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Senate

(Legislative day of Monday, June 19, 1995)

The Senate met at 8:40 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Gracious Lord, we begin the work of this day with awe and wonder. You have chosen and called us to know, love, and serve You. Through the years You have honed the intellect, talent, and ability You have entrusted to each of us. With providential care You have opened doors of opportunity, education, culture, and experience. Most important of all, You have shown us that daily You are ready and willing to equip us with supernatural power through the anointing of our minds with the gifts of Your Spirit: wisdom, knowledge, discernment, and vision of Your priorities.

When we ask You, You reveal Your truth and give us insight on how to apply it to specific decisions before us. We say with the Psalmist, ''In the day when I cried out, You answered me, and made me bold with strength in my soul.''—Psalm 138:3.

We thank You that in a time of restless relativism and easy equivocation, You make us leaders who are intrepidly bold in the fecklessness of our time. Now, as the Senators press on to the votes and responsibilities of this day continue to give them the boldness of Your strength in their souls, manifested in conviction and courage. In Your holy name. Amen.

RESERVATION OF LEADER TIME

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

PRIVATE SECURITIES LITIGATION REFORM ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 240, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 240) to amend the Securities and Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act.

The Senate resumed consideration of the bill.

Pending:

Boxer amendment No. 1480, to exclude insider traders who benefit from false or misleading forward looking statements from safe harbor protection.

Specter amendment No. 1483, to provide for sanctions for abuse litigation.

Specter amendment No. 1484, to provide for a stay of discovery in certain circumstances.

Specter amendment No. 1485, to clarify the standard plaintiffs must meet in specifying the defendant's state of mind in private securities litigation.

Mr. D'AMATO. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

VOTE ON AMENDMENT NO. 1483

Mr. D'AMATO. Mr. President, I move to table the Specter amendment, numbered 1483, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on agreeing to the motion to table the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Mississippi [Mr. COCHRAN] and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—57

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Bennett	Frist	Mikulski
Breaux	Gorton	Murkowski
Brown	Gramm	Murray
Burns	Grams	Nickles
Campbell	Grassley	Nunn
Chafee	Gregg	Pressler
Coats	Hatfield	Reid
Cohen	Helms	Robb
Conrad	Hollings	Rockefeller
Coverdell	Hutchison	Santorum
Craig	Inhofe	Shelby
D'Amato	Kempthorne	Simpson
Daschle	Kyl	Smith
Dodd	Lieberman	Thomas
Domenici	Lott	Thompson
Exon	Lugar	Thurmond
Faircloth	Mack	Warner

NAYS—38

Akaka	Glenn	Levin
Baucus	Graham	Moseley-Braun
Biden	Harkin	Moynihan
Bingaman	Hatch	Packwood
Boxer	Heflin	Pell
Bradley	Inouye	Roth
Bryan	Jeffords	Sarbanes
Bumpers	Kennedy	Simon
Byrd	Kerrey	Snowe
DeWine	Kerry	Specter
Dole	Kohl	Stevens
Dorgan	Lautenberg	Wellstone
Feingold	Leahy	

ANSWERED ''PRESENT''—1

Bond

NOT VOTING—4

Cochran	Kassebaum
Johnston	Pryor

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

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So the motion to table the amendment (No. 1483) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1484

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes for debate equally divided on the second Specter amendment, 1484, to be followed by a vote on the amendment. Who yields time?

Mr. SPECTER. Mr. President, before my 2 minutes commence, may we have order in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment would leave it to the discretion of the trial judge, as the Federal judges have discretion in all other cases, to decide whether there ought to be discovery after the defense files a motion to dismiss. The judges currently have the full authority to stop discovery if it is inappropriate.

What is happening here, as with many of the other rules changes in the bill, is a wholesale revolution in the way securities cases are handled without having followed any of the usual procedures prescribed by law under which the Supreme Court of the United States establishes the rules after hearings and consideration by advisory committees and recommendation from the Judicial Conference, and without ever having had the Committee on the Judiciary consider these issues.

