment. Obviously, it is not his view that this is in any way inappropriate for this legislation.

I also say to my good friend from Wyoming, this will not slow down the bill. This amendment will be voted on at 12:45. There is a time agreement on it. We certainly are not in any way trying to slow down the passage of the underlying bill which I fully expect to support.

The issue is whether we are only interested in corporate defense counsel misbehavior. Why are we only interested in corporate defense counsel misbehavior? My amendment applies to the other side, the plaintiff's side. It would apply to cases, for example, brought under the Federal Employers Liability Act, which governs injury and wrongful death actions against railroads in interstate commerce by railroad workers and their families. It would apply to cases brought under the Longshore and Harbor Workers Compensation Act, which establishes no-fault compensation for employees injured on navigable rivers. And it would apply to plaintiffs bringing action under the Price Anderson Act amendments of 1998, which creates a Federal cause of action for nuclear accidents. It would also apply to the Federal Tort Claims Act, which creates Federal causes of action for tort claims against the U.S. Government. It would apply to lawyers representing clients bringing cases under the Public Health Service Act, which are suits against certain federally supported health centers and their employees brought under the Federal Tort Claims Act. And finally, it would apply to lawyers representing clients bringing actions under part of Federal law, very important in my State, the Black Lung Benefits Act of 1972, which establishes a compensation scheme for coal miners allegedly suffering from blank lung disease and survivors of miners who died from or were totally disabled by the disease.

Let me sum it up again: it is not my intent to slow the bill down. This amendment will be voted on at 12:45, so it clearly is not slowing anything down. It seems to me entirely consistent with the underlying amendment dealing with corporate defense counsel misbehavior to also address the question of a plaintiff's lawyer's misbehavior.

Beyond that, we are talking simply about providing consumers of legal services with basic information, at the beginning, during, and at the end of a lawsuit, and a modest 45-day bereavement rule giving the victims and their families a chance to get back on their feet before they are contacted by lawyers seeking to represent them in court. It would not in any way prevent families from contacting a lawyer during that time but would protect them from unwarranted solicitation of legal services for a mere 45 days.

This is a very modest proposal. I would love to go a lot further. I like the fee caps in the Federal Tort Claims Act. That is not what we have offered. That is not what I offered. There is no impact on fees, no caps on damages. This is strictly consumer protection in the area of legal services. It is a very modest proposal which I hope the Senate will adopt when we vote on it at 12:45.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I will give a little explanation for the point raised that this particular bill—because a time has been set for the vote—will not hold things up. There are about 60 amendments out there; there are probably 10 that actually deal with what is in the bill. There has to be some point where we have to ask, Can we not concentrate on what is in the bill instead of bringing up the other things? I am sorry that yours is the bill on which we are starting that.

Mr. MCCONNELL. Will the Senator yield?

Mr. ENZI. Sure.

Mr. MCCONNELL. It was my understanding that cloture was filed last night. Would my friend from Wyoming not agree, that cloture vote brings the bill to a conclusion? I am not in any way trying to delay the passage of the bill. I support the underlying bill. I believe my amendment is appropriate to be considered.

Mr. SARBANES. Will the Senator yield?

Mr. ENZI. Yes.

Mr. SARBANES. Actually, I will use my own time, and the Senator may reserve his time.

We must table this amendment. Otherwise, it becomes an invitation for others to come in and offer second-degree amendments that are not relevant to the bill. This amendment is not relevant to the bill—nowhere close. If we start this process now, opening up the bill to these nonrelevant amendments, what will happen to the relevant amendments, some of which are germane under cloture and others of which might miss the tight test of germaneness but are relevant material, which are pending, which other colleagues have offered, if they want to get to those amendments?

We could have done the Edwards amendment yesterday and moved on to something else, but we came in with a second-degree amendment, not relevant—not only not relevant to the Edwards amendment, not relevant to the bill.

Frankly, we are well beyond the point where we at least ought to set aside amendments that have no relevance to the underlying legislation.

Mr. MCCONNELL. Will the Senator yield?

Mr. SARBANES. Certainly, I yield.

Mr. MCCONNELL. I ask my friend from Maryland, if he believes my amendment may have some merit, whether he would support taking it up as a freestanding measure with a time agreement.

Mr. SARBANES. No, I would not support that.

Mr. MCCONNELL. I thank the Senator.

Mr. SARBANES. Why would I support a request like that? Surely the Senator from Kentucky is just making a joke on the floor of the Senate by making that inquiry. That must be apparent to all. I appreciate the Senator's sense of humor in that regard. I also appreciate his indication, just a moment or two ago, he intends to support the underlying bill. Of course, we are gratified to hear that.

I yield the floor and reserve whatever time I may have left.

What is the time situation?

The PRESIDING OFFICER. The Senator has 33 seconds, Senator MCCONNELL has 4 minutes 38 seconds, and the Senator from Wyoming has 3 minutes.

Who yields time?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. It was my understanding that Senator SANTORUM was on the way. But if he has not arrived yet, I suppose the best thing to do would be to enter a quorum call knowing full well my time is running.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

Mr. REID. Madam President, I will alert Members we are going to have a vote later. The two members of the Appropriations Committee have finally gotten a meeting with the House appropriators on the supplemental appropriations bill. I think it would be in everyone's best interest that they are allowed to go forward with that most important meeting.

We received a request from the chairman of the Appropriations Committee, Senator BYRD. Therefore, I ask unanimous consent that the order that is now in effect be modified and that Senator ENZI would be recognized at 2 p.m. to move to table the amendment, and that 8 minutes prior to that would be devoted to debate between the two managers of the bill, Senator SARBANES and Senator GRAMM, and that Senator ENZI would be recognized for 2 minutes, and Senator MCCONNELL for 2 minutes—a total of 8 minutes. All other provisions of the unanimous consent agreement now in effect would remain the way they are.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, the vote will occur at 2 o'clock today. In the meantime, I ask there be a period from now until then for morning business, with the time equally divided between Senator DASCHLE or his designee or Senator LOTT or his designee.

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

Mr. REID. I suggest the absence of a quorum, and I ask the time be charged equally between Senator DASCHLE and Senator LOTT.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNEMPLOYMENT INSURANCE EXTENSION

Mrs. CLINTON. Mr. President, I rise in this period of morning business to raise a continuing and serious problem that we believe most acutely in New York but which I know is shared in other parts of our Nation.

Last month, the Nation joined New Yorkers in our reflection and sorrow as the workers at ground zero removed the final debris from the 16-acre World Trade Center site.

While this event, which was accomplished ahead of schedule and below budget by the most dedicated workforce that I think you could find anywhere in the world—unionized building trades and construction workers who worked on that pile for 12- to 15-hour days, 7 case days a week, for months, and, therefore, because of their heroic efforts we moved one step closer to the beginning of the rebuilding process—there are many workers who have not been able to begin rebuilding their lives simply because there are not enough jobs right now.

Many of us will remember a photograph shortly after September 11 that the press ran showing hundreds of people standing in lines at a job fair that was held in the city, people who had lost their jobs, both directly because of the attack on the World Trade Center and indirectly because of the ripple effect through the economy.

There were workers—and I have met with scores and scores of them—whose jobs were literally destroyed when the Twin Towers collapsed. They were the janitors. They were the doormen. They were the waiters and waitresses. They were the secretaries and the messengers. They went to work every day in that huge complex of offices. There were those who served the small businesses that took care of the workers in those buildings. And, of course, then there were those throughout the city who may not have worked at ground zero but who lost their jobs because of the aftermath on the entire economy because of the terrorist attacks.

We all know that thousands of hard-working Americans have been thrown out of work because of the combination of the jobless recovery and the terrorist attacks.

Prior to September 11, our economy was beginning to slow down. Our national unemployment rate rose from 4.5 percent a year ago to 4.9 percent in September and to 5.9 percent today. But I think that somehow does not even tell the whole story because what we have seen occurring since September 11 is this so-called jobless recovery.

The Wall Street Journal just ran an article about it stating that employment has now shown 13 consecutive months of decline through April. That exceeds the 11 straight months of loss in the 1990–91 recession, the only recent comparable period, about a decade ago.

I ask unanimous consent that article be printed in the RECORD.

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

[From the Wall Street Journal]

UNEMPLOYMENT HIT 5.9% IN JUNE; REVISIONS SHOW GRIM JOB PICTURE

(By Greg Ip)

WASHINGTON—WITH WEAK STOCK PRICES AND CORPORATE SCANDALS DAMPING COMPANIES' HIRING PLANS, THE RECOVERY IS STARTING FOR WORKERS TO LOOK AS BAD AS, IF NOT WORSE THAN, THE ''JOBLESS RECOVERY'' OF 1991–92.

The number of nonagricultural jobs rose just 36,000 in June from May, and the unemployment rate edged up to 5.9% from 5.8%, the Labor Department said Friday. Government statisticians once again revised down prior months' levels of employment, revealing a job market far weaker than previously thought.

''The economy is on the road to recovery [though] the recovery is a bit anemic,'' said Labor Secretary Elaine Chao. ''The labor market lags behind changes in real economic activity.''

While the Labor Department regularly revises its payroll estimates, those revisions have been strikingly negative this year, with every month's report being revised downward—often sharply. The agency originally said payrolls rose 66,000 in February, but now it says they fell 165,000. An originally reported gain of 58,000 jobs in March is now a loss of 5,000, and a gain of 43,000 in April is a loss of 21,000. May's gains were revised down to 24,000 from 41,000.

A ''benchmark'' revision a month ago also reduced employment throughout last year. Employment in November 2001 was 340,000 below original estimates.

As a result, employment now shows 13 consecutive monthly declines through April. That exceeds the 11 straight losses in 1990–1991, though those declines were steeper. Back then, job losses continued intermittently through 1991 and into early 1992. A similarly tough spell could be in store for workers now, with the recovery so far subpar and employers more determined than usual to boost output per employee rather than the number of employees.

Lois Orr, acting commissioner of the Bureau of Labor Statistics, said recent revisions haven't been statistically significant, but she couldn't explain why they have been overwhelmingly negative. Data compiled by the Federal Reserve Bank of Philadelphia show that in 1991, as the economy emerged from recession, early payroll revisions were alternately positive and negative, though benchmark revisions years later sharply lowered employment levels.

While job creation was stagnant last month, there were still signs in the jobs report that the economy is continuing to grow. The average work week rose to 34.3 hours from 34.2 hours, and in manufacturing it jumped to 41.1 from 40.9 hours. When firms see an increase in business but aren't sure if it will last, they often boost the hours of current employees before hiring new ones, because it is easier to cut back hours later than to sack workers.

Temporary employment, another way for firms to raise output without adding to permanent payrolls, edged up by 9,000. Manufacturing payrolls fell 23,000, though that was one of the smallest declines in two years. In services, losses in retail trade were offset by gains in health care and government.

''Businesses are hesitant to expand, due to concerns about the stock market and heightened uncertainty over the geopolitical outlook,'' Bank Credit Analyst, a financial-markets research firm, said in a report Friday. ''The attack on accounting standards and concerns about re-regulation are additional factors keeping corporate executives from expanding.''

Long-distance phone company WorldCom Inc. announced 17,000 layoffs two weeks ago when it disclosed it had understated operating expenses by $3.8 billion. Electronic Data Systems Corp., a major supplier to WorldCom whose accounting has also come under scrutiny by investors, said last week it would lay off about 2,000 employees in response to sluggish demand for its computer services.

The weak job market doesn't mean a shrinking economy because firms are squeezing increased production out of their current employees.

Merrill Lynch estimates that productivity, or output per hour worked, expanded at more than a 3% annual rate in the second quarter, down from the first quarter's remarkable 8.4%, but still robust.

Mrs. CLINTON. So here we are with a national unemployment rate of 5.9 percent, and the situation in New York is even worse. In our State, it is 6.1 percent unemployment, and in New York City, 8 percent unemployment.

We did the right thing a few months ago when we passed unemployment insurance and disaster unemployment assistance for 13 weeks. Those are both very important programs.

The disaster unemployment assistance, which comes through FEMA, goes directly to those workers who actually lost their jobs because of the physical destruction of September 11. Unemployment insurance, as we know, is triggered when there is a lack of jobs for whatever reason. And, of course, more people are out of work in New York and throughout our Nation because of the impact of September 11.

Unfortunately, these extensions, which provided a very needed safety net for thousands of workers, are about to expire for many of those workers. Nationally, 686,000 individuals will have exhausted their benefits with no job to enter.

On Monday, I participated in an announcement of a study that was commissioned by a group called the 9/11 United Services, which is a coordinating group that tried to bring all the charities together. A very accomplished corporate executive was asked to come in and serve as the temporary chairman. He immediately said: We don't have any data. We don't know what the facts are.

He commissioned a study by McKenzie and Company to try to figure out what the economic challenges are that we are confronting. Their survey, which was announced on Monday, showed that approximately 45,000 workers in New York City whose jobs were affected continue to suffer an income loss of more than 25 percent. Approximately 28,000 are still unemployed. In other words, we got down to about 45,000, and of those 45,000, about 17,000 did get a job, although it cut their income considerably, and 28,000 are still unemployed.

It is clear, despite the very best efforts of private charities and very extraordinarily generous people, we just cannot make up the losses of income and joblessness that we are still confronting.

The New York State Department of Labor confirmed these figures from the McKenzie study, but, in fact, theirs are even more dire, and they are the official figures. They show that 105,000 people were on unemployment insurance as a direct result of the World Trade Center attacks. We have an increasing number who are running out of time. Nearly 7,000 of the 24,000 are still unemployed, looking for jobs, and have exhausted all their benefits. There is no job in sight.

The disaster unemployment assistance expired, dropping 1,100 people who still have not found a job, who have not been placed anywhere else because their companies, if they are still in New York—as many, thankfully, are—have downsized, have moved, and have not been able to provide all the jobs that were once there.

I have provided these statistics just to give you some insight. But, of course, the personal stories are what are most wrenching and what I encounter every time I am in the city, or my caseworkers and staff, as they field phone calls, e-mails, and letters from people who worked at jobs for 18 years, 25 years, who put two children through college, and now have nothing to fall back on, who are on the brink of being evicted from the apartment they have lived in for decades, or are about to be foreclosed on in the homes they have struggled to buy.

I know that it is sometimes difficult to think about these faceless people out there, but we have tried very hard to do the right thing in the wake of the World Trade Center. We certainly tried to provide the resources that businesses needed to get back on their feet.

This body and the President and the House were extremely generous to provide the public funds that we needed to begin the rebuilding process, to clean up the debris, to do what we needed to get back on the right track in Lower Manhattan. But I just do not want to see our workers—people who were gainfully employed, doing the right thing—forgotten.

Certainly, I have a great deal of sympathy for people in other parts of the country who are really caught up in this so-called jobless recovery as well.

I am introducing two pieces of legislation, along with Senators SCHUMER and KENNEDY, to extend both unemployment insurance and disaster unemployment assistance for an additional 13 weeks. It is our hope that the jobs will start coming back into the economy.

In fact, experts certainly agree that extending unemployment insurance is more likely than anything else we can do to get money into the economy that people will have to start spending because they do not have any choice.

Over the last five recessions, every $1 spent on unemployment benefits generated a $2.15 increase in the gross domestic product. I went back and looked. What did we do the last time we were in any kind of comparable period?

Mr. President, the period of 1990–91 was the most recent time in which to compare this. In the early 1990s, benefits were extended four times, for it became clear, in the absence of that safety net, that lifeline, we would have even greater problems with which to deal.

What are we going to do with people who get foreclosed on and evicted? Not everybody has a family to go to and crowd on to a sofa bed or into a spare room. We are going to have increases in homelessness. We are going to have all kinds of problems that at least we can try to forestall and, hopefully, eliminate.

These benefits would be extended for just an additional 13 weeks—half the time they were extended back in the early 1990s.

Clearly, I think we need systemic changes to the unemployment insurance system. I think it is kind of an odd position for us all to be in: Coming back, asking to extend it whenever it is needed, that we have to have new congressional action. There ought to be some ways where we can also be more sensitive to different parts of the country.

I know there are parts of the country—there are parts of my State—that are below the national average in unemployment. But there are concentrated pockets that we don't, frankly, want to spread and have more expensive problems to deal with, which is one of the additional reasons I hope the Senate will support this action.

I am very appreciative of all of the support that New York and New Yorkers have received over the last many months. This has been obviously a traumatic and terrible time for many families. Certainly nothing we can say or do will bring back a loved one or even bring back a job that was there for 20, 25 years. But we do have to continue to try to send out this lifeline, the help that is needed, so people can try to get themselves back on their feet and that we don't claim more victims because of the horrific attack on September 11.

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

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

Mr. REED. I ask unanimous consent the time be equally charged to both sides during the course of the quorum calls.

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

INVESTOR CONFIDENCE

Mr. REED. Mr. President, I rise in strong support of the Sarbanes legislation.

We have been buffeted over the last several months on a daily basis with news of companies with accounting practices that have led them to bankruptcy, have left them without the means to carry on their business, have left their workers without jobs, and have devastated their pension funds. Day after day after day, a litany of accounting irregularities surface on the front pages of America. It has translated into a growing lack of confidence in our markets.

We are here today with the critical role of reassuring the American public that we will pass legislation quickly that will restore their confidence in our financial system.

This crisis is deepening with each day. Therefore, we must move forward deliberately, carefully but very quickly, to ensure that we can communicate with the American people and let them know we are aware of these problems and we are correcting them.

I just came from a press conference to which we invited representatives who manage public pension funds. It is a staggering sense that we are seeing out there, not just problems on Wall Street but problems on Main Street. Essentially what has happened is that the American public has become invested heavily in our capital markets, in our equities, not just individually but particularly through pension funds. Sixty percent of the assets of defined contribution plans are invested in equities or mutual funds. About 70 percent of all of these funds together is creating a situation in which, when Wall Street has a problem, it translates to every corner of the country.

We have to step forward. We are stepping forward. The Sarbanes bill is a strong bill. It has been made even stronger with the adoption yesterday, in a bipartisan vote, of the Leahy amendment. We are going to create an oversight board for accountants that will truly be independent and will have the force and the teeth to get the job done.

The Sarbanes bill also proposes the serious separation of the auditing function and other consulting functions that accountants can perform. If you

are going to be an auditor, you have to be an auditor, not an auditor and consultant. This is an important step forward.

Also importantly, the Sarbanes bill will require that the SEC receive the necessary resources to get the job done. There have been for decades extensive security laws on our books. Unless these laws are enforced, they are not effective. Frankly, some of what we are discovering is a lack of enforcement. You have the SEC that is overwhelmed with filings and not capable of reviewing all those filings, not capable of taking the kind of proactive action which is necessary to avert the crisis we have seen.

We are indeed at a critical moment in our history. We have seen the market over the last few days take huge losses. That suggests that not just the American public but the world is growing more and more concerned with our accounting practices, our transparency, whether or not a financial statement by an American publicly traded company can be relied upon.

One of the ironies of this is a year or 2 ago, 3 or 4 years ago certainly, we were out offering our market to an emerging economy in Russia as the model; in a way, sort of looking at them, saying: Boy, if only they would adopt our accounting practices, the kind of tough rules we have, it would be a huge step forward in their development as a market economy.

Well, ironically, today we have discovered that what we thought was a very thorough, comprehensive system is not as thorough and comprehensive as we thought and did not have the kind of integrity we need to ensure investors that when they read a report from an American company, that report is accurate. That used to be the standard.

I mentioned previously that I had the occasion to attend a press conference with representatives of public pension funds. One of the individuals was the first comptroller of New York City.

Let me give you an idea of the dimension of a problem we are talking about. On an annual basis, the city of New York has been contributing about $600 million a year to their pension funds in order to make sure those pension funds are actuarially sound, that they can pay the benefits for all of their retirees. They still can do that today, but the pricetag has gone up to over $1 billion in a year. They estimate, if the market continues, that they will be paying on the order of $3 billion in a few years. That money comes from taxes paid by the people of New York, and it comes from cutting other programs. It is a huge problem.

At the core of the problem is this lack of confidence, the daily spate of news reports saying essentially that the accounting practices of major publicly held companies are absolutely erroneous. We have to reverse that tidal wave, and we have to do it quickly. We can begin to do that by strong support of the Sarbanes bill.

Many people have called this an investors' bill of rights. I think they are correct. I commend and compliment the chairman of the Banking Committee, Senator SARBANES.

This is an example of how legislation should be done. This is an example of a careful, thoughtful process through the committee. I know the Presiding Officer, as a member of that committee, contributed substantially to that process. It was a delight and pleasure to work with Senator SARBANES on the Banking Committee, to see that careful, thoughtful approach—with 10 hearings, witnesses from every sector of our economy, including perspectives from those who manage pensions, those who are security experts, and those who are business leaders. All of those perspectives were brought together in this legislation, which is thorough, comprehensive, and, in my view, outstanding.

Then, also, to be able to fashion a bipartisan group of support was critical here and throughout our country. This is a textbook example by a master of how to move legislation through this body, but, more importantly, how to respond to the compelling needs of the American public. I commend and thank Senator SARBANES and his staff for their great effort.

We are at a point we can begin to see—if we move forward in the next few days—a new regime of securities laws that will feature an independent, full-time professional oversight board to monitor the behavior of accountants. We will also see guidelines on which nonaudit services are prohibited, so there will be a separation between the audit and nonaudit services. That should prevail. This is very important.

I was an attorney in private practice and did corporate work. Frankly, I assumed that what I saw in that report, signed by a distinguished auditing firm, was gospel and not to be contradicted; that it was the final judge about disputes on costs and facts about what the company was doing and what they were disclosing and what they didn't have to disclose. I always assumed that it was the accountants who were answering those tough questions. They were literally the bad guys. There were a lot of creative CEOs, CFOs, and lawyers. In fact, they were often satirized, and the most uncreative part of the management was that auditor who was telling you, no, you cannot do this. That, obviously, over the last few years, has eroded tremendously.

With the Sarbanes bill, we will clearly delineate those activities that can and should be performed by an auditor. It will also shore up tremendously corporate responsibility and require CEOs and CFOs to certify the accuracy of the company's financial statements. It will also increase the amount of the financial disclosure that a company must conduct in the course of their business.

Many of the exotic arrangements that brought down Enron were never disclosed to shareholders and the investing public. As a result, those entities, when discovered—such as CHEWCO—were the instruments of the demise of that company. Those kinds of off-balance-sheet transactions will have to be disclosed if the bill passes, and I think it is necessary to do that.

We are also dealing with the very real need for increasing funding for the SEC. That is a critical component of the legislation.

The President was in New York City making a speech, calling for $100 million—or probably closer to $300 million, or more—that we need to ensure that the SEC has to conduct their activities. So we are moving forward and ensuring that, I hope, we do this.

Our record over the last several years has not been as aggressive as I would have liked it to be. I supported a measure a few years ago—in fact, I think last year—in which we passed legislation that lowered various fees that are involved in securities transactions, with the idea that we would, at the same time, increase the pay within the SEC to attract better workers and more sophisticated individuals there, to complement what is going on in the private market where legal salaries are very high. The transaction reduction fee went down, but the pay parity never went into effect. So I think we have to follow through not only with this authorization but also with appropriations to make sure that can occur.

So we have a situation where we are moving forward and in which the Sarbanes legislation, I hope, will be complemented by legislation proposed by Senator KENNEDY to directly affect pension operations in the United States. These two pieces of legislation—hopefully brought together quickly, passed through this body and by the other body, and signed by the President—will send a signal to the American public, the investing public in the U.S. and around the world that our markets are the best in the world, that they can rely upon every word in a financial report, and to have fully disclosed the financial conditions of publicly held companies in the United States. If we do that, it will be a huge benefit not just to Wall Street but to Main Street.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRAMM. Mr. President, I support the McConnell amendment. I think it is a good government amendment. I think it is a full disclosure amendment. I don't even see why we are voting on it. I am convinced it will be defeated because any good government amendment that has anything to do with plaintiffs' attorneys is routinely defeated in the Senate.

Having said that, I make note of the fact that the Dow is down again today. I do not believe the primary problem in the markets today is the disease we are fighting. The primary problem we have now is fear about the absurd prescription of the doctor. I believe there is concern that in this frenzy, things are going to be done that will have a long-term negative impact on the capital market.

If you take the bill the House has already passed and the Senate bill as it is now, and you take the President's position reiterated yesterday by the Secretary of the Treasury, we have the makings of a good bill that can be broadly supported.

I reiterate my hope and desire that we bring this debate to a close. We could, by unanimous consent, have a vote on cloture today. We could deal very quickly with germane amendments. We could pass this bill tonight, and next week we could be going to conference. That would be prudent policy.

We are going to have a lot of amendments offered, if my list is indicative, that if anyone really believed they would be adopted, would be terribly frightening to investors.

The PRESIDING OFFICER. The Senator's 2 minutes has expired.

Mr. GRAMM. I ask unanimous consent for 1 additional minute.

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

Mr. GRAMM. If anybody took this list of amendments seriously, they would not be willing to risk thousands, millions, or billions of dollars. But they should not take this list seriously because these amendments are not going to become law.

The sooner we bring this debate to an end, the sooner we pass this bill in the Senate, the sooner we go to conference, the sooner we put together a bill that will represent a compromise, the more certainty there will be on Wall Street and the quicker we will rebuild equity values in America and rebuild confidence in our market.

I urge my colleagues, let's move ahead. Nothing good is going to happen today to this bill. Nothing bad is going to happen either, I make that clear, but it will not be clear to people watching this debate. The sooner the debate ends, the better off we will be. The sooner we get to conference, the sooner we will have a bill. That cannot come soon enough to suit me.

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I expect shortly my amendment will be tabled. That will be further evidence that there is not a majority of the Senate willing to confront the issue of either union corruption as we discovered yesterday or, in the case of the amendment about to be voted on, plaintiff's lawyer misconduct.

The underlying amendment, the Edwards-Enzi amendment, addresses the issue of corporate counsel, defense counsel misconduct, and it seemed only appropriate to me that we deal with the other side of the equation; that is, the lawyers who represent plaintiffs in Federal claims and in Federal courts.

This is a long overdue matter to be dealt with. If not now, when? My good friend from Maryland said this is an inappropriate bill to deal with it, so I suggested maybe he would support me in bringing up my matter freestanding with a time agreement; he smiled, but clearly the answer was no.

Mr. SARBANES. Will the Senator yield?

The answer was no. I didn't smile. I said no and smiled along with it.

Mr. MCCONNELL. Mr. President, I respectfully correct the observation, in case the Senator from Maryland misunderstood. I didn't doubt that his answer was no. He doesn't want to deal with this at any point, ever—not now, not tomorrow, not ever.

The issue before the Senate is whether it is appropriate to deal with client misbehavior when they are representing plaintiffs, as well as when they might be representing defendants.

My amendment is very simple. I would love to have gone further. My amendment does not cap fees, does not cap damages. It simply deals with the following: Providing, for the client, information about the arrangements under which the client is retaining the lawyer at the beginning, in the middle, and at the end of the case so the client fully understands the terms of the arrangement; second, that there be a 45-day bereavement rule established 45 days after the occurrence of the accident where the victims and their families would not be harassed by those seeking to represent them. It is just a 45-day bereavement rule which we already did under Federal law for airplane accidents.

I hope this amendment will be adopted. It is very reasonable and very appropriate to this bill.

I yield the floor.

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

Mr. SARBANES. Mr. President, what is the time situation? I have 2 minutes?

The PRESIDING OFFICER. The Senator from Maryland has 2 minutes and the Senator from Wyoming has 2 minutes. The Senator from Maryland.

Mr. SARBANES. Mr. President, I urge my colleagues to table this amendment. I do not know what amendment the Senator from Kentucky will come with next out of his grab bag, but he has obviously got a whole set of pet projects that he has been husbanding there in his committee and that he will seek to offer. They are not relevant to this legislation.

Here we are again trying to deal with an issue that is relevant. I suggest to the distinguished Senator from Kentucky that he allow the second-degree amendment staffer to take the weekend off so we do not have to continue to go through this exercise of being confronted with these second-degree amendments not relevant to the legislation. We have important legislation to deal with here. We have some good amendments pending out there. This repeated effort to just gum up the works is difficult to understand.

In any event, I urge my colleagues on the vote that is shortly to come to vote to table the McConnell amendment.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, we have, I think, before us, about 60 amendments. I join my ranking member, the Senator from Texas, in his comments about how we need to get this bill done as quickly as possible. The stock market is dropping. It may be because of what we are doing. It may be because of the need to have this bill done. Either way, getting this bill done will give some assurance to the stock market both that we are not dabbling in it anymore, and that we have completed our work and have provided a solution.

As a result—and I regret that it is on this amendment with my friend from Kentucky—I will begin making tabling motions on amendments that do not have a direct aspect to the bill. I also would be doing that to amendments that put specific accounting language into the bill, even if it is relevant. This bill is not designed to put in specific accounting language; it is designed to set up a process for getting to specific accounting language. That is a very fine distinction and a very important one if we want to have the kind of stock market and the companies that we envision.

With those comments, at this time I move to table the McConnell amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I ask unanimous consent we be permitted 1 minute to make an introduction.

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

INTRODUCING THE HONORABLE PAT COX, PRESIDENT OF THE EUROPEAN PARLIAMENT

Mr. DASCHLE. Mr. President, one of the privileges accorded the majority leader is the opportunity to welcome and introduce our fellow legislators from the European Parliament. This is a tradition that was begun in 1972, and has continued every year since.

I find it especially meaningful, because although the Atlantic Ocean separates us from our European friends, we are connected by a belief in the rule

of law, and a commitment to the betterment of the people we serve, and the world we share.

This afternoon I have the distinct honor of introducing The Honorable Pat Cox, President of the European Parliament. This is an exciting time of growth and change in the European Union, and as President of the European Parliament, Pat Cox has been instrumental in fostering greater European unity and advocating for EU expansion.

As Europe becomes ever more unified, the extension of EU membership to free and democratic nations will be crucial to ensuring that diversity and pluralism accompany unification. In the face of persistent disputes among EU nations and political factions, President Cox has not wavered in his support for expansion, or in his denouncement of far right politicians who do not express the views of most Europeans. For that, we are all grateful.

Mr. President, Mr. Cox will be available to meet our Senate colleagues here on the floor during this vote.

Let me, on behalf of the U.S. Senate, welcome President Cox.

(Applause.)

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002—Continued

AMENDMENT NO. 4200

The PRESIDING OFFICER (Mr. CARPER). The question is on agreeing to the motion to table amendment No. 4200. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 35, as follows:

(Rollcall Vote No. 172 Leg.)

YEAS—62

Akaka	Dorgan	McCain
Allen	Durbin	Mikulski
Baucus	Edwards	Miller
Bayh	Enzi	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Boxer	Graham	Reed
Breaux	Hagel	Reid
Byrd	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Inouye	Schumer
Carper	Jeffords	Shelby
Chafee	Johnson	Snowe
Cleland	Kennedy	Specter
Clinton	Kerry	Stabenow
Collins	Kohl	Thompson
Conrad	Landrieu	Torricelli
Corzine	Leahy	Warner
Daschle	Levin	Wellstone
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NAYS—35

Allard	Fitzgerald	McConnell
Bennett	Frist	Murkowski
Bond	Gramm	Nickles
Brownback	Grassley	Roberts
Bunning	Gregg	Santorum
Burns	Hatch	Sessions
Campbell	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Craig	Inhofe	Stevens
DeWine	Kyl	Thomas
Domenici	Lott	Thurmond
Ensign	Lugar	

NOT VOTING—3

Crapo	Helms	Voinovich

The motion was agreed to.

Mr. SARBANES. 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 majority leader.

AMENDMENT NO. 4269 TO AMENDMENT NO. 4187

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. DASCHLE. Mr. President, I have an amendment I send to the desk on behalf of Senator LEVIN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LEVIN, for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN, proposes an amendment numbered 4269.

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

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

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

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this amendment is offered—and I thank the majority leader—on behalf of myself, Senator BILL NELSON, Senator HARKIN, Senator CORZINE, and Senator BIDEN.

Our amendment would grant the SEC administrative authority to impose civil fines on persons who violate securities laws, regulations, and rules. Now the SEC has to go to court, which is difficult and burdensome.

We, just the other day, decided we wanted to give the SEC the power to remove directors and officers from public companies who violate rules and regulations and laws without having to go to court.

Of course, those decisions administratively by the SEC are subject to an appeal. That is always true and always must be true. The same approach is essential relative to the imposition of civil fines. If the SEC is going to have power, without a lot of cumbersome, costly, and expensive procedures, to really take on those directors and those auditors who violate the law, who violate rules and regulations, the SEC must have the same authority which other regulatory bodies have to impose civil fines.

A few examples: The Commodity Futures Trading Commission has authority to impose civil fines up to three times the monetary gain from a violation plus restitution of customer damages. The Department of Transportation can impose civil fines. The Consumer Product Safety Commission can impose civil fines. The Occupational Safety and Health Administration, OSHA, can impose civil fines. The Federal Communications Commission can impose civil fines.

As a matter of fact, the Securities and Exchange Commission can impose civil fines on some of the people it regulates—brokers. But unless we act today, there will be a great gap in the enforcement power of the SEC, a continuing gap. That gap is, it does not have the power, without legislation, to impose an administrative civil fine on auditors and members of boards of directors who violate rules and regulations in the law of the land.

Our amendment would give the SEC that authority to impose administratively civil fines on those people who violate our securities laws and regulations and rules. That includes officers, directors, and auditors of publicly traded companies.

I emphasize, these fines would be, and must be, subject to judicial review, as are the other SEC administrative determinations which they have authority to answer at this point. That is the first objective of the amendment.

Secondly, our amendment would significantly increase the civil fines the SEC can impose on law violators. I particularly thank Senator NELSON of Florida for highlighting the problem and supporting the inclusion of these provisions in the amendment.

The civil fines that currently can be imposed on broker-dealers administratively have maximum amounts that start at $6,500 per violation. That is the maximum amount under the so-called tier 1 civil fine. If a broker-dealer now violates the securities laws under so-called tier 1 where there is a violation found, not yet proven to be fraudulent but a violation nonetheless, $6,500 is the maximum fine under current law. Tier 2 for individuals is a $60,000 fine. That is where you find fraud, deceit, manipulation, and deliberate or reckless disregard—$60,000 for an individual for that violation.

It is laughable. The current structure of fines which can be imposed on those people who administratively can be subject to a civil action or civil fine by the SEC is so low, these fines are a joke. We are talking about people who frequently are walking away, lining their pockets, violating rules and regulations for millions of dollars, sometimes tens of millions of dollars. To have a system where the maximum fine under tier 1 is $6,500 for an individual and under tier 2 is $60,000 is just simply inadequate.

Here is what the SEC staff said in June of this year: The current maximum penalty amounts may not have the desired deterrent effect on an individual or a corporate violator. For example, an individual who commits a negligent act is subject to a maximum penalty of $6,500 per violation.

This is the conclusion of the SEC staff: The amount is so trivial that it cannot possibly have a deterrent effect on the violator.

I would say that is an understatement: $6,500, given the current amount of money flowing through these violations of rules and regulations, is pitifully trivial. In fact, it is no deterrent at all. It might as well not be there. If we are going to have a deterrent system, we have to have fines which have some bite, which are real, which have an impact on people.

We would, under our amendment, increase the maximum fines from a range of $6,500 to $600,000, which is the current range for tiers 1 through 3, to a range which goes from $100,000 to $5 million in fines per violation.

We are seeing these corporate restatements and misconduct involving $2 billion, $4 billion, and even $12 billion. These new fine amounts are critical if they are to have the desired deterrent and punitive effects on wrongdoers in the corporate world.

Our bill also has language which is similar to the language in the Leahy and Lott amendments that were adopted relative to the removal from office. We do this for the sake of completeness, so that we can lay out the entire structure being proposed in our bill for administratively imposed civil fines. That part of the amendment is the same as the removal from office provisions adopted by the Senate yesterday in the Leahy and Lott amendments.

Finally, our amendment would grant the SEC new administrative authority, when the SEC has opened an official investigation, to subpoena financial records from a financial institution without having to notify the subject that such a records request has been made. This authority would allow the SEC to evaluate financial transactions, to trace funds, to analyze relationships, without having to alert the subject of the investigation to the SEC's action.

Under current law, the SEC either has to give the subject advance notice of the subpoena or to obtain a court order that can delay notification for no longer than 90 days. That is a huge impediment to enforcement by the SEC. We ought to change that.

The staff of the SEC wrote the following relative to this amendment:

This amendment would enhance the Commission's ability to trace money and relationships quickly and effectively. The Commission typically requests bank records when it has reason to suspect possible relationships between persons or entities and that passage of money between those persons or entities may be relevant to violations of the securities laws. Identifying those relationships and quickly identifying assets obtained or transferred in connection with possible unlawful activity is critical to the Commission's ability to obtain orders freezing assets and other appropriate relief.

In many situations, the Commission could proceed much more effectively if it could obtain relevant bank records without providing notice to the persons whose account records are sought.

Under current law, however—

The SEC staff wrote—

the right to the Financial Privacy Act generally requires the commission to provide those persons with notice and a substantial period—10 to 14 days—in which to file a contest to the commission's authority to obtain the records.

Let me continue with the SEC staff analysis of this language that is in our bill:

Because Congress recognized that the notice requirement can, in some cases, compromise important and legitimate commission investigative objectives, Congress provided in section 21(h) of the Exchange Act that the commission may seek court authorization to obtain relevant bank records without notifying the customer for at least 90 days. Unfortunately—

The SEC staff wrote—

those important investigative objectives are also compromised by the inherent delay in obtaining the necessary court order.

The proposed amendment to section 21(h)—

Our language in this amendment—

addresses both the notice and delay problem by allowing the commission the discretion only in those cases in which it has already authorized a formal investigation to proceed without notice to the customer. The proposed amendment also reiterates and strengthens the commission's authority to require that financial institutions not compromise investigations by notifying any persons or entities that their bank records have been subpoenaed.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. LEVIN. I will be happy to yield for a question, but I do have an additional thought.

Mr. NELSON of Florida. I am proud to be here today with my colleague from Michigan to offer these reforms aimed at preventing and punishing perpetrators of corporate fraud. The questions I wanted to ask the very distinguished Senator from Michigan, who has the foresight of why we need this at this particular time, are these: Would it not intrigue the Senator from Michigan and other Senators here that all of this is happening in an environment when 17,000 workers at WorldCom have received pink slips and have realized losses of over a billion dollars in their retirement plans; and at the same time they were receiving pink slips, the corporate executives were attending a retreat in Hawaii? That would not surprise the Senator, would it?

Mr. LEVIN. It would not surprise me at all.

Mr. NELSON of Florida. I doubt that it would surprise the Senator that one of those executives, by the way, was putting the finishing touches on a $15 million mansion, derived from that money from WorldCom. Would it surprise the Senator that late last year Global Crossing laid off 1,200 people, giving them no severance package, while the CEO of that company walked away with hundreds of millions of dollars?

Mr. LEVIN. I am afraid very little would surprise me about some of these violations and deceptions these days.

Mr. NELSON of Florida. I know it would not surprise the Senator, but I will ask him this anyway. After what went on with Enron last summer, while Enron executives were selling their shares for hundreds of millions of dollars and protecting their portfolios, their retirees and employees lost more than a billion dollars in retirement savings. Does that surprise the Senator?

Mr. LEVIN. Tragically, it is not a surprise.

Mr. NELSON of Florida. It is unconscionable. One of those we had testify in our Commerce Committee was Janice Farmer, an Enron retiree who lost her entire life savings that she had built up in a retirement plan from Enron. In her case, it was $700,000. She has nothing now.

And then, I suppose it also would not surprise the distinguished Senator that, while we are talking about these excesses of corporate irresponsibility and corporate greed, the Florida pension fund for the Florida retirement system had a loss of $335 million—more losses than any other State—from Enron stock purchases, and that the money managers of that Florida pension fund, which covers all of the public sector retirees in Florida—the money managers kept buying Enron stock, based on the assertions from the company's management that everything was OK, that doesn't surprise us either, does it?

Mr. LEVIN. No surprise. I am afraid that the public, having lost so much of its pension money, is disgusted but no longer surprised.

Mr. NELSON of Florida. The management said everything was OK, but it was not OK. While the stock was dropping like a rock, but not before the company's management had unloaded their shares, the money managers were buying that stock as it dropped like a rock, and it caused to a dozen or so pension funds, retirement systems, public pension funds in this country over a billion dollars in losses. My State had the most losses of $335 million.

So we have seen in the last year and a half corporate abuses of monumental proportions, and it is time for us to stop it. I am grateful to the Senator from Michigan for his leadership in bringing forth the amendment that he has described, which is basically going to give some additional teeth to the Securities and Exchange Commission to cause disclosure and to cause some hurt when these corporate managers, motivated and operated by greed, cross the line.

I thank the Senator for his leadership.

Mr. LEVIN. I very much thank the Senator from Florida for his comments

and his questions, and also for the active role he has taken in shaping this language. He has identified the feeble nature of the fine structure that we have in the current law. We have some ruthless people out there who have lined their own pockets in violation not only of law and regulation, but of any code of morality and fiduciary duty. We have some ruthless people.

We also have some toothless laws. The SEC, when it has to go to court to impose a civil fine, is put through hoops that other regulatory agencies are not put through. They can impose civil fines administratively—always subject to an appeal by the respondent or the defendant. But they have the capability to seek civil fines administratively—these other agencies. I have given examples of some of them. But when it comes to the SEC—outside of the brokers, where the SEC has that power—they have to go through the cumbersome proceedings of going to court.

Now, we have cured some of this already in the bill. When it comes to the removal from office, yesterday we took action to give the SEC the ability to act administratively and to order the removal of directors or executives from office. What we didn't do yet, and what this amendment does, is add a critical component to regulatory effectiveness, which is the ability to impose civil fines administratively.

This is what the administration said in supporting the grant to the SEC of the power to remove directors from office, which we have now already done. It says that if we didn't do that—and now I am quoting the Statement of Administration Policy:

> It would continue to require the SEC to expand significant time and resources in order to attempt to gain similar relief in the Federal courts.

That is what we are talking about now with civil fines.

If we do not adopt this amendment, if we do not give the SEC these enforcement tools that other agencies have relative to directors and auditors, we will be requiring the SEC to be wasting time and wasting resources that they otherwise should be using to chase these corrupt and immoral people.

Mr. NELSON of Florida. Will the Senator yield for another question?

Mr. LEVIN. I will be happy to yield.

Mr. NELSON of Florida. The distinguished Senator from Michigan has laid out how this amendment will give stronger enforcement measures to the Securities and Exchange Commission. We have a saying in the South: It is beyond me. It is beyond me why there are other people in this Chamber, when confronted with such corporate and auditor misconduct, would not want to strengthen the law to prevent and punish such corporate abuse.

Does the senior Senator from Michigan have any idea why people would oppose us trying to strengthen existing law and, indeed, strengthen the underlying bill?

Mr. LEVIN. I am hopeful there will be broad support for this amendment, just for the reason the Senator from Florida gives. There should be. This is not novel. This capability of imposing civil fines administratively belongs to other regulatory agencies. The protection is always an appeal to the court, but without this tool, the SEC has a weaker capability. They are not in a position then to do what other enforcement agencies can do in the face of some of the worst deception this country has ever seen—the deception which is now unfolding in too much of corporate America.

This is of the worst attack on our system we have seen. It is unfolding in front of our eyes, and the SEC should be given the powers to deter it or punish it—all the power.

We want the court to be able to review administrative actions. I think most Members of this body do not want any administrative agency to be able to act without court review if they are excessive or if they are wrong. I think most of us believe in that. I believe in that. But I also believe an administrative agency has to have enforcement tools.

We have given the SEC some additional tools in the last few days. Senator LEAHY and Senator LOTT, for instance, in the criminal law area, toughened the criminal penalties, and the SEC now has the capability to impose fines against the stockbroker, although they are pitifully small.

Our amendment would include directors, corporate executives, and auditors in the purview of the SEC power to act administratively and would toughen the fines so they would be far more realistic and could have some deterrent effect. The current fine structure against a limited class of people is useless; it is toothless.

This is a huge gap in the bill before us. This is a terrific bill, by the way, and I do not want anything I say to suggest otherwise. The Banking Committee has given the Senate, and hopefully the country—if we can get some support for it from the administration and if it can get through conference—the Banking Committee has come up with a very strong law. We have strengthened it so far on the floor.

This amendment will strengthen it further by filling a gap that exists in the toolbox. It is the missing tool in the toolbox of enforcement capabilities that the SEC should have.

Mr. NELSON of Florida. The Senator's timing is just uncanny. We need look back no further than to yesterday when the stock market dropped almost 300 points, all the way down close to 8,800, the stock market being a reflection of the confidence of the American people in their investments in public corporations. Lo and behold, that confidence is sinking, and the American people need some greater sense of confidence that, indeed, they will not be hoodwinked, that they will not be fooled by greedy corporate executives or greedy auditors who blur the lines on what their auditing duties ought to be and instead get in bed with those who would mismanage the finances of a corporation. The people of America who invest their hard-earned dollars ought to have the confidence that when they see the financial reports, those financial reports are accurate. That confidence is not there, and we saw it yesterday in the reaction of the people in their purchases and sales in the stock market.

I thank the Senator from Michigan for his timeliness in trying to put some teeth in the authority of the Securities and Exchange Commission to give greater confidence to the Joe and Jane Citizen of America who invest their money because they want to invest in the future of their country and they need to do it and know they are getting accurate figures. I thank the Senator.

Mr. LEVIN. I thank the Senator from Florida.

Mr. President, I wish to expand for one moment on the question of the notice provision in our amendment.

As I indicated before, where there are allegations that officers, directors of companies are misusing the accounting rules and abusing their powers, the SEC has to be able to look at financial records without giving the account holder an opportunity to move funds or to change accounts or to further muddy the investigative waters. Other agencies have that power, and this agency must have that power.

We have carefully circumscribed that power in a number of ways. We have not just simply said you can subpoena any documents you want. We have criteria for doing that or else they have to give notice.

One of the criteria is that it has to be an official investigation that has been ordered by the Commission. That is an important safeguard. This is not just the beginning of an investigation. This is not during a discovery process. This is where the Securities and Exchange Commission has initiated an official investigation, which is a very formal act on the part of the Securities and Exchange Commission.

At that point, they should be able to subpoena documents under certain circumstances. These are the circumstances that we set forth in the amendment:

If the Commission so directs in its subpoena, no financial institution or officer, director, partner, employee, shareholder, representative or agent can directly or indirectly disclose that records have been requested or provided in accordance with subparagraph (A).

In other words, you cannot disclose to the subject of the investigation that you, as a financial institution, have been subpoenaed for those records if the Commission finds reason to believe that such disclosure may—and then we set forth the rules, and the rules are intended to make sure that the Commission can act after it has announced or

determined there should be an official investigation but does not want to risk that the subject of the investigation is going to remove documents or remove money or hide assets.

So we set forth the protections, and they are: If the Commission finds reason to believe that disclosing the fact of the official investigation to the subject of that investigation by a financial institution would, one, result in the transfer of assets or records outside of the territorial limits of the United States. So if the Commission says, hey, we have reason to believe if that person is notified in advance of those records being obtained by us or if there is a delay in our obtaining records that person may transfer assets or records outside of the United States, there could be nondisclosure.

The second criteria which, if it exists, would permit this to happen is if the disclosure would result in improper conversion of investor assets.

The third cause for the requirement that there be nondisclosure is that if such disclosure would impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction. That speaks for itself.

The fourth way in which nondisclosure would be permitted is that if it endangers the life or physical safety of an individual. If the Commission has reason to believe the life or physical safety of an individual would be compromised by disclosure, surely we ought to not require disclosure.

Fifth, if it results in flight from prosecution, if they have reason to believe that could happen, or if the Commission has reason to believe that the disclosure may result in destruction of or tampering with evidence, or if such disclosure may result in intimidation of potential witnesses or otherwise seriously jeopardize an investigation or unduly delay a trial.

Those are carefully set forth reasons for why disclosure should not be required. These are similar to what other agencies have in terms of powers, and it seems to me with this careful delineation of this subpoena power that we should surely give the Securities and Exchange Commission that power.

Again, staff has given the reasons for the importance of that amendment, and I hope that reasoning of the SEC staff would be persuasive on this body. We have to give the SEC some administrative authority to impose civil fines. It would provide a tool that is now missing from the toolbox. It would add this tool, this weapon, to their arsenal. Without this weapon in their arsenal, they still have one hand tied behind their back. Without this amendment, they do not have the same administrative authority that other agencies have.

Given the environment we are in, that we must use all legitimate means to put an end to the abuses and the deceptions of too many of our corporate leaders, corporate executives, corporate directors, and auditors, we must surely bring our laws up to date in terms of the powers we give to the SEC, and in terms of the civil fines we authorize them to impose, always subject to an appeal to the courts.

I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Texas.

Mr. GRAMM. Mr. President, some of my colleagues change positions on issues like privacy so quickly that it gives me whiplash, and I will get to that point. I do not know how many people have seen the movie ''Minority Report.'' If you have not, I want to tell you the story. I never thought I would see a real-life example of what happens in this movie, but I have found one right here on the floor of the Senate.

In the movie ''Minority Report,'' you have a cop who has almost supernatural powers, and his job is to arrest people before they commit a crime. It starts with three people, two guys who naturally do not have very much ESP, and then you have this lady, who naturally is quite attractive, who has these massive powers of ESP. They visualize crimes that are going to happen, their brain waves activate a computer, and then it prints out what they are seeing. They see crimes happening that have not yet occurred.

The action in the movie begins with a guy finding his wife in bed with another man. The husband is obviously a nice guy—probably an accountant—and he is leaving his house. His wife seems so eager for him to leave, he figures out something is going on. He is sort of an old, balding fellow and as he is leaving, he misses his bus. While he is waiting for the next bus, a young guy comes in and walks in his front door. Needless to say, the husband is upset about it. (Who wouldn't be upset about it? No one would want that to happen to them or anybody they knew.) So the husband goes in and he is sort of in shock. He finds himself in the bedroom, sitting by the bed. He goes crazy, and picks up a pair of scissors.

At this point, the computer system (hooked up to the people with ESP) alerts this superwarrior for law enforcement that there is about to be a murder. He jumps in this sort of minijet that flies fast and stops on a dime. The officer zooms in—have you seen this movie, Senator MCCAIN?—and just as the guy is getting ready to stab his wife, the officer grabs the knife, puts the handcuffs on the husband, takes him off and they put him in prison for murder.

Mr. MCCAIN. Will the Senator yield? That is a better description than the movie was.

Mr. GRAMM. Now, I thought, the whole thing is sort of a moral question: Were these people really going to commit these crimes? They put them in prison for life. They put them in these metal cylinders and wired them up to control their brain waves. It is not very pleasant. So the question is, Do you have a right to do this to people who have not yet committed a crime simply because some person with extrasensory perception said it was going to happen?

That is what the movie is about. It is a big hit movie. It made over $100 million the first week. It sounds silly when I tell it, but they got $100 million and I am giving this speech.

In any case, I thought, what an absurd plot. Who in the world could ever believe—this is the U.S. of A, by the way. This movie is off in the future.

Why would we ever have a law under which people can be punished for what they might do? Is that absurd? Can anybody believe that would happen? If you think not, you are wrong.

Let me read from this amendment. This is in general. It is talking about authority of the Commission to assess monetary penalties. This is from the amendment that is pending.

> In general, in any cease and desist proceedings under subsection A, the commission may impose a civil monetary penalty if it finds on the record, after notice and opportunity of hearing, that a person is violating, has violated, or is about to violate or has been or will be the cause of violation.

Senator LEVIN is going to fine people because we are concluding that they are about to do something before they have done it. Or that they ''will be'' the cause of a violation.

I submit, first of all, this is not from the SEC. The SEC has not asked for this provision. This is from staff at the SEC—maybe ''a'' staff person, for all I know.

The point is, do we really want to say we are going to penalize people because they are about to violate the law or we believe they are going to? How can you tell? How are you going to tell that they will be the cause of a violation? I submit that is a standard I am unaware has ever existed. If so, I didn't know about it or I would have tried to change it.

Let me mention a second problem. The second problem has to do with financial records. Correct me, my colleague on the Banking Committee, if somehow I have fallen into a time warp and am in a different world than last year. Was it not last year we were going to shut down the Internet, we were going to put people in prison for putting out your mailing address or for mailing you a letter where someone could read your address off of it and go murder you? Were we not just in this time warp where privacy was the be-all and end-all of society?

I get whiplash, we change positions so often.

Let me state what the current law is and then read what Senator LEVIN is proposing. The current law is the following: The SEC and other Federal agencies have the power to get your financial records, and they can do it through administrative subpoena or judicial subpoena.

Now, normally there is one little inconvenience. Normally, they have to tell you they have taken your financial

records. Not an unreasonable thing, it would seem to me, if this is still America. But we are talking about business people here, and there is a different standard. Two consenting adults can engage in any activity other than commerce, with full constitutional protection, but if they engage in job creation or wealth creation, they stand naked before the world in terms of any rights whatever.

Under current law, the Government can come in and take your financial records, but they have to tell you they have done it—''except.'' And there are three reasons they can do it without telling you. I think we all would say they make reasonably good sense. They can not tell you if they have reason to believe that there is going to be a flight from prosecution; or if they believe there is going to be destruction of or tampering with evidence; or if telling you would otherwise seriously jeopardize an investigation of official proceedings, or unduly delay a trial of an ongoing official process.

That is the current law. What is unreasonable about that? If the Government believes someone is doing something wrong, they can come in and take their records. Unless they believe there is going to be a flight from prosecution or there will be tampering with evidence or it will jeopardize the investigation, they have to tell you they took the records. That is not unreasonable. But if they believe any of these things to be the case, they can go in and take your records and not tell you.

Now, what does the amendment of the Senator from Michigan do? It says notwithstanding—that is always dangerous—notwithstanding sections 1105 or 1107 of the Right To Financial Privacy Act of 1978—that law has been around here a long time. But notwithstanding it, which means throw it out, the Commission may obtain access to and copies of or information contained in financial records of any person held by a financial institution, including financial records of a customer, without notice to that person.

If you think someone is going to flee prosecution or destroy evidence or that will jeopardize an ongoing investigation, maybe we would accept the limits of our individual liberty. But under the Levin amendment, you don't have to find any of those things. The government doesn't have to find that any of those circumstances is the case to be able to go in and take financial records.

Since this bill is a bill that amends our securities laws and our financial laws, this bill falls under this jurisdiction. So what this literally means is that a government agency, without ever going to the courthouse, could come and take all of your financial records—your banking records, your investment records, any financial records you have or have ever had—and without finding that there is any risk that you are going to flee from justice or destroy evidence or jeopardize an investigation, they can take them and not tell you about it.

There is a limit, it seems to me, to the logic in this case. If the Senator had an amendment that simply raised these fines for people who are criminals, that would be an amendment I could support. It shows how far we have flown from reality when we are talking about penalizing people because they are ''about'' to violate the law; or that ''will be'' the cause of a violation.

It is very hard to know when someone is going to violate the law. I have not yet gotten any kickback, I am not a stockholder even, I don't think I have received a contribution from the PAC of the people who made the movie I've described—though if they had any decency, they would have contributed to my campaign over the years. But if you watch this movie, you are going to see what the problem with the Levin amendment is.

The problem with the Levin amendment, as it turns out, is these psychics are not always right, and they don't always agree. Sometimes there is a ''Minority Report.'' The superwarrior cop discovers this. It turns out they try to frame him for a murder. A good movie. I recommend seeing it.

In any case, I am opposed to this amendment. It is a thick amendment. There are a lot of things in it. There are some things in it that I support. But I do not support penalizing people for what you think they are going to do. I do not support taking people's financial records without telling them about it. It sounds to me as if somebody at the SEC has got the idea that maybe they are living in a different era in a different country and they are saying: Look, if we didn't have to fool with civil liberties, if we could get rid of the Bill of Rights, we could be a more effective law enforcement agency. If we could arrest people we think are going to violate the law, we could be more efficient. We don't live in that country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me assure my good friend from Texas that I have seen ''Minority Report.''

Mr. GRAMM. You have?

Mr. LEVIN. I have.

Mr. GRAMM. Then you got the idea from it.

Mr. LEVIN. As a matter of fact, I got the idea for the protections we write in here from ''Minority Report'' just because, as a tribute to the protections and civil liberties that are defended and protected in ''Minority Report,'' I had to be absolutely certain we would put these protections in our bill, to make sure that only if there were reason to believe a transfer of assets was going to go outside of the United States, or there would be conversion of assets, or it would endanger the life or physical safety of an individual, or result in flight from prosecution—those very criteria, carefully delineated, that are a tribute to the civil liberties and protections and privacy rights in this country to which my good friend from Texas just referred.

I can assure my good friend from Texas, the lesson of ''Minority Report'' is carefully reflected in this amendment. I saw that because I knew the Senator from Texas was going to raise that movie. With that kind of foresight, I decided, knowing just how he does this so beautifully on the floor of the Senate, I had better see ''Minority Report.'' That is why I want to assure the Senator from Texas that these very protections which he is so careful to delineate are in fact set forth in this amendment. We have these criteria laid out in this amendment.

Mr. REID. I don't want to take away from the seriousness of the debate, but I haven't seen ''Minority Report.'' I have seen ''Big Fat Greek Wedding,'' and I would recommend that.

(Laughter.)

Mr. LEVIN. It sounds as if I have not been doing too much else, but I have also seen that—since we are giving testimonials to movies here.

The language to which the Senator from Texas objects, about penalizing people for what they are going to do—that is language which the good Senator from Texas, as chairman and ranking member of the Banking Committee, has overseen for years. That is the same language that currently exists in the SEC law. We are not adding anything new here. This is the SEC law, section 77(h)(1): Cease and desist proceeding, authority of the Commission.

If the Commission finds after notice and opportunity for a hearing that any person is violating, has violated or is about to violate any provision—

That is existing law. The Senator from Texas has overseen that for all these years. He has done a brilliant job as chairman and ranking member of the Banking Committee, and we are just simply following the language that exists already in the SEC law and applying it to folks who are not now covered.

Mr. GRAMM. Will the Senator yield?

Mr. LEVIN. For a question, I will be happy to.

Mr. GRAMM. What the Senator saying is they can issue cease and desist orders under these circumstances, but they can't fine somebody. You are not only ceasing and desisting them—I have no problem. In the movie—and that is where you got this idea from. I thought it was.

In the movie, I don't object to them grabbing the guy who is about to stab his poor wife. It is putting him in prison, not for attempted murder—he did that—but for killing her when she is not dead.

Mr. LEVIN. The Senator from Texas raises an issue which, I am afraid, is also addressed in current law. It is not just cease and desist orders, it is the implementation of civil fines. We are

following the same language. But what we are saying is, if the SEC has power to impose a fine on a broker, based on the standards which exist in this law, there is no reason the SEC should not have the same power to impose a fine on an auditor or on a director who violates the regulations and laws of this land. This is the same language. We haven't added anything new.

What is new here is that for the first time there will be the potential, the power in the SEC, subject to an appeal to the court—which is another protection of our civil liberties—subject to an appeal to the court, to impose a civil fine, administratively, on people who are now let off the hook. There is no reason for this gap in the law.

If, in fact, there is a problem that the Senator has raised, with language, that language is in the existing law for SEC. It is in the existing law for FDIC, the Federal Deposit Insurance Corporation:

If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution affiliated party is engaged or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution affiliated party is about to engage—

The words which the Senator from Texas mocks are in existing law, in the FDIC law, in the SEC law.

There may be reasons the Senator wants to maintain this gap in enforcement, but that cannot be used as the reason. That cannot be used.

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO RECOMMIT WITH AMENDMENT NO. 4270

(Purpose: To require publicly traded companies to record and treat stock options as expenses when granted for purposes of their income statements)

Mr. MCCAIN. Mr. President, I move to recommit the bill to the Committee on Banking, Housing, and Urban Affairs with instructions to report the bill back forthwith, with the following amendment that I send to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN) moves to recommit the bill (S. 2673) to the Committee on Banking, Housing and Urban Affairs, with instructions to report back forthwith with the following amendment, numbered 4270:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4271

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. EDWARDS, for himself, Mr. ENZI, and Mr. CORZINE, proposes an amendment numbered 4271 to the instructions of the motion to recommit S. 2673 to the Committee on Banking.

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

Mr. MCCAIN. I object. I would like to hear what the amendment says.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to read the amendment.

Mr. REID. I say to my friend, I will be happy to have it read, but it is the exact same amendment that was pending beforehand.

Mr. MCCAIN. Thank you.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To address rules of professional responsibility for attorneys)

At the end of the instructions add the following:

''(c) 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.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 4272 TO AMENDMENT NO. 4271

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. REID. Mr. President, I send a second amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LEVIN, for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN, proposes an amendment numbered 4272 to amendment No. 4271.

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

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

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

Mr. REID. Mr. President, I appreciate the cooperation of the Senator from Arizona. There are other ways we could have gotten to the point we are now. This just made it a lot easier. I appreciate that very much.

I say this, before I yield the floor, to my friend from Arizona. We are now in the exact same posture we were in prior to the Senator from Arizona offering his amendment—his instructions, I should say.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before the Senator from Nevada leaves the floor, I wonder if he would respond to a question. Do we intend to vote on these pending amendments and the motion to recommit?

Mr. REID. I say to my friend, we have been trying very hard. I have received instructions—it is probably the wrong word, but Senator EDWARDS has been here for 2 days, and he left here for a while this afternoon waiting to vote on his amendment. Senator LEVIN has been here for several days—2 days. We would like very badly to vote on the Levin second-degree amendment and the Edwards first-degree amendment.

I have spoken to the manager of the bill for the minority. It appears very unlikely that we are going to be able to do that. I think that is a disappointment. I think some of these relevant—I shouldn't say some—I think all of these relevant amendments we can get up to prior to the cloture vote, we should try to dispose of.

But I understand the rules of the Senate. I am disappointed to say, my friend from Texas also understands them, so even though I would like votes, it does not appear we are going to be able to have votes.

Mr. MCCAIN. Mr. President, I thank my friend from Nevada for his candor. I think it is pretty obvious. Everybody ought to understand what is happening as we go through these arcane procedures.

The whole purpose of this—the whole purpose of what we just went through—is to not have a vote on anything that has to do with stock options. Let's be very clear what that is all about.

Whatever side you are on on the issue, the fix is in, as we say all too often in the sport of boxing. The fix is in and we will now have cloture invoked and there will not be a vote on stock options.

While my friend from Nevada is still here, I can tell him, I understand the rules of the Senate. I have been through other difficult issues on which I have been blocked from getting votes. I tell my friend from Nevada, and all of my colleagues, we will have a vote on stock options. We will have—sooner or later—a vote on stock options. And I only regret that we cannot do it now, get it over with, and get everybody on record.

I also would make one additional comment. I hope I do not harm the feelings of any of my colleagues. This is an important issue. This is a very important issue, no matter where you stand on the issue of stock options and how they should be accounted. It is a very important issue.

Why is it that this body would not take up the issue and have an up-or-down vote on how stock options are treated? I would ask the manager of the bill, why would we not at least allow a vote up or down?

I will read editorials. In fact, it may be sometime before I give up the floor because I have a lot to say about this issue. I will read from Mr. Greenspan's speech, a fairly widely respected individual, who says—well, I will read his speech in just a minute. He is in favor of treating stock options as an expense.

So is Mr. Stiglitz and Mr. Buffett, and so many others, who are aware of this issue and its impact and the way it has been terribly abused by the same people we are trying to go after, the same people we are after.

Mr. SARBANES. Will the Senator yield for a response to his question?

Mr. MCCAIN. According to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions, which allowed the corporation to severely reduce their payment in taxes. According to reports that I think I have here, over $1 billion in stock options were issued to the senior executives of WorldCom.

This is an important issue. I respect the views of my colleagues who disagree with my position and that of Mr. Greenspan, Mr. Stiglitz, and Mr. Buffett in various op-eds and editorials in newspapers throughout America. But why would we not vote on it? That is the question.

Why would the distinguished Senator and friend from Nevada feel it incumbent upon himself to not allow a vote on stock options? I guess that question can be answered by observers.

But here is the deal. I want to tell my friend from Nevada again, there will be a vote on how stock options are treated. I will repeat the amendment. I will repeat the amendment and will repeat it again several times before I finish discussing this issue. The issue, no matter how you feel, should be addressed. But through the invocation of cloture, everybody knows that the amendment and the motion to recommit will fall.

I want to repeat. The amendment is fairly clear-cut, fairly simple. We deal with a lot of arcane issues in the discussion of this regulatory reform. But I repeat:

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

It is very simple. It does not say anything about the tax treatment of it. It does not say anything about a number of other rather controversial aspects. It just says it will ''record the granting of the option as an expense in that corporation's income statement. . . . ''

Mr. President, it is curious to me—actually, it is not curious to me—why a vote on this amendment is blocked. It is because every lobbyist in this town for the high-tech community has said: Don't do it. Don't do it. The one thing that the folks in Silicon Valley are scared of more than anything else is that they would lose their precious stock options—all of it, of course, in the interest of the employee, only the employees, the secretaries, the workers, those people who are down there toiling in the bowels of the corporation, trying to get some incentive to stay there and have their retirement.

Meanwhile, Mr. Ellison, the CEO of Oracle, last year, cashes in $706 million worth of stock options, $706 million worth of stock options in 1 year. Are we going to vote on it? Yes, we will vote on it. Maybe not now, but unless there is cloture on every single bill that comes before this body, there will be a vote on stock options. I want to assure my friend from Nevada of that.

I will just remind him, there were many who wanted to block a vote on campaign finance reform for a long period of time. Well, we got our vote on campaign finance reform, and we will get a vote on stock options.

We have to end the double standard for stock options. Currently corporations can hide these multimillion-dollar compensation plans from their stockholders or other investors because these plans are not counted as an expense when calculating company earnings.

I want to make it perfectly clear to all, I am not in favor of doing away with stock options. Stock options have a valuable place in American corporate life. What we are addressing here is how they are treated so investors can know exactly what the profit and loss of a corporation is.

I repeat: I am not in favor of eliminating stock options. What I am trying to do is exactly in accordance with Mr. Greenspan's comments from which I will quote. Federal Reserve Chairman Alan Greenspan, New York University, March 26, 2002:

Some changes, however, appear overdue. In principle, stock-option grants, properly constructed, can be highly effective in aligning corporate officers' incentives with those of shareholders. Regrettably, the current accounting for options has created some perverse effects on the quality of corporate disclosures that, arguably, is further complicating the evaluation of earnings and hence diminishing the effectiveness of published income statements in supporting good corporate governance. The failure to include the value of most stock-option grants as employee compensation and, hence, to subtract them from pretax profits has increased reported earnings and presumably stock prices. This would be the case even if offsets for expired, unexercised options were made. The Financial Accounting Standards Board proposed to require expensing in the early to middle 1990s but abandoned the proposal in the face of significant political pressure.

The Federal Reserve staff estimates that the substitution of unexpensed option grants for cash compensation added about 2½ percentage points to reported annual growth in earnings of our larger corporations between 1995 and 2000. Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms.

Especially in high-tech firms? Where is most of the opposition coming from to the proper accounting of stock options? From the high-tech firms. I repeat:

Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms. If market participants indeed have been misled, that, in itself, should be surprising, for there is little mystery about the effect of stock-option grants on earnings reported to shareholders. Accounting rules require enough data on option grants be reported in footnotes to corporate financial statements to enable analysts to calculate reasonable estimates of their effect on earnings.

Some have argued that Black-Scholes option pricing, the prevailing means of estimating option expense, is approximate. But so is a good deal of other earnings estimates, as I indicated earlier. Moreover, every other corporation does report an implicit estimate of option expense on its income statement. That number for most, of course, is zero. Are option grants truly without any value?

I repeat Mr. Greenspan's question: Are option grants truly without any value?

Critics of option expensing have also argued that expensing will make raising capital more difficult. But expensing is only a bookkeeping transaction. Nothing real is changed in the actual operations or cashflow of the corporation. If investors are dissuaded by lower reported earnings as a result of expensing, it means only that they were less informed than they should have been. Capital employed on the basis of misinformation is likely to be capital misused.

Critics of expensing also argue that the availability of options enables corporations to attract more-productive employees. That may well be true. But option expensing in no way precludes the issuance of options. To be sure, lower reported earnings as a result of expensing could temper stock price increases and thereby exacerbate the effects of share dilution. That, presumably, would inhibit option issuance. But again, that inhibition would be appropriate, because it would reflect the correction of misinformation.

I am not sure this debate is between me and the high-tech community. I think the debate is somewhat different. When you look at the preponderance of opinion, not only that stock options need to be expensed but the incredible effect that it has had on the whole distortion of the market, then it is an important issue.

I ask again: How can we really address the entire issue we are facing without addressing the issue of stock options? That is like playing a baseball game without third base.

Mr. Joseph Stiglitz, noble laureate professor of economics at Columbia University on Tuesday, March 12, 2002:

Some contend that it is difficult to obtain an accurate measure of the value of the options. But this much is clear: zero, the implicit value assigned under current arrangements, is clearly wrong. And leaving it to footnotes, to be sorted out by investors, is not an adequate response, as the Enron case has brought home so clearly. At the Council of Economic Advisers, we devised a formula that represented a far more accurate lower bound estimate of the value of the options than zero. Moreover, many firms use formulae for their own purposes, in valuing stock options (charging them against particular divisions of the firm). However, Treasury, in its opposition to the FASB concerns, was singularly uninterested in these alternatives. I leave it to others to hypothesize why that might have been the case.

If we are to have a stock market in which investors are to have confidence, if we are to have a stock market which avoids the kind of massive misallocation of resources that result when information provided does not accurately report the true condition of firms, we must have accounting and regulatory frameworks that address these issues. As derivatives and other techniques of financial engineering become more common, these problems too will become more pervasive. While headlines and journalistic accounts describe some of the inequities—those who have seen their pensions disappear as corporate executives have stashed away millions for themselves—what is also at stake is the long run well being of our economy. The problems of Enron and Global Crossing are part and parcel of the current downturn.

I was under the impression this legislation was all about trust and transparency—regaining the trust of the American people and investors in the stock market and, frankly, the economic system that drives America and has been so successful, and transparent. Perhaps under this legislation, by beefing up many of the penalties and regulations and many other things—many of which I have recommended and strongly supported and will have in further amendments, but how in the world do we say that we have given transparency when, in the view of most experts, this is one of the greatest hindrances to transparency in the system as it exists today?

I would now like to read the opinion of Mr. Warren Buffett, in the Washington Post, April 9, 2002, Stock Options and Common Sense:

In 1994 seven slim accounting experts, all intelligent and experienced, unanimously decided that stock options granted to a company's employees were a corporate expense.

Six fat CPAs, with similar credentials, unanimously declared these grants were no such thing.

Can it really be that girth, rather than intellect, determines one's accounting principles? Yes indeed, in this case. Obesity—of a monetary sort—almost certainly explained the split vote.

The seven proponents of expense recognition were the members of the Financial Accounting Standards Board, who earned $313,000 annually. Their six adversaries were the managing partners of the (then) Big Six accounting firms, who were raking in multiples of the pay received by their public-interest brethren.

In this duel the Big Six were prodded by corporate CEOs, who fought ferociously to bury the huge and growing cost of options, in order to keep their reported earnings artificially high. And in the pre-Enron world of client-influenced accounting, their auditors were only too happy to lend their support.

The members of Congress decided to adjudicate the fight—who, after all, could be better equipped to evaluate accounting standards?—and then watched as corporate CEOs and their auditors stormed the Capitol. These forces simply blew away the opposition. By an 88–9 vote, U.S. senators made a number of their largest campaign contributors ecstatic by declaring option grants to be expense-free. Darwin could have foreseen this result: It was survival of the fattest.

The argument, it should be emphasized, was not about the use of options. Companies could then, as now, compensate employees in any manner they wished. They could use cash, cars, trips to Hawaii or options as rewards—whatever they felt would be most effective in motivating employees.

But those other forms of compensation had to be recorded as an expense, whereas options—which were, and still are, awarded in wildly disproportionate amounts to the top dogs—simply weren't counted.

The CEOs wanting to keep it that way put forth several arguments. One was that options are hard to value. This is nonsense: I've bought and sold options for 40 years and know their pricing to be highly sophisticated. It's far more problematic to calculate the useful life of machinery, a difficulty that makes the annual depreciation charge merely a guess. No one, however, argues that this imprecision does away with a company's need to record depreciation expense. Likewise, pension expense in corporate America is calculated under widely varying assumptions, and CPAs regularly allow whatever assumption management picks.

Believe me, CEOs know what their option grants are worth. That's why they fight for them.

It's also argued that options should not lead to a corporate expense being recorded because they do not involve a cash outlay by the company. But neither do grants of restricted stock cause cash to be disbursed—and yet the value of such grants is routinely expensed.

Furthermore, there is a hidden, but very real, cash cost to a company when it issues options. If my company, Berkshire, were to give me a 10-year option on 1,000 shares of A stock at today's market price, it would be compensating me with an asset that has a cash value of at least $20 million—an amount the company could receive today if it sold a similar option in the marketplace. Giving an employee something that alternatively could be sold for hard cash has the same consequences for a company as giving him cash. Incidentally, the day an employee receives an option, he can engage in various market maneuvers that will deliver him immediate cash, even if the market price of his company's stock is below the option's exercise price.

Finally, those against expensing of options advance what I would call the ''useful fairytale'' argument. They say that because the country needs young, innovative companies, many of which are large issuers of options, it would harm the national interest to call option compensation as expense and thereby penalize the ''earnings'' of these budding enterprises.

Why, then, require cash compensation to be recorded as an expense given that it, too, penalizes earnings of young, promising companies? Indeed, why not have these companies issue options in place of cash for utility and rent payments—and then pretend that these expenses, as well, don't exist? Berkshire will be happy to received options in lieu of cash for many of the goods and services that we sell corporate America.

At Berkshire we frequently buy companies that awarded options to their employees—and then we do away with the option program. When such a company is negotiating a sale to us, its management rightly expects us to proffer a new performance-based cash program to substitute for the option compensation being lost. These managers—and we—have no trouble calculating the cost to the company of the vanishing program. And in making the substitution, of course, we take on a substantial expense, even though the company that was acquired had never recorded a cost for its option program.

Companies tell their shareholders that options do more to attract, retain and motivate employees than does cash. I believe that's often true. These companies should keep issuing options. But they also should account for this expense just like any other.

A number of senators, led by Carl Levin and John McCain, are now revising the subject of properly accounting for options. They believe that American businesses, large or small, can stand honest reporting, and that after Enron-Andersen, no less will do.

I think it is normally unwise for Congress to meddle with accounting standards. In this case, though, Congress fathered an improper standard—and I cheer its return to the crime scene.

This time Congress should listen to the slim accountants. The logic behind their thinking is simple.

One, if options aren't a form of compensation, what are they?

Two, if compensation isn't an expense, what is it?

Three, and if expenses shouldn't go into the calculation of earnings, where in the world should they go?

Mr. President, I have to admit to you that I stood fifth from the bottom of my class at the Naval Academy. I don't pretend to understand a lot of the nuances and hidden workings of the stock market or many of the issues we are facing today because there were some very imaginative CEOs and corporate officers who have deprived investors of their money and hundreds of thousands of people of their jobs. But even I can understand Mr. Buffett's questions:

If options aren't a form of compensation, what are they?

If compensation isn't an expense, what is it?

And if expenses should not go into the calculation of earnings, where in the world should they go?

Mr. President, that is why this amendment is simple:

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

That is not a complicated issue, and there will be discussion from time to time about what the tax implications are and all those things. I would be glad to have smarter people than I figure it out.

I want to read a letter to the editor of the New York Times by Steven Barr,

senior contributing editor of CFO Magazine, April 5, 2002. Reference: ''Leave Options Alone'' by John Doerr and Frederick W. Smith:

What if, in the mid-1990s, accounting-rule makers had not caved in to lobbyists and instead had forced companies to recognize options as a compensation expense on financial statements?

There would still have been a technology boom, a bear market, and a period of recession. Such cycles are immutable. But there may have been less of the accounting gamesmanship that is now the object of government investigation and investor ire.

Options should count as an expense to the corporation, and the ability to exercise them should be based on stock performance that exceeds an index of peers.

Mr. President, one of the more egregious activities we have seen with some of these really unsavory people has been that while their company stock was declining, they exercised their stock options and sold them, making hundreds of millions of dollars.

As I said earlier, in the case of Enron—I heard WorldCom was $1.8 billion, or Enron, I am not sure which—at the same time in the case of Enron, the employees, in testimony before the Commerce Committee, said they were urged to hang on to the stock, hang on to the Enron stock. Meanwhile, the executives were selling the stock. I do not know of anything quite as egregious as that.

As I mentioned, according to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions which allowed the corporation to severely reduce their payment in taxes.

I repeat, no other type of compensation gets treated as an expense for tax purposes without also being treated as an expense on the company books. This double standard is exactly the kind of inequitable corporate benefit that makes the American people irate and must be eliminated.

If companies do not want to fully disclose on their books how much they are compensating their employees, then they should not be able to claim a tax benefit for it.

The Washington Post, Thursday, April 18, 2000:

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

The Washington Post said:

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 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 profit; the real number was a $2.7 billion loss.

Mr. President, those numbers are staggering. Let me repeat:

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 purposes of tax reporting. The dissenters also claim 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-Connecticut) 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 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.

Mr. President, again, transparency and trust. Transparency and trust. Without transparency, we are not going to have trust.

A Washington Post, April 21, 2002, editorial; byline David S. Broder. Mr. Broder writes:

Thanks to the Enron scandal, the public is getting to know about a scheme that corporate executives have used for years, but that most of us were not smart enough to understand.

I include myself in that group that Mr. Broder describes.

You can call it the have-your-cake-and-eat-it-too ploy.

It involves stock options, the rights to buy company stock some time in the future at the (presumably bargain) price at which it is selling currently. Stock options awarded to senior management by their (usually hand-picked) boards of directors mushroomed from $50 billion in 1997 to $162 billion just three years later. As Business Week pointed out in its April 15 issue, boards have been ''lavishing options on executives'' so profligately ''that they now account for a staggering 15 percent of all shares outstanding.''

This is obviously a good deal for the executives. One of them, Oracle Corporation's Lawrence Ellison, exercised options worth $706 million in one week. A nice mouthful of cake, by any standard.

But here's how his company—and all others like it—can have its cake, too. The value of the stock options granted Ellison is a cost to Oracle for tax purposes, but it doesn't come off the bottom line when Oracle is reporting its earnings for the year.

This would seem to defy common sense—and it does. Almost a decade ago, as the options craze was getting under way, the Federal Accounting Standards Board—the watchdog group—said that when options are granted, they should be treated as an expense in company reports as well as in tax returns. The corporate CEOs and the accounting firms they hire went nuts, and the next thing you knew, the Senate in 1994 was passing a resolution . . . telling the watchdog: forget it.

Mr. GRAMM. Mr. President, will the Senator yield? I do not want to break in, but a key point I would like to make—and I thought the Senator might want a breather——

Mr. MCCAIN. I would appreciate it if the Senator would phrase it in the form of a question, as he is very adept at doing. I will be glad to yield for his question.

Mr. GRAMM. I thought it was very important to make this point. What happened almost a decade ago when we saw this blossoming of stock options? The answer is, in 1993, we passed a law that said that if you paid a corporate executive more than $1 million a year in a plain old paycheck, you could not deduct it as an expense in running the business.

At that time, the largest companies in America—and I am trying to make a point that is in no way contradicting anything the Senator says, though I do not agree with a word of it, but what we said was you could not pay a corporate executive, through their paycheck, more than a million a year, even though the 50 largest companies in America were paying their corporate executives $3 million a year, on average.

When we passed that law, what happened? What happened is that corporate America, being clever—you do not make $3 million a year if you are not pretty smart—figured out ways around the law. Some of the ways around the law were getting loans from the company at low interest rates and getting stock options, which are now criticized as giving corporate leadership a very short-term horizon.

The only point I want to make is that everybody has forgotten that in 1993 Congress, in a demagogic amendment aimed at ''rich people,'' started this whole process.

It struck me when you were saying this group of accountants got together in 1994, what they were doing was responding to a bad law, and the bad law helped trigger this. One of the things—and God knows it is not going to happen in the environment we are in now—but one of the things Congress ought to do is to repeal that law so General Electric could pay its CEO with a paycheck, like everybody else, instead of trying to find all these ways around the law. I just wanted to get in that advertisement.

Mr. MCCAIN. I would like to respond to the Senator's question by saying that I think the Senator makes a very valid point. I think this is probably none of Congress's business as to what salaries should be bestowed on a corporate executive, with truly independent boards of directors and with a voice of the stockholders.

Let me say to the Senator before he leaves, I am not talking about doing away with stock options. I am talking about how they are treated. They may have gotten around that, but it is how they are treated. As we get into the debate further, I would be glad to hear him respond to Mr. Buffett's three questions.

Mr. GRAMM. I would be happy to respond to Mr. Buffett.

Mr. MCCAIN. I ask unanimous consent for Senator GRAMM to respond without me losing my right to the floor.

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

Mr. GRAMM. I would be happy to respond to him. First, I would have been happy to have voted on the Senator's amendment.

Mr. MCCAIN. I thank the Senator.

Mr. GRAMM. Second, this is something I am happy to debate. The only point I wanted to make is that while we are all damning corporate America, our law, which said if you paid somebody more than $1 million a year it could not count as a business expense, really helped trigger all of this. One of the things we ought to be doing in the name of reform is to repeal that law.

When I tried today in Finance—the Senator said this would not be brought up in Finance, but today in the Finance Committee I thought we ought to have one Good Government amendment, and it failed, like logic and truth, for the lack of a second. That is my only point.

Mr. MCCAIN. I thank the Senator. I especially thank him for agreeing because the Senator from Texas—we have had our agreements, mostly agreements and occasional disagreements—has never, in all the years we have known each other, which goes back to our days in the other body, wanted to deprive anybody of a vote on an issue, no matter where he stood on that issue.