It is true that there are some frivolous lawsuits which are filed in America today, but we are dealing here with an industry which in 1993 had transactions on the stock exchanges of $3.663 trillion, new issues of $54 billion, and the savings of many small investors and the proverbial widows and orphans at risk.

The Securities and Exchange Commission does not have the resources to handle all the potential violations as enforcement matters. That is why there are private actions. When you take a look at the lawyers' fees, they are a pittance compared to the over $3.6 trillion involved. What is happening here, Mr. President, is we are not throwing the baby out with the bath water. We are throwing out the entire family with the bath water.

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

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, if we are going to talk about the securities industry we should talk about its role in capital formation, in fact the securities industry is an integral part of the American system—and that system is now being ripped off. As a matter of fact, one law firm does handle about 30 percent of all this litigation. They go out and hire plaintiffs, they have lists of plaintiffs to chose from, and then they race to the courthouse.

Let me tell you, once they bring the suit, firms feel they have to surrender. In 93 percent of the cases brought, people give up. Do you know why? Because the average case costs you $6 million to defend; so even if you win you lose.

So the defendants are forced to settle before costs get too high. The people, the small investors get nothing back. The law firm rakes in the settlement. No wonder the lawyers want to keep the system the same.

Now, let me tell you something what this legislation says on staying discovery. When a person makes a motion to dismiss, ''discovery and other proceedings shall be stayed unless the Court finds, upon the motion of any other party, that particularized discovery is necessary to preserve evidence.''

So you can stay discovery unless the court rules against that motion. If you cannot stay discover, however, then they are in there fishing, fishing, fishing, until they find any piece of evidence to force corporate America to give up, to surrender. The little guy is not protected by this process. The interest of a group of entrepreneurial lawyers is advanced. This amendment would continue that system and let those lawyers continue to go out fishing and keep corporate America held hostage. It is about time we freed them.

Mr. President, if all time has been yielded back, I move to table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment No. 1484, offered by the Senator from Pennsylvania, [Mr. SPECTER]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BOND (when his name was called). Present

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—52

Abraham	Frist	Mack
Ashcroft	Gorton	McConnell
Bennett	Gramm	Mikulski
Breaux	Grams	Moseley-Braun
Brown	Grassley	Murkowski
Burns	Gregg	Murray
Chafee	Harkin	Nickles
Coats	Hatch	Pressler
Coverdell	Hatfield	Pryor
Craig	Helms	Reid
D'Amato	Hutchison	Simpson
Daschle	Inhofe	Smith
Dodd	Johnston	Stevens
Dole	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lieberman	Warner
Feinstein	Lott	
Ford	Lugar	

NAYS—47

Akaka	Feingold	Moynihan
Baucus	Glenn	Nunn
Biden	Graham	Packwood
Bingaman	Heflin	Pell
Boxer	Hollings	Robb
Bradley	Inouye	Rockefeller
Bryan	Jeffords	Roth
Bumpers	Kassebaum	Santorum
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Shelby
Cochran	Kerry	Simon
Cohen	Kohl	Snowe
Conrad	Lautenberg	Specter
DeWine	Leahy	Thompson
Dorgan	Levin	Wellstone
Exon	McCain	

ANSWERED ''PRESENT''—1

Bond

So the motion to table the amendment (No. 1484) was agreed to.

Mr. BENNETT. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1485

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes for debate equally divided for the third Specter amendment No. 1485, to be followed by a vote on or in relation to the amendment.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have asked my colleagues to listen to this amendment. In the well of the Senate, I won several votes, finally having received a hearing on the last amendment.

What this amendment does is to accept the very stringent standard of the second circuit on pleading to show state of mind, and then it adds to the legislation the way the second circuit says you can allege the necessary state of mind.