I regret deeply that it is clear, as I said earlier, the fix is in; there is not going to be a vote on this issue before cloture is invoked, but I want to again assure my colleagues there will be a vote. There will be a vote on this issue, just like when I was blocked for a long time on the line-item veto, I was blocked for a long time on campaign finance reform, I have been blocked on a lot of other issues but we always got a vote because that is my right as a Senator to get a vote.

It is not my right as a Senator to determine the outcome, but it is my right as a Senator to get a vote on an issue, particularly when, in the view of any observer, stock options are a key issue in this entire debate.

Again, I respect the views of the Senator from Texas who disagrees with my position. I think it is a respectful disagreement that we have. I look forward to debating him. I do so at some disadvantage because he is a trained economist and former professor of economics.

I can also see why he would want to do away with that million-dollar cap because I am sure the Senator from Texas will make more than a million dollars when he leaves this body, and justifiably so given his talent, expertise, and experience. I wish him well. I wish him every success in doing so.

At least the Senator from Texas is in agreement that we should have a vote on this issue.

The question is going to be raised by me and others, time after time: Why did we not have a vote on this issue? If we are truly committed to reforming the system, restoring trust and transparency to the system, why do we not have a vote on it? That is a very legitimate question. There will be a vote.

I will return to Mr. Broder's editorial. He talks about that:

The Federal Accounting Standards Board said that when options are granted, they should be treated as an expense.

And the Senate passed a resolution telling the watchdogs, forget it.

And that has had a truly wondrous effect. On average, the Federal Reserve Board estimates, the ruling has boosted the reported earnings growth of corporations by 3 percentage points from a realistic 6 percent to an inflated 9 percent. Enron, it is estimated, used that same ruling in 2000 to inflate its earnings by more than 10 percent. Overstated earnings, of course, boost stock prices, thus benefiting the executives who have been given stock options.

By the way, I might add, not only stock options but it increases compensation because the stock value is inflated.

But that is not the end of it. Because these stock options are deductible for tax purposes, and their cost can be carried forward for years, they also enable companies that hand out a lot of options to stiff-arm the IRS. In Enron's case, they allowed the company to cut its tax bill by $625 million between 1996 and 2000.

Especially on my side of the aisle, there is this continuous drumbeat: Let us make the tax cuts permanent; let us do away with the death taxes; let us make the tax cuts permanent; let us help the American taxpayer. Should we not try to make a corporation pay its legitimate taxes? In Enron's case, because of the use of stock options, they allowed the company to cut its tax bill by $625 million over a period of 4 years. Amazing.

Thanks to Enron, another push is under way to stop the double-dealing. But it faces tough sledding. The Coalition to Preserve and Protect Stock Options, which includes 32 influential trade associations, is flooding Congress with 'talking points' claiming that 'stock options are a vital tool in the battle for economic growth and job creation . . . (and) to attract, retain and motivate talent.'

The coalition is trying to kill a bill that would not end stock options but simply specify that companies could not use them to reduce their taxes unless they also report them as an expense in their financial statements.

The bill has bipartisan sponsorship: Democratic Senators CARL LEVIN of Michigan, MARK DAYTON of Minnesota and DICK DURBIN of Illinois; Republican Senators JOHN MCCAIN of Arizona and PETER FITZGERALD of Illinois. FITZGERALD is particularly interesting. He is from a wealthy banking family and is a staunch conservative, but Enron has made him almost a raging populist.

It has had no such effect on President Bush. Concerned as always for the deserving rich, he told the Wall Street Journal he opposes this kind of legislation. . . . But Federal Reserve Board Chairman Alan Greenspan testified recently in support of expensing stock options. The only issue, he said, is whether under current rules, ''is income being properly recorded? And I would submit to you that the answer is no.''

That is what Alan Greenspan says: Is income being properly reported? And I would submit to you that the answer is no.

And superinvestor Warren Buffett, who hands out bonuses but not stock options to his employees—

By the way, I have not heard of any bad morale or failure to attract employees out at Berkshire Hathaway out in Omaha, a lovely place to live—for years has been asking three questions: ''If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?''

That is what Mr. Broder has to say.

Paul Krugman, on May 17, 2002:

On Tuesday Standard & Poor's, the private bond rating agency, announced that it would do something unprecedented: It will try to impose accounting standards substantially stricter than those required by the federal government. Instead of taking corporate reports at face value, S.&P. will correct the numbers to eliminate what it considers the inappropriate treatment of ''one-time'' expenses, pension fund earnings and, above all, stock options—a major part of executive compensation that, according to federal standards, somehow isn't a business expense. S.&P.'s estimate of ''core earnings'' for the 500 largest companies slashes reported profits by an astonishing 25 percent.

Why does S.&P.—along with Warren Buffett, Alan Greenspan and just about every serious financial economist—think that current accounting standards require a drastic overhaul? And if such an overhaul is needed, why doesn't the government do it? Why does S.&P. think that it must do the job itself?

To see the absurdity of the current rules, consider stock options. An executive is given

the right to purchase shares of the company's stock, at a fixed price, some time in the future. If the stock rises, he buys at bargain prices. If the stock falls, he doesn't exercise the option. At worst, he loses nothing; at best, he makes a lot of money. Nice work if you can get it.

Yet according to federal accounting standards, such deals don't cost employers anything, as long as the guaranteed price isn't below the market price on the day the option is granted. Of course, this ignores the ''heads I win, tails you lose'' aspect; executives get a share of investors' gains if things go well, but don't share the losses if things go badly. In fact, companies literally apply a double standard: they deduct the cost of options from taxable income, even while denying that they cost anything in their profit statements.

So how could it possibly make sense not to count options as a cost? Defenders of the current system argue that stock options align the interests of executives with those of investors. Even if that were true, however, it wouldn't justify ignoring the cost—no more than it would make sense to deny that wages, which provide incentives to workers, are a business expense. Furthermore, it's now clear that stock options, far from reliably inducing executives to serve shareholders, often create perverse incentives. At worst, they handsomely reward managers who run their companies as pump-and-dump schemes, executives at Enron and many other companies got rich thanks to stock prices that soared before they collapsed.

I hope the opponents of this provision, including my friend from Texas, will put it into the real-world context. It is nice to talk about economic theory. I know of no one better at that than the Senator from Texas. What happened at Enron? What happened at Enron when it cashed in $600 million worth of stock options and the stock tanks and there are 10,000 or so employees out of work? And there was a period of time where the employees were not allowed, because they were undergoing some managerial change of their portfolio, to cash in their stock options. But the executives were not prohibited from doing so. They kept on doing it. They kept on doing it.

So I hope we can have this debate not in the world of theories of economics. I am not a CPA, nor am I a professor of economics, nor am I as smart as most of the Members of this body, but I know what happened to these people. I know of the thousands left penniless. I know of the thousands whose retirement savings were wiped out.

Meanwhile, the very people this whole stock option deal was supposed to be protecting were not protected, and yet somehow the executives all made out like bandits.

Perhaps my colleagues, as they oppose this legislation, can talk about the real-world examples—not the theoretical world of economics, which I will immediately grant them a distinct advantage on. I would like for them to have the opportunity to meet some of these employees, as I have, who were told by the executives of the corporation the stock was in great shape, while they were dumping the stock. I would like for them to talk to the employees or the retirees who invested enormous amounts of their money and their life savings, in some cases in a stock, and were told by their employers and executives that everything was great, things could not be better, estimates of double the stock value over the next few years.

That is the framework of this debate, not the framework of whether certain economic theories are valid or not.

Options are only part of an accounting system in deep trouble. As David Blitzer, S.&P.'s chief investment strategist, recently wrote, ''Financial markets are as much a social contract as is democratic government.'' Yet there is a growing sense that this contract is being broken, undermining the trust that is so essential to the operation of financial markets. Clearly, major reforms are needed. And bear in mind that this isn't a left-right issue; it's about protecting investors—middle-class and wealthy alike from exploitation by self-dealing insiders. So who could possibly be opposed? You'd be surprise.

Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform.

Bear in mind, this is not a left-right issue. It is about protecting investors, middle class and wealthy alike, from exploitation by self-dealing insiders. So who could possibly be opposed? You would be surprised. Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform. Mr. Blitzer of S&P points out that in previous periods of corporate scandal, legislatures and prosecutors took the lead with public concerns over the market.

It is a sad commentary on our leadership that this time he believes he must do the job himself—referring to Standard and Poors—and announced that it would impose accounting standards substantially stricter than those required by the Federal Government.

Boston Globe, June 10, 2002:

Stock options have become the currency of choice to reward high ranking executives in part because under current rules the company need not count them as an expense with much of their compensation. Depending on the difference between the option price of the stock and the market price, it is no wonder that some executives have used trickery to show quarterly growth and inflate the worth of their companies. Excessive reliance on stock options is a license for some executives to drive their companies along treacherous roads.

I have a number of other views, but I think I have made my point. The point is this: Why should we, in the name of restoring confidence, trust, and transparency to the American people on an issue of this import, not have a vote? That is the first question.

The second question that needs to be answered is Mr. Buffett's question, not mine; not mine because I don't claim to have a corner on expertise and knowledge on this issue. But I believe that Mr. Buffett does. I believe that Mr. Greenspan does. I believe that literally every outside observer and economist does. If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?

I know what I will hear in response. In fact, most of those have already been responded to so I don't intend to engage in extended debate about it. We all know where the majority stock options have gone—to the executives, not to the workers. Mr. Buffett, and many others, have been able to attract good and talented employees and retain them without having to resort to stock options.

But the real question is not whether stock options are good or bad because the intent of the amendment is not to do away with stock options. The intent of the amendment is simply to give an accurate depiction of what stock options are. And that is clearly compensation. Depreciation is listed as an expense. In the view of many, that is much harder to calculate than a stock option.

Another argument I anticipate will be, how do you treat it taxwise? Frankly, I would be glad to treat it taxwise as to how the smartest people at the SEC would say it should be treated. I would leave that up to the two experts. But to not treat it as an expense, as Mr. Buffett says, of course is just Orwellian. It is Orwellian.

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

Mr. MCCAIN. I am sorry my colleague will not allow a vote. I will be glad to respond to my colleague from Michigan.

Mr. LEVIN. I appreciate the Senator's yielding for a question. I wonder if the Senator would agree that the following individuals and organizations support the change in accounting for stock options, which the Senator has outlined: Alan Greenspan, Paul Volcker, Arthur Levitt, Warren Buffett, as the Senator mentioned, TIAA-CREF, Paul O'Neill, Standard & Poor's, Council for Institutional Investors, Consumer Federation, Consumers Union, AFL/CIO—among others? Would the Senator agree that those organizations support a change in the accounting for stock options?

Mr. MCCAIN. I would say to my friend, yes. I think there is another important organization, the Federal Accounting Standards Board—I believe it is—the international.

Mr. LEVIN. There are some additional organizations.

Mr. MCCAIN. Yes.

Mr. LEVIN. I wanted to give the Financial Accounting Standards Board.

Mr. MCCAIN. Yes.

Mr. LEVIN. Does the Senator remember, as I do very vividly because I appeared before the Federal Financial Standards Board in the middle 1990s to support their independence, when they decided that you had to expense options, that it was compensation, that it had value like all other forms of compensation?

Does the Senator remember what the Financial Accounting Standards Board

decided when they left it optional, as to whether or not to either expense options or to show them as a footnote—just to disclose them without actually expensing them? Because if the Senator does not, I would like to read what the Financial Accounting Standards Board said about the pressure they were put under, the horrendous, horrific pressure they were put under, and how they could have, indeed, been put out of existence if they went forward with what they believed was right, which is what Warren Buffett says.

If the Senator does not remember those words, I wonder if he might yield to me to read them, without losing his right to the floor.

Mr. MCCAIN. Yes.

Mr. LEVIN. This is what the Financial Accounting Standards Board said. They had proposed that stock options be expensed. That was their proposal. This is the board of accountants.

The debate on accounting for stock-based compensation, unfortunately, became so divisive that it threatened the Board's future working relationship with some of its constituents. Eventually the nature of the debate threatened the future of accounting standards setting in the private sector. The Board continues to believe that financial statements would be more relevant and representationally faithful if the estimated fair value of employee stock options was included in determining an entity's net income, just as all other forms of compensation are included. To do so would be consistent with accounting for the cost of all other goods and services received as consideration for equity instruments. However, in December 1994, the Board decided that the extent of improvement in financial reporting that was envisioned when this project was added to its technical agenda and when the Exposure Draft was issued was not attainable because the deliberate, logical consideration of issues that usually leads to improvement in financial reporting was no longer present.

That is the climate that was created for this Board in 1994. And when the accountants, the Board, the Financial Accounting Standards Board of this country, said they have value, these options, they are compensation, they should be accounted for in the financial statement, they were hit upon so hard that even when they said we are throwing in the towel because it could destroy us, even when they said we will allow it to be shown as a footnote, not required to be taken as an expense—even then, they said this is not the right way to proceed.

We are now creating—I should ask a question, I think, given the request I made.

Does the Senator not agree that ideally what we should be allowing here is an independent Financial Accounting Standards Board to determine the rules?

Mr. MCCAIN. I could not agree more with the Senator from Michigan. I think he knows how strongly I believe that options should be expensed because they are compensation and they have value and there is no other form of compensation that is not expensed. It is a stealthy form of compensation and has driven the excesses of the 1990s. These options have driven the deceptions that make these financial statements for corporations look better than those corporations' situations really are because they have created so much value in those options that then executives—mainly executives—were able to cash in on these options and make tens of millions of dollars based on financial accounting which was deceptive.

Would the Senator agree with that and agree that ideally these standards should be set by an independent financial accounting standards board?

Mr. MCCAIN. I say to my friend from Michigan, first of all, it was the Senator from Michigan who first initiated discussion with me on this issue several years ago. We were treated as virtual pariahs for having the audacity to challenge what was then, as we now know, a high-tech bubble in the way stock options were being disbursed.

By the way, let's do away with the myth that these stock options are for the average worker. The fact is the overwhelming majority of the stock options have gone to the chief executives. That is just a matter of record and fact.

But I think the Senator is correct. I think the Senator has also an additional, I think important, corollary to this amendment, that we could have certain direction from FASB, as it is known. But I think it is also a clear-cut, black-and-white issue as to how stock options should be treated.

I would be glad to agree with the Senator from Michigan that some of these aspects of it can be better handled by the experts.

Finally, the Senator from Nevada and the Senator from Maryland are in the Chamber. I hope they will reconsider and allow a vote postcloture at some time on this important amendment. I do not see how you can possibly go to the American people and say: Look, we have discussed and debated all these issues, but we wouldn't allow a vote on the issue of stock options.

There is no observer who does not believe that the issue of stock options is one of significant importance in this entire scenario of returning trust and transparency so we can regain the confidence of the American investor.

Again, I assure my friends, we will have a vote on this issue at some time, whether it be now on this bill or whether it be the next bill or the bill after that. So I hope my colleague from Nevada and my colleague from Maryland will allow an up-or-down vote on this amendment.

Mr. LEVIN. Will the Senator yield for one last question?

Mr. MCCAIN. I am glad to.

Mr. LEVIN. Assuming cloture is invoked, there is still, does my friend agree, the possibility at least of voting on germane amendments relating to this subject? So the amendment which is germane postcloture does not state what the Senator from Arizona and I believe, which is that unless we deal with this, we are missing a huge problem, we are not addressing a huge problem that has driven the situation that we now face in terms of deceptive financial statements. But, in any event, will the Senator from Arizona agree that at least postcloture, if an amendment is germane which says it is determined that FASB or an independent accounting board reviewed this matter, that at least there could be a vote at that time on something which carries out the spirit of what the Senator from Arizona and I have been fighting for, which is that an independent accounting board be allowed to proceed without threatening its very existence to determine what is the proper accounting for stock options?

Mr. MCCAIN. I apologize to my colleagues for taking as much time as I have on this subject. As I said, I believe it is one of transcending importance in the minds of average American citizens. Yes. I would support the Senator's amendment postcloture. But I would also have to add that it doesn't address the issue completely. Here is why.

The Senator from Michigan just talked about how these boards have been intimidated and bullied into backing off of a position they had before. I can't have the confidence that any board that is subject to the kind of intimidation and bullying that has happened in the past would properly carry out what is a pretty simple operation.

I understand the Senator's point. I will support his amendment postcloture. I think it is an important one. But there has to be a clear signal sent. That clear signal is this: As Mr. Buffett says, if it isn't compensation, what is it? If options are not a form of compensation, what are they? If compensation is not an expense, what is it? If expenses shouldn't go into the calculation of earnings, where in the world should they go? This answers Mr. Buffett's question. We know where it should go—as an expense.

Again, I am not trying to do away with stock options but how it is treated so the American people can restore their confidence.

Mr. LEVIN. Will the Senator yield for a couple of questions which his comments have raised?

Mr. SARBANES. Will the Senator yield? The Senator directed a question.

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

Mr. MCCAIN. I would be glad to yield to the Senator from Maryland for a comment without yielding my right to the floor.

Mr. SARBANES. I wanted to respond at this point because the Senator just directed a question. We are not trying to prevent a vote on your amendment. We have been trying repeatedly to get votes on these amendments. Senator EDWARDS has had an amendment pending in here for now more than a day.

We can't get a vote on it. Senator LEVIN has had an amendment pending. We have a list of people who want to offer amendments. We have been trying to work through these amendments. Now the Senator has come with his amendment. There are a lot of amendments around here on which people are trying to get votes. I think they are entitled to those votes.

I know you have a problem. But I take some umbrage as sort of having it placed on my shoulders. In fact, I think that is totally inaccurate, and I just want to make sure I put that on the record.

Mr. MCCAIN. Thank you.

I ask unanimous consent that the McCain amendment be allowed postcloture.

Mr. REID. Objection.

Mr. MCCAIN. So you see.

Mr. SARBANES. No. That doesn't approve anything. The Senator wants his amendment——

Mr. MCCAIN. I have the floor.

Mr. SARBANES. And denies everybody else.

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

Mr. MCCAIN. I thank the Chair.

I think I have made my point.

Mr. SARBANES. No. You haven't made your point.

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

Mr. MCCAIN. I would like to respond to the question of the Senator from Michigan, if he would like.

Mr. SARBANES. Will the Senator yield?

Mr. MCCAIN. I would be glad to yield, if the Senator from Michigan would be glad to yield.

Mr. SARBANES. It is a very clever trick, but you haven't made your point. There are other Members here with amendments that are very important to them which they are trying to have considered. We have been trying to process those amendments in an orderly way. The Senator arrives on the scene and apparently thinks, well, there should be a special set of rules for the Senator to do his amendment. So he just now tried to jump ahead of other people, and a reasonable objection was made. And I think it ought to have been made. The Senator from Arizona comes in, and, all of a sudden, there is going to be a special set of rules to deal with his amendment. The Senator doesn't even recognize what is in the bill, which does try to address to some extent this problem with independent funding and FASB that this legislation provides for—which everyone agrees is long overdue and is an important contribution.

But we have these people lined up here who want to do amendments. We have the Edwards amendment, we have the Levin amendment, and we have a whole list of people with amendments. We have been trying to process those amendments, and we have not been able to do it.

As one who is down here trying to work overtime to get these amendments processed, I want to very strongly register that point.

Mr. REID addressed the Chair.

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

Mr. MCCAIN. I still have the floor. I thank the Senator from Maryland. I appreciate his hard work managing the legislation. I have managed bills in my time. I know that sometimes it gets very frustrating and difficult.

I have some suggestions. One is that the Senator oppose cloture so that we can address all of these issues and prevail on his colleagues to do so so that we can have relevant amendments considered.

I also think—it is not just in this Senator's view but in the view of almost everyone, in the view of Alan Greenspan, in the view of Warren Buffett, in the view of the Washington Post and the New York Times, and everybody—that this is a serious and vital issue.

So my suggestion is that we not have a cloture vote, and that we go ahead and take up the amendments in an orderly fashion. The Senator from Nevada, obviously, will not allow my amendment to be considered postcloture.

The Senator from Michigan has a question. Would the Senator from Nevada, the distinguished whip, like to wait until the Senator from Michigan is finished, or would you like to go ahead?

Mr. LEVIN. My question was actually touched upon by the Senator from Arizona relative to the independence of the Financial Accounting Standards Board, and as to whether or not the Senator was aware—at least now in this bill—that we have the source of financing for that board which hopefully will not only allow it to reach its own conclusion, as it did once before, that options have value and should be expensed but also that it carry through with it without threatening their own survival.

I think that is an important part of this. But at least that gives us hope this time that when the Financial Accounting Standards Board reviews this matter—if it does—it will reach a conclusion not only that it believes it, but it can then implement it through an accounting standard.

That was my question about that funding source in this bill.

Mr. MCCAIN. I would like to respond. I understand that. I did know it is part of the bill. I also know what has happened in the past. The fact is that we have not made the changes which are necessary because of enormous pressures that have been brought to bear.

The Senate should be on record on this issue. This is not a minor issue. This is not a small item. The Senate should be on record on this issue, and it apparently will not be at this time.

I thank my colleagues, though I do think that it is an important step forward. But I also believe this is something that we could address in a straightforward fashion.

Mr. LEVIN. Mr. President, will my colleague yield for 60 seconds so I can make a statement on this subject prior to a unanimous consent, or an address on a different part of my amendment?

Mr. MCCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank Senator MCCAIN for his steadfast support of the issue which is critically important.

Unless we address the way stock options are dealt with in this country—the fact that it is now a free ride, and stealth compensation which has caused, in large measure, the problems because accepted accounting practices, as we have seen, are significantly driven by the option accounting which allows options to be left off the financial statements as an expense, and, therefore, cashed in when those books of the company show great value, which is not reality, but nonetheless drives up stock prices—I want to say that I agree with the Senator from Arizona. Unless we address this issue, we are leaving a huge gap in our reform efforts.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Maryland has tried now for several days to figure out a way to have amendments. We have tried to negotiate. We have had those which have been arbitrated. We have had some cajoling. We have had a little bit of begging. We have gotten nowhere. But the rules of the Senate are the rules of the Senate. Therefore, it would be contrary to my beliefs to have a special set of rules for the Senator from Arizona, as well intentioned as his amendment may be.

I have had phone calls. I have had personal visits from at least 15 Democratic Senators saying they have amendments that they believe in very strongly. They and their staffs have worked on some of these amendments for months. They are not going to be able to offer those amendments.

Mr. GRAMM. There are 58 Democratic amendments.

Mr. REID. So it would be totally unfair to have a nongermane amendment that would be available for us postcloture. That is why I object. If I had to do it again, I would do the same thing.

But let me say this. People can complain—and I have no problem with their doing so—that we have not been able to go through the relevant amendments, but this legislation that has been brought to us by the Banking Committee and has now been improved upon by the Judiciary Committee's amendment of Senator LEAHY is a very fine piece of legislation.

Let's not lose track of that. This is a very fine vehicle. Maybe we could do a better job—put some rearview mirrors on both sides of it, maybe improve the upholstery a little bit, but the legislation we have that will be voted on and approved by the Senate is very good.

The Public Company Accounting Reform and Investor Protection Agent would establish the Public Company Accounting Oversight Board to set standards for auditing public companies.

It would inspect accounting firms. It would conduct investigations into possible violations of its rules and impose a full range of sanctions. It would restrict the nonaudit services a public accounting firm may provide to its clients that are public in nature. It would require a public accounting firm to rotate its lead partner and review partner on audits after 5 consecutive years of auditing a public company.

It would require chief executive officers and chief financial officers to certify the accuracy of financial statements and disclosures. It would require CEOs and CFOs to relinquish bonuses and other incentive-based compensation and profit on stock sales in the event of accounting restatements resulting from fraudulent noncompliance with Securities and Exchange Commission financial reporting requirements.

It would prohibit directors and executive officers from trading company stock during blackout periods. It would require scheduled disclosures of adjustment statements. It would establish bright-line boundaries to prohibit stock analyst conflicts of interest.

It would authorize about $300 million more than the President's budget for the SEC next year to enhance its investigation and enforcement capabilities.

I will not go through all the details of the amendment that has been approved by the Senate, offered by Senator LEAHY, making certain things criminal in nature and increasing the penalties.

This is a fine piece of legislation. But I do say this. The Senator from Maryland is in the Chamber. I am confident the Senator from Maryland would agree to a unanimous consent request that on relevant amendments, determined by the Parliamentarian, we have a half hour on each one, and as soon as the half hour is up, vote on them.

I ask the Senator from Maryland, you would agree to that, wouldn't you?

Mr. SARBANES. It would be one way of trying to deal with these amendments and dispose of them. A request of that sort ought to be carefully considered, certainly.

We have this problem. Members have amendments pending. We have been trying to move the amendments forward. We have not been able to do that. I know how frustrated they are. I share their frustration.

(Mrs. CARNAHAN assumed the chair.)

Mr. REID. But in spite of all this, I want the RECORD to be spread with the fact that we have a good piece of legislation. I would like, as I said before, to have some of the fancier upholstery——

Mr. SARBANES. If the Senator will yield, it is interesting, in the debate we just had, until the Senator from Michigan underscored the fact, it was not pointed out that we provide independent funding in this legislation for the Financial Accounting Standards Board, which has the responsibility of setting these accounting standards.

Their problem in the past has been that they are voluntarily funded from the industry. They have to go to them and beg for money in order to carry out their activities. And if the industry thinks they are going to do a ruling that is contrary to what they want, then they are not as willing to support their activity.

We eliminate that in this bill because we have a mandatory fee that must be paid by all issuers, and the Board will be funded out of that money. So that, in itself, is a very important and significant step in establishing the independence of the Accounting Standards Board.

Mr. REID. Madam President, I have spoken with the Presiding Officer and staff on several occasions. Yours is our next amendment in order. You have been waiting 2 days to have that amendment offered, a very important amendment. And you are just one of several. You are fortunate in that you are the next one, if we can ever get to the next one.

I would ask my friend——

Mr. GRAMM. I have the next Republican amendment.

Mr. REID. We know we have to be burdened with a Republican amendment once in a while.

I say to my friend, would the Senator consider my proposal to have relevant amendments debated—and the relevancy would be determined by the Chair—for a half hour on each one of those and, at the end of the half hour, have a vote up-or-down on that amendment?

Mr. GRAMM. The Senator is already in a big fight with Senator MCCAIN. I do not know why he wants to try to pick one with other people.

Where we are is, we are going to cloture. And there are rules in the Senate. And postcloture, for an amendment, the ticket to get into the arena is it has to be germane, which means it must be directly related to a provision in the bill. It cannot amend the bill in more than one place. There is a certain set of rules.

If the Senator would indulge me a second, we have 36 Republicans who want to offer an amendment. My amendment is next on the list. I am the ranking member of this committee, and it appears I am not going to get an opportunity to offer an amendment. Now, I could cry and pout about it, but it would not change anything and would not change the world either. There are 58 Democrat amendments.

The point is, we all agree on one thing: Whether you like this bill or you do not like it, it is an important bill and we need to get on with it. We need to pass it. We need to go to conference. We need to work out an agreement with the House and with the White House. If we sat here and tried to do 36 Republican amendments and 58 Democrat amendments—and some of them having to do with things such as the Ninth Circuit Court of Appeals and bankruptcy law—we would literally spend 3 or 4 months. So there is no other alternative than following the rules of the Senate. And that is exactly what I want to do.

Mr. REID. Reclaiming the floor, I have always enjoyed the Texas drawl of my friend, the senior Senator from Texas. But even through the drawl, I understood that to be a no.

Mr. GRAMM. Yes. Yes, it was a no.

Mr. REID. My friend, the other Senator from Arizona, is on the floor. We are waiting for the Republican leader. I assume that will be soon.

I ask my friend from Wyoming, when the Republican leader does appear, if he would be kind enough to allow us to attempt to enter into an agreement.

I ask the Senator, if you see him come to the floor, would you be so kind as to yield the floor for just a short time? It would be appreciated.

Mr. ENZI. I would be happy to interrupt my remarks at that time. I would hope my remarks would appear as uninterrupted.

Mr. REID. I would agree.

UNANIMOUS CONSENT REQUEST—H.R. 5011

Mr. REID. Madam President, the Republican leader is on the floor. I will propound a unanimous consent request. This relates to H.R. 5011, the military construction appropriations bill.

I ask unanimous consent that a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 486, H.R. 5011, the military construction appropriations bill; and that it be considered under the following limitations: that immediately after the bill is reported, all after the enacting clause be stricken and the text of Calendar No. 479, S. 2709, the Senate committee-reported bill, be inserted in lieu thereof; that debate time on the bill and substitute amendment be limited to a total of 45 minutes, with an additional 20 minutes under the control of Senator MCCAIN; that the only other amendment in order be an amendment offered by Senators FEINSTEIN and HUTCHISON of Texas which is at the desk, with debate limited to 10 minutes on the Feinstein and Hutchison of Texas amendment; that upon the use or yielding back of time on the amendment, without further intervening action or debate, the Senate proceed to vote on adoption of the amendment; that all debate time not already identified in this agreement be equally divided and controlled between the Chair and ranking member of the subcommittee or their designee; that upon the disposition of the Feinstein-Hutchison amendment and the use or yielding back of the time, the substitute amendment, as amended, be

agreed to; the bill, as amended, be read three times; that section 303 of the Congressional Budget Act be considered waived; and the Senate then vote on passage of the bill; that upon passage of the bill, the Senate insist on its amendment and then 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 without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Madam President, reserving the right to object, first, I would say that I am glad we have reached the point where we are prepared to start trying to move some appropriations bills. We are way late in the year. But ordinarily, we move anywhere from as few as five to as many as nine in July. I hope we can begin to get on a roll here pretty soon on the appropriations bills because there are a lot of things we need to do, but there are a few things we must do. One of them is, we have to pass the bills to fund the Government for the next fiscal year, and the fiscal year ends the 1st of October.

I am glad this is being asked for consideration now. I want to thank the managers and both sides of the aisle for allowing time for Senator MCCAIN and others to review the managers' package. I understand that has been worked out and has been cleared. I think this is a good way to consider this legislation.

There may be objection, but I want the RECORD to reflect that I strongly support this unanimous consent request and I support this legislation. It is more than what the President asked for in this particular category, but it still has to go to conference. I hope that it can be worked out in such a way that it would be acceptable to the President.

There are those who are worried that any time a bill of this nature moves through the process, they lose an opportunity for critical matters to be considered. For instance, let me be specific, because I think Senator KYL may talk about this, there are those from the West and maybe other areas that have had fires in their States—we know some of those in Colorado, Arizona, and New Mexico—and floods, such as the one they have had in Texas. There has probably been well in excess of $1 billion used, involved in fighting the fires. Now that is going to be needed to deal with the floods in Texas.

Those funds have been provided by transfer of funds from other accounts. One of two things is going to happen: We are going to replenish the funds taken from those accounts or those accounts are going to come up short. Understandably, the Senators from the States affected want to make sure there is going to be an opportunity for them to provide the funds that have been used or replace the funds that have been used to make sure money is there for upcoming needs.

I am sympathetic to that. I don't think this is the last train out of the Senate. If this bill moves, there will be another one, and hopefully we will be moving two or three appropriations bills every week.

There may be other considerations about what do we do if we don't get an agreement on the supplemental this week. I hope that within the next 24 hours something can be worked out on the supplemental appropriations bill, which, by the way, has been hanging around now for over 100 days, probably closer to 120 days by now. It is time to get an agreement. At some point, if we don't get the supplemental funds, we may wind up not having adequate funds for our airport security workers, the Transportation Security Agency, and it will begin to affect the Defense Department. I hope we can get all of this worked out.

I am sympathetic to those worried about that and the fires. But I don't think that is justification for not moving forward on the military construction appropriations bill. I support this request. I want the RECORD to be clear about how I feel about the request and the legislation.

With that, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Madam President, I know there is another reservation, but I just want to respond to the leader because I want him to be able to retire to his office when he feels necessary.

I had the opportunity to chair the Military Construction Subcommittee and worked as ranking member. It is an extremely important subcommittee for the military. With what has been going on in Afghanistan, it is compounded as to its importance. That is why the two Senators who run this committee, the Senators from California and Texas, Mrs. FEINSTEIN and Mrs. HUTCHISON, have worked so hard getting it in a posture that has been signed off by literally everyone, including Senator MCCAIN, who has reviewed the work done. They have done a wonderful job.

I would also say to my friend from Arizona, Nevada, last year and the year before, was scourged with terrible fires. We didn't have forest fires; we had range fires that burned millions of acres. We were able to get money to help replenish those rangelands so depleted as a result of the fires.

I have been here a long time. I never remember a time when we did not respond to take care of the needs caused by fires in this country. Most of the fires occur in the West. We have always handled that.

We have 12 other appropriations bills coming through here. With all due respect, I say to the junior Senator from Arizona, this is not the time to hold up this legislation. There are at least 12 other bills. We reported another one out of the committee today.

I would say to my friend, the Republican leader, I had the opportunity to speak to Senator BYRD a short time ago. There is hope that the supplemental conference will be completed tomorrow. Great progress is being made. I hope we can move forward on this bill. This is so important that we get it out of here and get it to the House.

I have no doubt, as tight as money is, that we will take care of the fire needs of the western part of the United States. We always take care of emergency needs, whether it is fire or flood. We will do so in the future.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I object, and I would like to explain the reason why. I concur with the comments Senator LOTT has made about the importance of moving this legislation forward. I have conferred with the ranking member of the committee, the Senator from Texas, who makes a strong case that the legislation has been carefully crafted, and it is important to move it forward. I totally concur with her on that.

I also have no problem with the way in which the unanimous consent agreement has been constructed in terms of moving forward as soon as it is possible to do so. I have no objection to any of that.

I do simply want to, as the minority leader said, preserve the option of dealing with the subject of the recent floods and droughts on this appropriation bill. The reason is as follows: The ranking member of the committee, the chairman of the Appropriations Committee, and the ranking member of the Energy and Water Subcommittee are all meeting today with other people, including the Director of the OMB, the Senator from Texas, and others, to try to figure out the best way to deal with the new issue of the fire and flood and drought damages that have occurred in this country since the supplemental appropriations bill was put together.

My personal view is that the supplemental would probably be a preferable place to include the disaster relief to replenish the funds for the forest fires to the BIA and the Forest Service. There are those, however, who disagree. If the Director of OMB and chairman and ranking member of the Appropriations Committee believe that it is not appropriate to use the supplemental as the vehicle for doing that, then one of the other appropriations bills will be appropriate, and the first one before us is the military construction bill. That would be the next appropriate vehicle.

I am simply preserving their option to decide which is the best vehicle for moving this forward. The reason specifically for wanting to do it right now—in response to the Senator from Nevada, I am confident that we will deal with this issue because it has to be dealt with.

Here is the very practical problem. We have had about one-fourth of the

entire budget of the Forest Service now consumed in fighting forest fires; whereas, ordinarily it is something like 4 percent of their budget, or something like that. So they have borrowed from other accounts in order to pay these firefighters.

The fires in Arizona cost almost $50 million to fight. As a result, they have had to borrow that money from other accounts. The result of that is that right after the fire is over, before it is even cool, they will not be able to go into the area of these fires and prevent the erosion that inevitably occurs as soon as the rains start, and now the rainy season is beginning, and the planting of the grasses and trees and so on that further inhibits that erosion. They literally want to go in as soon as they can after the fire to stabilize the ground. If they wait too long, it doesn't do any good. So they have to do that right away.

The problem is, they have spent all the money in the restoration accounts. The head of the Forest Service put a stop on the expenditure of any money that doesn't have to be spent almost on an emergency or daily operations basis. So right now, both the Department of the Interior and the Department of Agriculture are significantly precluded from doing the other things Congress mandated that they do.

We need to make sure they know they are going to have the funds to restore those accounts so they can get on with the jobs we have asked them to do; and, most importantly, in the very near term they can get into the area of these fires and begin the restoration that is essential in a timely fashion. That is why the first vehicle in terms of an appropriations bill that can be used should be used for this process—whether it is the supplemental or this appropriations bill.

There have been suggestions that the Interior Appropriations bill would be a better vehicle. From a purely substantive point of view, that is true, but that will not come before us for another month, or 6 weeks, or 2 months. That is, obviously, way too late.

That is the reason why we need to preserve this particular option. I hope we can move quickly to the consideration of the MILCON bill, both for the purpose of completing the work of the Senator from Texas, as well as the work we are talking about.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, I am the ranking member of the Military Construction Subcommittee. I have worked very hard with Senator FEINSTEIN, the chairman of that committee, to produce a bill that takes into account all of the priorities of the Department of Defense, the administration, and the Members' requests. I think we have done a good job. We didn't give every Member everything they asked for, of course, but I think we have done a terrific job in meeting the needs of the military and the requests of the administration.

We need to pass this bill. I appreciate the support of Senator LOTT, along with, of course, Senator REID and Senator DASCHLE and Senator FEINSTEIN, that we need to move this forward. However, I wanted to say that although Senator KYL has objected—and I disagree with his decision to do so—I understand his frustration, and Senator REID said he understands his frustration. We see it every night on the news—the fighting of these incredible fires, people being put out of their homes, ruining vast hundreds of thousands of acres of our forestland in this country, and we are running out of money.

I hope that people have also seen the floods in my home State of Texas. The Governor is now saying that the damage is estimated to be $2 billion. It only happened last week, so I cannot tell you exactly what we are going to need to clean up the floods. But I know that the people are suffering. I am going to be there tomorrow with Joe Albaugh, head of FEMA, to look at the damage myself because I want to make sure we are doing the right thing for the people of Arizona, the people of Colorado, the people of New Mexico, the people of Idaho, and the people of Texas. We have always done that.

So I understand Senator KYL's frustration. I am sorry he is holding up this bill, but I am committed to seeking a vehicle for an amendment that would ensure that the money is there to fight the forest fires in this country and to clean up the flood damage that we see happening in Texas. We will do that. We will find the vehicle to do it. I commit that we will. We are not going to appropriate money that isn't needed. We are going to have a contingency appropriation so that if the money is needed, it is there.

We all want to be careful with taxpayer dollars, but there has never been an earthquake, or a flood, or a fire that we have not responded to as a country and said we are not going to let people suffer when they have nowhere to turn but to us. We will be there for them. So I am committed to trying to find the right vehicle. I want to make the decision now so we can get on with MILCON. If military construction is the right vehicle, let's put that emergency appropriation on military construction. I would prefer to see it on the supplemental appropriations on which we are having a conference tomorrow. I would like to put it there.

This is an emergency. We have had a change in circumstances since the President sent his request to Congress. It seems to me that it is common sense that we have had a change in circumstances that would warrant a change in the cap. That would be the preferred way to handle this emergency, which we all acknowledge we need to do. If we cannot do that, I want the commitment for Senator KYL, for Senator DOMENICI, for the Senator from Colorado, that we will handle this issue. So if it is not going to be on the supplemental, then I am willing to try to help them put it on military construction. If it is not military construction, then I don't think we will be handling any appropriations bills until we get a commitment to address this issue.

I yield the floor to my colleague from New Mexico.

Mr. DOMENICI. I don't need the Senator to yield for a question, but I will talk for a moment. Sometime yesterday I raised this issue when most of the Republican Senators were in a meeting. It seemed, from the feedback, that most of them agreed with the comments that were made then. Essentially, we don't often have this situation, but what really happened—I used the word ''yesterday''—the supplemental has been around here for so long that it has run into a new problem. It ran into the problem of forest fires—huge ones—and into flooding that has been described by those who come from States where flooding has occurred. But there is no question that the forest fires and the floods, because they came a long time after these urgent supplementals, should have cleared it.

In normal times you would be beyond the supplemental and you would be waiting for something else; but the supplemental bumped right into the fires and the floods, it took so long to get its rightful place here on the Senate floor. It didn't seem to be very urgent when it took 2 months to get done. But now we want to try to live by the facts the White House put into the budget before this new set of facts occurred. After that meeting yesterday, I was very pleased to note that the distinguished Republican leader joined with us and submitted to the White House, to the Budget Director for the executive branch the fact that this was going to happen sooner or later, that most of the people we had talked to and that he had talked to—and shortly thereafter we started talking with Democrats—that there was going to be substantial support, if not 100 percent.

So I am pleased that we are at a point where we are going to put this amendment on one of the bills.

I understand our distinguished ranking member of Appropriations has concurred with others and doesn't want it put on the supplemental. That is all right with me, provided we are standing in line with commitments from those who we need commitments from, that the fire and flood money will be on the next appropriations bill that comes by. Since I don't want to take additional time, I assume that is where we are.

I will ask the Senator from Nevada a question: Are we now at a point where we are going to decide on which appropriations bill we are going to be free to put the emergency language for the floods and the fires?

Mr. REID. I say to the distinguished senior Senator from New Mexico that we are trying to move these bills.

I cannot imagine that Senator BYRD and Senator STEVENS would have the fire money in the military construction bill. We reported, as the Senator knows, another bill out of the committee, the legislative branch appropriations bill. There are other bills coming up. As the Senators from New Mexico and Arizona said, fire money should be in the supplemental, but it is not. I just do not think it is going to be in the military construction bill. That is why we should get it out of the Senate and get it to the President. There are some significant military needs that will be satisfied.

I say to my friend who is so aware of everything that goes on around here because of his position on the Appropriations Committee and the Budget Committee, I can never ever remember a time when we have not taken care of fire needs and the flood needs of this country, and we will do it this year also. If there needs to be another supplemental, we will do that, or if we have to put the money in the Interior appropriations bill or other bills, we will do that. I just do not think this is the vehicle on which to do it.

Mr. DOMENICI. Madam President, I said yesterday that I do not recall—I have been here a few years longer than the Senator from Nevada—a situation where we would not pay for an emergency of forest fires and the damages and costs that ensued.

Frankly, there are a lot of people in the West, particularly in Nevada and my State, who have seen these fires and now hear on the television that the Forest Service does not have money in its budget to pay for them. They do. They are borrowing from another account.

As the Senator said and I have said, they are going to get reimbursed shortly. The sooner we do it, the sooner we keep faith with the hundreds of thousands of people in Arizona, Nevada, Utah, New Mexico, and Colorado who have been watching. It would be good if it is sooner rather than later. While we are paying for many things, we should pay for their account also. I assume that is what you are going to try to do in the Senate.

Mr. REID. Yes, and I say to my friend, these moneys are so important to the people of our respective States, there is no question about that. I think it is a shame, for lack of a better description, that we do not have it in the supplemental. I repeat that. If there ever was an emergency, this is it. We have not budgeted for these moneys, and the fire that swept Arizona is 400,000 acres.

We had a fire in Nevada at Lake Tahoe—we are so thankful it did not ravage that basin—of only 1,000 acres. In the last 2 years, we have had over 2 million acres burn in Nevada, not forestland but rangeland.

We need to take care of this emergency. It should be done in the supplemental, but the majority leader, myself, and anyone on this side who has jurisdiction will do whatever we can to speed this up as quickly as possible.

Mr. DOMENICI. I thank the Senator. I say to those who want to make sure the supplemental not only passes but is signed, the Senator from New Mexico is on their side. I am with them. I am certainly not going to do anything to delay that, although it does seem strange to this Senator, an urgent supplemental, which is intended for urgent supplemental needs, would have to be isolated from this need because some kind of arrangement has been made. The arrangement comes very late, but it is an effort to get the bill done and to get the important parties to agree.

I yield the floor.

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002—Continued

Mr. REID. Madam President, I ask unanimous consent that there be a vote immediately on or in relation to the Levin amendment, the second-degree amendment. Following disposition of that amendment, we vote immediately on the Edwards amendment; and following that, we vote on cloture, which motion was filed yesterday.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I noticed the McCain amendment was not listed. Was that an inadvertent error or was it the intention to exclude that amendment which was offered after the two listed?

Mr. REID. The last two amendments offered were the Levin and Edwards amendments.

Mr. GRAMM. Madam President, I have to object.

The PRESIDING OFFICER. Objection is heard. The Senator from Texas.

Mr. GRAMM. Madam President, I ask unanimous consent that the vote on cloture occur immediately; that we proceed with the process of dealing with germane amendments; and that we set the time of 8 o'clock for all debate on the bill to end.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I object.

The PRESIDING OFFICER. Objection is heard.

AMENDMENT NO. 4269

Mr. ENZI. Madam President, I do have to answer some of the questions. I am sorely disappointed that the Senator from Arizona left the floor. He asked some important questions. He has asked three questions about accounting. I don't get to answer questions about accounting very often. I was very excited about that.

Now, I do warn people who may be watching in their offices, or somewhere else, that accounting questions often put people to sleep. So it might not always be that exciting for them.

But I do have to say, from what we saw, there is no passion like the passion of a repentant sinner. This is not the first time somebody has said we are going to tell FASB what to do.

On May 4, 1994, the Senate said: We do not care what you said in your multiple pages of FASB rules, we are going to tell you what to do. And the vote was 88 to 9 the last time we interfered with FASB. I have to tell you, the Senator from Arizona was in the 88. He was one of the people who said: I know how to do this. I know how to do this better than FASB. So listen to me: I am going to vote my conscience on this and dictate how FASB is going to handle accounting on stock options.

If he and several other people had not voted to tell FASB what to do at that time, we wouldn't be having this discussion at all.

Now we have another amendment. It is very important to pay attention to the wording.

What I am trying to do is—as I mentioned, there is no passion like the passion of a repentant Senator—I am trying to keep people from sinning again. There are some very important reasons. We cannot take a complex situation such as stock options, which I think all of us can spell but for which not all of us can account, and put it into a simple little paragraph on how it should be handled. This amendment, which is just one sentence which makes up the whole paragraph, says:

> Any corporation that grants a stock option to an officer employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

One of the problems we are having right now is investors are a little bit shaken because there are restatements of income being done. Not all restatements are because something was hidden. Some of those restatements are because of changes in rules. This will be one of the biggest changes in rules we have made in decades, and the way this is written, while it is intended to move to an expense system, does not really say that. It says that you have to expense it in that corporation's income statement for the year in which the option is granted.

There are a lot of options that are already granted. Some of them are outstanding maybe 25 years. It is more common that it be 2 or 3 years. The new stock options are done on a much shorter period of time. Even if it is just 2 or 3 years, what this amendment is saying is, redo your income statements and restate them for the last 3 years for all of your options that are outstanding. We did not make you do that before; now we want you to show a huge change or maybe just a small change, but at any rate a change, and every time a company announces a change—and I have had some call and say: I am going to have to do a restatement and that restatement is going to be upward; you know what it is going to do to my stock; I am showing an increase in profit, and it is going to destroy me. All I can say is, it is the law; you have to restate.

This will cause the biggest restatement in the history of the United States, the way it is done. One cannot dictate in very simple language something that will take multiple pages to be able to explain and to allow reconciliation. If we listened to the explanation earlier, it sounds as if companies are writing this stuff off and nothing ever happens with it. That is not true. Every time there is an exercise, every time somebody trades their option for real stock, there is an accounting for it. At the end of each year there is a reconciliation for it to make sure the taxes are paid on the stock options that are exercised.

We heard something earlier about $625 million that we are losing because of Enron. It is because they went bankrupt. It is not because they are not reconciling, because they are not paying taxes. They do not have anything with which to pay the taxes.

One of the problems with this bill is that we have gotten into a feeding frenzy. I think of Enron as this huge, dead carcass. In Wyoming, we have kind of a pecking order of feeding. There are the grizzly bears, there are the wolves, and there are the coyotes. Each of them come up and take their bite out of the carcass, but not until the previous one has finished, and that is kind of the way that we are handling this bill.

We have this huge carcass of Enron, and we are trying to figure out how to get rid of it and make sure we do not have any more carcasses. We have a bill that has the primary right to feed on it. Then we have the wolves, which are the germane amendments, that have the right to feed on it. Then we have the coyotes, which do not have any right until everything else is finished. Those are the nongermane amendments.

What we are trying to say is let us get this carcass finished off before we have a whole bunch more carcasses, before the stock market has more problems. They are a little bit worried about us working on this stuff at all, and if they see an amendment like this with the oversimplification being thrust on this legislative body to make a massive accounting decision, they ought to panic. We do not want that to happen.

There are a lot of reasons this amendment should not be passed should it ever come to a vote, and I hope everybody would do that. Now, I have an option I had drafted up. I have over 25 cosponsors from both sides of the aisle now. It deals with stock options. What it does is put it back on FASB to come up with a proper solution and gives them some guidelines to look at. That would be the way to handle a massive problem like this with a lot of detail for which none of us, including me, have the expertise.

I am kind of fascinated that Warren Buffett is the main authority on stock options these days. As I look at it, there are several camps of people that are opposed to stock options, not opposed to the accounting of stock options. They are flat out opposed to stock options. Warren Buffett is one of those. And that is because when stock options are exercised, it dilutes his stock. I think he probably has more stock than anybody else in the whole world, and I guess if I had more stock than anybody else in the whole world I would have gotten there by being sure that every single piece of that was accounted for. Unfortunately, that is not the case. But that would give one some compunction to make sure that none of it can be diluted, which is what stock options have the possibility of doing.

It is also based on the premise that the company is going to grow and expand, and that is why all of the people who are employees are willing to take stock options instead of hard cash. I think all of them would love to have hard cash as Berkshire is doing.

I suspect that the hard cash does not come to quite as much as the increase in value of the stock. So given an option between hard cash and potential in a company that you yourself can work in, you yourself believe in, you yourself know can grow, you want to participate in all of that economic growth. So stock options would be something that might lure you from another company, that might lure you into a startup company, that might lure your expertise to where you can make this company grow.

One of the questions that was asked was: If stock options are not a form of compensation, what are they? At the time they are granted, they are not anything. There is no assurance of them being worth anything. They are a potential liability, and there are some models for determining how to calculate that. They are very complicated. I am not even sure an accountant can handle all of those things. I think they have computer models now that are designed by engineers that go through this thing to calculate what that worth would be so they could put down some number on their balance sheet. Or they can use the other option, which is to disclose it in a footnote. If I wanted to devote more time to this, I would bring over a chart that shows the disclosure that is in the footnote.

So if people read the annual report of the corporation, they know what the potential dilution and value of those stock options are.

Then the next two questions are: If compensation is not an expense, then what is it? And if expenses should not go in this calculation, where should they go? Those are two questions built on a false premise. That is why it makes it difficult to answer the last two questions. If you answer the first one, the next two are not answerable.

Like I said, if I were one of those people such as Warren Buffett who wanted to do away with stock options, that is the attack I would take. I would appreciate it if they were a little more honest: We just want to do away with stock options.

There is another group of people who say all the stock options go to the top employees and consequently they do not want stock options either, but the honest part of that is that they do not want stock options either.

I heard all the references to the newspapers that say expense these things. Of course, I know that all the newspapers have all the technical expertise to make that kind of an evaluation. I say that facetiously, of course.

Senator SARBANES and I have been working on this accounting bill for months, and as we went through the hearings that he did with so much care, very carefully picking the people with the most expertise to be able to explain to us what went wrong in the Enron situation and what could be done in the future to prevent that sort of thing from happening again, it was very educational and he did a magnificent job.

While we were going through that process, I was keeping notes and he was keeping notes. I think everybody else in the Banking Committee was keeping notes. From those notes, several of us drafted up a bill. I noticed that an editorial in the Washington Post down near the end said something needed to be done, which all of us agree on, and then down at the end it says Senator ENZI's bill is a sham.

My first reaction was to get ahold of them and say: Can I talk to the accountant that looked at my bill? Well, the newspaper has journalists, not accountants. It might be a small flaw in expertise even on stock option expensing. I have not seen anything in there since I continued to work with Senator SARBANES, and some of the principles I had in mind were some of the same principles that he had, and those were easy to resolve. Some of the other ones that I had wound up in the bill and are in this bill that we have before us now. I have not seen any editorial that recognizes their expertise of that evaluation either.

There were comments about Chairman Greenspan, and I did read the speech he gave. As soon as I read the speech he gave, I wanted a little bit more information. So I asked if I could get together with him, and he was nice enough to come to my office. Through the discussion, which, again, was educational, I keep learning things every day. This is such a marvelous institution for education. One of the things he concluded with was to say: Yes, they should be expensed, but Congress should not decide how that is done. He was not in favor of us passing something that said how to handle stock options. I think he could see the wisdom or the folly, whichever way you want to consider it.

Now, one may have guessed that I am in opposition to the McCain amendment on expensing stock options. I

think there are some other ways of doing it better. I think there are ways that it could actually be voted on by this group if it were done better. I do not think the one that is presented is the one that is votable, and I assume he will work with us and make some changes.

As we all know, Enron's executives and employees were issued numerous stock options. It is now clear that months before Enron filed for bankruptcy, executives were aware of the true condition of the company. They exercised millions of dollars of options. Enron employees kept in the dark on company finances are left with worthless Enron stock, and retirement savings, while some bad Enron executives absconded with stock openings. The financial fraud causing the collapse of Enron had nothing to do with the company's accounting procedures for stock options.

I appreciate my colleagues' effort to try to fix the problems posed by Enron, and perhaps WorldCom and Xerox and Global Crossing as we get into those. Congress must react to what happened with Enron, but it must be careful not to overreact. I have a principle with legislation having watched it for a long time: If it is worth reacting to, it is worth overreacting to. It goes back to the feeding frenzy on the huge carcass that is here—an overreaction, adding things to one up or outbid.

While legislation may be appropriate to ensure employees are protected and prevent future Enrons from occurring, we should not do anything to hamper rank-and-file employees from receiving stock in their company. A couple of years ago we passed a bill that went through both Houses by unanimous consent. That bill was so that the rank-and-file employees could get it without more difficult accounting. We said we want the rank-and-file folks to have it. We passed a bill by unanimous consent. That means everybody who was here at the time said yes, that is good, without any amendments. That is tough to do around here. It was a definite recognition we wanted all employees to have stock options. When properly used, stock options can be a marvelous opportunity for all of the employees.

In addition, as I mentioned, small businesses and startup companies must continue to have an incentive to issue options, which is often their only means to attract qualified employees. I feel so strongly about protecting stock options for rank-and-file employees in small businesses that on April 18 of this year I testified before the Finance Committee against the legislation in this McCain amendment, although it had more detail to it so it made a little bit more sense. This was revised so it could perhaps meet the test of not being blue-slipped by the House because it has the potential for being a revenue issue.

I am against this amendment because it seriously hurts employees, small businesses, startup companies, and in general the high-tech industry and many listed corporations which employ thousands of employees. This legislation will not solve the problem of Enron, that dead carcass I referred to, or WorldCom, which is still out there kicking a little bit, Xerox, and perhaps failing dot-com companies, but instead it will create additional problems for the rank-and-file employees of the small and large corporations because they will no longer get the benefit of stock options. Why? Because companies will no longer have an incentive but, rather, a disincentive to grant them.

We have all heard that Federal Reserve Chairman Alan Greenspan and Warren Buffett support the purpose behind the McCain legislation because they believe stock options should be treated as compensation. Admittedly, they may at some point become compensation, but there is disagreement at what point that is. Even Chairman Greenspan admitted to me, as I mentioned earlier, that Congress should not legislate expensing but that the Federal Accounting Standards Board, or the FASB, should make such a determination.

This is not an easy determination, although in our discussions we make it sound like an easy determination. Concepts are much easier than the detail. That is what makes our legislating so difficult. We can all agree on huge concepts, but when you figure out the details of how you get to that, it becomes very difficult.

Secretary O'Neill disagrees that expensing of stock options is a solution and believes better disclosure provisions would cure the current problem with regard to stock options. The McCain-Levin bill is creating the same debate over expensing stock options on company financial statements that occurred a few years ago. At that time, the solution was to give companies the option of listing the number of stock options issued by a company in a footnote to the financial sheets or directly on its income or financial statements as an expense. Either way, investors and employees have the ability to see how much stock is outstanding before they invest in the company or before they exercise their stock options. These footnotes provide a lot more information to shareholders or investors than you might imagine, or than the supporters of the McCain amendment would like you to believe.

Some would like you to believe the average person out there doesn't have the ability to read a footnote, let alone understand it. I think at any meeting of employees they would have people contesting that. They look at some of those annual reports, probably more so than some of the major investors. Some of it is difficult to understand. Financial literacy is difficult but very important when you are investing.

It was mentioned that Berkshire buys companies and switches to cash bonuses. It does not cause any problem. The problem is, except cash bonus, you lose your job. Now if they had the option between cash bonuses and a stock option, in a growing company, which would they take? It is hard to tell.

Rather than estimate the value of stock options and expense them on the balance sheets, the companies estimate them in a footnote using something called the Black-Scholes model. That is because they don't know what the future value of the stock will be when the option is actually exercised and sold. That is very important because I have seen a number of different proposals on this, and one of them, unless you expensed it and guess exactly what it was at the time you expensed it, you are not allowed to claim any additional expense. But they don't realize these things are reconciled so that there is a running value of actually expensed items.

Again, that gets into a lot of the accounting detail that would put people to sleep. I have some fascinating charts I would love to drag out, but I have already lost most of my audience so I won't do that. They use that model because they don't know what the future value of the stock will be when the stock option is actually exercised and sold. So they attempt to make an educated guess. Their footnote predicts what the expense might be and the diluted earnings per share for the outstanding stock.

Currently, most companies list the outstanding stock options as a note to their financial statements. Unlike Boeing, Microsoft, Winn Dixie, and a few other companies, most companies do not want to list the options as an expense on their financial statement because it creates a perception of a drop in value of the company, even though the stock options have not yet been exercised. In other words, there has been no expense yet and may not be an expense if the options are never exercised. Yet under the McCain amendment, companies must list these stock options as an actual expense to their company when granted. This would mean taking the estimated value in a footnote and making it an expense to the company.

A problem with expensing early on, how do you value stock options which have been granted but not exercised or sold? Almost everyone believes the current practice of using the Black-Scholes method to value stock options as currently used on footnotes is fatally flawed. Under the McCain amendment, companies are going to now have to use this flawed model to make a guess at what the value of the options are to determine an expense to the company.

The tax consequences will also be based on this flawed estimate. But later, when some of the stock options are exercised and the value is different than estimated, this amendment provides no opportunity for a reconciliation of company records or taxes.

That is kind of an accounting principle that there is supposed to be an explanation for how taxes match up with the books of the company. Yes, we do force different kinds of calculations for taxes than we do for the accounting that goes to the stockholders. But the accountants are able to draw the reconciliation, they are able to show how one number goes to another number. That is a requirement, as well.

Currently, when the estimates are placed in the footnote, they appear as what they are, a best guess at their value, with no effects on the company's books and no need for reconciliation of records later. Yet an investor can see what outstanding, possible estimated expense might occur to the company.

Another problem with the McCain amendment is it does not provide for a method of reconciliation if the stock options are never exercised. So what appeared as an expense may never happen, yet the value of that stock actually goes down instead of up. No one would buy the option and have it cost more than just going out and buying stock. So it is not exercised. So what appears as an expense may never happen, yet the financial statement prepared months before reflects an expense and a decrease in company profit that never occurred. Meanwhile, the current footnote method shows this estimate to investors as a worst case scenario of what could occur if all the options were exercised but no reconciliation were required.

As a result, the McCain amendment creates a disincentive for companies to issue stock options to those rank-and-file employees.

If this amendment becomes law, many companies will cut back on giving stock options to rank-and-file employees rather than list those options as an expense, and create a perception of a decrease in the value of a company when the stock options are not yet an expense and may never be exercised. This means employees will lose a valuable means of increasing their income.

But, these companies are not going to cease offering CEOs and senior executives this form of compensation—that is deferred compensation. Big companies will continue to issue stock options to attract the best talent to top levels of their companies, because this is the only way they can get the most talented management personnel. Despite what the media and supporters of this amendment want you to believe, stock options are not issued to just executives. In fact, those who claim only a small percentage of stock options are offered to rank-and-file companies are misguided. For example, Sun Microsystems, which has approximately 40,000 employees, distributed only 9 percent of its stock options to executives in 2000 and 2001. In contrast, distribution of stock options to employees who were not executives was a whopping 91 percent for both those years.

This is not an isolated example. In 1998, over 66 percent of large companies gave options to some portion of their non-executive workforce. Of this group, 26 percent granted options to all their workers and another 15 percent gave options to at least half of their employees. A 2000 survey of Pricewaterhouse-Coopers and the National Association of Stock Plan Professionals reported 44 percent of 345 large domestic companies with stock option plans made grants to all employees, including hourly employees. The San Francisco Chronicle reports that in the technology sector, this percentage is even higher. Of the top 100 e-commerce companies, 97 percent give options to all their employees.

The San Francisco Chronicle also points out that:

> Ten years ago, about a million workers were in a few hundred employee stock programs around the country.

In 2001, that number had grown to 10 millions Americans receiving stock options. The National Center for Employee Ownership confirmed the trend is toward more non-managers receiving stock options. However, the Levin legislation will stop this trend by having a negative effect on companies which offer stock option compensation packages to their rank-and-file employees. The McCain/Levin Amendment will also hurt small businesses and start-up companies which cannot afford to offer the salaries larger companies give, so they offer stock options as an incentive to attract highly-skilled employees. And it works. They do not have the hard cash for bonuses, but they have stock options. In turn, employees that risk working for start-up companies have the ability to make much more money than through traditional methods of payment by salaries or wages.

The National Commission on Entrepreneurship points out that, without stock options, startup companies which are now household names, like Intel, Federal Express, Apple, Dell and Starbuck, would not exist. In addition, the McCain-Levin bill will cause the whole tax structure to dramatically change. Currently, when stock options are granted or issued there is no tax consequence for either the employer or employee. But when stock options are exercised, the employees are taxed as if it is ordinary income. The income amount is based on the difference between the market price and the exercise price.

Of course, if it goes down and there are not stock options exercised, then there is no income tax because there is no gain.

I do have some charts, again, too, that show that the Federal Government does receive the taxes that are due, unless there is a bankruptcy.

At the same time, the employer can take a deduction based on the amount equal to what is considered income to the employees. For example, if the amount is $25,000 worth of income to employees, the company may take a deduction based on the same amount, $25,000, times its marginal tax rate. If the marginal tax rate is 35 percent, the company would have a tax savings of $8,700. This deduction provides a useful incentive for a company to offer options to its rank-and-file employees. Unfortunately, the McCain-Levin bill will force companies to list the numbers of stock options issued as an expense on its financial statement before they can take the current tax deduction. And they way that this particular amendment is written, it will have to be a restatement for all the years for which there are stock options out. As I mentioned, this added expense to the financial statement alone is a disincentive for companies to issue stock options. In addition, under the McCain-Levin amendment, the tax treatment of the deduction totally changes, becoming much more complicated because it involves valuing stock that has never been exercised. The tax complexity created by this amendment is another disincentive for companies to issue stock options to rank-and-file employees.

Add to all of this, the fact that stock options are not all exercised at the same time. But that is the optional part of it. When you are given a stock option, you have the control over when you personally want to take the stock option or not take the stock option.

Then there are some other interesting amendments out there that could deal with stock options and whether lawyers could ever exercise them, or whether they would have to reinvest them—a lot of complications. But even assuming they are exercised at the same time, the McCain amendment imposes much more complexity to the current system.

Again, I have some charts that could show how all that complexity comes about, but it looks as if we are ready to move on to another decision here so I will pass on that.

If I have confused anybody, I know that I have not confused them nearly as much as if I showed them how this actually worked. This is not easy stuff. I guess that is what keeps accountants in business. It really isn't all the taxes that people pay, although a lot of the revenue comes from figuring the taxes.

I do hear from accountants who say: You really need to simplify the system. Yes, I do hear from accountants that way—not just about this system but the tax system as well. There is plenty of work out there for them to do and not enough accountants, and there are less and less every day. However, I think I have made one thing crystal clear—99 Senators with no accounting degree, and 1 Senator with an accounting degree, have no business trying to rewrite the accounting methods of publicly listed companies. In other words, if you or your staff don't understand any of this, then you shouldn't vote for the McCain-Levin amendment. Instead, the Federal Accounting Standards Board, or even the Securities and Exchange Commission, have much more expertise to make these determinations. We can direct them to look at

current accounting methods, rather than passing specific legislation on replacing the current system. We can direct them to look at possibly developing a better pricing model to value stock options than the Black Scholes method. We can ask it to look at possibly improving disclosure provisions to better inform investors, including using plain English and charts and graphs. We should direct them to create rules that continue to promote ownership of company stock by employees, rather than providing disincentives to companies in granting stock options. Let's let the entities with expertise study and recommend what will prevent future Enrons. Otherwise, we may create a remedy that is worse than the disease.

As mentioned before, I worked with Senator LIEBERMAN and Senator ALLEN and Senator BOXER and numerous other Senators to come up with an amendment that would give some direction to FASB. It would show them that we do want them to take a look at this, that it is a priority, and that we would like to have a solution as soon as possible, but not one that will destroy the entire market, not one that will require retroactive restatements for all of the companies to bring them up to a specific present point.

There will be companies that will choose to do that, but in the present atmosphere that could be very detrimental to the entire stock market. So I hope we will not try to go with something oversimplified as the McCain amendment is, and that we will take a look at making sure that options are treated properly, as we are trying to do in this bill, with all accounting. We are trying to set up a mechanism—a mechanism, not specific language on accounting—a mechanism for determining proper accounting, and I think the bill before us does a good job of doing that. It sets up oversight for discipline and ethics. It will be the first time that we have had centralized any profession. But it will solve some problems, and it needs to be done quickly for the sake of the stock market. I am sure we will get to address this at a later time.

I heard the threat of the Senator from Arizona. I hope in the meantime that his threat will include a little rewrite that gives a little bit more latitude and puts the situation in the hands of the people who actually have some expertise on this.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I want to talk briefly today about how America got caught in the current quicksand of corporate scandal and how we can help dig our economy out of it.

Our economy is in trouble today not because we have a shortage of parts, labor, or ingenuity, but because the American people have a shortage of confidence in the basic mechanics of the marketplace. Every new corporate scandal jostles our markets with the force of a jab or an uppercut. If the punches keep coming and we don't react, our economy will get even wobblier. It may even get knocked down.

Investors are shaken. They don't know what's real anymore. Trust has eroded. The stock exchanges are suffering. These are serious problems that demand a serious response, which is why I strongly support Senator SARBANES' legislation to reform accounting oversight and strengthen corporate accountability.

I welcome President Bush's voice to this discussion, and appreciated the principled remarks he made in New York on Tuesday. But the President's substantive proposals were late and they were limited. I regret that he still hasn't committed, and committed forcefully, to the meaningful, systemic reforms in the legislation before the Senate today. This is a responsive bill. It is a responsible bill. A vote for it is a strong vote of confidence in the American economy. And the President's failure to speak out in favor of it, in my view, sends the wrong message to our markets.

In the wake of Enron's collapse, I had hopes that self-regulation could heal many of the wounds inflicted on our markets and on our economy. I have called for the markets to toughen listing standards, and for companies to make ethics a front-burner issue, not a footnote. Many companies have made progress. The stock exchanges and other business groups have worked to root out conflicts of interest and to demand more independent corporate oversight.

But the new revelations, which seem to come daily, have demonstrated that these problems go far beyond a bad company or two or three. We now have to ask not whether there are more scandals lurking in the fine print, but how many more are there? And we have to ask, what is it about the shape of the system that needs to be corrected to prevent similar debacles from happening again?

The system isn't broken, but it is strained. And we all now understand that self-regulation, as critical as it is, will not do enough to fix the damage.

The stakes are high. Over the last two decades we have witnessed an explosion in middle-class participation in the capital markets. A majority of Americans now have a direct stake in stock or mutual funds, usually, through their 401-k plans. Those American investors have discovered, through the painful shock of every new recent revelation, that the basic, traditional ethical values of small businesses, where you respect every dollar, pay back your investors, treat your employees well, and serve your customers honestly, are not always shared in the boardrooms of some large corporations.

Today and tomorrow, the American people deserve every confidence that their government is setting the highest standards of honesty, transparency, and accountability and enforcing those standards without hesitation.

That is why I strongly support Senator SARBANES' bill. It is a potent prescription for the serious ethical ills that ail our economy. The aim here is not just to penalize individuals when fraud happens; it is to prevent future economic catastrophes, to the degree that we can, and re-instill confidence in the marketplace. I regret that after the collapse of Enron and the pretty pathetic parade that has followed of Global Crossings, Tycos, ImClones, and WorldComs, the President still hasn't awakened to the full scope of the problem or the need for a strong solution like that proposed by Senator SARBANES.

Gene Sperling, former Economic Adviser to President Clinton, put it well. After September 11, we all understood what was necessary to get people back in airports and on airplanes. Cracking down on hijackers with tough new criminal penalties wouldn't be enough. We knew that we needed to improve baggage and passenger screening, fortify cabin doors, and make a whole host of other changes that addressed the systemic problems that let the attacks happen in the first place.

The same is true here. If we want Americans to regain confidence in our economy and get back in the market, as they have gotten back in the skies, we need to not only get tough on offenders, but to get tough on the structural problems that enable the offenses. That means closing loopholes and rooting out the endemic conflicts of interest that put even decent people in difficult if not untenable situations.

Senator SARBANES' bill would set up a strong, independent board to oversee accountants—a critical step that will give Americans reason to believe their numbers again. The President hasn't come out clearly in favor of that. The bill would restrict firms from doing both consulting and auditing for the same company in most cases, addressing what is a corrosive conflict in the system today. The President hasn't supported that as a law yet. The bill would also go further than the new NASD or NYSE rules to address the inherent conflicts of interest that currently prevent Wall Street analysts, who make the judgments so many Americans rely upon in making their investment decisions, from thoroughly and independently scrutinizing the companies they cover. In the hearings of the Senate Governmental Affairs Committee I chair, we discovered that those conflicts are real, deep, and widespread. Unfortunately, the President hasn't been strong enough or sharp enough on this issue. And the bill would require disclosure within 7 days anytime a corporate executive takes a loan from the company he is working for.

We in Washington cannot and should not pretend to be able to fix all these problems single-handedly, but we have an essential role to play. We must lead.

And at the same time, we must take care not to let this turn into an anti-business crusade. I believe in American business. My father was a small business owner in Stamford, CT. Through hard work he bought a house, sent his kids to college, prepared for retirement, and bettered his community.

You cannot be pro-jobs and anti-business. You can't be pro-growth and anti-business. You can't be pro-opportunity and anti-business. Business has created our unprecedented prosperity, and business will continue to extend more and more opportunities to more and more Americans and people around the world. But not if we let this erosion of confidence, this rust of distrust, keep eating away at our markets.

American values are better than Enron's values. They're better than Global Crossing's values. They're better than WorldCom's values. And so is the American economy better and stronger than these companies' ethical and economic breaches of trust. This bill will point the way to both better ethics and better economics. It should become law.

Mr. FEINGOLD. Mr. President, I support S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, and I commend Senator SARBANES for his efforts to produce this measure. That it is needed is a sad commentary on the state of corporate finance, but it is also a reminder that free markets do not work well without a set of rules and regulations in which the marketplace can be confident. It is also a reminder that if government is to farm out the task of regulating corporate finance, then those entities that are designated to patrol corporate activities must also have the confidence of the marketplace.

The Enron and WorldCom disasters were notable but not isolated. Observers have noted the increase in corporate financial restatements in recent years. In testimony on this point, Robert Litan of the Brookings Institution reports that the number of American corporations whose earnings have been restated had been modestly rising throughout the 1990s, but then took a big jump in 1998 and hit a peak of over 200 in 1999. Many reasons have been offered for this development. Some point to the tying of executive compensation to stock performance. Others have noted the potential conflict of interest that arises when a firm provides both auditing and consulting services to the same firm. Both explanations have some merit.

And I will add to both of those reasons the enactment of a so-called securities reform measure in December of 1995, a law that made it more difficult for stockholders to hold corporations and accounting firms accountable for bad behavior. One newspaper has characterized that law as expanding ''a climate that invites the kinds of securities and accounting abuses that investors and employees suffered in Enron's colossal collapse.'' In reviewing the history of that bill, the Washington Post reported that ''accountants at what were then the Big Six firms lobbied aggressively for the measure, spending millions of dollars.'' The Post story also adds a foreboding note that ''leaders of Arthur Andersen were so pleased with their efforts they encased the text of the new law in a paperweight and handed it out as a souvenir.''

The reforms we consider today are extremely modest, and I look forward to supporting amendments that will further strengthen this bill, including Senator Leahy's amendment that will strengthen enforcement and sanctions for securities fraud. That amendment passed unanimously out of the Judiciary Committee earlier this year. It creates new criminal laws for altering or shredding documents and provides tough new penalties specifically for securities fraud. It prevents wrongdoers from avoiding those monetary damages by filing for bankruptcy. It provides specific whistleblower protections for employees who provide information to Federal regulators or criminal investigator about corporate wrongdoing. And it increases the statutes of limitation in securities fraud cases, responding to clear evidence that the shorter time limits put in place by the 1995 securities reform law have allowed wrongdoers to escape liability. These are necessary steps, and I applaud the chairman of the Judiciary Committee for bringing this amendment forward on this bill.

We should also consider other steps, if not on this bill then as part of another vehicle, to close down abusive tax shelters that encourage the kind of creative bookkeeping used by Enron, and to address the double standard of allowing certain forms of executive compensation to be deducted from taxes, while remaining hidden from investors.

All of these steps face opposition by interests who are more concerned with their own profits and survival than with the public interest. Unfortunately, these interests have held great sway over the Congress over the last decade, using soft money contributions and lobbying might to smother reform proposals before they could receive a fair hearing and action by the Congress. It is very unfortunate that the measures we are considering today were not enacted years ago. If they had been in place, thousands of employees might not have lost their jobs and millions of investors might not have lost their life savings.

Let us not forget that the central players in the scandals of the past year are not rogue companies operating at the fringe of American economic life. No, they are some of the biggest companies in the country, and they have been central players in a corrupt campaign finance system that this Congress finally started to address by passing the McCain-Feingold/Shays-Meehan bill a few months ago.

We have all heard of how Enron curried favor in Government. It gave a total of nearly $3.7 million in soft money to the political parties from the 1992 election cycle through June 3 of this year according to Democracy 21. Arthur Anderson made about $645,000 in soft money contributions during that period. Global Crossing gave just over $3 million to the parties in soft money from the 1998 election cycle to the present. And WorldCom, whose failure has brought us to the point where we will actually pass these long needed reforms, has given over $4 million in soft money, dating back to the 1992 cycle. Just in this cycle, with all its problems, WorldCom has already made $400,000 in soft money contributions, according to the Center for Responsive Politics.

These are enormous sums. They show, frankly, that our political parties are among those who were unjustly enriched by these companies who cheated their shareholders and employees. I understand that some contributions have been returned, but just as in the case of the employees who lost their jobs or the investors who lost their life savings, the damage has been done. The contributions had their intended effect when they were given.

As I mentioned before, and as we all know, Congress passed and the President signed a bill to ban soft money earlier this year. So these enormous soft money contributions should be a thing of the past starting in the next election cycle. Members of Congress will no longer be allowed to call up the CEOs of Enron, or Arthur Anderson, or Global Crossing or WorldCom, or any other corporation, and ask for enormous contributions for the political parties and then have to come back to this floor and vote on legislation that might affect their activities. At least that is what we intended. But in just the last few weeks, the Federal Election Commission has undermined the law that we passed after so many years of effort. The new regulations on our soft money ban that are about to be promulgated open enormous new loopholes in the law before it even goes into effect. If we want to remove the stain of soft money from the legislation we pass in this Congress, we cannot allow that to happen.

The sponsors of campaign finance reform intend to invoke the Congressional Review Act to overturn these regulations. That will send the FEC back to the drawing board to do the job of implementing the law right. Doing this is part and parcel of addressing the corporate scandals that have led to our work on the floor today on this important bill. Unless we defend the soft money ban, the influence of unscrupulous corporations on the Congress will continue, and we will find ourselves again in the situation of trying to explain to America why we didn't act to prevent further corporate and accounting scandals or other scandals before they happened.

According to Consumers Union, just over half of all U.S. households are investing in the stock market, many through their retirement savings. If the public is to have confidence in the financial markets, they must have a complete and honest accounting of the financial health of the firms in which they invest. This bill is a good starting place, and I look forward to supporting it. And I look forward to maintaining public confidence in the Bipartisan Campaign Reform Act of 2002 by overturning the FEC's loophole-ridden regulations before they take effect.

Mr. KYL. Mr. President, as Congress debates S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, it is important to keep in mind certain facts: The United States of America is the most successful country in the world. No other country outworks, outproduces, or economically outperforms the United States. Americans have much to be proud of and it is due to the vigor of our businesses, the entrepreneurial spirit of our citizens, and the willingness of both to take risks. For hundreds of years, people from every corner of the globe have chosen to come to our country and pursue what has become known to the world as the American Dream.

The American Dream can and should be available to all Americans who, with diligence, determination, and a sound moral compass, choose to pursue it. Unquestionably, our government has an important role to play in ensuring its viability. By the passage and enforcement of laws to protect Americans seeking to achieve success, lawmakers reaffirm that America's prosperity rests on the rule of law, on the existence of safeguards, checks, and balances to ensure that all compete fairly in the marketplace. These protections must be transparent and easy to understand. This is not only so that businesses and individuals can readily determine what distinguishes appropriate from inappropriate action, but so that all may have faith in the governmental bodies tasked with enforcing the rules.

The implosion of Enron, Global Crossing, WorldCom, and other public companies has caused widespread concern about the soundness of American businesses. Public confidence in corporate practices has been undermined, and serious questions have been raised about the accuracy of corporate audits and the integrity of auditors. Many Americans have become worried that neither internal corporate safeguards nor the government's financial oversight mechanisms are functioning properly.

I share these concerns and I am glad that the Senate is seeking to address them. All Americans have a stake in a healthy business climate, and we know that health depends on having an ethical business climate. While the past two decades have unleashed a tidal wave of entrepreneurship and successful business growth, we have also witnessed, most notably throughout the late 1990's, an ''anything goes'' relativism that has increasingly penetrated our corporate business and political culture.

We've always taught our children a moral principle well expressed by Macauley: that ''The measure of a man's real character is what he would do if he knew he would never be found out.'' We do so because, as parents, we know that we cannot supervise our children forever. When they face, as they inevitably will, a choice between the easy road of cheating or the tough road of following the rules, we want them to choose right, not wrong.

Sadly, this lesson seems to have been forgotten lately. In the haze of morally gray areas, corporate executives have come right up against the limits of what is acceptable behavior, and in several cases, have gone beyond it. What's worse, these companies' boards of directors have stood by in the face of wrongdoing, either unable to discover it or unwilling to rouse themselves to take corrective action.

I am very troubled by the inability of the markets to see through the phony numbers being generated by these enterprises. As a result, average investors no longer enjoy the protections put in place to ensure accountability and transparency. I agree with President Bush, who said that ''to properly inform shareholders and the investing public we must adopt better standards of disclosure and accounting practices for all of corporate America.''

Yesterday, President Bush outlined an aggressive plan to rejuvenate the mechanisms that ensure corporate responsibility. This plan will expose and punish acts of corruption, make corporate accounting standards more transparent, and protect small investors and pension holders. The President has urged Congress to adopt tough new criminal penalties and enforcement provisions in order to punish those who refuse to play by the rules and who choose to undermine the integrity of our financial markets.

The House of Representatives have already passed legislation addressing this slippage in corporate responsibility, while also permitting enough legal and regulatory flexibility to tackle future problems. Rather than seeking to provide a statutory answer for every current deficiency and every recent transgression, the House bill recognizes that this is a job for experts and gives the Securities and Exchange Commission the authority necessary to prevent future abuses.

By attempting to legislate detailed accounting standards, the bill before us puts Congress in the position of micromanaging details that we know less about than SEC experts. So, the legislation before the Senate represents a less workable approach than the President's proposal. Although I support its goals, particularly the need to improve the quality of independent audits and financial reporting and ensure meaningful accountability by executives of public companies, this bill has other specific problems.

For example, the Public Company Accounting Oversight Board, which would be created by the bill, would be allowed to begin proceedings against accounting firms without affording them the same due-process protections they would have in court. Their livelihood could be at stake. Certainly, bad actors should be held accountable for wrongdoing. But our system of justice has always had safeguards to protect the innocent; checks need to be in placed to prevent the wielding of unbridled government power.

The bill would make accountants liable for not reporting ''any material noncompliance'' with the law that auditors ''should know'' about. What does that mean? That standard is so vague that it is certain to invite a flood of litigation. Unfortunately, we have had some experience with frivolous lawsuits trumped up by trial lawyers over alleged securities violations.

Section 105 of the bill establishes liability for any ''failure to supervise,'' another vague standard that is likely to invite litigation.

Again, let me say that bad actors must be held accountable for wrongdoing. But as we attempt to root out and punish the wrongdoers, we must be mindful of the impact legislation will have on the greater number of people who are acting in good faith. Setting up a system that is too costly to comply with, or one that even good people find too onerous to comply with, will ultimately harm the very people we are trying to protect—employees, retirees, and others who have invested in American corporations. If the liability potential is too great, it will be hard for many businesses to obtain accounting services at a reasonable cost.

Fortunately, we can still improve the bill in conference, before we send it to the President and he must decide whether to sign it.

And while we're at it, the Senate would be wise to look at its own financial practices. We, too, are accountable to the American people. The Budget Enforcement Act of 1974 requires Congress to approve a budget resolution on how much the government can spend each fiscal year. Yet, this year, the Majority has refused to bring a budget to the Senate floor. This is unprecedented and unacceptable. The majority is abrogating its duty to the Senate and the American people. Its stubborn refusal to do what is right, while the whole country watches, is indefensible. Its eagerness to hammer away at what are admittedly acts of wrongdoing in American business, while gliding over its own dereliction of duty in the same general area—is breathtakingly hypocritical.

So while we work to pass these important reforms, we must remember that, like the CEOs of public companies, we, too, have an ethical duty to protect and use wisely other people's

money. I would remind my colleagues that it is thoroughly disingenuous to rise today to demand clean accounting practices by the private sector, while failing to ensure even basic general accounting standards for the federal government.

In closing, consider the thoughts of George Will on capitalism and ethics. Mr. Will wrote that a properly functioning free-market system is ''a complex creation of laws and mores that guarantee, among much else, transparency, meaning a sufficient stream, a torrent, really, of reliable information about the condition and conduct of corporations. By casting a cool eye on Enron's debris and those who made it, government can strengthen an economic system that depends on it.''