The bill, quite properly, tightens up the pleading standards by establishing the most stringent rule of any circuit. The committee report takes pride and says that the committee does not adopt a new and untested pleading standard but takes the second circuit standard. But then in four lengthy, well-reasoned opinions, the second circuit has said this is how you can allege the required state of mind. They set two ways down to prove it, which I would like to read to you but I do not have time.

All this amendment does is says that when you take the second circuit standard, admittedly stringent, this is how you get it done—not the exclusive way—but the way you get it done. In asking the managers and the proponents of the bill, I have yet to hear any reason advanced why this is not sound, even after they conferred with their staffs.

This is just basic fundamental fairness that if you take the second circuit standard, you ought to take the entire standard, which is very tough on plaintiffs to establish state of mind, which is hard to prove. How do you get into somebody else's head? But at least

when the second circuit says this is the way it ought to be done and the bill says let us make it really tough, at least let the plaintiff know how they are going to be able to plead it by the way the second circuit itself permits.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from New York.

Mr. D'AMATO. Mr. President, I know that the proponents of this legislation are attempting to stop the kind of litigation that has made securities cases a sham. This amendment goes too far, however, because it actually tells the court how to interpret S. 240's pleading standards. S. 240 codifies the second circuit pleading standard, but this amendment goes further, to say precisely what evidence a party may present to show a strong inference of fraudulent intent. I think this straitjackets the court.

Having said that, I could accept referring to the courts interpretation, but I think we are going too far if we adopt the language that the court referred to because it would tie the courts hand by forcing it to ask that plaintiffs prove exactly the delineated facts; alleging facts to show the defendant had both the motive and opportunity to commit fraud and by alleging facts that constitute strong circumstantial evidence.

To be quite candid with you, I think it places too great a burden on the plaintiffs, and I have a difficult time understanding how the Senator from Pennsylvania feels that this would add fairness to this process. We tried to be balanced in setting this standard, that is why we did not straitjacket the court with the language in this amendment.

Mr. President, I am not going to move to table. 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 question is on agreeing to amendment No. 1485, offered by the Senator from Pennsylvania [Mr. SPECTER]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—57

Abraham	Dodd	Kennedy
Akaka	Dorgan	Kerrey
Baucus	Exon	Kerry
Biden	Feingold	Kohl
Boxer	Feinstein	Lautenberg
Bradley	Ford	Leahy
Breaux	Glenn	Levin
Bryan	Graham	Lieberman
Byrd	Heflin	Lugar
Chafee	Hollings	Mack
Cochran	Inouye	McCain
Cohen	Jeffords	Mikulski
Conrad	Johnston	Moseley-Braun
Daschle	Kassebaum	Moynihan
Murray	Robb	Shelby
Nunn	Rockefeller	Simon
Packwood	Roth	Snowe
Pell	Santorum	Specter
Pryor	Sarbanes	Wellstone

NAYS—42

Ashcroft	Faircloth	Kyl
Bennett	Frist	Lott
Bingaman	Gorton	McConnell
Brown	Gramm	Murkowski
Bumpers	Grams	Nickles
Burns	Grassley	Pressler
Campbell	Gregg	Reid
Coats	Harkin	Simpson
Coverdell	Hatch	Smith
Craig	Hatfield	Stevens
D'Amato	Helms	Thomas
DeWine	Hutchison	Thompson
Dole	Inhofe	Thurmond
Domenici	Kempthorne	Warner

ANSWERED ''PRESENT''—1

Bond

So the amendment (No. 1485) was agreed to.

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

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1480

The PRESIDING OFFICER. Under the previous order, there will be 7 minutes of debate on the Boxer amendment, with 5 minutes under the control of Senator BOXER and 2 minutes under the control of the Senator from New York, to be followed by a vote on or in relation to the amendment.

Mrs. BOXER. Thank you, Mr. President. My colleagues, I will make this very brief and, I hope, interesting, because I think it is an interesting issue that is raised by the Boxer amendment. This is the last Boxer amendment on this bill, I am happy to say.

I think we have shown in this Chamber we can be very tough on crime. Today I am giving Members a chance to show we can be tough on white-collar crime. I am afraid if we do not adopt this amendment, we are opening the door to insider trading, which could really hurt a lot of small investors.

My amendment simply says that you do not get the benefit of the safe harbor in S. 240 if you are an insider trader who personally profits in connection with the issuance of a false and misleading statement.

Let me show a couple of real examples. Here is the company called Crazy Eddie. Some may remember. What happened here? The insiders bought a lot of the stock, it went up, and at the peak, they started selling it after they made a false and misleading statement: ''We are confident that our market penetration can grow appreciably. Growing evidence of consumer acceptance of the Crazy Eddie name augurs well for continuing growth.'' They get out, and the top officer flees the country with millions of dollars. The CEO is convicted of fraud. Under this bill, the safe harbor would apply to these people.

I will show another quick example. Here is another company, T2 Medical. They said: ''T2 plans to lead the way through the 1990's. We expect steady revenue in earnings growth.'' Then there is a bad report about the company, which they obviously knew because they get out of the stock. It goes down and all the stockholders are left holding the bag.

What we are basically saying is, if you are an insider and you benefit, you should not have the benefit of the safe harbor under this bill.

I want to tell Members what the opponents of my amendment have said. First, they said my definition of insiders is too broad. Nothing could be farther from the truth. It is a boilerplate. It is the corporation, it is the officers, and the board of directors. That is what insiders are.

Then they say, ''But, Senator, you include purchases as well as sales.'' Anyone who follows the stock market knows that insiders often purchase the stock of a company before the false and misleading statement so they can get in at a cheap price.

The last thing they have said is that, ''Gee, this is covered by another statute.'' That is not true. Only if you happen to buy the specific shares that the insider sells you, are you covered in another statute. If you are an ordinary shareholder, a small investor, you get hit, because these guys run away with all the money, the stock, plus you are left holding the bag.

I want to show one article here. If Members are wondering whether insider trading is common now—because we heard about it in the 1980's—let me tell Members about it. Saturday, in the Los Angeles Times, ''Insider-Trading Probes Make a Comeback.'' '''We have more insider-trading investigations now than at any time since the takeover boom in the 1980's,' says Thomas Newkirk, Associate Director of Enforcement for the Securities and Exchange Commission.''

Then I thought this statement by Gary Lynch, who, as chief of enforcement at the SEC in the 1980's, brought about the investigations of Boesky and Milken: ''What's happening now is exactly what everyone predicted back in the '80's: That with the number of high profile cases brought, the incidence of insider trading would decline for a while, but as memories dulled, insider trading would pick up again,'' said Lynch. ''The temptation is too great for people to resist.''

So, insider trading is back. We should not have a safe harbor for these people. Forty-eight Members voted for one of the Sarbanes amendments, which would have taken another look at this safe harbor. It did not pass.

I say to my friends who voted against that, the least those Members can do is narrow the safe harbor for people who profit, who make false and misleading statements. I want to say that again: The only people who would not get the safe harbor in S. 240 under the Boxer amendment are those insiders who personally profit in connection with the issuance of a false and misleading statement.

I urge my colleagues, please stand up against white-collar crime. I think this is a very good amendment Members could be proud to support. I yield the floor.

Mr. D'AMATO. Mr. President, I yield 1½ minutes to the Senator from Utah.

Mr. BENNETT. Mr. President, I hesitate to challenge my friend from California. She has a background as a stockbroker. This is an area where she has great expertise.

I must share with Members my own experience in trying to recruit directors for a company that would become a public company. They said, ''The grief that goes with being a director under the present law is so overwhelming that I simply do not need it. I will not accept appointment as a director.'' The only way we could change their minds was to assure them that we had 20 million dollars' worth of officer and director insurance.

I know from my own experience as a director of a public company that the present law is very stringent and, in my opinion, adequate. I am forbidden, as a director, to buy or sell any securities 30 days prior to a public announcement of our earnings, and, after the announcement has been made, for another 48 hours after that announcement, I cannot enter the market to either buy or sell under the present law.