I am confident that, despite these recent abuses of the public's trust, our economy and our system remain fundamentally sound and strong. The vast majority of businesspeople respect legal norms and live by them. We will make our free enterprise system better for them, and for all Americans, by penalizing those who did wrong and repairing creaky enforcement mechanisms. The President has acted. The House has acted. Now it is time for the Senate to act, to return trust, accountability and transparency to our financial institutions.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there be a period for morning business with Senators allowed to speak therein for 10 minutes each.

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

DROUGHT

Mr. DOMENICI. Mr. President, I rise today to discuss the effects of a natural disaster that lingers across much of the west, drought. There is not a segment of the New Mexico population that will not be touched, in some form or fashion, by drought this year.

People in other parts of the country have turned on their television sets over the past few weeks and have seen the blazes of catastrophic wildfires that are again devastating the western United States. This may be the only effect of the drought that many are aware of. Let me tell you, the devastation is even more profound.

Ranchers are being forced to sell off livestock because they can't find enough water for them and can't afford the significant feed costs. Other agricultural businesses are being forced to shut their doors because the agriculture sector as a whole is hurting.

Most of the National Forests in New Mexico are closed to the public. This has added to a decrease in tourism. Let me mention a couple of specific examples. First of all, there is a small railroad, the historic Cumbres and Toltec Railroad, that takes people through a very beautiful part of the State. The railroad contributes to the tourism and economic stability of a very poor part of the State. That railroad has had to close because it runs through National Forest system lands and the fear that the railroad might spark and start a wildfire is a threat to imminent to risk. A second example is the river rafting operations that have been forced to cease operations because of the drought conditions and lack of river flows.

Municipal and private wells are running dry. In the City of Santa Fe, emergency wells for municipal water use are needed because Santa Fe's water storage is at 18 percent capacity, the spring run off is only at 2 percent, and current wells are pumping 24 hours a day. The City of Santa Fe is at a Stage 3 water shortage emergency, which allows outdoor watering once a week, but the City Council is considering going to Stage 4, which would eliminate all outdoor watering. To put this in perspective, the last substantial rain for the area was in late January.

A recent article in the New York Times accurately depicts the dire situation. It talks about how gardening in a desert is challenging, especially during a drought and at a time of mandatory water restrictions. The article went on to talk about people spray painting plastic flowers and artificial turf, while also using freeze dried plants to beautify porches and other areas.

Santa Fe is only one of the numerous municipalities that have imposed restrictions on water use. The article also notes that these restrictions are enforced by ''water police'' and that violators face steep fines ranging from $20 for a first offense to $200 for a fourth offense and stay at $200 for each repeat violation.

A second article appearing in the Albuquerque Journal, referenced a ''drought reduction'' cattle sale. The sale took place last week on the edge of the Navajo reservation. While most livestock sales generally take place on the reservation during September and October, this year emergency sales are being held almost every weekend. Hundreds of cattle, horses and sheep have already died as a result of the severe drought conditions.

The article goes on to describe the severity of the conditions. ''Stock ponds have gone dry, fish have died in evaporating lakes, and grass has disappeared. Sand blows across reservation roads, and the stiff bodies of dead cattle litter the land.''

The seriousness of the water situation in New Mexico becomes more acute every single day. I reiterate that every single New Mexican will feel the impact of this drought in one way or another—whether they are selling off the essence of their livelihood—livestock, or losing daily revenues in other small business, whether they are actually having to refrain from watering their own lawns and washing their cars to looking for alternative recreational opportunities this summer, the drought and its devastation is very real.

There is a need out west and I stand ready to do what I can. It will be a monumental and expensive challenge, but one we cannot avoid. I ask unanimous consent that the two articles referenced in my remarks be printed in the RECORD.

[From the New York Times, July 8, 2002]

IN SANTA FE, IT'S TIME TO PAINT THE PLANTS

Gardening in a desert is challenging. Gardening in a desert in a drought is tough. Gardening in a desert in a drought at a time of mandatory water restrictions is ridiculous.

It's enough to make a hard-core gardener break out the spray paint and feather dusters. Why? To brighten the artificial turf and plastic flowers, of course, and to keep the cobwebs off the freeze-dried evergreens.

''Isn't this a hoot?'' said Kay Hendricks, a 70-year-old interior designer who cheerfully pointed out a now-dead wisteria vine as she stuffed a plastic sprig of purple lavender into a pot of freshly painted silk red flowers. ''A little red paint will make any flower a geranium.''

In a whirlwind tour of her home, Ms. Hendricks showed off a bouquet of what may have once been silk purple zinnias, now painted red to match an American flag hanging on her garage; a potted four-foot-tall plastic cactus with fake thorns; and English ivy with fake dewdrops draped from another pot.

With drought gripping several Western states this summer, Santa Fe is one of a number of municipalities that have instituted mandatory restrictions on lawn watering, car washing and other uses of water. The restrictions are enforced by ''water police,'' who can impose steep fines and even decrease water flows to scofflaws' homes. Phone lines have been set up so people can report wasteful neighbors to city officials.

Fines for illegal watering here start at $20 and go up to $200 after the fourth offense, and then stay at $200 for each repeated violation.

''There is a guilt to watering things,'' said Mary Thomas, manager of the American Country Collection furniture store in downtown Santa Fe. She used to plant colorful annuals in pots outside her store each spring, but now she has 18 freeze-dried miniature evergreens instead.

''They don't have to be watered and we can paint them if they lose their color,'' she said. Ms. Thomas said her parents liked the freeze-dried trees so much that they bought some for their own patio.

The city is at a Stage 3 water shortage emergency, which allows outdoor watering once a week, but the City Council is considering going to Stage 4, which would eliminate all outdoor watering. Reservoirs that the city relies on for water are at 23 percent of normal capacity, and the last substantial rain was in late January, said Chandra Marsh, a water conservation educator and compliance specialist with the City of Santa Fe Water Department.

Not every plant here is fake or dead. Established low-water perennials are surviving, and hollyhocks and lilies can be seen blooming here and there. But, Ms. Marsh said, it is difficult to establish many plants without regular watering.

It seems as if everyone in this town is either adding a few silk and plastic plants to their yards, or knows someone who is doing

so while letting the grass die in the baking dry heat.

Mary Branham, 71, has switched from pots with nearly 200 red geraniums to all silk and plastic plants and flowers this year. ''It seemed irresponsible even when we can water once a week,'' she said. Ms. Branham's terra cotta pots now have blue hydrangeas, ornamental grasses, orange marigolds and pink and purple lilacs ''planted'' in the soil.

She said she now dusts her flowers twice a week.

[From the Albuquerque Journal, July 7, 2002]

IT'S LIKE THE SAHARA

(By Leslie Linthicum)

Life-draining drought drives ranchers on Navajo reservation to sell off gaunt livestock.

About 200 people filled the stands of the Naschitti Livestock Association arena on the eastern edge of the Navajo reservation last week, waiting for the start of what was being billed as a ''drought reduction'' cattle sale.

Livestock auctions usually take place on the reservation in September and October, when sheep and cattle are fat.

But this is a year when the reservation is baking in one of the worst droughts anyone can remember, and hundreds of cattle, horses and sheep have already died. This year, emergency sales have been cropping up almost every weekend.

In a place where harmony is prized and people live close to the land, hot afternoon winds carry fear and uneasiness as the landscape becomes ever drier and prayers for rainfall go unanswered. Stock ponds have gone dry, fish have died in evaporating lakes, and grass has disappeared. Sand blows across reservation roads, and the stiff bodies of dead cattle liter the land.

''It's bad, really bad,'' said John Blueeyes, director of the tribe's agriculture department. ''Mother Nature's not too nice to us lately.''

Sagebrush turns black.

Livestock are not the only victims of the lingering drought.

Last week an elk cow wandered into The Gap, a community on the edge of the Grand Canyon, desperate for water.

She jumped a fence and sought relief in a sewage lagoon, where she died and lay floating three days later.

Many Farms Lake on the Arizona side of the reservation usually spreads across about 1,500 acres, shimmering in the summer sun and inviting fishermen to try their luck catching bass and catfish.

With no water flowing in the creeks and washes that feed it, the lake has gone completely dry. It is now a 2½-square-mile, crackly graveyard for tens of thousands of fish.

At the base of Gray Mountain just east of the Grand Canyon, usually hardy sagebrush has turned black.

Elsewhere, sand blows across highways in a rippling reminder that rain is a distant memory. The last rain most people can remember was last October.

Last week on the two-lane highway that links Canyon de Chelly to Monument Valley a road that sees plenty of tourists' cars during the summer a front-end loader scooped buckets of sand into dump trucks bound for a construction site at a nearby community.

Chancellor Damon, a heavy equipment contractor from Window Rock, was doing the work under hire by the Bureau of Indian Affairs to keep the road safe from sand dunes that had been encroaching on the roadway since the spring.

''It's like the Sahara,'' Damon said. ''It's just been windy, hot and dry.''

Damon is a lifelong resident of the Navajo reservation and is accustomed to huge winter snows in the mountains that hug the New Mexico-Arizona border. Usually, a three-wheeler is needed to make it through the snow. This year, passenger cars had no trouble.

''Almost no snow. No rain whatsoever, It's bad,'' Damon said.

Hardship bargains

Elderly women in velveteen blouses, ranchers in Wranglers and toddlers in pint-sized straw hats helped to fill the stands during a 100-degree afternoon at the livestock auction while a handful of Anglo ranchers from out of state lined the top row.

The Navajos, out of water and feed, had come to sell.

The cattlemen, fortunate to have rain and pasture grass in Nebraska and Louisiana, were looking for some hardship bargains.

First, the invocation in Dine, the native language of the Navajo: ''Please give us rain. Please give us moisture. Let it be like it used to be grass green and high and rain every day.''

As the auction rolled on under a sizzling sun, stunted calves and skinny cows were paraded in and sold.

Some were to be fattened up in greener pastures; others were bound directly for the slaughterhouse. Prices were moderate and, considering that the cost of hay to continue feeding the cows hovers between $6 and $11 a bale on the reservation the auction satisfied both the buyers and the sellers.

The Becenti family from Naschitti had brought 30 calves and cows to the auction. Three weeks ago they sold another group of 30 cattle and sheep at an auction in Aztec.

Ilene Becenti is reducing her herds by about 50 percent, banking the money from the sales and hoping to buy more animals once rains come.

Like the rest of the animals on sale at Naschitti, Becenti's animals are healthy; they are just much lighter than they should be at this time, and it is costing more to feed them as hay prices rise.

''There's no grass. It's completely dry,'' said Patricia Arviso, Becenti's niece and one of the many family members who look after the animals.

''When I was growing up,'' Arviso said, ''it never looked like this.''

Becenti is not in the ranching business to make money, and she did not consider only economics when she made the decision to sell.

''There's no rain, no grass. We don't want these animals to suffer,'' she said.

She will not, under the advice of some of the tribe's range management specialists, sell all of her animals and wait out the duration of this drought with no livestock.

''It makes you feel good if you have livestock around your house. It's how we were raised,'' Becenti said. ''If you look outside your house and you don't see cows and sheep and goats and horses, it doesn't feel right. It's life to us.''

Too many animals.

About 700 cattle and horses were sold at Naschitti, less than one-fifth of what the tribe's range management specialists and tribal president had been hoping for.

''We want people to sell,'' said Blueeyes, of the tribe's agriculture department.

Rather than use hay to feed cows that are old, sick or not reproducing, the agriculture department wants owners to thin their herds dramatically, keeping only young and healthy animals.

The drought has brought into sharper focus an issue that has troubled natural resource managers for a century: The Navajo reservation, with so much land and so little vegetation, is being eaten away by too many animals.

The reservation is immense some 25,000 square miles spread over northwestern New Mexico, northeastern Arizona and southeastern Utah. Range surveys have found large portions where overgrazing and drought have combined to kill grass. Without grass anchoring the soil, it blows away.

As early as 1930, a federal survey described the Navajo range as ''deteriorating rather steadily and more rapidly each year.'' In 1933, tribal lawmakers approved a livestock reduction plan that, carried out over one traumatic decade, reduced the livestock on Navajo lands from 800,000 head to about 460,000.

Estimates of the number of sheep, cattle, goats and horses on the reservation today vary between 100,000 and 200,000.

They have symbolism that goes beyond their ability to provide meat and transportation. Sheep and goats are an integral part of family and ceremonial life; cattle are vital to the Indian cowboy tradition; and Navajo elders believe horses bring rain.

Last week Navajo President Kelsey Bagaye issued a statement to Navajos, imploring them to sell some of their animals.

''We need to help our Mother Earth recover so that it may yield and sustain green pastures again in the future when moisture comes to our land,'' Begaye said.

''Owning livestock,'' he said, ''is more a privilege and gift than a right.''

Grazing reforms have been suggested for years and never enacted. Blueeyes expects Navajos will haul water and buy hay for their animals and wait for rain to make things better, but will not be open to discussions of limiting their herds so the land can heal.

''It is the Navajo sacred cow,'' said Blueeyes. ''Nobody wants to talk about it.''

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 19, 2000 in Cambridge, MA. A Muslim student, who was wearing a praying cap, was returning to his dorm from Islamic prayer when two white men with shaved heads attacked him. The men grabbed the student from behind and punched and kicked him. One of the perpetrators used a racial epithet during the beating. The victim required medical attention and received stitches for a wound to his head.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

HONORING THE COMPANY OF FIFERS AND DRUMMERS

• Mr. DODD. Madam President, I rise to recognize the outstanding contributions of The Company of Fifers and Drummers to the people of Connecticut and beyond. The largest organization of its kind in the Western world, The Company has both increased awareness of fife and drum history and fostered communication amongst corps worldwide. I would like to take the opportunity to commend its hard work and numerous achievements over the years.

Rooted in early American musical tradition, The Company of Fifers and Drummers is a nonprofit organization founded in 1965. The historical significance of The Company is evidenced through the early establishment of various corps dating back to the 1760s and 1800s. Throughout its existence, The Company has broadened corps membership beyond Connecticut and New England to include an impressive 150 corps worldwide, including corps in Europe and along the Pacific coast. In addition to showcasing fife and drum music and history, The Company organizes all activities for member corps, both inside and outside the United States.

The efforts of The Company of Fifers and Drummers extends far beyond musical events and fellowship. The commitment of this organization to the art of fife and drum is also evidenced through its creation of the Museum of Fife and Drum in Ivoryton, CT. Since 1987, the museum has serviced the community by providing access to artifacts, including eighteenth and nineteenth century instruments and uniforms, a music and video library, as well as an extensive archives. The Company is certainly worthy of praise for its efforts in maintaining the only museum devoted to fife and drum to date.

As the fife and drum first appeared in the early colonies, The Company of Fifers and Drummers is a reminder of the importance of our history as Americans. While the drum arrived in America with the first English settlers, the fife was introduced in the colonies during the French and Indian War. By 1775, the year of the Lexington Alarm, most colonial regiments were comprised of fifers and drummers. The spirit of patriotism rooted in the Company is a great example for all Americans.

I am proud to honor The Company of Fifers and Drummers for its remarkable service and accomplishments over the past 30 years. My experience with The Company, most recently at the Eight Mile River Dedication Ceremony in East Haddam, CT, has proved both enlightening and inspiring. I wish to show my appreciation for its outstanding contributions to society, and I wish The Company continued success in the future.•

CONGRATULATIONS TO LIEUTENANT COLONEL TIM JONES, BATTALION COMMANDER, U.S. ARMY

• Mr. MCCONNELL. Madam President, I rise today to pay tribute to Lieutenant Colonel, LTC, Timothy A. ''Tim'' Jones as he assumes command of the 9th Battalion, 101st Aviation Regiment, 101st Airborne/Air Assault Division, at Fort Campbell, KY. This well deserved honor is the latest achievement in a long and distinguished Army career that started with Tim's graduation in 1984 from the U.S. Military Academy at West Point, NY. After being commissioned as a Second Lieutenant, 2LT, in the brand new branch of Aviation, Tim returned to his home state of Alabama to complete rotary wing flight training at Fort Rucker. He then served in numerous positions including Company Commander with the 7th Infantry Division, Light, at Fort Ord, CA. His service at Ft. Ord was highlighted by his heroic actions in Panama during Operation Just Cause. He then served with the elite 160th Special Operations Aviation Regiment, also based at Ft. Campbell, KY. Only the ''best of the best'' in Army Aviation are invited to serve with the 160th, the ''Nightstalkers.'' Most recently, Tim completed an overseas assignment in Korea, and now returns to the United States to provide the leadership and experience desperately needed by combat units such as the 9th Battalion. Please join me in congratulating the Army's newest battalion commander, LTC Tim Jones, as well as his family, including wife Theresa, daughter Megan, and sons John and Daniel on this latest achievement in a long and distinguished career in Army Aviation.•

TRIBUTE TO DR. ALBERT SOLNIT

• Mr. LIEBERMAN. Madam President, it is with sadness that I come to the floor today to note the untimely passing of a great man whose life and work in Connecticut have made my State, and our country, a better place, particularly for our children.

Dr. Albert Solnit, Chair of the Yale Child Study Center from 1966 to 1983 and Commissioner of Mental Health and Addiction Services for the State of Connecticut from 1991 to 2000, died tragically and suddenly on June 21, as a result of injuries sustained in a car accident earlier that day. This loss has compounded the mourning of the men and women of the Yale Child Study Center, who lost another former director in Donald Cohen last October.

Albert Solnit spent an entire lifetime serving his fellow human beings with great dedication, enthusiasm, and distinction. Having served in the U.S. Army as a psychiatrist, Dr. Solnit arrived at Yale, my alma mater, in 1948, as a psychiatric resident. Two years later, he became the first trainee in child psychiatry ever at the Child Study Center. In another 2 years, he joined the faculty of the Center. And by 1964, he was a full professor there. With years of diverse training in medicine, pediatrics, anatomy, and communicable diseases and a passionate commitment to bettering the lives of children of Connecticut, Dr. Solnit became director of the Child Study Center in 1966.

Every day, Dr. Solnit would arrive at the Yale Child Study Center long before his colleagues. He would work late into the evening. He didn't have to; after all, he was the boss. But he did, because he had a tireless work ethic and a clear vision of how his effort could better the world.

Even if I had an hour or two here on the floor, I could not catalogue Dr. Solnit's accomplishments in full. So let me focus briefly on what were his deepest interests: assisting children caught in complicated custody situations, children being adopted, or children committed to the well-intentioned, though often challenging, foster care system of my state. Dr. Solnit didn't simply observe and dissect problems with the status quo; he corrected them. He helped set the standards for how the legal system would work with child development experts on behalf of children. In the late 1960s, he worked with the state government to develop a new department of juvenile delinquency called the Department of Children and Youth Services, and to build a separate State psychiatric hospital that would treat only children, and treat them with special focus and care.

He wrote two books, ''In the Best Interests of the Child'' and ''Beyond the Best Interests of the Child,'' that are known as classics in the field of child mental health.

This man was always taking his vast range of knowledge and figuring out how best to apply it to touch the lives of others. He was always mentoring his colleagues. He was always nurturing children. It is with sorrow that I mourn his sudden death, and it is with far greater pride, respect, and love that I pay tribute today to the life of inspiration that Dr. Al Solnit gave to us all.

I extend my deepest condolences to his colleagues at the Child Study Center, to his wife Martha, and to his children David, Ruth, Ben, and Aaron—and their families.

And I ask that the following obituary, written by Dean David Kessler of the Yale School of Medicine, be printed into the RECORD, so that this man's life, a model to which we might all aspire, is remembered forever.

The obituary follows:

DEAR FACULTY, It is with great sadness that I write to inform you of yet another deep and tragic loss of a member of the faculty and senior leadership of the Yale Child Study Center and Yale School of Medicine. Dr. Albert J. Solnit died on Friday evening, June 21st, as a result of injuries he sustained in an automobile accident earlier that day. His wife, Martha, was also involved in the accident and is in stable condition in the intensive care unit of Waterbury Hospital.

Dr. Solnit was chair of the Child Study Center from 1966 to 1983 and Commissioner of

Mental Health and Addiction Services for the State of Connecticut from 1991 to 2000. He was also the Sterling Professor Emeritus of Pediatrics and Psychiatry in the Child Study Center. Named a Sterling Professor in 1970, he was the middle of three Sterling professors who led the Center. The most recent was Donald J. Cohen who succeeded Dr. Solnit as chairman of the Center in 1983, and who died last October.

Al arrived at Yale in 1948 as a psychiatric resident and in 1950 became the first trainee in child psychiatry in the Child Study Center. He was born in 1919 and grew up in Los Angeles, California, attended the University of California in Berkeley and San Francisco, and received his medical degree in 1943. After pediatric training in Long Island College Hospital, he entered the U.S. Army and served as a psychiatrist during his two-year commitment. He joined the faculty of the Child Study Center in 1952 and became a full professor in 1964. Like his predecessor, Al came to his leadership position at the Child Study Center with a broad background that also included a masters degree in anatomy and a year as a resident in communicable diseases. He also had begun psychoanalytic training in the New York Psychoanlytic Institute from which he graduated in 1955.

Al's tenure as chair of the Center was infused with his distinctive energy and broad vision, he was a man of remarkable stamina, arriving at Center long before his colleagues and continuing to work late into the evening, a characteristic that was enduring from his very first years at Yale through the day before this death. Long concerned for the needs for poor and underprivileged children, he had been working as consultant to various school districts and many child-serving such social agencies in the New Haven community and the state. In the late 60's, he worked with the state government of Connecticut to develop new department of juvenile delinquency, the Department of Children and Youth Services, and to build a separate state psychiatric hospital for children.

In his effort to bring the Center into the community, Al built bridges throughout the university and the city of New Haven. Among those initiatives was his collaborative work with the law school. Trained as a child and adult psychoanalyst he cared deeply for children caught in the turmoil of the foster care system, or complicated custody situations. With his close colleagues, Anna Freud and Joseph Goldstein, he set the standards for an informed, collaborative interface between the legal system and child development experts on behalf of children. His books, In the Best Interests of the Child and Beyond the Best Interests of the Child, are recognized classics in the field of child mental health. Throughout his career—even up to last week—he was regularly consulting with colleagues and trainees about how to think about complex questions of adoption, custody, and child placement. His perceptiveness in these often difficult areas was legendary and much respected by judges and child psychiatrists alike. Other of his scholarly contributions, set forth in seventeen books and over two hundred papers and chapters, set the tone of the emerging field of child psychiatry.

Al maintained strong and close ties to pediatrics and to pediatricians. He established a long-standing collaborative group involving both child psychiatrists and practicing pediatricians that has met monthly for over forty years to discuss the common clinical ground between the two disciplines. He developed the concept of the 'vulnerable child' that detailed the effects on parents and children of neonatal or very clearly serious illness or threatened illness. With his close colleagues, Sally Provence, Julius Richmond, and Irving Harris. Al also began the organization Zero To Three that defined the field of infant psychiatry.

Al was a recognized and prodigious leader in the world of child mental health and child psychoanalysis. He was president of the American Psychoanalytic Association from 1970 to 1971; of the American Academy of Child and Adolescent Psychiatry from 1971–73; and of the International Association of Child and Adolescent Psychiatry and Allied Professions from 1974–76. In the latter organization, he remained an active, contributing member of the leadership and was intimately involved just this past week in developing a new training agenda to bring international child mental health scholars together. He was editor of the Psychoanalytic Study of the Child, a position he assumed in 1971 and through which he turned the journal into one of the leading publications in the field. Al was an international leader in psychoanalysis. He was actively involved with the Yale Press and with the Muriel Gardiner Seminar for Psychoanalysis and the Humanities. Both of these efforts reflect Al's broad intellectual interests and his ability to span fields. He was an enduringly curious scholar and enjoyed most bringing individuals from different disciplines together to encourage cross-talk and interdisciplinary understanding. He was masterful in his ability to detect even the faintest possibility of common ground among apparently disparate points of view and for bringing these groups together.

Many individuals in the field of child psychiatry, and more broadly child mental health, attribute their careers to Al's ability to see their potential and make connections that put them in the right place at a critical time for their personal development. He worked often quietly behind the scenes to help young faculty members find sufficient help and resources to start their research or to feel sufficiently grounded so that they could flourish. He stayed in touch with his patients for years, long after they were adults and parents, even grandparents, themselves and he never ceased to be their physician, always available and sensitive to their needs.

Though an emeritus professor, Al Solnit was by no means retired. He was mentoring, guiding, and caring every hour of the day. He was a vital, present member of the Child Study Center's leadership and carried the wisdom afforded by living the history of a place. His untimely, unexpected death cuts short a continuing vigorous life with mentoring and leadership yet to give.

I know you join me in extending sympathy to all of his colleagues in the Child Study Center and to his wife Martha, his children David, Ruth, Ben, Aaron, and their families.

Al Solnit was a vital citizen of this medical school and university. We shall miss him and do our best to carry out his constant imperative that there is always more to be done on behalf of the world's children.—David Kessler, M.D., Dean, Yale School of Medicine.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting treaties and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:50 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3130. An act to provide for increasing the technically trained workforce in the United States.

H.R. 4481. An act to amend title 49, United States Code, relating to airport project streamlining, and for other purposes.

H.R. 4878. An act to provide for estimates and reports of improper payments by Federal agencies.

H.R. 5017. An act to amend the Temporary Emergency Wildfire Suppression Act to facilitate the ability of the Secretary of the Interior and the Secretary of Agriculture to enter into reciprocal agreements with foreign countries for the sharing of personnel to fight wildfires.

H.R. 5063. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services.

At 2:14 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that it has passed the following bill, in which it requests the concurrence of the Senate.

H.R. 4635. An act to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3130. An act to provide for increasing the technically trained workforce in the United States; to the Committee on Health, Education, Labor, and Pensions.

H.R. 4481. An act to amend title 49, United States Code, relating to airport project streamlining, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 4878. To provide for estimates and reports of improper payments by Federal agencies; to the Committee on Governmental Affairs.

H.R. 5063. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services; to the Committee on Finance.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 4635. An act to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

H.R. 5017. An act to amend the Temporary Emergency Wildfire Suppression Act to facilitate the ability of the Secretary of the Interior and the Secretary of Agriculture to enter into reciprocal agreements with foreign countries for the sharing of personnel to fight wildfires.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 11, 2002, she had presented to the President of the United States the following enrolled bill:

S. 2594. An act to authorize the Secretary of the Treasury to purchase silver on the open market when the silver stockpile is depleted, to be used to mint coins.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–7802. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a violation of the Antideficiency Act; to the Committee on Appropriations.

EC–7803. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination confirmed for the position of Chair, Foreign Claims Settlement Commission, Department of Justice, received on June 26, 2002; to the Committee on the Judiciary.

EC–7804. A communication from the Director of Operations and Finance, American Battle Monument Commission, transmitting, pursuant to law, the Commission's report of its administration of the Freedom of Information Act for Fiscal Year 2001; to the Committee on the Judiciary.

EC–7805. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Annual Report entitled ''Outer Continental Shelf Lease Sales: Evaluation of Bidding Results'' for Fiscal Year 2001; to the Committee on Energy and Natural Resources.

EC–7806. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled ''Information Collection Needed in VA's Flight-Training Programs'' (RIN2900–AJ23) received on June 26, 2002; to the Committee on Veterans' Affairs.

EC–7807. A communication from the Managing Director, Federal Housing Finance Board, transmitting, pursuant to law, the report of a rule entitled ''Office of Finance Board of Directors Meetings'' (RIN3069–AB15) received on June 26, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–7808. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage'' (RIN3067–AD27) received on June 26, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–7809. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement that Brokers or Dealers in Securities Report Suspicious Transactions'' (RIN1506–AA21) received on July 2, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–7810. A communication from the Deputy Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–7811. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Research and Development Streamlined Contracting Procedures'' (DFARS Case 2001–D002) received on June 26, 2002; to the Committee on Armed Services.

EC–7812. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the List of Proscribed Destinations'' (22 CFR Part 126) received on June 26, 2002; to the Committee on Foreign Relations.

EC–7813. A communication from the Assistant Secretary for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–7814. A communication from the Assistant Secretary for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–7815. A communication from the Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Nectarines Grown in California; Decreased Assessment Rate'' (Doc. No. FV02–916–2IFR) received on June 25, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7816. A communication from the Administrator, Fruit and Vegetable Programs, Research and Promotion Branch, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Rules of Practice'' (Doc. No. AMS–02–001) received on June 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7817. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Raisins Produced from Grapes Grown in California; Additional Opportunity for Participation in 2002 Raisin Diversion Program'' (Doc. No. FV02–989–5IFR) received on June 25, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7818. A communication from the Executive Vice President, Commodity Credit Corporation, Farms Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Dairy Recourse Loan Program'' (RIN0560–AF41) received on June 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7819. A communication from the Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements'' (Doc. No. FV02–955–1 IFR) received on June 25, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7820. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary, Economic Policy, received on June 26, 2002; to the Committee on Finance.

EC–7821. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of the discontinuation of service in acting role and a nomination confirmed for the position of Assistant General Counsel (Treasury)/ Chief Counsel, IRS, received on June 26, 2002; to the Committee on Finance.

EC–7822. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of the discontinuation of service in acting role and a nomination confirmed for the position of Chief Financial Officer, received on June 26, 2002; to the Committee on Finance.

EC–7823. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of the discontinuation of service in acting role and a nomination confirmed for the position of Assistant Secretary (Management), received on June 26, 2002; to the Committee on Finance.

EC–7824. A communication from the Chief of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Treasury Department, transmitting, pursuant to law, the report of a rule entitled ''Elimination of Application to Remove Tobacco Products from Manufacturer's Premises for Experimental Purposes'' (RIN1512–AC32) received on June 26, 2002; to the Committee on Finance.

EC–7825. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report regarding Medicare Beneficiaries' Access to Hospice; to the Committee on Finance.

EC–7826. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Health Reimbursement Arrangements'' (Rev. Rul. 2002–41) received on June 26, 2002; to the Committee on Finance.

EC–7827. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Restorative Payments to Defined Contribution Plans'' (Rev. Rul. 2002–45) received on June 26, 2002; to the Committee on Finance.

EC–7828. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Health Reimbursement Arrangements'' (Notice 2002–45) received on June 26, 2002; to the Committee on Finance.

EC–7829. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Prohibited Transactions Excise Tax Computation'' (Rev. Rul. 2002–43) received on June 26, 2002; to the Committee on Finance.

EC–7830. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''New York Liberty Zone Questions and Answers'' (Notice 2002–42) received on June 26, 2002; to the Committee on Finance.

EC–7831. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—July 2002'' (Rev. Rul. 2002–40) received on June 26, 2002; to the Committee on Finance.

EC–7832. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule

entitled ''Application of Employment Taxes to Statutory Stock Options'' (Notice 2002–47) received on June 26, 2002; to the Committee on Finance.

EC–7833. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Rev. Proc. 2001–17—Employee Plans Compliance Resolution System'' (Rev. Proc. 2002–47) received on June 26, 2002; to the Committee on Finance.

EC–7834. A communication from the Regulations Coordinator, Center for Medicare Management, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of rule entitled ''Medicare Program; Criteria for Submitting Supplemental Practice Expense Survey Data under the Physician Fee Schedule'' (RIN0938–AL99) received on June 27, 2002; to the Committee on Finance.

EC–7835. A communication from the Acting General Counsel, Office of National Drug Control Policy, Executive Office of the President, transmitting, pursuant to law, the report of a nomination for the position of Deputy Director for Demand Reduction, received on June 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–7836. A communication from the Deputy General Counsel, Office of National Drug Control Policy, Executive Office of the President, transmitting, pursuant to law, the report of a change in previously submitted reported information and a nomination confirmed for the position of Deputy Director for Demand Reduction; to the Committee on Health, Education, Labor, and Pensions.

EC–7837. A communication from the Chairman of the Barry M. Goldwater Scholarship and Excellence in Education Foundation, transmitting, pursuant to law, the Annual Report regarding the activities of the Foundation; to the Committee on Health, Education, Labor, and Pensions.

EC–7838. A communication from the White House Liaison, Department of Education, Office of Postsecondary Education, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary, received on June 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–7839. A communication from the White House Liaison, Office of Postsecondary Education, Department of Education, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary, received on June 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–7840. A communication from the Assistant Secretary of Labor for Mine Safety and Health, transmitting, pursuant to law, the report of a rule entitled ''Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines'' (RIN1219–AA75) received on June 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–7841. A communication from the Acting Assistant Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a nomination for the position of Chief Financial Officer, received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7842. A communication from the Assistant Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a change in previously submitted reported information and a nomination for the position of Assistant Administrator for Enfor and Compliance Assurance, received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7843. A communication from the Assistant Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of the designation of acting officer for the position of Chief Financial Officer, received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7844. A communication from the Director, Office of Congressional Affairs, Office of the Chief Financial Officer, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Revision of Fee Schedules; Fee Recovery for FY 2002'' (RIN3150–AG95) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7845. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the monthly status report on the licensing activities and regulatory duties of the Commission; to the Committee on Environment and Public Works.

EC–7846. A communication from the District of Columbia Auditor, transmitting, a report entitled ''City Charges DCPS Nearly $1 Million in Utility Expenses That Should Have Been Charged To Other Entities''; to the Committee on Governmental Affairs.

EC–7847. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–80E1 Series Turbofan Engines'' ((RIN2120–AA64)(2002–0273)) received on June 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7848. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS350B, AS350B1, AS350B1, AS350B2 , AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters'' ((RIN2120–AA64)(2002–0275)) received on June 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7849. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Corporation 250–C28 Series Engines'' ((RIN2120–AA64) (2002–0274)) received on June 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7850. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Israel Aircraft Industries, Ltd. Model Galaxy Airplanes and Model Gulfstream 200 Series Airplanes'' ((RIN2120–AA64) (2002–0272)) received on June 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7851. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Fokker Model F.28 Series Airplanes'' ((RIN2120–AA64) (2002–0271)) received on June 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7852. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, correspondence with the Office of Management and Budget regarding H.R. 4466, the National Transportation Safety Board Reauthorization Act of 2002; to the Committee on Commerce, Science, and Transportation.

EC–7853. A communication from the Chairman of the National Transportation Safety Board, transmitting, a draft of proposed legislation entitled ''National Transportation Safety Board Amendments Act of 2002''; to the Committee on Commerce, Science, and Transportation.

EC–7854. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement Amendment 3 to the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region'' (RIN0648–AO23) received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7855. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Notice of Agency Action; Withdrawal of Proposed Rule'' received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7856. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closes A Season Inshore Component Pacific Cod in the Western Regulatory Area, Gulf of Alaska'' received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7857. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closes a Season Pacific Cod Fishing for Offshore Processing Component in the Western Regulatory Area, Gulf of Alaska'' received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7858. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Atlantic Herring Fishery; Closure of the Directed Fishery for Atlantic Herring for Management Area 1A'' (ID041892A) received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7859. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure of Directed Fishing for Rock Sole/Flathead Sol/ ''Other Flatfish'' by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands Management Area (BSAI). This Action is Necessary to Prevent Exceeding the 2002 Bycatch Allowance of Red King Crab Specified for the Trawl Rock Sole/Flathead Sole/ ''Other Flatfish'' Fishery Category in Zone 1'' received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7860. A communication from the Deputy Assistant Director for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-Based Longline Restrictions and Seasonal Area Closure, and Sea Turtle and Sea Bird Mitigation Measures'' (RIN0648–AP24) received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURBIN, from the Committee on Appropriations, without amendment:

S. 2720: An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–209).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment:

S. 812: A bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

John M. Rogers, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

Marcos D. Jimenez, of Florida, to be United States Attorney for the Southern District of Florida for the term of four years.

Miriam F. Miquelon, of Illinois, to be United States Attorney for the Southern District of Illinois.

James Robert Dougan, of Michigan, to be United States Marshal for the Western District of Michigan for the term of four years.

George Breffni Walsh, of Virginia, to be United States Marshal for the District of Columbia for the term of four years.

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Peter J. Hurtgen, of Maryland, to be Federal Mediation and Conciliation Director.

*Robert Davila, of New York, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

*Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

*Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

*Michael Pack, of Maryland, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BURNS:

S. 2718. A bill to redesignate the position of the Secretary of the Navy as Secretary of the Navy and Marine Corps, and for other purposes; to the Committee on Armed Services.

By Mr. DOMENICI:

S. 2719. A bill to authorize the Secretary of the Army to carry out critical restoration projects along the Middle Rio Grande; to the Committee on Environment and Public Works.

By Mr. DURBIN:

S. 2720. An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. SARBANES (for himself, Mr. REED, Mr. SCHUMER, Mr. CARPER, Ms. STABENOW, Mr. CORZINE, and Mr. AKAKA):

S. 2721. A bill to improve the voucher rental assistance program under the United States Housing Act of 1937, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ROCKEFELLER:

S. 2722. A bill to amend the Internal Revenue Code of 1986 to ensure the proper tax treatment of executives compensation, and for other purposes; to the Committee on Finance.

By Mr. LEAHY:

S. 2723. A bill to provide transitional housing assistance for victims of domestic violence; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mr. CORZINE, Mr. LEAHY, Mrs. BOXER, Mr. DURBIN, and Mr. NELSON of Nebraska):

S. 2724. A bill to provide regulatory oversight over energy trading markets and metals trading markets, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2725. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to restrict ocean dumping at the site off the coast of New Jersey, known as the ''Historic Area Remediation Site'', to dumping of dredged material that does not exceed polychlorinated biphenyls levels of 113 arts per billion; to the Committee on Environment and Public Works.

ADDITIONAL COSPONSORS

S. 847

At the request of Mr. DAYTON, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 995

At the request of Mr. AKAKA, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 995, a bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1298

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1298, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 1394

At the request of Mr. ENSIGN, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1678

At the request of Mr. MCCAIN, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 1678, a bill to amend the Internal Revenue Code of 1986 to provide that a member of the uniformed services or the Foreign Service shall be treated as using a principal residence while away from home on qualified official extended duty in determining the exclusion of gain from the sale of such residence.

S. 1785

At the request of Mr. CLELAND, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1924

At the request of Mr. LIEBERMAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1924, a bill to promote charitable giving, and for other purposes.

S. 1956

At the request of Mr. KOHL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1956, a bill to combat terrorism and defend the Nation against terrorist attacks, and for other purposes.

S. 2047

At the request of Mr. BREAUX, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 2047, a bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax.

S. 2055

At the request of Ms. CANTWELL, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 2055, a bill to make grants to train sexual assault nurse examiners, law enforcement personnel, and first responders in the handling of sexual assault cases, to establish minimum standards for forensic evidence collection kits, to carry out DNA analyses of samples from crime scenes, and for other purposes.

S. 2059

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana

(Ms. LANDRIEU) was added as a cosponsor of S. 2059, a bill to amend the Pubic Health Service Act to provide for Alzheimer's disease research and demonstration grants.

S. 2119

At the request of Mr. GRASSLEY, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 2119, a bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of inverted corporate entities and of transactions with such entities, and for other purposes.

S. 2135

At the request of Mr. BAUCUS, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2135, a bill to amend title XVIII of the Social Security Act to provide for a 5-year extension of the authorization for appropriations for certain medicare rural grants.

S. 2395

At the request of Mr. BIDEN, the names of the Senator from Vermont (Mr. LEAHY), the Senator from California (Mrs. FEINSTEIN), the Senator from Ohio (Mr. DEWINE) and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2395, a bill to prevent and punish counterfeiting and copyright piracy, and for other purposes.

S. 2425

At the request of Mr. BAYH, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2425, a bill to prohibit United States assistance and commercial arms exports to countries and entities supporting international terrorism.

S. 2466

At the request of Mr. KERRY, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2466, a bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes.

S. 2480

At the request of Mr. LEAHY, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

S. 2489

At the request of Mrs. CLINTON, the names of the Senator from Virginia (Mr. WARNER), the Senator from Maine (Ms. COLLINS), and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2489, a bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

S. 2498

At the request of Mr. BAUCUS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2498, a bill to amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes.

S. 2525

At the request of Mr. KERRY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2525, a bill to amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria, and for other purposes.

S. 2554

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2622

At the request of Mr. HOLLINGS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2622, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the Nation.

S. 2686

At the request of Mr. KERRY, his name was added as a cosponsor of S. 2686, a bill to strengthen national security by providing whistleblower protections to certain employees at airports, and for other purposes.

S. 2697

At the request of Mr. REID, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 2697, a bill to require the Secretary of the Interior to implement the final rule to phase out snowmobile use in Yellowstone National Park, John D. Rockefeller Jr. Memorial Parkway, and Grand Teton National Park, and snowplane use in Grand Teton National Park.

S.J. RES. 10

At the request of Mr. KENNEDY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S.J. Res. 10, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. RES. 266

At the request of Mr. ROBERTS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Res. 266, a resolution designating October 10, 2002, as ''Put the Brakes on Fatalities Day.''

S. CON. RES. 122

At the request of Ms. SNOWE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Con. Res. 122, a concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

AMENDMENT NO. 4140

At the request of Mr. GRAHAM, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of amendment No. 4140 proposed to S. 2514, an original bill to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 4141

At the request of Mr. FRIST, his name was added as a cosponsor of amendment No. 4141 proposed to S. 2514, an original bill to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 2719. A bill to authorize the Secretary of the Army to carry out critical restoration projects along the Middle Rio Grande; to the Committee on Environment and Public Works.