In my opinion, the present law is sufficient. The kind of people that are being talked about in the article that she offers from the Wall Street Journal are breaking the law now and we do not need the redundancy of the Boxer amendment.

Mr. D'AMATO. Let me say, first of all, insider trading is prohibited by section 10(B) and rule 10b-5 of the Federal securities laws. What this amendment does is destroy the safe harbor, absolutely destroys it. Any small company that pays a director with stock options will be effectively excluded from the safe harbor. All the plaintiff would have to do is allege wrongdoing to bring a suit, which will open up this whole area to continued litigation. This is a carefully crafted amendment which would destroy what we are attempting to do, which is to free corporate America from a group of bandits.

Mr. President, I move to table, and 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 question is on agreeing to the motion to table the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. FORD. I announce that the Senator from Nevada [Mr. REID] is necessarily absent.

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

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—56

Abraham	Frist	Lugar
Ashcroft	Gorton	Mack
Baucus	Gramm	McConnell
Bennett	Grams	Murkowski
Bingaman	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Harkin	Pell
Campbell	Hatch	Pressler
Chafee	Hatfield	Roth
Coats	Helms	Santorum
Cochran	Hutchison	Shelby
Coverdell	Inhofe	Simpson
Craig	Jeffords	Smith
D'Amato	Johnston	Stevens
DeWine	Kassebaum	Thomas
Dodd	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lieberman	Warner
Faircloth	Lott	

NAYS—42

Akaka	Feinstein	McCain
Biden	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Bradley	Graham	Moynihan
Breaux	Heflin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pryor
Byrd	Kennedy	Robb
Cohen	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dorgan	Lautenberg	Snowe
Exon	Leahy	Specter
Feingold	Levin	Wellstone

ANSWERED ''PRESENT''—1

Bond

NOT VOTING—1

Reid

So the motion to table the amendment (No. 1480) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. COHEN. Mr. President, I rise today to express some concerns I have regarding S. 240, the Securities Litigation Reform Act of 1995, as reported by the Banking Committee.

The laudable goal of this legislation has been to reform the Securities Litigation System to curb frivolous lawsuits. I strongly support the goal of deterring meritless securities class action lawsuits and believe that there is room for constructive improvement in the current Federal securities litigation process. In some instances, meritless class action cases can be costly to defend against and may impose large and unnecessary costs on issuers and other participants in the market. In other cases, small investors themselves are taken advantage of by overzealous attorneys.

Nevertheless, in our quest for reform, it is crucial that we do not undermine the right of investors, particularly small investors, to protect themselves against unscrupulous swindlers who use grossly exaggerated claims to lure investors. Private litigation under Federal securities laws is an important complement to the SEC's Enforcement Program. We must not curtail legitimate rights of the investor to litigate.

Over the past several weeks, an intense battle has been waged over the airwaves on the merits and motives of this legislation. At times, these assaults have been aimed not only at the bill's provisions, but at its sponsors as well, with insinuations that supporters of S. 240 are intentionally protecting securities fraud and are against senior citizens. Unfortunately, once again mass media lobbying campaigns have distilled a complex, and I believe earnest, reform effort into a white hat or black hat screenplay, casting any one who supports this branded bill an enemy of senior citizens. Somewhere in this heated debate, I believe that a balance must be achieved that protects the rights of defrauded investors while also providing relief to above board companies who might find themselves the target of meritless or frivolous lawsuits.

Mr. President, as chairman of the Senate Special Committee on Aging, and as a strong advocate of consumer protections against the elderly, I suggest that there can and should be some middle ground. I am extremely concerned about issues that affect the welfare of our senior citizens and, in particular, about fraudulent and abusive practices that are directed against them. The Aging Committee has held a series of hearings on the special needs and issues facing the small, and often unsophisticated, investor. As interest rates declined over the last decade, the quest for higher yields has intensified, particularly among senior citizens who often rely on their investments as a principal means of support. Many of them are low- and middle-income retirees who have worked hard for their pensions, and who must now make these pensions stretch over two or even three decades.