Mr. DOMENICI. Madam President, great endeavors begin with a vision. Last fall, I joined the Middle Rio Grande Conservancy District and the Army Corps of Engineers in unveiling a vision that would rehabilitate and restore the Rio Grande Bosque in Albuquerque, NM.

Today, I rise to introduce a bill that will make that vision a reality. Since last fall, the Army Corps of Engineers has undertaken the task of conducting a feasibility study so that we might gain a better understanding of how best to rehabilitate and restore this beautiful Albuquerque green belt.

I remain grateful to each of the parties who have been involved with this idea since its inception. Each one contributes a very critical component. The Middle Rio Grande Conservancy District owns this vital part of the Bosque which runs from the National Hispanic Cultural Center north to the Paseo Del Norte bridge. The MRGCD has proven to be a valuable local partner in identifying areas for non-native species and other environmental restoration work. Additionally, MRGCD continues to work on the development and implementation of an educational campaign for local public schools on the importance of the Bosque. Finally, MRGCD has continually worked with all parties to provide options on how the Bosque can be preserved, protected and enjoyed by everyone.

Last year I committed to requesting the Army Corps of Engineers to develop a preliminary restoration plan for the Bosque along the Albuquerque corridor. I have done that and the plan is well underway. This bill that I introduce today is the next step in following through on this project.

Specifically, this bill authorizes $75 million dollars to complete projects, activities, substantial ecosystem restoration, preservation, protection and recreation along the Middle Rio Grande.

Having grown up in Albuquerque, the Bosque is something I treasure. I have been very involved in Bosque restoration since 1991 and I commend the Bosque Coalition for the work they have done, and will continue to do, all along the river.

This new vision, specific to the Albuquerque Corridor, builds on that idea and is a logical complement to these previous efforts as well as towards Bosque revitalization, restoration and recovery along the entire Rio Grande river.

This area was designated as a State park many years ago. As many of you know, this area has been overrun by non-native vegetation, peppered with graffiti, cluttered with trash and as we saw this past year, has become more susceptible to fire.

I want to ensure that the Albuquerque corridor, which is a unique and irreplaceable part of the desert Southwest's ecosystem, is preserved for generations to come. A healthy ecosystem is key to such things as the protection of threatened species and overall river flow.

We know that the river in this area is vital habitat for many species, including the endangered Rio Grande Silvery minnow. Efforts reducing non-native species, while protecting all from the possibility of devastating wildfire, will also improve the flow of the river and habitat for its many species.

At the same time, the Bosque is a natural green belt through Albuquerque. This area should be made beautiful and more accessible to the public for enjoyment.

I am grateful that all parties have come together and that I can be a part of making this vision a reality. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2719

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) the Middle Rio Grande bosque is—

(A) a unique riparian forest located in Albuquerque, New Mexico;

(B) the largest continuous cottonwood forest in the Southwest;

(C) 1 of the oldest continuously inhabited areas in the United States;

(D) home to portions of 6 pueblos; and

(E) a critical flyway and wintering ground for migratory birds;

(2) the portion of the Middle Rio Grande adjacent to the Middle Rio Grande bosque provides water to many people in the State of New Mexico;

(3) the Middle Rio Grande bosque should be maintained in a manner that protects endangered species and the flow of the Middle Rio Grande while making the Middle Rio Grande bosque more accessible to the public;

(4) environmental restoration is an important part of the mission of the Corps of Engineers; and

(5) the Corps of Engineers should reestablish, where feasible, the hydrologic connection between the Middle Rio Grande and the Middle Rio Grande bosque to ensure the permanent healthy growth of vegetation native to the Middle Rio Grande bosque.

SEC. 2. DEFINITIONS.

In this Act:

(1) CRITICAL RESTORATION PROJECT.—The term ''critical restoration project'' means a project carried out under this Act that will produce, consistent with Federal programs, projects, and activities, immediate and substantial ecosystem restoration, preservation, recreation, and protection benefits.

(2) MIDDLE RIO GRANDE.—The term ''Middle Rio Grande'' means the portion of the Rio Grande from Cochiti Dam to the headwaters of Elephant Butte Dam, in the State of New Mexico.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Army.

SEC. 3. MIDDLE RIO GRANDE RESTORATION.

(a) CRITICAL RESTORATION PROJECTS.—The Secretary shall carry out critical restoration projects along the Middle Rio Grande.

(b) PROJECT SELECTION.—

(1) IN GENERAL.—The Secretary may select critical restoration projects in the Middle Rio Grande based on feasibility studies.

(2) USE OF EXISTING STUDIES AND PLANS.—In carrying out subsection (a), the Secretary shall use, to the maximum extent practicable, studies and plans in existence on the date of enactment of this Act to identify the needs and priorities for critical restoration projects.

(c) LOCAL PARTICIPATION.—In carrying out this Act, the Secretary shall consult with, and consider the priorities of, public and private entities that are active in ecosystem restoration in the Rio Grande watershed, including entities that carry out activities under—

(1) the Middle Rio Grande Endangered Species Act Collaborative Program; and

(2) the Bosque Improvement Group of the Middle Rio Grande Bosque Initiative.

(d) COST SHARING.—

(1) COST-SHARING AGREEMENT.—Before carrying out any critical restoration project under this Act, the Secretary shall enter into an agreement with the non-Federal interests that shall require the non-Federal interests—

(A) to pay 25 percent of the total costs of the critical restoration project;

(B) to provide land, easements, rights-of-way, relocations, and dredged material disposal areas necessary to carry out the critical restoration project;

(C) to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the critical restoration project that are incurred after the date of enactment of this Act; and

(D) to hold the United States harmless from any claim or damage that may arise from carrying out the critical restoration project (other than any claim or damage that may arise from the negligence of the Federal Government or a contractor of the Federal Government).

(2) RECREATIONAL FEATURES.—

(A) IN GENERAL.—Any recreational features included as part of a critical restoration project shall comprise not more that 30 percent of the total project cost.

(B) NON-FEDERAL FUNDING.—The full cost of any recreational features included as part of a critical restoration project in excess of the amount described in subparagraph (A) shall be paid by the non-Federal interests.

(3) CREDIT.—The non-Federal interests shall receive credit toward the non-Federal share for any design or construction activities carried out by the non-Federal interests before the date of execution of a cost-sharing agreement for a critical restoration project if the Secretary determines in the feasibility study for the critical restoration project that the activities are part of the critical restoration project.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act—

(1) $10,000,000 for fiscal year 2003; and

(2) such sums as are necessary for each of fiscal years 2004 through 2012.

By Mr. SARBANES (for himself, Mr. REED, Mr. SCHUMER, Mr. CARPER, Ms. STABENOW, Mr. CORZINE, and Mr. AKAKA):

S. 2721. A bill to improve the voucher rental assistance program under the United States Housing Act of 1937, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SARBANES. Madam President, I come to the floor today to introduce the Housing Voucher Improvement Act of 2002. I am pleased that this legislation is being co-sponsored by a number of my colleagues on the Committee on Banking, Housing, and Urban Affairs: Senators REED, SCHUMER, CARPER, STABENOW, CORZINE, and AKAKA. This legislation will make important changes to the housing voucher program, a program that serves over 1.5 million low-income American families. These 1.5 million families are part of a growing number of people in this country who are unable to afford rising housing costs. As we learned in hearings before the Committee earlier this year, for too many people, the paycheck they bring home is too small to cover housing and other expenses. Low-income families are forced to live in crowded, unsafe conditions or forgo other necessities to make ends meet.

In order to ensure that families have decent, safe and affordable housing, the government provides assistance in a variety of ways including public housing, section 8 vouchers, FHA mortgage insurance, and homeless assistance programs. While we have provided funding for these programs over the years, more must be done. It is estimated that over 14 million working families in this country pay more than they can afford for housing. In addition, 1.7 million families live in substandard housing—housing that is unsafe or overcrowded. Homelessness continues to be a major problem, with approximately 2 million people experiencing homelessness at some point this year. These statistics show that millions of Americans are unable to afford the most basic of needs, housing.

The solution to the affordable housing crisis is not found in any one program or in any one policy. We must

work on a variety of fronts to combat this crisis. We must preserve the affordable housing that already exists; we must build new affordable housing; and, we must ensure that the housing programs we have in place work effectively to house families in need. The Housing Voucher Improvement Act is not intended to address all of these needs, but it is an important step forward in making sure that the voucher program works to provide the greatest range of housing opportunities to the lowest income Americans.

The bill I am introducing today is intended to work towards three objectives: ensuring that the voucher program works effectively and that all families receiving vouchers are able to find adequate housing; providing families with vouchers the widest range of possibilities as to where to live; and assisting families receiving housing assistance in attaining self-sufficiency.

The voucher program has provided millions of Americans with the opportunity to live in safe and decent homes. However, as housing markets tighten, families are finding it more difficult to use housing vouchers. This difficulty may result from a lack of rental housing, available housing being too expensive, or too few landlords who accept tenants with housing vouchers. The Housing Voucher Improvement Act will give local public housing authorities a number of tools to assist voucher holders in finding housing and to make the voucher program attractive to private market landlords.

To help people find decent and safe housing, this bill will give public housing agencies the flexibility to use a limited amount of their funds to provide search assistance to voucher holders. For many people who receive vouchers, additional assistance, such as housing counseling, transportation services, or security deposit funds may make the difference in finding a place to live. This bill will also increase housing opportunities for voucher holders by allowing public housing agencies to increase the amount that the voucher is worth where a significant number of families given vouchers are unable to find adequate housing. Provisions are also included in the bill to make it easier to use vouchers in housing developed with HOME funds or Low Income Housing Tax Credits. Ensuring that vouchers can be used in these developments will greatly expand housing opportunities for extremely low-income families.

In order to operate a successful program, enough apartments must be available for people with vouchers. Therefore, vouchers must be an attractive option for landlords. Towards that end, the Housing Voucher Improvement Act allows public housing agencies to use their funds to reach out to local property owners to increase landlord participation in the vouchers program. It also scales penalties for inspection violations to the magnitude of the violation and helps guarantee timely payments to apartment owners by creating an incentive for housing authorities to use automatic payment systems for interested owners. This bill will also allow public housing authorities to streamline inspections while still ensuring that housing is decent, safe and sanitary. All of these provisions will make vouchers easier to use for private-market apartment owners.

This bill also creates a new use for vouchers, allowing housing authorities to couple a limited number of vouchers with housing being constructed with HOME dollars, tax credits, or other funds. These ''thrifty vouchers'' will cost less than regular vouchers, allowing more families to be served.

While most of this bill will help to expand housing opportunities for people searching for housing, one critical component of housing policy is self-sufficiency. Housing assistance is key in moving people from welfare to work. A stable home is needed for job stability. While this seems intuitive, I do not rely on intuition alone in making this assertion. Recent studies, including one done by the Manpower Research Demonstration Corporation, show that people receiving housing assistance are more successful in moving from welfare to work. They had higher wages and retained employment for longer periods of time. This bill strengthens the role that housing plays in self-sufficiency by providing greater opportunities for voucher holders to become involved in educational and employment programs. We also authorize welfare to work vouchers, which will strengthen relations between housing and welfare agencies. Given the role that housing assistance can play in promoting self-sufficiency, greater confidence between housing and welfare agencies makes good common sense.

I introduce this bill today with the hope that it will strengthen one of the most important federal housing programs. People given vouchers should be able to find adequate housing, and should have greater choices in where to live. And those families already receiving housing assistance should be able to access programs that will assist them in meeting their educational and employment goals. There is widespread consensus that the changes made in this bill will assist in these efforts. This bill is supported by a wide range of organizations including public housing agencies, industry groups, and advocacy organizations. The bill is strongly supported by the National Association of Housing and Redevelopment Officials, the Center on Budget and Policy Priorities, the Local Initiatives Support Corporation, the Enterprise Foundation, the National Low Income Housing Coalition, the National Apartment Association, the National Affordable Housing Management Association and others.

I want to take a moment to thank my staff for their hard work on this bill, and I want to specifically thank Mary Grace Folwell, a fellow from the American Planning Association, who has been crucial in working on this legislation.

I urge my colleagues to support this critical legislation and to recognize the important role that housing assistance plays in the lives of millions of Americans.

Madam President, I ask unanimous that letters of support and a section-by-section analysis be printed in the RECORD.

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

JULY 11, 2002.

Senator PAUL S. SARBANES,
Chairman, Senate Banking Housing and Urban Affairs, Washington, DC.

DEAR SENATOR SARBANES: We, the organizations signed below, are writing in support of the Housing Voucher Improvement Act of 2002. The Section 8 housing voucher program provides many low-income families with the means to find affordable housing. However, in many cities, suburbs, and rural housing markets around the country, vouchers are very difficult to use. In some markets, there is just not a lot of rental housing available, the available housing is too expensive, or there are too few landlords who accept tenants with Section 8 vouchers. This legislation is narrowly tailored to make vouchers more effective by giving PHAs various tools to assist voucher holders in finding housing and by making vouchers easier for private properly owners to use.

To make vouchers easier to use for private-market apartment owners, the Housing Voucher Improvement Act changes the unit inspection requirement to make it more time-efficient; scales penalties for inspection violations to the magnitude of the violation; and, to guarantee timely payments by the PHA, creates an incentive for PHAs to use automatic payment systems for interested owners.

To help PHAs deal with high-cost rental markets, the bill increases local flexibility in setting maximum rents. The legislation grants PHAs limited authority to increase their Fair Market Rents to a maximum of 120% of the area's fair market rent. Current law allows PHAs to use this maximum only after the waiver is granted by HUD. The bill also adds provisions to facilitate the use of vouchers in units in lower-poverty neighborhoods that are developed with HOME funds or Low Income Housing Tax Credits.

To help voucher-holders find housing, the bill authorizes PHAs to use existing funding to provide landlord outreach and education and apartment-search assistance to voucher-holders as well as assistance with security deposits, application fees and credit checks.

The bill gives local public housing authorities the option of turning a limited portion of its available vouchers into lower cost ''thrifty vouchers,'' which can be attached to a new housing development or to a development this rehabilitated or preserved. Because the vouchers cost less than regular vouchers, a larger number of families can be served by the same level of funding. The bill also makes it easier to administer the project-based component on the vouchers program and to attach vouchers to buildings in a range of neighborhoods.

Appropriately in this year of welfare reauthorization, the bill contains several provisions to promote employment among tenants of HUD's major rental assistance programs, including a 5-year authorization of Welfare-to-Work vouchers.

We thank you for your leadership on this issue and for your continued support of affordable housing programs.

Consortium for Citizens with Disabilities Housing Task Force, Center on Budget and Policy Priorities, Local Initiatives Support Corporation (LISC), National Apartment Association, National Association of Housing and Redevelopment Officials (NAHRO), National Coalition for the Homeless, National Housing Conference, National Housing Law Project, National Low Income Housing Coalition, National Multi Housing Council, The Enterprise Foundation, and Volunteers of America.

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION,
Alexandria, VA, July 11, 2002.

Hon. PAUL S. SARBANES,
Chairman, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR CHAIRMAN SARBANES, The National Affordable Housing Management Association (NAHMA) is pleased to support provisions in the Housing Voucher Improvement Act which make the Section 8 voucher program more user-friendly for both tenants and landlords, improve administration, and address many problems which inhibit voucher utilization.

In recent years, the difficulty of satisfying the Section 8 regulatory burdens has created a strong disincentive for private landlords to accept the vouchers. The Housing Voucher Improvement Act makes several constructive reforms to the voucher program which address this reality. First, it makes the unit inspection requirement more time efficient. Likewise, it makes penalties for inspection violations commensurate with the severity of the violation. Furthermore, it will improve the timeliness of payments to landlords by creating an incentive for public housing authorities (PHAs) to use automatic payment systems.

This bill also addresses voucher utilization problems in high-cost areas by offering PHAs flexibility to establish maximum rents in high cost areas. By allowing PHAs to set the voucher payment standard at 120 percent of fair market rent (FMR), housing authorities will be able to automatically increase their payment standard to address market changes.

In short, NAHMA is pleased that you have offered legislation to improve Section 8 voucher utilization and increase housing opportunities for extremely low income families.

Sincerely,

GEORGE CARUSO,
Executive Director.

COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES,
1250 EYE STREET NW, SUITE 901 A,
Washington, DC, June 27, 2002.

Hon. PAUL SARBANES,
Chair, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR CHAIRMAN SARBANES: We write in support of your efforts to make Section 8 vouchers easier to use through the ''Housing Voucher Improvement Act of 2002.'' In light of the great need for more affordable housing opportunities and the difficulty many low-income families have encountered in utilizing the program due largely to rising costs in many markets, we agree that legislative changes are needed so that the program can be more effective in providing housing subsidy to low-income families. We very much appreciate the attention this legislation will bring to this important issue.

As a November 2001, HUD study shows, tight market conditions brought about by extremely low vacancy rates in many communities is biggest impediment to voucher holders succeeding in utilizing their subsidy. We support several provisions in the bill that would help address this problem, particularly the proposal to enable PHAs to increase payments to 120% of the payment standard without prior HUD approval, In addition, the sections which authorize a $50 million Voucher Improvement Fund and provide some flexibility for PHAs to use voucher resources to pay for housing counseling, search assistance, and incentives to landlords will help voucher holders become more competitive in the market place. The proposed revisions to the current project-based Section 8 program will also assist PHAs that can better serve low-income families by increasing the supply of assisted units, instead of relying on exclusively on private market.

While we understand that this bill is designed to make only modest changes to the Section 8 program, it highlights the need for a more dramatic reform. Legislative changes over the years have addressed particular issues to help Section 8 keep pace with changing market conditions, however, some of these piecemeal modifications have added significantly to the program's complexity. Ultimately, we believe that local authorities need even more flexibility to make the most efficient use of Federal funding for housing in an ever-changing market place. Your bill is a step in that direction.

Again, we very much appreciate your staunch support of affordable housing programs and your efforts to increase Federal investment in this area. We look forward to our continued work with you and your dedicated staff to continue to make the Section 8 program work better for needy families.

Sincerely,

SUNIA ZATERMAN,
Executive Director.

SUMMARY OF THE HOUSING VOUCHER IMPROVEMENT ACT OF 2002

Section 1. Short Title.

Section 2. Purposes—(1) to ensure that the Section 8 program works effectively and all families receiving vouchers are able to find adequate housing; (2) to provide families with vouchers the widest range of possibilities as to where to live; and (3) to assist families receiving housing assistance in attaining self sufficiency through encouraging partnerships between housing authorities and welfare agencies.

Section 3. Authorize ''Thrifty Vouchers'' designed to make additional housing affordable to extremely low-income families.

Thrifty Vouchers (TVs) are intended to encourage the production or preservation of housing affordable to extremely low-income families. PHAs would be authorized to issue TVs out of their existing allocation of vouchers. In addition, Congress could appropriate additional incremental assistance for use as TVs.

TVs would cost less than regular vouchers because there would be no debt service included in the rent calculation for a TV unit. Rents would be based on the operating costs of a development and would be capped at 75% of the FMR (unlike regular vouchers which are set between 90 and 110% of the FMR). Data indicate that 75% of FMR should be adequate in most places to cover the costs of operation of multifamily housing. The bill provides an exception to the 75% cap for PHAs that can demonstrate both that this cap could not support a reasonable operating cost of rental housing and a need for the production or preservation of affordable housing in the PHA's service area. Since these vouchers cost less than regular vouchers, PHAs could serve more families with the same amount of funding.

At the beginning of the development of a project, developers receiving tax credits, HOME funds, or other capital subsidies could link TVs to not more than 25% of the units in a development. The 25% cap is intended to prevent concentration of poverty. While tax credits and HOME are producing new rental housing, such housing is not affordable to extremely low income families without additional operating subsidies. A recent study done by HUD found that extremely low-income families living in HOME units who do not also receive vouchers, pay 69% of their income for rent. In some cases, residents use tenant-based vouchers to afford such units. However, linking TVs to a project would ensure that some of the units in a given project would be affordable to those most in need of housing.

This section makes TVs a subparagraph of the project-based voucher statute. This is in response to a concern expressed by HUD that they do not want to administer two separate programs. Thus, TVs would be counted against a PHA's 20% cap on project-based vouchers; however, new incremental assistance appropriated by Congress for use as TVs would not be counted against the 20% cap.

Several changes were made to the project-based voucher statute to make it easier for PHAs and private owners to administer these vouchers. The most significant include the expansion of the purpose of project-based vouchers to include the revitalization of low-income communities and the prevention of the displacement of extremely low-income families, and changes to the waiting list provisions to allow for separate project-based lists and to permit PHAs to allow owners to maintain their own waiting lists, subject to certain requirements.

Section 4. Providing assistance to voucher holders in their search for decent, safe and affordable housing.

1. Allow PHAs with unutilized Section 8 funds to use those funds on activities designed to assist families in finding housing. PHAs that have low utilization rates (they do not use all of their Section 8 funds to house families) will have unused Section 8 funds that could be made available to assist families in finding housing. This legislative change would allow PHAs to use 2% of the funds they receive under the voucher program to provide additional services to families searching for housing if they have a low voucher success rate and/or problems with concentration of voucher holders in high-poverty neighborhoods. PHAs could use funds for counseling, security deposits, application and credit check fees, and search assistance such as transportation services.

2. Allow PHAs that use all of their Section 8 funds to use up to one week of reserves on activities designed to assist families in finding housing. For PHAs that use all of their funds and whose families still face difficulties in funding adequate housing (a success rate less than 80%), the bill allows PHAs to use up to one week of reserves to provide additional service to families searching for houring.

3. Create a Voucher Success Fund of $50 million for PHAs that do not have unused funds, but still need additional resources to assist families in finding housing. These PHAs use almost all of their Section 8 funds, but families that receive vouchers still face difficulties in finding adequate housing. PHAs that use almost all of their Section 8 funds but have a success rate lower than 80% would apply to HUD for funds to help families find housing through counseling, security deposits, application and credit check fees, and search assistance such as transportation services.

Section 5. Expanding housing opportunities for voucher holders

1. All PHAs to set their voucher payment standard at 120% of FMR if they have had their payment standard set at 110% or above

for the previous 6 months AND continue to have problems with utilization, success rates, or concentration of Section 8 units. Currently, PHAs may set their payment standard (which determines the amount the voucher is worth) between 90% and 110% of the Fair Market Rent. HUD can approve higher payment standards on a case by case basis. This change will allow housing authorities to automatically increase their payment standard to address market changes. Raising the payment standard will help ensure that more vouchers could be used in high cost Areas.

2. Allow PHAs to pay 120% of FMR as the payment standard in individual cases for people with disabilities. People with disabilities may be limited in their housing opportunities, and their choices may be restricted based on special needs. This provision will allow housing authorities to pay up to 120% of the FMR as a reasonable accommodation for voucher holders with disabilities without prior HUD approval, and would authorize HUD approval for payment standards above 120%.

3. Allow PHAs to set higher payment standard for voucher used in Low Income Housing Tax Credit (LIHTC) developments. The LIHTC program provides substantial funding for low-income housing development. Though tax credit housing serves low-income people, these properties are not usually affordable to extremely low-income households (with incomes below 30% of the Area Median Income). One way to serve the poorest families in tax credit developments is to house families with vouchers. The recent increase in tax credits presents an opportunity to expand housing choice for even the lowest income families. In some areas, the tax credit units will have higher rents than are normally covered by a voucher. In 2000, Congress changed the project-based statute to allow project-based assistance to cover these higher rents so long as the LIHTC building was not in a high poverty census tract. This provision would make a similar change for vouchers.

4. Allow PHAs to pay up to their full payment standard for units in HOME developments. Currently, HOME units may only be rented up to the Fair Market Rent to voucher holders. This provision will allow a PHA to pay a rent at their regular payment standard, where above the FMR, in order to provide an incentive to HOME developments to seek out voucher holders as renters, only where the units are located outside of high-poverty areas.

5. Addressing Housing in the Consolidated Plan. Cities, counties and states that receive Community Development Block Grant (CDBG) funds (known as ''participating jurisdictions'') are required to complete Consolidated Plans detailing the housing and community development needs in their jurisdictions. This provision of the bill makes the following changes to the Consolidated Plan requirements:

a. Include a requirement that the jurisdiction identify barriers to voucher utilization and potential solutions. This would ensure that entities other than the PHA (such as cities and counties) are aware of issues with voucher recipients and their ability to find housing. While no direct action would be required from the city or participating jurisdiction, they would be acknowledging the difficulties in using vouchers, and identifying the causes. This would hopefully lead to the jurisdiction deciding to take actions to alleviate the barriers where possible.

b. Include a requirement that the jurisdiction consider employment opportunities in determining the location of housing development. Housing opportunities close to employment opportunities and/or transportation are important to ensuring the success of low-income people in finding and retaining employment. This provision would ensure that jurisdictions are looking at location in determining where housing resources should be allocated.

c. Include a requirement that a participating jurisdiction must consult with social service agencies in certain aspects of planning for housing opportunities. When determining how to address affordable housing problems, housing planners and welfare administrators should be working together to help plan for people moving from welfare to work, and to help link people receiving housing assistance with welfare agencies and resources (and vice versa).

Section 6. Access to HOME and LIHTC developments

Require that HUD ensure that PHAs have a list of LIHTC and HOME developments to give to voucher holders. While LIHTC developments could provide housing opportunities to very poor families, and while LIHTC developments may not discriminate against voucher holders, there is almost no communication or coordination between PHAs and state HFAs, which operate the LIHTC program. This provision will require HUD to compile information on where tax credit and HOME developments are located and ensure that this information is readily available to PHAs. PHAs will be responsible to access such information and provide it to families searching for housing assistance with vouchers.

Section 7. Reallocation of vouchers. Currently, HUD allows PHAs to return unused vouchers to HUD. HUD published a notice (which has not yet been fully implemented) which requires that unused budget authority be recaptured from PHAs with low utilization rates (under 95% utilization). While HUD's notice describes how they will reallocate these vouchers, the reallocation is not structured in a way that ensures that communities do not lose needed vouchers. This provision will require that vouchers to be reallocated be distributed to one or more administrators in the region. HUD would, through a competition, designate such an administrator with Section 8 experience, which could be a PHA, a state or local agency, a non-profit, or a private entity. The administrator would receive all vouchers available for reallocation in its region and would be able to operate the vouchers on a regional basis, allowing and encouraging families to live anywhere in the metropolitan area while still serving people on the original PHA's waiting list. The new administrator would have to reach certain levels of performance—in both success rates and utilization in order to retain the vouchers.

Section 8. Promoting Self-Sufficiency

1. Allow people who live in a project-based Section 8 housing to be eligible for Family Self Sufficiency activities. The Family Self Sufficiency (FSS) program provides services to assist families in public housing or those who receive vouchers in attaining educational and employment goals. This provision would also make residents of project-based Section 8 housing eligible for the FSS program. Under this provision, owners of project-based section 8 housing would be able to choose to operate their own FSS program, and if they opted not to provide such services, the PHA, at its discretion, could choose to serve such families in its FSS program. While this change will have some cost, it will be small, given that only a small percentage of families currently participate in FSS programs.

2. Allow Resident Opportunities and Self-Sufficiency (ROSS) funds to be used to serve Section 8 families. ROSS grants are given to PHAs and resident organizations to fund self-sufficiency activities. Currently, PHAs can only serve public housing residents with these funds, though the predecessor to ROSS allowed PHAs to serve Section 8 residents as well. This provision would permit PHAs to serve Section 8 tenants with ROSS funds, though it would leave the decision to each PHA to determine where funds are best used.

3. Incentives to Families to Increase Earnings. State and local welfare agencies have an enormous amount of flexibility in using their funds to help low-income families. In some cases, welfare agencies and housing authorities have worked together to use some of these funds to assist people receiving federal housing assistance. This section would ensure that payments made by welfare agencies (or other agencies) to help families with rental payments that have increased because of increased earnings, are deducted from the family's income when the PHA determines that family's share of rent. These provisions will create incentives for families to increase earnings and retain employment by allowing them to retain more of their income.

4. Authorize Welfare to Work Vouchers. In FY 1999, Congress authorized 50,000 Welfare to Work vouchers in an appropriations bill. The program has never been authorized and new vouchers have not been allocated beyond the initial 50,000. However, given that welfare will be reauthorized this year, the timing seems perfect to authorize this program, giving housing authorities additional incentives to collaborate with welfare agencies. In authorizing this program, we strengthen the requirements that PHAs work with welfare agencies in administering these vouchers. Recent studies show that housing assistance is critical in allowing people to retain employment, and these vouchers will help in this effort.

Section 9. Inspection of Units under Section 8. Currently, when a voucher holder wants to rent a unit, prior to the voucher holder moving in, and payments being made to an owner, the PHA must inspect that individual unit and any deficiencies must be repaired. Owners and PHAs agree that this is disincentive to owners participating in the program because of the amount of time it takes to lease-up the unit and receive payment. This provision will allow a PHA to begin payments to an owner prior to inspection of that particular unit so long as: (1) a building inspection has been conducted by the PHA in the last 6 months; (2) a unit inspection is completed within 30 days; and (3) the PHA and the owner have an agreement that any repairs on the unit must be made within 30 days of the unit inspection. This section will also allow PHAs to annually inspect units within 3 months of the anniversary date of that unit entering the Section 8 program if they are conducting inspections on a geographical basis.

Current regulation allows PHAs to withhold their entire portion of a rent payment for an inspection violation, regardless of the magnitude of the violation. This provision would scale penalties for inspection violations to the severity of the violation—if a garbage disposal needs to be fixed the PHA payment will only be withheld to the extend that the garage disposal would merit.

These changes will help to bring owners into the program while still ensuring that units meet HUD standards for being safe and decent.

Section 10. Automatic Payment Systems. Currently, some, but not all, PHAs use electronic fund transfers to pay Section 8 dwelling unit owners. This section would allow PHAs to use technical assistance funds and other means to establish electronic fund transfer systems for rental payments. Landlord participation is optional. Automatic

payment systems would assist PHAs in making timely rent payments and thereby encourage owner participation in the Section 8 program.

Section 11. Enhanced Workers. To protect tenants from displacement, in 1999 Congress passed legislation creating ''enhanced vouchers'' for all tenants facing conversion of a project from project-based Section 8 to market-rate housing. In several respects, the law as passed and interpreted by HUD fails to clearly protect tenants as Congress intended. Some PHAs require existing tenants to go through an application process for enhanced vouchers, which occasionally results in a tenant being denied voucher benefits. To protect tenants, this section amends the existing statute to clarify that tenants cannot be required to go through the application process again to receive an enhanced voucher.

''Empty nesters,'' elderly tenants whose household members have either moved or died, sometimes reside in units that are too large for their current family size under normal program and occupancy requirements. Likewise, growing families may reside in units that are too small under normal program and occupancy requirements. In both situations, these tenants could be displaced due to family/unit size mismatches. This section clarifies the current enhanced voucher statute to allow tenants with family size/unit mismatches to remain in the unit until an appropriately sized unit becomes available in the property.

By Mr. ROCKEFELLER:

S. 2722. A bill to amend the Internal Revenue Code of 1986 to ensure the proper tax treatment of executives compensation, and or other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Madam President, the corporate accounting scandals that have unfolded over the previous few months have caused incalculable damage to the American economy. Millions of people have been harmed, among them some of our most vulnerable citizens, including retirees on fixed incomes and families who have saved for years to educate their children or finally buy a home. Loss of confidence threatens our economy and diminishes hope for the millions who have lost their jobs in the last 18 months. And the cost of equity is rising, making it more difficult for the vast majority of honest and energetic entrepreneurs to turn their ideas into economic growth.

This is not a bubble bursting; it is, in great measure, the result of a considerable diminution of regulation at the behest of powerful lobbies, over the objections of many people.

Today, the Senate is debating the most effective way to restore balance between entrepreneurship and oversight, to ensure that corporate excesses do not again steal the savings of millions of people. The underlying Senate bill is based on accounting reforms and tougher enforcement. The Finance Committee is about to mark up its own bill dealing with diversification requirements, executive compensation, and notification and disclosure regarding 401(k) plans.

I fully support Senator SARBANES' bill and will support the Finance Committee proposal as well. And today I propose legislation that will complement my colleagues' efforts and help us move toward our goal of restoring confidence in American business and American businesspeople. Where legislation already under consideration focuses largely on oversight and punishment—two critical sides of the triangle—my bill attacks the incentives to cut corners or commit crimes in the arena of executive compensation.

This legislation will protect workers and shareholders as Congress carefully sorts through the appropriate measures.

Currently, Federal regulations permit a number of frankly sleazy accounting practices which allow corporations and their executives to take millions of dollars away from shareholders, creditors, and the Treasury, without any penalty at all. Some of the most obvious abuses aren't even crimes. My proposal will help to stop white collar crime before it is committed, by taking the common sense step of putting the lid on the cookie jar.

This bill will do four things: 1. Right now, corporations may transfer funds to an executive's deferred compensation account, giving that executive certain access to the money but potentially also removing it from the reach of shareholders and creditors. But since it is termed ''deferred,'' the executive pays no taxes. Currently, Section 132 of the Revenue Code prevents regulators from cracking down on this practice. My legislation gives Treasury the authority to examine the constructive receipt doctrine and close loopholes that allow inappropriate deferral of taxation. It also gives Treasury the authority to act on situations where executive assets are supposedly subject to the claims of an employer's creditors, but in reality, are protected from legitimate claims. Either the individual must pay income tax, or the funds must be corporate assets subject to claims. They can't have it both ways.

2. Currently, corporations can give their senior executives massive loans, with no real expectation of repayment. These loans are effectively theft from the employees and shareholders, since they represent revenue given in compensation which will never be repaid, reinvested, or distributed as dividends. And they are theft from the Treasury as well; since they are accounted as loans, the recipient doesn't pay taxes on them. It's a tax-free performance bonus, often given—as we saw in the Adelphi and WorldCom cases—when the executive deserves more to be fired than to be paid. My legislation will make sure a loan is a loan: if a loan doesn't require security or have any enforceable repayment schedule, it's income and it will be taxed, just like the salaries of rank-and-file workers are taxed.

3. Right now, company employees may be unable to sell their stock while executives are dumping theirs and creating—as analysts take note and supply overwhelms demand—the kind of stock-price death spiral that took the life savings of thousands of Enron employees.

Back in the early 1980's, Congress responded to the trend of corporations providing their executives with ''gold parachutes'' with a 20 percent excise tax on those payments. I believe that the excise tax on golden parachutes should also be applied to the sales of corporate stock by corporate executives during periods when regular employees of the company are not able to freely sell their stock in their company retirement plans. This would be a temporary, six-month provision, to deter corporate executives from taking advantage of the existing uncertainty as Congress considers other possible reforms to encourage more equitable treatment of rank-and-file employees and corporate executives. And it will be a bridge from the current structure to one in which employees have the same ability to sell their stock as insiders have.

4. Additionally, my bill will prevent corporate executives from getting a free ride when their corporation moves offshore for tax avoidance purposes. Under current law, if an American corporation dissolves and is then reincorporated in a foreign country, shareholders of the corporation are required to pay capital gains on the ''exchange'' of their stock in the ''old corporation'' for stock in the ''new corporation,'' even though they never actually sell their stock. Meanwhile, corporate executives, who have engineered the move offshore, are under no such obligation regarding stock options they receive as compensation. My bill would require executives to pay capital gains taxes on the ''exchange'' of their stock options when they move offshore to avoid taxation. I believe this provision will provide a much-needed disincentive to corporate executives seeking to avoid the reach of the IRS through corporate expatriation.

I agree with all those who would increase oversight and penalties, but I say, let's also look at first causes—the executive compensation funds. That's where some of the greatest opportunities for inappropriate, unfair, and unethical practices are—practices that disadvantage average workers and investors and are undermining confidence in America's capital markets. And it's time for that to change.

Finally, I am appalled at the problem of executives benefitting from what can only be considered excessive compensation arrangements in the waning days before bankruptcy of a failing corporation. I am looking for a way to prevent those arrangements in the final months before a corporation closes, and I hope to have a proposal ready for introduction soon.

By Mr. LEAHY:

S. 2723. A bill to provide transitional housing assistance for victims of domestic violence; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEAHY. Madam President, I am pleased to introduce the Transitional Housing Assistance for Victims of Domestic Violence Act of 2002 to provide grants for transitional housing and related services to people fleeing domestic violence situations.

I witnessed the devastating effects of domestic violence early in my career as the Vermont State's Attorney for Chittenden County. Today, a growing number of homeless individuals are women and children fleeing domestic violence. More than half the cities surveyed by the U.S. Conference of Mayors in 2000 cited domestic violence as a primary cause of homelessness. Shelters offer short-term assistance, but are overcrowded and unable to provide the support needed. Transitional housing allows women to bridge the gap between leaving a domestic violence situation and becoming fully self-sufficient.

A transitional housing grant program was last authorized for only one year as part of the reauthorization of the Violence Against Women Act in 2000. This program would have been administered through the Department of Health and Human Services and provided $25 million in FY2001. Unfortunately, funds were never appropriated for the program, and the authorization has now expired.

The grant program established in the bill I am introducing today would be administered through the Department of Justice, in consultation with the Departments of Health and Human Services and Housing and Urban Development. This program would have the benefit of a wide range of expertise in the three departments, and has enormous potential to improve people's lives.

This new grant program will make a big impact, in many areas of the country, availability of affordable housing is at an all-time low. There are many dedicated people working to provide victims of domestic violence with resources, such as Rose Pulliam of the Vermont Network Against Domestic Violence and Sexual Assault, but they can not work alone. We should all be concerned with providing victims of domestic violence a safe place to gain the skills and stability needed to make the transition to independence. This is an important component of reducing and preventing crimes that take place in domestic situations, ranging from assault and child abuse to homicide, and helping the victims of these crimes. I urge the Senate to take prompt action on this legislation.

By Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mr. CORZINE, Mr. LEAHY, Mrs. BOXER, Mr. DURBIN, and Mr. NELSON of Nebraska):

S. 2724. A bill to provide regulatory oversight over energy trading markets and metals trading markets, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. FEINSTEIN. Madam President, I am very pleased to introduce this bill today along the Senator HARKIN and Senator LUGAR, chairman and ranking member of the Senate Agriculture Committee. Our bill is already co-sponsored by Senators FITZGERALD, CANTWELL, WYDEN, CORZINE, LEAHY, DURBIN, and BOXER.

The Senate Agriculture Committee held a hearing on this bill yesterday and I understand it is the intentions of the chairman and ranking member to try and have a bill that can be marked up before the recess.

The bill closes the loophole that was created when Congress passed the Commodity Futures Modernization Act in 2000 which exempted on-line energy and metals trading from regulatory oversight.

The bill is supported by: The New York Mercantile Exchange, The Pacific Exchange, Aquila Energy Corporation, Cambridge Energy Research Associates, Mid-America Energy Holding Company, Pacific Gas and Electric, Southern California Edison, Calpine, The Apache Corporation, The American Public Gas Association, The American Public Power Association, The Texas Independent Producers and Royalty Association, The California Municipal Utilities Association, The Consumers Union, The Consumer Federation of America, The Derivatives Study Center, The National Rural Electric Cooperative Association U.S. PIRG, The Transmission Access Policy Study Group, The Sierra Club, and all four FERC Commissioners.

This bill could not be more timely in light of what we have learned about the energy sector in the past couple of months and the operations of these energy companies: 1. CMS Energy admitted that 80 percent of its trades were round trip or wash trades and were made simply to increase volume; 2. Reliant admitted to $6.4 billion in wash trades from 1999–2001 which the company characterized as energy swaps; 3. Duke confessed to $2 billion in wash trades and stated that $650 million of these trades were executed on the Inter-Continental Exchange, ICE, and electronic trading facility exempt from CFTC oversight because of the Commodity Futures Modernization Act.

But electronic exchanges like ICE have no responsibility for trades or wash trades executed on its exchange and does not even have any responsibility for checking that a transaction has been executed. Thus, a company that wanted to manipulate prices or game the market would not have to even execute a single trade.

In the past year, 12 of the largest energy companies in the U.S. have lost about $188 billion of capital, accounting for 71 percent of the market value. The credit ratings of several of those energy companies have been severely downgraded; some are at junk bond or near-junk bond status.

In May, 2000, a severe energy crisis began in California. Electricity that had typically sold for about $30 a Megawatt hour all of a sudden started selling for 10 times that. This led to the bankruptcy of California's largest utility and the near-bankruptcy of California's second largest utility. It also resulted in overcharges of billions of dollars to California ratepayers and taxpayers.

In November, California encountered a natural gas crisis. Natural gas is the main cost component of electricity. At one point gas was selling for $12 per decatherm in San Juan New Mexico and $59 in Southern California when the cost to transport it was less than one dollar.

Just about the time Congress passed the Commodity Futures Modernization Act exempting electronic energy trading exchanges from oversight, the crisis began spreading to the other western states. For more than six months Oregon, Washington, and the other Western States experienced the same price spikes as California.