Retirees and others know they can invest in CD's with long periods of maturity, but they are reluctant to tie up their money fearing that they may have to tap into their savings for a major operation, expensive drugs, or some other emergency. As a result, the lucrative securities market became a popular choice for the small, but often financially unsophisticated and inexperienced, investor.

For the first time in American history, investment company assets have surpassed commercial bank deposits. The percentage of U.S. households that own mutual funds has more than quadrupled since 1980, with over 38 million Americans investing in those funds. One out of three American families now have investments in mutual funds or the stock market. While this mass movement into the securities market has provided new opportunities for investors, it has also increased risk, led to a great deal of confusion, and, unfortunately, created opportunities ripe for fraud by securities dealers who misrepresent risks to unsuspecting investors.

Our Aging Committee hearings showed that low interest rates create an environment in which small investors are susceptible to outright investment fraud and abusive sales practices. Senior citizens are not the exclusive prey of these market manipulators, but one factor makes scamming the senior citizen small investor particularly odious: Younger Americans can restore some or all of their losses through new earnings, while seniors' savings are not a renewable resource. Accordingly, scammed seniors living on fixed incomes cannot write their losses off as a lesson learned for the future. Instead, their financial losses may be the loss of their entire future.

Our Aging Committee investigation and hearings revealed a wide range of small investor frauds, from penny stock scams to large mutual fund companies deceptively peddling junk bonds. Our hearings also examined the questionable marketing practices of some banks that sell uninsured investments, such as mutual funds, annuities and stocks. While we should not close the door to banks wanting to sell securities, the hearing pointed out the special dangers and problems that this trend in banking presents, namely that there is tremendous potential for confusion by bank customers about the safety and nature of the investments they are buying. As bank customers are swayed more toward uninsured investments, we must ensure that they are fully informed of the risks inherent in some of these investments and have adequate opportunity to seek redress remedies if they are intentionally misled into these investments.

I cosponsored S. 240 as introduced to indicate my support for securities litigation reform efforts. Frivolous lawsuits have become all too common. I have concerns, however, that the bill reported by the Banking Committee does not strike the appropriate balance between securities litigation reform and investor protection.

First, I question whether the safe harbor provisions of the revised S. 240 may make it very difficult to sue when intentionally misleading information clauses investors to suffer losses. The original S. 240 directed the SEC to develop regulatory safe harbor rules for forward-looking statements. The new version of S. 240, however, establishes statutory safe harbor rules. I am concerned that these rules would unwisely protect even some fraudulent statements that were made knowingly.

I have concerns that the revised version of S. 240 would leave defrauded investors with the nearly insurmountable task of establishing a corporate executive's actual intent, and that a few carefully placed disclaimers could provide a legal protection for misleading statements that were made knowingly.

I believe that the SEC should be given an opportunity to fashion a safe harbor that strikes the proper balance.

Finally, S. 240 as reported dropped the extension of the statute of limitations for private securities fraud actions contained in the original bill. I believe that the extension should have been retained in order to tip the balance of reform more toward investor protections.

I believe that the Banking Committee deserves much credit for addressing some of the major concerns with the original S. 240. The bill before us, for instance, contains no loser-pays provision, a provision of the original bill which caused me concern.

Mr. President, the challenge before us today is to identify ways to make the legal system more balanced and efficient. We must sift through the dueling advertisements and challenges of ''pro-Keating'' and ''antisenior'' on one side and challenges of ''antibusiness'' and ''antireform'' on the other. An appropriate balance between the rights of investors to hold companies responsible for wrongdoing and the need of the companies to be protected from costly, meritless litigation must be achieved.

I believe that the safe harbor rules should be implemented by regulation rather than statute. The regulatory process allows for full and fair comment by all sides to determine appropriate safe harbor rules. Also, once established, regulatory safe harbor rules offer greater flexibility than would statutory ones. In the fast-changing world of investment finance, this flexibility is important.