The entire crisis lasted for more than a year while energy companies like Reliant, Enron, Duke, Williams, and AES enjoyed record revenues and profits. Obviously we are all a bit wiser today about energy markets and about wash trades in particular.

Wash trades or round trip trades involve two or more companies plotting together to execute offsetting trades. These trades would be illegal if they were done on NYMEX, the Chicago Merc, or the Pacific Exchange and those exchanges would have the responsibility to report it.

However, there is no such reporting or enforcement requirement on electronic exchanges because as I said before, the CFMA created a big loophole. This legislation would ensure that wash trades are subject to full CFTC oversight no matter where they are done.

And of course there is Enron which controlled a large share of the energy market while they engaged in activities that were downright illegal. Many of these activities could have been prevented or at least stopped if regulators simply had the proper authority and the will.

Let me recap what happened with the Commodity Futures Modernization Act. In November, 1999, the SEC, the Federal Reserve, the CFTC and the Department of Treasury produced a study titled Over the Counter Derivative Markets and the Commodity Exchange Act, A Report of the President's Working Group on Financial Markets.

It was signed by Federal Reserve Chairman Alan Greenspan, Secretary of Treasury Larry Summers, SEC Chairman Arthur Levitt and CFTC Chairman Bill Rainer.

The report said that the case had not been made that energy or other tangible commodities should be exempted

form CFTC oversight. The report found that because of the immaturity of the energy market, the lack of liquidity in the market and finite supplies, in energy markets, energy markets were more susceptible to manipulation than the deep and liquid financial markets.

Recent history has certainly borne that to be correct; these commodities are more subject to manipulation!

On June 21, 2000 shortly after the President's Working Group issued its report, the Banking Committee and Agriculture Committee held a hearing on the Report and the Commodity Futures Modernization Act.

Let me read from that committee report:

The Commission has reservations about the bill's exclusions of Over the Counter (OTC) derivatives from the Commodities Exchange Act. On this point he bill diverges from the recommendations of the President's Working Group, which limited the proposed exclusions to financial derivatives. The Commission believes the distinction drawn by the Working Group between financial (nontangible) and non-financial transactions was a sound one and respectfully urges the Committees to give weight to that distinction.

And the Senate Agriculture Committee marked up the Commodity Futures Modernization Act consistent with what was in the President's Working Group Report.

That version of the bill however, was not reflected in the final provision that passed Congress as part of a much bigger bill at the end of the 106th Congress.

I urge my colleagues in Congress to pass this legislation and fix this problem as soon as possible.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4209. Mrs. BOXER submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table.

SA 4210. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4211. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4212. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4213. Mr. GRAMM (for Mr. VOINOVICH (for himself and Mr. AKAKA)) submitted an amendment intended to be proposed by Mr. Gramm to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4214. Mr. DORGAN (for himself and Mr. WELLSTONE) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4215. Mr. DORGAN (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4216. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4217. Mr. DORGAN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4218. Mr. BAYH submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4219. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4220. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4221. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4222. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4223. Mrs. CARNAHAN (for herself, Mr. KERRY, and Mr. DURBIN) submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4224. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4225. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4226. Mr. GRAMM (for himself, Mr. SANTORUM, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4227. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4228. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4229. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4230. Mr. SCHUMER (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4231. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4232. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4233. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4234. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4235. Mr. ENZI (for Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. LOTT, Mr. BENNETT, Mr. WYDEN, Mrs. MURRAY, and Mr. BURNS)) submitted an amendment intended to be proposed by Mr. Enzi to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4236. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4237. Mr. BYRD (for himself and Mr. THOMPSON) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4238. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4239. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4240. Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. BENNETT , Mr. WYDEN, Mr. LOTT, Mrs. MURRAY, Mr. BURNS, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4241. Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. BENNETT , Mr. WYDEN, Mr. LOTT, Mrs. MURRAY, Mr. BURNS, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4242. Mr. KENNEDY (for himself, Mr. REED, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4243. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4244. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4245. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4246. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4247. Mr. EDWARDS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4248. Mr. EDWARDS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4249. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4250. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4251. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4252. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4253. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4254. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4255. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4256. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4257. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4258. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4259. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4260. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4261. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4262. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4263. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4264. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4265. Mr. EDWARDS submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4266. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4267. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4268. Mr. SMITH, of Oregon submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4269. Mr. DASCHLE (for Mr. LEVIN (for himself, Mr. NELSON, of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN)) proposed an amendment to the bill S. 2673, supra.

SA 4270. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra.

SA 4271. Mr. REID (for Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE)) proposed an amendment to the bill S. 2673, supra.

SA 4272. Mr. REID (for Mr. LEVIN (for himself, Mr. NELSON, of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN)) proposed an amendment to amendment SA 4271 proposed by Mr. REID (for Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE)) to the bill (S. 2673) supra.

TEXT OF AMENDMENTS

SA 4209. Mrs. BOXER submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 16, beginning on line 8, strike ''Two members'' and all that follows through line 12, and insert ''One member, and only 1 member, of the Board shall be or shall have been a certified public accountant pursuant to the laws of 1 or more States, and he or she may not have been''.

SA 4210. Mrs. BOXER submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 18, strike line 11 and insert the following:

''(6) INDEPENDENCE STANDARD FOR PUBLIC MEMBERS.—Prior to the appointment of a member of the Board who is not a certified public accountant, the Commission shall certify that the appointee does not have any material conflicts of interests with respect to accounting firms that audit public companies. A conflict of interest may arise from past employment with a public accounting firm or the American Institute of Certified Public Accountants, or a commercial, banking, consulting, legal, charitable, or familial relationships with a public accounting firm. In making its independent determination, the Commission shall broadly consider all relevant facts and circumstances, including whether a reasonable investor would consider the appointee to be independent of the accounting profession.

''(7) REMOVAL FROM OFFICE.—A member of the ''.

SA 4211. Mr. GRAHAM submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 82, line 18, strike the period and all that follows through ''certify'' on line 20 and insert the following: '', regardless of whether such issuer is located in or organized under the laws of the United States or any State, or any foreign country.

SA 4212. Mr. GRAHAM submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 82, line 20 insert '', under oath,'' after ''certify''.

SA 4213. Mr. GRAMM (for Mr. VOINOVICH (for himself and Mr. AKAKA)) submitted an amendment intended to be proposed by Mr. GRAMM to the 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; which was ordered to lie on the table; as follows:

On page 114, insert between lines 2 and 3 the following:

SEC. 605. CHIEF HUMAN CAPITAL OFFICER.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4C (as added by this Act) the following:

''SEC. 4D. CHIEF HUMAN CAPITAL OFFICER.

''(a) IN GENERAL.—The Commission shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the Commission and other Commission officials in carrying out the Commission's responsibilities for selecting, developing, and managing a high-quality, productive workforce in accordance with merit system principles; and

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the Commission.

''(b) FUNCTIONS AND AUTHORITIES.—

''(1) FUNCTIONS.—The functions of the Chief Human Capital Officer shall include—

''(A) setting the workforce development strategy of the Commission;

''(B) assessing workforce characteristics and future needs based on the Commission's mission and strategic plan;

''(C) aligning the Commission's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(D) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(E) identifying best practices and benchmarking studies;

''(F) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

''(G) providing employee training and professional development.

''(2) AUTHORITIES.—In addition to the authority otherwise provided by this section, the Chief Human Capital Officer—

''(A) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(i) are the property of the Commission or are available to the Commission; and

''(ii) relate to programs and operations with respect to which the Chief Human Capital Officer has responsibilities; and

''(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided under this section from any Federal, State, or local governmental entity.''.

SA 4214. Mr. DORGAN (for himself and Mr. WELLSTONE) submitted an amendment intended to be proposed by him to the 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 objectively and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 84, line 23, strike ''(b) COMMISSION'' and insert the following:

''(b) PROCEEDS FROM THE SALE OF SECURITIES PRIOR TO BANKRUPTCY FILING.—If an issuer files for bankruptcy protection under title 11, United States Code, each director, chief executive officer, and chief financial officer of the issuer shall pay to the issuer all amounts described in paragraphs (1) and (2) of subsection (a) (to the extent that such amounts have not been reimbursed under subsection (a)) realized by such director or officer from the sale of the securities of the issuer during the 12-month period preceding the date of the bankruptcy filing.

''(c) COMMISSION''.

SA 4215. Mr. DORGAN (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 82, line 14 insert after ''issuer'' the following: '', whether domiciled, incorporated, or reincorporated under the laws of the United States or any individual State, or under the laws of a foreign country or political subdivision thereof,''.

SA 4216. Mr. DORGAN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 70, between lines 19 and 20, insert the following:

(c) NON-AUDIT SERVICE REGULATIONS.—The regulations of the Commission to carry out section 10A(g) of the Securities Exchange Act of 1934, as added by this section, shall be substantially similar to the scope of practice provisions of the proposed rule issued by the Commission and published in the Federal Register on July 12, 2000, regarding revision of the auditor independence requirements contained in Parts 210 and 240 of title 17, Code of Federal Regulations (65 Fed. Reg. 43190 et seq.), consistent with the provisions of this Act.

SA 4217. Mr. DORGAN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table, as follows:

On page 44, strike lines 8 through 11 and insert the following:

(2) PUBLIC HEARINGS.—All hearings under this subsection shall be public, unless otherwise ordered by the Board for good cause shown on its own motion or after considering the motion of a party to the hearing.

SA 4218. Mr. BAYH submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. REQUIREMENT THAT PLAN ADMINISTRATOR NOTIFY PARTICIPANTS OF INVOLUNTARY PLAN TERMINATION.

(a) IN GENERAL.—Section 4042(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342(b)) is amended by adding at the end the following:

''(4)(A) Not later than 30 days (or such longer period as the corporation finds reasonable) after the corporation notifies a plan administrator of a plan of the corporation's determination under subsection (a) to institute proceedings under this section with respect to such plan, the plan administrator shall provide to each affected party (other than the corporation) a written notice of the corporation's determination that the plan should be terminated and the corporation's proposed termination date. The written notice shall be made in such form and manner as the corporation may require. Such notice shall be written in a manner so as to be understood by the average plan participant.

''(B) A plan administrator's failure to comply with the requirement under subparagraph (A) shall not affect the validity of any determination or action by the corporation or the termination date established under section 4048.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to termination proceedings commenced after the date of the enactment of this Act.

SA 4219. Mrs. BOXER submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 84, strike lines 13 through 25 and insert the following: ''shall forfeit to the Department of Labor—

''(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.

''(c) DISTRIBUTION OF FUNDS.—

''(1) FORMER EMPLOYEES.—Except as provided in paragraph (4), and in accordance with paragraphs (2) and (3), the Secretary of Labor shall distribute the funds forfeited under subsection (a) to former employees of the issuer whose employment was terminated by the issuer.

''(2) ELIGIBILITY FOR FUNDS.—Before distributing funds to an applicant under this subsection, the Secretary of Labor shall certify that the job loss of the applicant resulted from a business decision made by the issuer as a consequence of a restatement of earnings, as described in subsection (a).

''(3) EXCEPTION.—A former employee of the issuer who was complicit in the misstatement of earnings of the issuer referred to in paragraph (2) shall not be eligible to receive funds distributed under this subsection.

''(4) NO LOSS OF EMPLOYMENT.—If no employee of the issuer is laid off by the issuer within 12 months of a restatement of earnings as a consequence of such restatement, the Secretary of Labor shall distribute the funds forfeited under subsection (a) to the issuer.''.

SA 4220. Mrs. BOXER submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 84, strike lines 13 through 25 and insert the following: ''shall forfeit to the Commission—

''(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.

''(c) DISTRIBUTION OF FUNDS.—

''(1) FORMER EMPLOYEES.—Except as provided in paragraph (4), and in accordance with paragraphs (2) and (3), the Commission shall distribute the funds forfeited under subsection (a) to former employees of the issuer whose employment was terminated by the issuer.

''(2) ELIGIBILITY FOR FUNDS.—Before distributing funds to an applicant under this subsection, the Commission shall certify that the job loss of the applicant resulted from a business decision made by the issuer as a consequence of a restatement of earnings, as described in subsection (a).

''(3) EXCEPTION.—A former employee of the issuer who was complicit in the misstatement of earnings of the issuer referred to in paragraph (2) shall not be eligible to receive funds distributed under this subsection.

''(4) NO LOSS OF EMPLOYMENT.—If no employee of the issuer is laid off by the issuer within 12 months of a restatement of earnings as a consequence of such restatement, the Commission shall distribute the funds forfeited under subsection (a) to the issuer.''.

SA 4221. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the end of title III, insert the following:

SEC. ___. PROVISIONS RELATING TO WHISTLEBLOWER ACTIONS INVOLVING PENSION PLANS.

(a) AUTHORITY TO BRING ACTIONS.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended by striking ''or'' at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following new paragraph:

''(10) by the Secretary, or other person referred to in section 510—

''(A) to enjoin any act or practice which violates section 510 in connection with a pension plan, or

''(B) to obtain appropriate equitable or legal relief to redress such violation or to enforce section 510 in connection with a pension plan.''

(b) ADDITIONAL ACTIONS WHICH MAY BE BROUGHT.—The second sentence of section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140) is amended by striking ''person because he'' and inserting ''other person because such other person has opposed any practice in connection with a pension plan that is made unlawful by this title or''.

SA 4222. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the end of title III, add the following:

SEC. 307. FORFEITURE OF CERTAIN BONUSES AND PROFITS IN BANKRUPTCY.

Section 541(a) of title 11, United States Code, is amended by adding at the end the following:

''(8) Any bonus or other incentive-based or equity-based compensation received by a chief executive officer or chief financial officer of an issuer of securities (as defined in section 2(a) of the Public Company Accounting Reform and Investor Protection Act of 2002) from that issuer during the 24-month period before the date of the filing of the bankruptcy petition by the issuer.

''(9) Any profits realized by a chief executive officer or chief financial officer of an issuer of securities (as defined in section 2(a) of the Public Company Accounting Reform and Investor Protection Act of 2002) from the sale of securities of the issuer during the 24-month period before the date of the filing of the bankruptcy petition by the issuer.''.

SA 4223. Mrs. CARNAHAN (for herself, Mr. KERRY, and Mr. DURBIN) submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 94, line 16, beginning with ''shall file'' strike all through ''feasible'' on line 24 and insert ''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 shall take effect 1 year after the date of enactment of this paragraph),''.

SA 4224. Mr. GRAMM submitted an amendment intended to be proposed by him to the 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 objectively and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 12, insert the following after ''transaction'': ''(or classes of such persons, issuers or public accounting firms from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems necessary or appropriate in the public interest and consistent with the protection of investors and consistent with the purposes of this Act)''.

SA 4225. Mr. GRAMM submitted an amendment intended to be proposed by him to the 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 objectively and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 51, after line 2, insert the following new paragraph:

(3) JUDICIAL REVIEW OF DISCIPLINARY ACTION.—Instead of filing an application for Commission review under paragraph (1), a public accounting firm or person associated with such firm may, not later than 10 days after the date on which a disciplinary action by the Board becomes final, seek review of such disciplinary action by the United States District Court for the District of Columbia or the appropriate Federal district court in the State in which such person is domiciled. Application to a Federal district court for review of such disciplinary sanction shall operate as a stay of such disciplinary action.''.

SA 4226. Mr. GRAMM (for himself, Mr. SANTORUM, and Mr. BOND) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

Strike section 201(b) and insert in lieu thereof the following:

''(b) EXEMPTION AUTHORITY.—

''(1) CASE-BY-CASE WAIVERS.—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.

''(2) SMALL BUSINESS EXEMPTION.—The Board may, by rule (subject to review by the Commission in the same manner as for rules of the Board under section 107), exempt any person, issuer or public accounting firm (or classes of such persons, issuers or public accounting firms) from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems necessary or appropriate in the public interest and consistent with the protection of investors and consistent with the purposes of this Act.''.

SA 4227. Mr. SCHUMER submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

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

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

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

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

''(1) IN GENERAL.—It shall be unlawful for any issuer, directly or indirectly, to extend or maintain credit, or arrange for the extension of credit, in the form of 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 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 an issuer;

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

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

SA 4228. Mr. SCHUMER submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MANDATORY RESTITUTION FOR FEDERAL CRIMES OF FRAUD.

Section 2327(a) of title 18, United States Code, is amended—

(1) by striking ''all victims of any offense'' and all that follows through the period and inserting the following: ''all victims of any offense—

''(1) for which an enhanced penalty is provided under section 2326; or

''(2) relating to a Federal crime of fraud under section 371, 1131, 1341, 1343, 1348, 1519, or 1520.''.

SA 4229. Mr. SCHUMER submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 99, between lines 15 and 16, insert the following:

SEC. 408. AVAILABILITY OF CORPORATE TAX RETURNS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(*l*) AVAILABILITY OF TAX RETURNS.—

''(1) FILING REQUIREMENT.—Each issuer that is required to file a return under section 6012 of the Internal Revenue Code of 1986, shall annually provide a complete copy of that return to the Commission.

''(2) PUBLIC AVAILABILITY.—Each return provided to the Commission under paragraph (1) shall be made available to the public for inspection.''.

SA 4230. Mr. SCHUMER (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

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

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

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

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

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

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

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and loses 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) the 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.

SA 4231. Mr. SCHUMER submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

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

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

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

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

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT.—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; and

(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.

(3) RULES.—If the Commission reports under paragraph (2) that such special purpose entities are not generally consolidated by the issuer having the majority of the risks and rewards of the assets, liabilities, leases, and losses of the special purpose entity, the Commission shall, not later than 12 months after the date of submission of the report, adopt rules or regulations to require consolidation of such entities by the sponsoring issuer.

SA 4232. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 15, strike line 11 and inserting the following:

of the Board and the staff of the Board; and

(8)(A) review and conduct oversight audits of the financial statements of issuers and using its resources effectively to focus on highest risk audit areas and to target questionable audit practices of which the Board is aware, including practices that the Board is made aware of from communications with the Division of Enforcement of the Commission;

(B)(i) refer findings of accounting or auditing irregularity to the Division of Enforcement of the Commission for further investigation of the issuer or the public accounting firm, as appropriate; and

(ii) if appropriate, refer findings of accounting or auditing irregularity to—

(I) 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 audit report for an institution that is subject to the jurisdiction of such regulator;

(II) the Attorney General of the United States;

(III) the attorneys general of 1 or more States; or

(IV) the appropriate State regulatory authority; and

(C) on an annual basis, report its findings and make recommendations for change to—

(i) the Commission; and

(ii) the Comptroller General of the United States.

SA 4233. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

(c) INVESTIGATIONS AND ACTIONS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following:

''(6) DISGORGEMENT OF BENEFITS.—In any action or proceeding brought or instituted by the Commission under the securities laws against any person for engaging in, causing, or aiding and abetting any violation of the securities laws or the rules and regulations prescribed under those laws, such person, in addition to being subject to any other appropriate order, may be required to disgorge any or all benefits received from any source in connection with the conduct constituting, causing, or aiding and abetting the violation, including salary, commissions, fees, bonuses,

options, profits from securities transactions, and losses avoided through securities transactions.''.

SA 4234. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . ANNUAL LIMIT ON AMOUNT REALIZED FROM EXERCISE OF STOCK OPTIONS.

(a) IN GENERAL.—It is unlawful for any officer or director of a corporation to exercise stock options with respect to securities registered pursuant to section 12 of the Securities and Exchange Act of 1934 granted by a corporation for its stock, or the stock of any subsidiary or affiliated corporation, to the extent that the net proceeds (determined without regard to taxes) to, or for the benefit of, that officer or director realized from the exercise of the stock options exceed $20,000,000 during any 12-month period.

(b) EXCEPTION.—Subsection (a) does not apply if—

(1) at last 80 percent of the net proceeds are attributable to the exercise of options held by the officer, employee, or director for 5 years or more; or

(2) the exercise of the stock options has been approved in advance by majority vote of the publicly-held shares voted during the 12-month period within which the options are exercised.

(c) REMEDY.—The provisions of section 306(c) of this Act apply to any violation of subsection (a) in the same manner as if the violation were a violation of section 306(a).

(d) EFFECTIVE DATE.—Subsection (a) applies to stock options granted after the date of enactment of this Act.

SA 4235. Mr. ENZI (for Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. LOTT, Mr. BENNETT, Mr. WYDEN, Mrs. MURRAY, and Mr. BURNS)) submitted an amendment intended to be proposed by Mr. ENZI to the 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; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. RECOMMENDATIONS ON THE TREATMENT OF STOCK OPTIONS.

(a) ANALYSIS.—The Commission shall conduct an analysis and make regulatory and legislative recommendations on the treatment of stock options in which the Commission shall analyze—

(1) the accounting treatment for employee stock options, including the accuracy of available stock option pricing models;

(2) the adequacy of current disclosure requirements to investors and shareholders on stock options;

(3) the adequacy of corporate governance requirements, including shareholder approval of stock option plans;

(4) any need for new stock holding period requirements for senior executives; and

(5) the benefit and detriment of any new options expensing rules on—

(A) the productivity and performance of large, medium, and small companies, and start-up enterprises;

(B) the recruitment and retention of skilled workers; and

(C) employees at various income levels, with a particular focus on the effect on rank-and-file employees and the income of women.

(b) RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit regulatory and legislative recommendations and supporting analysis to—

(A) the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 106 of this Act;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) CONTENTS.—The analysis, and regulatory and legislative recommendations submitted under paragraph (1) shall include—

(A) the results of the analysis conducted under subsection (a); and

(B) regulatory and legislative recommendations, if any, for changes in the treatment of stock options.

SA 4236. Mr. CLELAND submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 84, strike lines 6 through 22, and insert the following:

(a) ADDITIONAL COMPENSATION AND PROFITS RECEIVED SUBSEQUENT 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 by such issuer or its agents, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer, and any other officer and director of the issuer who had knowledge of such noncompliance, at the earlier of the first public issuance or the filing with the Commission of the financial document embodying such financial reporting requirement, shall reimburse the issuer for the value of—

(1) any bonus, compensation derived from a severance agreement, or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the earlier of the first public issuance or the filing with the Commission of the financial document embodying such financial reporting requirement;

(2) any profits realized from the sale of securities of the issuer during that 12-month period; and

(3) any profits realized from the exercise of any warrants, options, or rights received by that person during that 12-month period.

SA 4237. Mr. BYRD (for himself and Mr. THOMPSON) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DISCLOSURE OF INVESTMENTS, HOLDINGS, OR TRANSACTIONS IN CERTAIN FOREIGN COUNTRIES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE OF INVESTMENTS, HOLDINGS, OR TRANSACTIONS IN OR WITH CERTAIN FOREIGN ENTITIES.—

''(1) IN GENERAL.—Each designated issuer shall, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

''(A) disclose in each report or other document required to be filed under this section, including all annual filings, and in each registration statement required under section 14, the nature and scope of the operations of the designated issuer in or with any designated entity, and the Commission shall consider material, any investments, holdings, or transactions by a designated issuer in or with any designated entity that, in the aggregate, exceed $100,000 at any time during the period to which the filing relates; and

''(B) display all disclosures required by subparagraph (A) prominently for investors.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'designated entity' means any company or other entity that is organized under the laws of a foreign country, a government-owned corporation of a foreign country, or the government of any foreign country—

''(i) that is subject to sanctions by the Office of Foreign Assets Control; or

''(ii) the government of which has been determined by the Secretary of State under section 6(j)(1)(A) of the Export Administration Act of 1979, section 40(d) of the Arms Export Control Act, or section 620A of the Foreign Assistance Act of 1961, to have knowingly provided support for acts of international terrorism; and

''(B) the term 'designated issuer'—

''(i) means any issuer of a security registered pursuant to section 12, or the securities of which (including American Depository Receipts) are directly or indirectly listed for trading or sold on any national securities exchange or in any United States over-the-counter market; and

''(ii) includes any subsidiary or other affiliate of such an issuer.''.

(b) SECURITIES ACT OF 1933.—Section 10 of the Securities Act of 1933 (15 U.S.C. 77j) is amended by adding at the end the following new subsection:

''(g) DISCLOSURE OF INVESTMENTS, HOLDINGS, OR TRANSACTIONS IN OR WITH CERTAIN FOREIGN ENTITIES.—

''(1) IN GENERAL.—Each designated issuer shall, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

''(A) disclose in each prospectus required or permitted under this section, the nature and scope of the operations of the designated issuer in or with any designated entity, and the Commission shall consider material, any investments, holdings, or transactions by a designated issuer in or with any designated entity that, in the aggregate, exceed $100,000 at any time during the 6-month period preceding the date of issuance of the prospectus; and

''(B) display all disclosures required by subparagraph (A) prominently for investors.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'designated entity' means any company or other entity that is organized under the laws of a foreign country, a government-owned corporation of a foreign country, or the government of any foreign country—

''(i) that is subject to sanctions by the Office of Foreign Assets Control; or

''(ii) the government of which has been determined by the Secretary of State under section 6(j)(1)(A) of the Export Administration Act of 1979, section 40(d) of the Arms Export Control Act, or section 620A of the Foreign Assistance Act of 1961, to have knowingly provided support for acts of international terrorism; and

''(B) the term 'designated issuer'—

''(i) means any issuer of a security registered pursuant to section 12 of the Securities Exchange Act of 1934, or the securities of which (including American Depository Receipts) are directly or indirectly listed for trading or sold on any national securities exchange or in any United States over-the-counter market; and

''(ii) includes any subsidiary or other affiliate of such an issuer.''.

(c) ANNUAL REPORT ON INVESTMENTS, HOLDINGS, OR TRANSACTIONS IN OR WITH CERTAIN FOREIGN ENTITIES.—

(1) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of the Treasury, the Secretary of State, the Director of Central Intelligence, and any other departments or agencies that the Secretary of Defense determines appropriate, shall submit a report to Congress on an annual basis, regarding—

(A) whether material investments, holdings, or transactions by designated issuers in or with any designated entities have provided during the preceding year, or are providing, financial or technical support for any terrorist-sponsoring government, or terrorist-sponsoring group or organization, in the form of revenues, equipment, technology, or by other means; and

(B) the impact of such types of support on the regional and global security interests of the United States.

(2) FORM OF REPORTS.—Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(3) DEFINITIONS.—In this subsection—

(A) the terms ''designated entity'', and ''designated issuer'' have the same meanings as in section 13(i) of the Securities Exchange Act of 1934, as added by this section; and

(B) the term ''terrorist-sponsoring government'' means the government of a foreign country—

(i) that is subject to sanctions by the Office of Foreign Assets Control; or

(ii) that has been determined by the Secretary of State under section 6(j)(1)(A) of the Export Administration Act of 1979, section 40(d) of the Arms Export Control Act, or section 620A of the Foreign Assistance Act of 1961, to have knowingly provided support for acts of international terrorism.

SA 4238. Mr. MCCAIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 69, strike line 8 and all that follows through page 70, line 19, and insert ''any non-audit service.'.''.

On page 82, line 9, strike the quotation marks and the final period and insert the following:

''(n) STANDARDS RELATING TO BOARDS OF DIRECTORS.—

''(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 paragraph (2).

''(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) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the board of directors of the issuer (other than the chief executive officer) shall be independent.

''(B) CRITERIA.—In order to be considered independent for purposes of this paragraph, a member of a board of directors of an issuer may not, other than in his or her capacity as a member of that board of directors—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer;

''(ii) be an affiliated person of the issuer or any subsidiary thereof; or

''(iii) otherwise maintain any other business relationship with the issuer or the management thereof.

On page 82, line 24, insert before the period the following: '', and shall include a brief narrative of the basis for the decision to so certify, including a discussion of any questionable accounting treatment.''.

On page 86, line 8, strike ''during'' and all that follows through page 89, line 20 and insert the following: ''at any time during the term of employment of that person by the issuer, or service to that issuer as a director or executive officer, or during the 90-day period following the date of termination of such employment or service.

''(b) EXCEPTION.—Nothing in subsection (a) shall be construed to prohibit the purchase, sale, acquisition, or other transfer of equity securities of the issuer for the purpose of avoiding expiration of stock options, but only to the extent necessary to pay the option price of the securities and any applicable taxes or to satisfy a court ordered judgment.

''(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.

''(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.by the issuer.''.

SA 4239. Mr. MCCAIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 69, strike line 8 and all that follows through page 70, line 19, and insert ''any non-audit service.'.''.

On page 82, line 24, insert before the period the following: '', and shall include a brief narrative of the basis for the decision to so certify, including a discussion of any questionable accounting treatment.''.

On page 86, line 8, strike ''during'' and all that follows through page 89, line 20 and insert the following: ''at any time during the

term of employment of that person by the issuer, or service to that issuer as a director or executive officer, or during the 90-day period following the date of termination of such employment or service.

''(b) EXCEPTION.—Nothing in subsection (a) shall be construed to prohibit the purchase, sale, acquisition, or other transfer of equity securities of the issuer for the purpose of avoiding expiration of stock options, but only to the extent necessary to pay the option price of the securities and any applicable taxes or to satisfy a court ordered judgment.

''(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.

''(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.by the issuer.''.

SA 4240. Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. BENNETT, Mr. WYDEN, Mr. LOTT, Mrs. MURRAY, Mr. BURNS, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the end of the bill insert the following:

SEC. ___. RECOMMENDATIONS ON THE TREATMENT OF STOCK OPTIONS.

(a) ANALYSIS.—The Commission shall conduct an analysis and make regulatory and legislative recommendations on the treatment of stock options in which the Commission shall analyze—

(1) the accounting treatment for employee stock options, including the accuracy of available stock option pricing models;

(2) the adequacy of current disclosure requirements to investors and shareholders on stock options;

(3) the adequacy of corporate governance requirements, including shareholder approval of stock option plans;

(4) any need for new stock holding period requirements for senior executives; and

(5) the benefit and detriment of any new options expensing rules on—

(A) the productivity and performance of large, medium, and small companies, and start-up enterprises;

(B) the recruitment and retention of skilled workers; and

(C) employees at various income levels, with a particular focus on the effect on rank-and-file employees and the income of women.

(b) RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit regulatory and legislative recommendations and supporting analysis to—

(A) the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 106 of this Act;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) CONTENTS.—The analysis, and regulatory and legislative recommendations submitted under paragraph (1) shall include—

(A) the results of the analysis conducted under subsection (a); and

(B) regulatory and legislative recommendations, if any, for changes in the treatment of stock options.

SA 4241. Mr. LIEBERMAN (for himself, Mr. ENZI, Mrs. BOXER, Mr. ALLEN, Ms. CANTWELL, Mr. BENNETT, Mr. WYDEN, Mr. LOTT, Mrs. MURRAY, Mr. BURNS, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. RECOMMENDATIONS ON THE TREATMENT OF STOCK OPTIONS.

(a) ANALYSIS.—The Commission shall conduct an analysis and make regulatory and legislative recommendations on the treatment of stock options in which the Commission shall analyze—

(1) the accounting treatment for employee stock options, including the accuracy of available stock option pricing models;

(2) the adequacy of current disclosure requirements to investors and shareholders on stock options;

(3) the adequacy of corporate governance requirements, including shareholder approval of stock option plans;

(4) any need for new stock holding period requirements for senior executives; and

(5) the benefit and detriment of any new options expensing rules on—

(A) the productivity and performance of large, medium, and small companies, and start-up enterprises;

(B) the recruitment and retention of skilled workers; and

(C) employees at various income levels, with a particular focus on the effect on rank-and-file employees and the income of women.

(b) RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit regulatory and legislative recommendations and supporting analysis to—

(A) the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 106 of this Act;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) CONTENTS.—The analysis, and regulatory and legislative recommendations submitted under paragraph (1) shall include—

(A) the results of the analysis conducted under subsection (a); and

(B) regulatory and legislative recommendations, if any, for changes in the treatment of stock options.

SA 4242. Mr. KENNEDY (for himself, Mr. REED, Mr. LEAHY) submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. LIABILITY FOR BREACH OF FIDUCIARY DUTY.

(a) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

''SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN 401(k) PLANS.

''(a)(1)(A) Any person who is a fiduciary with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to each participant's and beneficiary's individual account in the plan (or directly to such participant or beneficiary in the absence of an individual account) any losses to the participant's or beneficiary's individual account in the plan resulting from each such breach, and to restore to the participant's or beneficiary's individual account in the plan (or directly to such participant or beneficiary in the absence of an individual account) any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

''(B) If an insider (as defined in section 409(b)(1)(B)) with respect to the plan sponsor

of an employer individual account plan that holds employer securities that are readily tradable on an established securities market—

''(i) knowingly participates in a breach of fiduciary responsibility to which subparagraph (A) applies, or

''(ii) knowingly undertakes to conceal such a breach,

such insider shall be personally liable under this subparagraph to each participant's and beneficiary's individual account in the plan (or directly to such participant or beneficiary in the absence of an individual account) for such breach in the same manner as the fiduciary who commits such breach.

''(2) Nothing in this subsection shall be construed as permitting the recovery by a participant or beneficiary of any consequential or punitive damages.

''(b) The right of participants and beneficiaries under subsection (a) to sue for breach of fiduciary duty with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of such Code shall be in addition to all existing rights that participants and beneficiaries have under section 409, section 502, and any other provision of this title, and shall not be construed to give rise to any inference that such rights do not already exist under section 409, section 502, or any other provision of this title.

''(c) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary, unless such liability arises under subsection (a)(1)(B).''

(B) CONFORMING AMENDMENT.—The table of contents for part 4 of subtitle B of title I of such Act is amended by inserting the following new item after the item relating to section 409:

''Sec. 409A. Liability for breach of fiduciary duty in 401(k) plans.''

(2) INSIDER LIABILITY.—

(A) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

''(b)(1)(A) If an insider with respect to the plan sponsor of an employer individual account plan that holds employer securities that are readily tradable on an established securities market—

''(i) knowingly participates in a breach of fiduciary responsibility to which subsection (a) applies, or

''(ii) knowingly undertakes to conceal such a breach,

such insider shall be personally liable under this subsection to the plan or to any participant or beneficiary of the plan for such breach in the same manner as the fiduciary who commits such breach.

''(B) For purposes of subparagraph (A), the term 'insider' means, with respect to any plan sponsor of a plan to which subparagraph (A) applies—

''(i) any officer or director with respect to the plan sponsor, or

''(ii) any independent qualified public accountant of the plan or of the plan sponsor.

''(2) Any relief provided under this subsection or section 409A—

''(A) to an individual account plan shall inure to the individual accounts of the affected participants or beneficiaries, and

''(B) to a participant or beneficiary shall be payable to the participant's or beneficiary's individual account in the plan (or directly to such participant or beneficiary in the absence of an individual account).''

(B) CONFORMING AMENDMENT.—Section 409(c) of such Act (29 U.S.C. 1109(c)), as redesignated by subparagraph (A), is amended by inserting before the period the following: '', unless such liability arises under subsection (b)''.

(b) EFFECTIVE DATE; PLAN AMENDMENTS.—

(1) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2003.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2003'' the date of the commencement of the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 2004, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(B) January 1, 2005.

(3) PLAN AMENDMENTS.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2005, if—

(A) during the period after such amendment made by this section takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this section, and

(B) such plan amendment applies retroactively to the period after such amendment made by this section takes effect and before such first plan year.

SA 4243. Mr. BUNNING submitted an amendment intended to be proposed by him to the 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 practice, 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TREATMENT OF THE TENNESSEE VALLEY AUTHORITY.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(2) (15 U.S.C. 77c(a)(2)), by inserting ''(other than the Tennessee Valley Authority)'' after ''Congress of the United States'';

(2) in section 3 (15 U.S.C. 77c), by adding at the end the following:

''(d) TENNESSEE VALLEY AUTHORITY BONDS NOT EXEMPT.—Notwithstanding any provision of this title, no bond issued or sold by the Tennessee Valley Authority pursuant to section 15d of the Tennessee Valley Authority Act (16 U.S.C. 831n–3(d)) shall be exempt from the requirements of this title.''; and

(3) in section 28 (15 U.S.C. 77z–3)—

(A) by inserting ''(a) IN GENERAL.—'' before ''The''; and

(B) by adding at the end the following:

''(b) APPLICABILITY.—Notwithstanding subsection (a), the Commission may not exempt from any provision of this title, or any rule or regulation issued under this title any bond issued or sold by the Tennessee Valley Authority pursuant to section 15d of the Tennessee Valley Authority Act (16 U.S.C. 831n–3(d)).''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(c) (15 U.S.C. 78c(c)), by inserting ''(other than the Tennessee Valley Authority)'' after ''establishment of the United States'';

(2) in section 3 (15 U.S.C. 78c), by adding at the end the following:

''(h) TENNESSEE VALLEY AUTHORITY.—Notwithstanding any other provision of this title, no bond issued or sold by the Tennessee Valley Authority pursuant to section 15d of the Tennessee Valley Authority Act (16 U.S.C. 831n–3(d)) shall be exempt from the requirements of this title or the rules or regulations issued under this title.''; and

(3) in section 36(b) (15 U.S.C. 78mm(b))—

(A) by striking ''exempt any'' and inserting ''exempt—

''(1) any'';

(B) by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(2) any bond issued by the Tennessee Valley Authority pursuant to section 15d of the Tennessee Valley Authority Act (16 U.S.C. 831n–3(d)).''.

SA 4244. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 84, after line 25, insert the following:

(c) FRAUDULENT TRANSFERS AND OBLIGATIONS.—Section 548(a) of title 11, United States Code, is amended by adding at the end the following:

''(3) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, including any bonuses, loans, nonqualified deferred compensation, or other extraordinary or excessive compensation as determined by the court, paid to any officer, director, or employee of an issuer of securities (as defined in section 2(a) of the Public Company Accounting Reform and Investor Protection Act of 2002), if—

''(A) that transfer of interest or obligation was made or incurred on or within 4 years before the date of the filing of the petition; and

''(B) the officer, director, or employee has committed—

''(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), State securities laws, or any regulation or order issued under Federal or State securities laws; or

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933.''

SA 4245. Mr. SESSIONS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COMPLIANCE COMMITTEES.

(a) ESTABLISHMENT.—The Commission shall, by rule, require each of the largest 1,000 publicly traded companies (as determined by the Commission) to establish a compliance committee of the board of directors to receive and investigate complaints or concerns of employees that question the integrity of financial records, financial statements, or other practices of the company.

(b) COMPOSITION.—Each compliance committee shall be made up of not fewer than 3 members of the board of directors.

(c) RECORDKEEPING.—The compliance committee shall keep records of complaints and investigation for a period of 5 years, which records shall be deemed confidential, and shall not be discoverable by any private party litigant in any civil action.

(d) PROCEDURES FOR REVIEW.—Each member of the compliance committee shall—

(1) personally review each complaint and investigation; and

(2) sign and certify that they have read the complaint and investigation and that records thereof are true and accurate in all material respects.

(f) REPORTS TO BOARD.—The compliance committee shall report to the board of directors its findings with respect to each investigation for appropriate action.

SA 4246. Mr. SESSIONS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . REPORTING COMPLAINTS.

The Commission shall establish, by rule, on easily available option (toll free number, website, e-mail, or other means) for employees of the largest 1,000 publicly traded companies (as determined by the Commission) to report to the Enforcement Division of the Commission confidentially any complaints or concerns that questions the integrity of the financial records or financial statements of the company.

SA 4247. Mr. EDWARDS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

( ) 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.

SA 4248. Mr. EDWARDS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 108, line 15, insert before the end quotation marks the following:

''(c) 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.

SA 4249. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 2, line 17 strike ''directors.'' and insert the following: ''directors.

SEC. 605. ADMINISTRATIVE PROCEEDINGS REGARDING BANS ON SERVICE.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND 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), or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class or securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICER AND

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) from acting as an officer or director of any issuer that has a class or 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 conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 606. AUTHORITY TO ASSESS CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end a new subsection as follows:

''(g) AUTHORITY OF THE COMMISSION TO ASSESS MONEY PENALTY.—

''(1) IN GENERAL.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that a person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $100,000 for a natural person or $250,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for such act or omission described in paragraph (1) shall be $500,000 for a natural person or $1,000,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $1,000,000 for a natural person or $2,000,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) in paragraph (4), by striking ''supervision;'' and all that follows through the end of the subsection and inserting ''supervision.'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) in subparagraph (C), by striking ''therein;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) in subparagraph (D), by striking ''supervision;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

SEC. 607. INCREASED MAXIMUM CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(1) in subparagraph (A)(i), by—

(A) striking ''$5,000'' and inserting ''$100,000''; and

(B) striking ''$50,000'' and inserting ''$250,000'';

(2) in subparagraph (B)(i), by—

(A) striking ''$50,000'' and inserting ''$500,000''; and

(B) striking ''$250,000'' and inserting ''$1,000,000''; and

(3) in subparagraph (C)(i), by—

(A) striking ''$100,000'' and inserting ''$1,000,000''; and

(B) striking ''$500,000'' and inserting ''$2,000,000''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(A) in subsection (b), by striking ''$100'' and inserting ''$10,000''; and

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking ''$10,000'' and inserting ''$500,000''; and

(ii) in paragraph (2)(B), by striking ''$2,000'' and inserting ''$500,000''.

(2) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking ''$1,000,000'' and inserting ''$2,000,000''.

(3) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in paragraph (2), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in paragraph (3), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(4) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in clause (ii), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in clause (iii), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(c) INVESTMENT COMPANY ACT OF 1940.—

(1) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(d) INVESTMENT ADVISORS ACT OF 1940.—

(1) REGISTRATION.—Section 203(i)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and
(ii) striking ''$250,000'' and inserting ''$1,000,000''; and
(C) in subparagraph (C), by—
(i) striking ''$100,000'' and inserting ''$1,000,000''; and
(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT ADVISORS ACT.—Section 209(e)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—
(A) in subparagraph (A), by—
(i) striking ''$5,000'' and inserting ''$100,000''; and
(ii) striking ''$50,000'' and inserting ''$250,000'';
(B) in subparagraph (B), by—
(i) striking ''$50,000'' and inserting ''$500,000''; and
(ii) striking ''$250,000'' and inserting ''$1,000,000''; and
(C) in subparagraph (C), by—
(i) striking ''$100,000'' and inserting ''$1,000,000''; and
(ii) striking ''$500,000'' and inserting ''$2,000,000''.

SEC. 608. AUTHORITY TO OBTAIN FINANCIAL RECORDS.

Section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is amended—
(1) by striking paragraphs (2) through (8);
(2) in paragraph (9), by striking ''(9)(A)'' and all that follows through ''(B) The'' and inserting ''(3) The'';
(3) by inserting after paragraph (1), the following:
''(2) ACCESS TO FINANCIAL RECORDS.—
''(A) IN GENERAL.—Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may obtain access to and copies of, or the information contained in, financial records of any person held by a financial institution, including the financial records of a customer, without notice to that person, when it acts pursuant to a subpoena authorized by a formal order of investigation of the Commission and issued under the securities laws or pursuant to an administrative or judicial subpoena issued in a proceeding or action to enforce the securities laws.
''(B) NONDISCLOSURE OF REQUESTS.—If the Commission so directs in its subpoena, no financial institution, or officer, director, partner, employee, shareholder, representative or agent of such financial institution, shall, directly or indirectly, disclose that records have been requested or provided in accordance with subparagraph (A), if the Commission finds reason to believe that such disclosure may—
''(i) result in the transfer of assets or records outside the territorial limits of the United States;
''(ii) result in improper conversion of investor assets;
''(iii) impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction;
''(iv) endanger the life or physical safety of an individual;
''(v) result in flight from prosecution;
''(vi) result in destruction of or tampering with evidence;
''(vii) result in intimidation of potential witnesses; or
''(viii) otherwise seriously jeopardize an investigation or unduly delay a trial.'';
(4) by striking paragraph (10); and
(5) by redesignating paragraphs (11), (12), and (13) as paragraphs (4), (5), and (6), respectively.

SA 4250. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

Amend Section 108 by creating a new (d) and relettering the rest of the section accordingly:

''(d) REVIEW OF STOCK OPTION ACCOUNTING TREATMENT.—A standard setting body described in paragraph (1) and funded pursuant to Section 109 shall review the accounting treatment of employee stock options and shall, within one year of the date of enactment of this Act, adopt an appropriate generally accepted accounting principle for the treatment of employee stock options.''.

SA 4251. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 114, between lines 2 and 3, insert the following:

SEC. 605. ADMINISTRATIVE PROCEEDINGS REGARDING BANS ON SERVICE.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditional or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b), or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class or securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICER AND DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditional or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) from acting as an officer or director of any issuer that has a class or 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 conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 606. AUTHORITY TO ASSESS CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end a new subsection as follows:

''(g) AUTHORITY OF THE COMMISSION TO ASSESS MONEY PENALTY.—
''(1) IN GENERAL.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that a person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.
''(2) MAXIMUM AMOUNT OF PENALTY.—
''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $100,000 for a natural person or $250,000 for any other person.
''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for such act or omission described in paragraph (1) shall be $500,000 for a natural person or $1,000,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement.
''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $1,000,000 for a natural person or $2,000,000 for any other person, if—
''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and
''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—
(1) in paragraph (4), by striking ''supervision;'' and all that follows through the end of the subsection and inserting ''supervision.'';
(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;
(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';
(4) by striking ''In any proceeding'' and inserting the following:
''(1) IN GENERAL.—In any proceeding''; and
(5) by adding at the end the following:
''(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of

this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) in subparagraph (C), by striking ''therein;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) in subparagraph (D), by striking ''supervision;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

SEC. 607. INCREASED MAXIMUM CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(1) in subparagraph (A)(i), by—

(A) striking ''$5,000'' and inserting ''$100,000''; and

(B) striking ''$50,000'' and inserting ''$250,000'';

(2) in subparagraph (B)(i), by—

(A) striking ''$50,000'' and inserting ''$500,000''; and

(B) striking ''$250,000'' and inserting ''$1,000,000''; and

(3) in subparagraph (C)(i), by—

(A) striking ''$100,000'' and inserting ''$1,000,000''; and

(B) striking ''$500,000'' and inserting ''$2,000,000''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(A) in subsection (b), by striking ''$100'' and inserting ''$10,000''; and

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking ''$10,000'' and inserting ''$500,000''; and

(ii) in paragraph (2)(B), by striking ''$10,000'' and inserting ''$500,000''.

(2) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking ''$1,000,000'' and inserting ''$2,000,000''.

(3) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in paragraph (2), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in paragraph (3), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$12,000,000''.

(4) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in clause (ii), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in clause (iii), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(c) INVESTMENT COMPANY ACT OF 1940.—

(1) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(d) INVESTMENT ADVISORS ACT OF 1940.—

(1) REGISTRATION.—Section 203(i)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT ADVISORS ACT.—Section 209(e)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

SEC. 608. AUTHORITY TO OBTAIN FINANCIAL RECORDS.

Section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is amended—

(1) by striking paragraphs (2) through (8);

(2) in paragraph (9), by striking ''(9)(A)'' and all that follows through ''(B) The'' and inserting ''(3) The'';

(3) by inserting after paragraph (1), the following:

''(2) ACCESS TO FINANCIAL RECORDS.—

''(A) IN GENERAL.—Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may obtain access to and copies of, or the information contained in, financial records of any person held by a financial institution, including the financial records of a customer, without notice to that person, when it acts pursuant to a subpoena authorized by a formal order of investigation of the Commission and issued under the securities laws or pursuant to an administrative or judicial subpoena issued in a proceeding or action to enforce the securities laws.

''(B) NONDISCLOSURE OF REQUESTS.—If the Commission so directs in its subpoena, no financial institution, or officer, director, partner, employee, shareholder, representative or agent of such financial institution, shall, directly or indirectly, disclose that records have been requested or provided in accordance with subparagraph (A), if the Commission finds reason to believe that such disclosure may—

''(i) result in the transfer of assets or records outside the territorial limits of the United States;

''(ii) result in improper conversion of investor assets;

''(iii) impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction;

''(iv) endanger the life or physical safety of an individual;

''(v) result in flight from prosecution;

''(vi) result in destruction of or tampering with evidence;

''(vii) result in intimidation of potential witnesses; or

''(viii) otherwise seriously jeopardize an investigation or unduly delay a trial.'';

(4) by striking paragraph (10); and

(5) by redesignating paragraphs (11), (12), and (13) as paragraphs (4), (5), and (6), respectively.

SA 4252. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 93, strike line 22, and insert the following: ''sion shall specify.

''(4) CERTAIN INFORMATION TO BE INCLUDED.—Disclosures required by paragraph (1)(B)(ii) shall include whether any payment was made through the tender of a security and, if so, the number of shares tendered.

''(5) DEADLINE FOR RULEMAKING.—The Commission shall—

''(A) propose rules to implement this subsection, not later than 90 days after the date of enactment of this subsection; and

''(b) issue final rules to implement this subsection, not later than 180 days after that date of enactment.''.

SA 4253. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 114, between lines 2 and 3, insert the following:

SEC. 605. ADMINISTRATIVE PROCEEDINGS REGARDING BANS ON SERVICE.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditional or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b), or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class or securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICER AND DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditional or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) from acting as an officer or director of any issuer that has a class or 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 conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 606. AUTHORITY TO ASSESS CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end a new subsection as follows:

''(g) AUTHORITY OF THE COMMISSION TO ASSESS MONEY PENALTY.—

''(1) IN GENERAL.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that a person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $100,000 for a natural person or $250,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for such act or omission described in paragraph (1) shall be $500,000 for a natural person or $1,000,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $1,000,000 for a natural person or $2,000,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) in paragraph (4), by striking ''supervision;'' and all that follows through the end of the subsection and inserting ''supervision.'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) in subparagraph (C), by striking ''therein;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) in subparagraph (D), by striking ''supervision;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

SEC. 607. INCREASED MAXIMUM CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(1) in subparagraph (A)(i), by—

(A) striking ''$5,000'' and inserting ''$100,000''; and

(B) striking ''$50,000'' and inserting ''$250,000'';

(2) in subparagraph (B)(i), by—

(A) striking ''$50,000'' and inserting ''$500,000''; and

(B) striking ''$250,000'' and inserting ''$1,000,000''; and

(3) in subparagraph (C)(i), by—

(A) striking ''$100,000'' and inserting ''$1,000,000''; and

(B) striking ''$500,000'' and inserting ''$2,000,000''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(A) in subsection (b), by striking ''$100'' and inserting ''$10,000''; and

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking ''$10,000'' and inserting ''$500,000''; and

(ii) in paragraph (2)(B), by striking ''$10,000'' and inserting ''$500,000''.

(2) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking ''$1,000,000'' and inserting ''$2,000,000''.

(3) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in paragraph (2), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in paragraph (3), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(4) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in clause (ii), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in clause (iii), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(c) INVESTMENT COMPANY ACT OF 1940.—

(1) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(d) INVESTMENT ADVISORS ACT OF 1940.—

(1) REGISTRATION.—Section 203(i)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT ADVISORS ACT.—Section 209(e)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

SA 4254. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 50, line 1, strike ''public (once'' and all that follows through page 51, line 2 and insert the following: ''public.

''(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.''.

SA 4255. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 74, line 7, strike ''and'' and all that follows through ''other'' on line 8, and insert the following:

'' ''(3) the quality, acceptability, clarity, and aggressiveness of the financial statements, financial reports, accounting principles, and related decision-making of the issuer; and

'' ''(4) other''.

SA 4256. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 84, line 8, strike ''If an issuer'' and all that follows through line 20 and insert the following: ''If, as a result of misconduct under the securities laws, an issuer is required by the board of directors, auditor, regulatory agency, bankruptcy official, civil or criminal settlement, court, or other legal proceeding to prepare an accounting restatement due to the material noncompliance of the issuer 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 document containing the financial information subject to correction in such restatement; and''.

SA 4257. Mr. LEVIN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 73, beginning on line 17, strike ''amended by adding'' and insert the following: ''amended—

''(1) in subsection (a)—

''(A) in paragraph (2), by striking 'and' at the end;

''(B) by redesignating paragraph (3) as paragraph (4); and

''(C) by inserting after paragraph (2) the following:

'''(3) a statement of opinion by the registered public accounting firm on whether the financial statements of the issuer are appropriate and fairly present, in all material respects, the operations and financial condition of the issuer; and'; and

''(2) by adding''.

SA 4258. Mrs. CLINTON submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

On page 99, between lines 15 and 16, insert the following:

SEC. 408. ACCOUNTABILITY TO SHAREHOLDERS FOR ISSUANCE OF STOCK OPTIONS.

(a) RULES REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Commission shall prescribe final rules to ensure that—

(1) all issuers require shareholder approval of any stock option plan, stock purchase plan, or other arrangement by which employees may acquire an equity interest in the issuer in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange;

(2) the shareholder approval requirement under paragraph (1) is waived whenever such approval is impracticable; and

(3) shareholder approval of a plan or arrangement under paragraph (1) is disclosed to the public immediately after such approval, through the Internet or similar means of broad distribution.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Commission shall report to Congress on the issuance of the rules pursuant to subsection (a).

SA 4259. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the 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; which was ordered to lie on the table; as follows:

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

SEC. 402. PROHIBITION ON LOANS TO OFFICERS AND DIRECTORS.

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, to or for any director or executive officer (or equivalent thereof) of that issuer, except as provided in paragraph (2).

''(2) LIMITATION.—Paragraph (1) does not preclude 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 an issuer;

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

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

SA 4260. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 73, strike lines 3 through 14 and insert the following:

SEC. 203. AUDIT FIRM 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 of the following:

''(j) AUDIT FIRM ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if that public accounting firm has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.''.

SA 4261. Mr. SHELBY submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 107, line 22 add the following:

(b) STUDY AND REPORT ON AIDING AND ABETTING SECURITIES FRAUDS.—

(1) The Commission shall, not later than 1 year after the adoption of the new rules on appearance and practice before the Commission as required under this section of the bill, complete a study to determine—

(A) the number of securities professionals including accountants, lawyers and other securities professionals practicing before the Commission, who have been found to have aided and abetting a violation of the securities laws or the rules and regulations issued thereunder; and

(B) the extent to which such violations indicate the existence of a pattern or practice; and

(C) the amount of shareholder value that was lost in the instances where securities professionals are found to have aided and abetted a violation of the securities laws; and

(D) the amount of disgorgement, restitution or any other fines or payments the Commission has obtained from securities professionals who have aided and abetted violations of the securities laws for such conduct; and

(E) the amount of remuneration shareholders have received in civil suits from securities professionals who have been found to have committed primary violations of the securities laws; and

(F) the number of securities professionals who have been found to have aided and abetted securities violations who have been censured or denied the privilege of practicing before the Commission for their aiding and abetting activities.

SA 4262. Mr. SHELBY submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 107, line 22 add the following:

(b) STUDY AND REPORT ON AIDING AND ABETTING SECURITIES FRAUDS.—

(1) The Commission shall, not later than 1 year after the adoption of the new rules on appearance and practice before the Commission as required under this section of the bill, complete a study to determine—

(A) the number of securities professionals including accountants, lawyers and other securities professionals practicing before the Commission, who have been found to have aided and abetting a violation of the securities laws or the rules and regulations issued thereunder; and

(B) the extent to which such violations indicate the existence of a pattern or practice; and

(C) the amount of shareholder value that was lost in the instances where securities professionals are found to have aided and abetted a violation of the securities laws; and

(D) the amount of disgorgement, restitution or any other fines or payments the Commission has obtained from securities professionals who have aided and abetted violations of the securities laws for such conduct; and

(E) the amount of remuneration shareholders have received in civil suits from securities professionals who have been found to have committed primary violations of the securities laws; and

(F) the number of securities professionals who have been found to have aided and abetted securities violations who have been censured or denied the privilege of practicing before the Commission for their aiding and abetting activities.

SA 4263. Mr. ENZI submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 74, strike lines 1 through 4 and insert the following:

''(2) all material 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 material''.

SA 4264. Mr. ENZI submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 78, strike lines 15 through 24, and insert the following:

In supervising public accounting firms that are not registered by the Board 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 could create undue burdens and costs if applied without independent consideration to nonpublic accounting companies and other accounting firms that provide services to small business clients.

On page 68, strike line 22 and all that follows through page 69, line 9, and insert the following:

''(g) PROHIBITED ACTIVITIES.—A registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) shall not be deemed independent if such firm or person 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, the following non-audit services:

On page 70, strike lines 3 and all that follows through page 73, line 2, and insert the following:

(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:

''(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—

''(1) IN GENERAL.

''(A) TERMS OF PROVISION OF 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 such services are provided in accordance with policies and procedures established by the audit committee of the issuer requiring the committee to approve in advance the provision of non-audit services.

''(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.—Policies and procedures for 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.''.

SA 4265. Mr. EDWARDS submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

On page 108, line 15, insert before the end quotation marks the following:

''(c) 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 the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of law 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.

SA 4266. Mr. SCHUMER submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . MANDATORY RESTITUTION FOR FEDERAL CRIMES OF FRAUD.

Section 1348 of title 18, United States Code as added by this bill, is amended—

(1) by striking ''all victims of any offense'' and all that follows through the period and inserting the following: ''all victims of any offense—

''(1) for which an enhanced penalty is provided under section 2326; or

''(2) relating to a Federal crime of fraud under section 371, 1131, 1341, 1343, 1348, 1519, or 1520.''.

SA 4267. Mr. DORGAN submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

Insert at the appropriate place:

''(c) FOREIGN REINCORPORATIONS.—This subsection shall not be interpreted or applied in any way to allow any issue to lessen the legal force of the statement required under this subsection, by reincorporating, or engaging in other transaction that result in the transfer of corporate domicile or offices from inside to outside the United States.

SA 4268. Mr. SMITH of Oregon submitted an amendment intended to be proposed by him to the 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; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GAO ANALYSIS AND REPORT.

(a) ANALYSIS.—The Comptroller General of the United States shall, in consultation with the Commission and the Department of Labor, shall conduct an analysis of—

(1) decline in the value of the securities of publicly traded companies under investigation by the Commission for possible violations of the Federal securities laws; and

(2) how such declines have affected assets held in public and private pension plans.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller shall submit a report to Congress on the results of the analysis conducted under subsection (a).

SA 4269. Mr. DASCHLE (for Mr. LEVIN (for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN)) proposed an amendment to the 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; as follows:

In the amendment on page 2 in line 17 strike director. and insert directors.

SEC. 605. ADMINISTRATIVE PROCEEDINGS REGARDING BANS ON SERVICE.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND 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), or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class or securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICER AND 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) from acting as an officer or director of any issuer that has a class or 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 conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 606. AUTHORITY TO ASSESS CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end a new subsection as follows:

''(g) AUTHORITY OF THE COMMISSION TO ASSESS MONEY PENALTY.—

''(1) IN GENERAL.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that a person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $100,000 for a natural person or $250,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for such act or omission described in paragraph (1) shall be $500,000 for a natural person or $1,000,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $1,000,000 for a natural person or $2,000,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) in paragraph (4), by striking ''supervision;'' and all that follows through the end of the subsection and inserting ''supervision.'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) in subparagraph (C), by striking ''therein;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) in subparagraph (D), by striking ''supervision;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

SEC. 607. INCREASED MAXIMUM CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(1) in subparagraph (A)(i), by—

(A) striking ''$5,000'' and inserting ''$100,000''; and

(B) striking ''$50,000'' and inserting ''$250,000'';

(2) in subparagraph (B)(i), by—

(A) striking ''$50,000'' and inserting ''$500,000''; and

(B) striking ''$250,000'' and inserting ''$1,000,000''; and

(3) in subparagraph (C)(i), by—

(A) striking ''$100,000'' and inserting ''$1,000,000''; and

(B) striking ''$500,000'' and inserting ''$2,000,000''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(A) in subsection (b), by striking ''$100'' and inserting ''$10,000''; and

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking ''$10,000'' and inserting ''$500,000''; and

(ii) in paragraph (2)(B), by striking ''$2,000'' and inserting ''$500,000''.

(2) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking ''$1,000,000'' and inserting ''$2,000,000''.

(3) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in paragraph (2), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in paragraph (3), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(4) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in clause (ii), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in clause (iii), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(c) INVESTMENT COMPANY ACT OF 1940.—

(1) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(d) INVESTMENT ADVISORS ACT OF 1940.—

(1) REGISTRATION.—Section 203(i)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT ADVISORS ACT.—Section 209(e)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

SEC. 608. AUTHORITY TO OBTAIN FINANCIAL RECORDS.

Section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is amended—

(1) by striking paragraphs (2) through (8);

(2) in paragraph (9), by striking ''(9)(A)'' and all that follows through ''(B) The'' and inserting ''(3) The'';

(3) by inserting after paragraph (1), the following:

''(2) ACCESS TO FINANCIAL RECORDS.—

''(A) IN GENERAL.—Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may obtain access to and copies of, or the information contained in, financial records of any person held by a financial institution, including the financial records of a customer, without notice to that person, when it acts pursuant to a subpoena authorized by a formal order of investigation of the Commission and issued under the securities laws or pursuant to an administrative or judicial subpoena issued in a proceeding or action to enforce the securities laws.

''(B) NONDISCLOSURE OF REQUESTS.—If the Commission so directs in its subpoena, no financial institution, or officer, director, partner, employee, shareholder, representative or agent of such financial institution, shall, directly or indirectly, disclose that records have been requested or provided in accordance with subparagraph (A), if the Commission finds reason to believe that such disclosure may—

''(i) result in the transfer of assets or records outside the territorial limits of the United States;

''(ii) result in improper conversion of investor assets;

''(iii) impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction;

''(iv) endanger the life or physical safety of an individual;

''(v) result in flight from prosecution;

''(vi) result in destruction of or tampering with evidence;

''(vii) result in intimidation of potential witnesses; or

''(viii) otherwise seriously jeopardize an investigation or unduly delay a trial.'';

(4) by striking paragraph (10); and

(5) by redesignating paragraphs (11), (12), and (13) as paragraphs (4), (5), and (6), respectively.

SA 4270. Mr. MCCAIN submitted an amendment intended to be proposed by him to the 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; as follows:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

SA 4271. Mr. REID (for Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE)) proposed an amendment to the 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; as follows:

At the end of the instructions add the following:

''(c) 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 empl9yed directly or indirectly by the company, or to the board of directors.

SA 4272. Mr. REID (for Mr. LEVIN (for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN)) proposed an amendment to amendment SA 4271 proposed by Mr. REID (for Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE)) to the 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; as follows:

In the amendment on page 2 in line 17 strike director. and insert directors.

SEC. 605. ADMINISTRATIVE PROCEEDINGS REGARDING BANS ON SERVICE.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND 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), or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class or securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICER AND 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) from acting as an officer or director of any issuer that has a class or 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 conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 606. AUTHORITY TO ASSESS CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end a new subsection as follows:

''(g) AUTHORITY OF THE COMMISSION TO ASSESS MONEY PENALTY.—

''(1) IN GENERAL.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that a person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $100,000 for a natural person or $250,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for such act or omission described in paragraph (1) shall be $500,000 for a natural person or $1,000,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $1,000,000 for a natural person or $2,000,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) in paragraph (4), by striking ''supervision;'' and all that follows through the end of the subsection and inserting ''supervision.'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) in subparagraph (C), by striking ''therein;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) in subparagraph (D), by striking ''supervision;'' and all that follows through the end of the paragraph and inserting ''supervision.'';

(2) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(3) by inserting ''that such penalty is in the public interest and'' after ''hearing,'';

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, is about to violate, or has been or will be the cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.''.

SEC. 607. INCREASED MAXIMUM CIVIL MONEY PENALTIES.

(a) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(1) in subparagraph (A)(i), by—

(A) striking ''$5,000'' and inserting ''$100,000''; and

(B) striking ''$50,000'' and inserting ''$250,000'';

(2) in subparagraph (B)(i), by—

(A) striking ''$50,000'' and inserting ''$500,000''; and

(B) striking ''$250,000'' and inserting ''$1,000,000''; and

(3) in subparagraph (C)(i), by—

(A) striking ''$100,000'' and inserting ''$1,000,000''; and

(B) striking ''$500,000'' and inserting ''$2,000,000''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(A) in subsection (b), by striking ''$100'' and inserting ''$10,000''; and

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking ''$10,000'' and inserting ''$500,000''; and

(ii) in paragraph (2)(B), by striking ''$2,000'' and inserting ''$500,000''.

(2) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking ''$1,000,000'' and inserting ''$2,000,000''.

(3) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in paragraph (2), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in paragraph (3), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(4) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in clause (ii), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in clause (iii), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$12,000,000''.

(c) INVESTMENT COMPANY ACT OF 1940.—

(1) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(d) INVESTMENT ADVISORS ACT OF 1940.—

(1) REGISTRATION.—Section 203(i)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$2,000,000''.

(2) ENFORCEMENT OF INVESTMENT ADVISORS ACT.—Section 209(e)(2) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(A) in subparagraph (A), by—

(i) striking ''$5,000'' and inserting ''$100,000''; and

(ii) striking ''$50,000'' and inserting ''$250,000'';

(B) in subparagraph (B), by—

(i) striking ''$50,000'' and inserting ''$500,000''; and

(ii) striking ''$250,000'' and inserting ''$1,000,000''; and

(C) in subparagraph (C), by—

(i) striking ''$100,000'' and inserting ''$1,000,000''; and

(ii) striking ''$500,000'' and inserting ''$12,000,000''.

SEC. 608. AUTHORITY TO OBTAIN FINANCIAL RECORDS.

Section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is amended—

(1) by striking paragraphs (2) through (8);

(2) in paragraph (9), by striking ''(9)(A)'' and all that follows through ''(B) The'' and inserting ''(3) The'';

(3) by inserting after paragraph (1), the following:

''(2) ACCESS TO FINANCIAL RECORDS.—

''(A) IN GENERAL.—Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may obtain access to and copies of, or the information contained in, financial records of any person held by a financial institution, including the financial records of a customer, without notice to that person, when it acts pursuant to a subpoena authorized by a formal order of investigation of the Commission and issued under the securities laws or pursuant to an administrative or judicial subpoena issued in a proceeding or action to enforce the securities laws.

''(B) NONDISCLOSURE OF REQUESTS.—If the Commission so directs in its subpoena, no financial institution, or officer, director, partner, employee, shareholder, representative or agent of such financial institution, shall, directly or indirectly, disclose that records have been requested or provided in accordance with subparagraph (A), if the Commission finds reason to believe that such disclosure may—

''(i) result in the transfer of assets or records outside the territorial limits of the United States;

''(ii) result in improper conversion of investor assets;

''(iii) impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction;

''(iv) endanger the life or physical safety of an individual;

''(v) result in flight from prosecution;

''(vi) result in destruction of or tampering with evidence;

''(vii) result in intimidation of potential witnesses; or

''(viii) otherwise seriously jeopardize an investigation or unduly delay a trial.'';

(4) by striking paragraph (10); and

(5) by redesignating paragraphs (11), (12), and (13) as paragraphs (4), (5), and (6), respectively.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, July 11, 2002, at 9:30 a.m., on global climate change and the U.S. Climate Action Report.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to hold a hearing during the session of the Senate on Thursday, July 11, 2002, at 10 a.m. in SD–366.

The purpose of the hearing is to explore the Department of Energy's progress in implementing its accelerated cleanup initiative and the changes DOE has proposed to the Environmental Management science and technology program.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Thursday, July 11, 2002, at 9:30 a.m. to conduct a hearing to assess the progress of national recycling efforts. The Committee will evaluate two areas of recycling. First, the Committee is interested in assessing what the federal government is doing to ensure the federal procurement of recycled-content products, and what can be done to improve these efforts. Second, the Committee is interested in evaluating the concept of producer responsibility specifically related to the beverage industry.

The hearing will be held in SD–406.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in Open Executive Session during the session of the Senate on Thursday, July 11, 2002 at 10 a.m.

Agenda:

S. 321, Family Opportunity Act.

S. 724, Mothers and Newborns Health Insurance.

S. 1971, National Employee Savings and Trust Equity Guarantee Act.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, July 11, 2002 at 2 p.m., to hear testimony on ''Protecting the Social Security Number.''

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

COMMITTEE ON FOREIGN RELATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session on the Senate on Thursday, July 11, 2002 at 2:30 p.m. to hold a hearing on implementing U.S. Policy in Sudan.

Agenda

Witnesses

Panel 1: The Honorable Walter Kansteiner, Assistant Secretary of State for African Affairs, Department of State, Washington, DC and the Honorable Roger Winter, Assistant Administrator for Democracy, Conflict, Humanitarian Assistance, U.S. Agency for International Development, Washington, DC.

Panel 2: Mr. John Prendergast, Co-Director, Africa Program, International Crisis Group, Washington, DC.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Thursday, July 11, 2002, at 10:00 a.m. in SD–430 during the session of the Senate.

Agenda

S. 710, Eliminate Colorectal Cancer Act of 2002.

S. 2328, Safe Motherhood Act for Research and Treatment

S. 812, Greater Access to Affordable Pharmaceuticals Act of 2001

S. 2489, Lifespan Respire Care Act of 2002

Nominations: Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities, Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts, Robert Davila, of New York, to be a Member of the National Council on Disability; Michael Pack, of Maryland, to be a Member of the National Council on the Humanities; and Peter J. Hurtgen, of Maryland, to be Federal Mediation Conciliation Director.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, July 11, 2002 at 10:00 a.m., in SD226.

AGENDA

NOMINATIONS

John M. Rogers to be a United States Circuit Court Judge for the Sixth Circuit.

To be a United States Attorney; Marcos D. Jimenez for the Southern District of Florida, and Miriam F. Miquelon for the Southern District of Illinois.

To be a United States Marshal: James Robert Dougan for the Western District of Michigan, and George Brefini Walsh for the District of Columbia.

BILLS

H.R. 3375, Embassy Employee Compensation Act [Blunt].

S. 486, Innocence Protection Act [Leahy/Smith].

S. 862, State Criminal Alien Assistance Program Reauthorization Act of 2001 [Feinstein/Kyl/Durbin/Cantwell].

S. 2395, Anticounterfeiting Amendment of 2002 [Biden/Hatch/Leahy/Feinstein/DeWine].

S. 2513, DNA Sexual Assault Justice Act of 2002 [Biden/Cantwell/Specter/Clinton/Carper].

RESOLUTIONS

S. Res. 293, A resolution designating the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country. [Biden].

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

SUBCOMMITTEE ON EMPLOYMENT, SAFETY, AND TRAINING

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Employment, Safety, and Training be authorized to meet for a hearing on Workplace Safety and Health: Oversight of MSHA and OSHA regulation and enforcement during the session of the Senate on Thursday, July 11, 2002 at 10:00 a.m.

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

PRIVILEGE OF THE FLOOR

Mr. SARBANES. Madam President, I ask unanimous consent that Glenna Humphries, a fellow in the office of Senator BILL NELSON of Florida, be granted the privilege of the floor during deliberations of S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002.

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

Mr. REID. Madam President, I ask unanimous consent that Bill Michael, a fellow on the staff of the majority leader, be granted floor privileges during the debate on S. 2673.

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

ORDERS FOR FRIDAY, JULY 12, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it recess until 9:15 a.m., Friday, July 12; that following the prayer and pledge, the Senate resume consideration of the accounting reform bill with the time until 9:30 equally divided between the two managers for debate only prior to the vote on cloture on the bill; further, that Senators have until 9:25 a.m. to file second-degree amendments to the accounting reform bill.

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

PROGRAM

Mr. REID. Madam President, we are not going to go out right now. The staff has a number of things they need to do so we can complete our wrap-up. On behalf of the majority leader, there will be no more rollcall votes today. The next rollcall will occur tomorrow morning at approximately 9:30 a.m. The leader asked me to notify everyone that additional rollcall votes are very possible until about noon tomorrow; also, that there likely will be votes Monday afternoon starting at 2 o'clock.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

GLOBAL AIDS AND TUBERCULOSIS RELIEF ACT OF 2000

Mr. REID. Madam President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of H.R. 2069 and the Senate proceed to its immediate consideration; that the substitute amendment at the desk be agreed to; that the act, as amended, be read the third time and passed; the amendment to the title be agreed to; and that the motion to reconsider be laid on the table, all with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. Madam President, this has not been cleared on our side, so I have to object.

The PRESIDING OFFICER. Objection is heard.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENTS NUMBERED 107–9, 107–10, AND 107–11

Mr. REID. Madam President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty, agreement, and protocol transmitted to the Senate on July 11, 2002, by the President of the United States:

Treaty with Ireland on Mutual Legal Assistance in Criminal Matters—Treaty Document No. 107–9;

Agreement with Russian Federation concerning Polar Bear Population—Treaty Document No. 107–10;

Second Protocol Amending the Extradition Treaty with Canada—Treaty Document No. 107–11.

I further ask that the treaty, agreement, and protocol be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters, signed at Washington on January 18, 2001. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of crimes, including terrorism, drug trafficking, fraud, and other white-collar offenses. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking the testimony or statements of persons; providing documents, records, and articles of evidence; locating or identifying persons; serving documents; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings; and such other assistance as may be agreed.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 11, 2002.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population done at Washington on October 16, 2000 (the ''U.S.-Russia Agreement''). I also transmit, for the information of the Senate, the report of the Department of State with respect to that Agreement.

The U.S.-Russia Agreement provides legal protections for this population of polar bears in addition to those found in the Agreement on the Conservation of Polar Bears done at Oslo, November 13, 1973 (the ''1973 Agreement''), which was a significant, early step in the international conservation of polar bears. The 1973 Agreement is a multilateral treaty to which the United States and Russia are parties. (The other parties are Norway, Canada, and Denmark.) The 1973 Agreement provides authority for the maintenance of a subsistence harvest of polar bears and provides for habitat conservation.

The proposed U.S.-Russia Agreement, which would operate as a free-standing treaty separate from the 1973 Agreement, is the culmination of an 8-year effort. The U.S.-Russia Agreement builds on the 1973 Agreement to establish a common legal, scientific, and administrative frame work for the conservation and management of the Alaska-Chukotka polar bear population, which is shared by the United States and the Russian Federation. For example, the U.S.-Russia Agreement provides a definition of ''sustainable harvest'' that will help the United States and Russia to implement polar bear conservation measures while safeguarding the interests of native people. In addition, the U.S.-Russia Agreement establishes the U.S.-Russia Polar Bear Commission, which would function as the bilateral managing authority to make scientific determinations, establish taking limits, and carry out other responsibilities under the terms of the U.S.-Russia Agreement. The proposed U.S.-Russia Agreement would strengthen the conservation of our shared polar bear population through a coordinated sustainable harvest management program.

Early ratification of the U.S.-Russia Agreement by the United States will reinforce our leadership role in international conservation of marine mammals and will encourage similar conservation action by other countries. I recommend that the Senate give early and favorable consideration to this Agreement and give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 11, 2002.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Second Protocol Amending the Treaty on Extradition Between the Government of the United States of America and the Government of Canada, as amended, signed at Ottawa on January 12, 2001. In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Second Protocol. As the report explains, the Second Protocol will not require implementing legislation.

The Second Protocol amends the Extradition Treaty Between the United States of America and Canada, signed at Washington on December 3, 1971, as amended by an Exchange of Notes of June 28 and July 9, 1974, and by a Protocol signed at Ottawa on January 11, 1988.

The Second Protocol, upon entry into force, will enhance cooperation between the law enforcement communities of both nations. The Second Protocol incorporates into the U.S.-Canada Extradition Treaty a provision on temporary surrender of persons that is a standard provision in more recent U.S. bilateral extradition treaties. It also provides for new authentication requirements for documentary evidence, which should streamline the processing of extradition requests.

I recommend that the Senate give early and favorable consideration to the Second Protocol and give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 11, 2002.*

MEASURE READ THE FIRST TIME—H.R. 4635

Mr. REID. Madam President, it is my understanding that H.R. 4635 is at the desk, and I now ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 4635) to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

Mr. REID. Madam President, I now ask for its second reading, but I object to my own request.

The PRESIDING OFFICER. The bill will receive its second reading on the next legislative day.

MEASURE READ THE FIRST TIME—H.R. 5017

Mr. REID. Madam President, I understand H.R. 5017 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 5017) to amend the Temporary Emergency Wildfire Suppression Act to facilitate the ability of the Secretary of the Interior and the Secretary of Agriculture to enter into reciprocal agreements with foreign countries for the sharing of personnel to fight wildfires.

Mr. REID. Madam President, I now ask for its second reading, but I object to my own request.

The PRESIDING OFFICER. The bill will receive its second reading on the next legislative day.

ORDER FOR RECESS

Mr. REID. Madam President, I ask unanimous consent that following the remarks of Senator SHELBY, the Senate stand in recess under the order previously entered by the Chair.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SECURITIES FRAUD

Mr. SHELBY. Madam President, over the course of the last 6 months, the longstanding, systemic fraudulent activities of numerous corporations have been exposed in America and around the world. This fraud has cost American investors massive amounts, perhaps hundreds of billions of dollars, perhaps more. Beyond the tangible losses, investor confidence in the integrity of our capital markets has also taken a tremendous hit, as the Presiding Officer knows.

As we move forward to address the shortcomings in the oversight of our financial markets, we must carefully consider the true impact of what has occurred. Thousands of people have lost billions of dollars. Thousands of people have lost jobs. Millions of people have lost or are losing faith in our capital markets every day.

The fact is, none of this is made any easier because of the manner in which this has happened. Americans don't feel better because the mugging took place in the boardroom rather than the back alley. In many ways, what has happened is even worse. Because of the sheer size and number of participants in our markets, the corporate scams have been much more efficient and much more effective than the average boiler room fraud.

The bottom line is this: Real people are facing tremendous losses, and confidence in our system is eroding.

I believe we must address this situation with concrete measures. Fraud, even if committed by white-collar individuals—indeed, especially if committed by white-collar individuals—needs to be severely punished with criminal sanctions.

I commend the efforts to create new, tough penalties for people who commit fraud through our securities markets. I supported that, as most of the people in the Senate did.

Additionally, I believe there is more that we can do to stop or slow down the kinds of conduct that lead to situations where investing Americans are swindled out of hundreds of billions of dollars. The fact is, in one key area, the appropriate disincentives for participating in securities fraud are just not in place today.

Since 1994, after the Supreme Court ruling in the Central Bank case, there has been no liability for secondary actors who aid and abet securities fraud in America. Think about that. Since 1994, there has been no liability for secondary actors who aid and abet securities fraud. In effect, the decision in the Central Bank case led to legions of accountants, lawyers, and other security specialists who play a vital yet behind-the-scenes role in securities transactions, off the hook for down-the-line fraud in the sale of securities.

Think of it like this: The guys who procure the getaway car before the robbery, tune it up, fill it up with gas, put air in the tires, and sometimes even drive it away, face no financial liability for their involvement.

Does that make any sense? Not to me. I believe not to the majority of the Senate, if we could get a vote on the Shelby-Durbin amendment. And we will someday because this is not an issue that is going to go away.

When attorneys, accounting firms, and other securities professionals know that assisting securities fraud is nothing to worry about, as it is today, there is no wonder there has been a proliferation of audit failures, restatements, Enrons, Global Crossings, WorldComs, and many more to come. Civil and criminal penalties are important and necessary, but they are not sufficient. They serve a separate but important purpose of punishing fraudulent behavior. But they do nothing to ensure that investors, the victims, have an opportunity to seek financial redress. Civil liability supplements criminal and civil penalties and acts as a further disincentive to engage in or assist fraudulent activities.

Here are a couple of basic questions we all need to answer. Why shouldn't investors—that is, so many million in America—be able to recover losses from aiders and abettors of securities fraud? What public interest do we serve by inoculating aiders and abettors of securities fraud from civil liability? Why should this type of tort, this fraud, not give rise to a civil claim, particularly when the loss to the investor and impact on the markets is so great, as it is today?

Investors are intentionally being defrauded. Yet they have no remedy at the moment to seek monetary redress from those who aid and abet these crimes. Why? The answer is, aiders and abettors play a vital role in allowing primary actors to commit fraud. They should, accordingly, be held proportionately liable for their participation in these fraudulent schemes.

I believe for our capital markets to function properly, it is not sufficient that financial information is accurate. The public must also have full faith and confidence that it is honest, that we have integrity there.

Accountants, lawyers, and other securities professionals perform, by design, a gatekeeping function within our securities markets. It is unacceptable, I believe, that those upon whom so many rely—all of us—those whose activities can literally move markets, are not held to the highest standards. Something is wrong.

Forty years ago, at a time when securities transactions were considerably less sophisticated than they are today, Judge Henry Friendly, a distinguished jurist remarked:

> In our complex society, the accountant's certificate and the lawyer's opinion can be instruments for pecuniary lost more potent than the chisel or the crowbar.

Today's staggering shareholder losses demonstrate that over time legal and accounting gimmicks have only grown more potent.

I believe we must create greater disincentives for those who would assist securities fraud. Restoring liability for aiders and abettors of securities fraud should make securities professionals think once, twice, even three times before they put their seal of approval on information sent to the marketplace. Such carefulness will serve investors and our markets well in the future.

Our economy has provided the best material standard of living in the world because our capital markets have traditionally favored clarity over complexity, disclosure over dissembling, and fairness over favoritism. For the sake of future economic growth and prosperity, I believe we must put those principles back into practice.

Senator DURBIN and I are going to continue to pursue our amendment. As I said earlier, this is not going to go away because there are going to be more scheduled. I wish we could have done it on this bill. I yield the floor.

RECESS UNTIL 9:15 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9:15 a.m. tomorrow.

Thereupon the Senate, at 6:41 p.m. recessed until Friday, July 12, 2002, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate July 11, 2002:

FEDERAL RESERVE SYSTEM

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 1990, VICE EDWARD W. KELLY, JR., RESIGNED.

DONALD L. KOHN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2002, VICE LAURENCE H. MEYER, RESIGNED.

FEDERAL DEPOSIT INSURANCE CORPORATION

JOHN M. REICH, OF VIRGINIA, TO BE VICE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, VICE ANDREW C. HOVE, JR.

NATIONAL TRANSPORTATION SAFETY BOARD

RICHARD F. HEALING, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM EXPIRED DECEMBER 31, 2006, VICE GEORGE W. BLACK, JR., TERM EXPIRED.

THE JUDICIARY

ALIA M. LUDLUM, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS, VICE HARRY LEE HUDSPETH, RETIRED.