I wish that S. 240 retained the original safe harbor provision; because it does not, however, I regret that I can no longer support this bill.

Mr. FEINGOLD. Mr. President, the legislation currently before this body, S. 240, the Private Securities Litigation Reform Act of 1995, is very important for two reasons. First, what it seeks to achieve and second, what in actuality it will achieve if passed in its current form.

One of the stated purposes of this legislation is to curb abusive lawsuits—so-called strike suits where lawyers seek to get rich quick by preying on a company which suffers a loss in value. That is what this legislation seeks to do and no one can quarrel with this goal. The interests of the American people and the integrity of the American legal system are not served by meritless lawsuits which drain precious resources from our national economy. This is true not just in the context of securities fraud, but also in the areas of product liability, of medical malpractice, in short, in every field of American jurisprudence. Frivolous lawsuits should be discouraged.

However, what this bill will actually do is limit the rights of investors to recover money they lose due to fraud. Unfortunately, as many of colleagues have already pointed out, this legislation fails to properly balance the goal of stopping frivolous lawsuits with the need to preserve the rights of legitimate investors to recover in cases of securities fraud.

It is important to note that the laws this legislation amends, the Securities Act of 1933 and the Securities Exchange Act of 1934, were the direct result of the Great Depression. As the report to S. 240 points out—the goal of these laws was to promote investor confidence in the securities markets. Unfortunately, the legislation we are now considering will erode, not enhance, investor confidence.

I want to touch briefly upon a few areas that I find particularly problematic.

SAFE HARBORS FOR FORWARD LOOKING STATEMENTS

The pending legislation contains a so-called safe harbor provision for forward looking statements. I support the notion that full and candid disclosure regarding the potential of a given company is beneficial, not only to the potential investors but also to the companies involved. Candor, however, should not be confused with fraud. The standard established by S. 240 makes only the most blatantly fraudulent statements subject to liability. The standard of proof is so high that the private plaintiff who actually prevails will be rare indeed.

I might add that the Chairman of the Securities and Exchange Commission, Arthur Levitt, in a letter dated May 25 said in regard to this provision:

> . . . I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment is so high as to preclude all but the most obvious fraud.

It is one thing to protect statements that are made in good faith, without intent to defraud, it is another issue altogether to protect people based upon the standard contained in this legislation.

The appropriate approach, ironically the approach contained in the original bill, is to allow the SEC to complete the rulemaking process—to review comments and testimony—and determine the proper scope of the safe harbor. Unfortunately, this commonsense approach has given way to an expansive exemption for all but the most egregious statements. This is unfortunate. While we clearly want to protect companies from being dragged into court over every comment or remark they make, we do not and should not protect those who engage in fraud at the expense of innocent investors.

This is not an either-or proposition. The language of S. 240 seems to suggest that the only way to truly protect the company is to also limit the rights of investors.

I suggest this is far from the truth. The original S. 240 contained the proper approach. We should return this function to the SEC, let them do their work and adopt guidelines for a safe harbor which protects companies and investors, but not those who deal in fraud. The purpose of this legislation is to eliminate fraudulent behavior, not to protect it.

STATUTE OF LIMITATIONS

Another area of this legislation which does a disservice to the millions of Americans who invest in securities is the failure to extend the statute of limitations from bringing an action based upon securities fraud.

Under existing law, as a result of a U.S. Supreme Court ruling in Lempf versus Gilbertson, the prevailing statute of limitations is 1 year from discovery of the violation or no more than 3 years from the date of the violation. This period is far too short. The complexity of these cases necessitates an extension of this limitation.

Once again, S. 240 had the proper solution when it was introduced, yet as reported, the bill sustains the woefully inadequate status quo. The original bill extended the statute of limitations to 2 years from the date of discovery and 5 years from the date of violation. The amendment of the Senator from Nevada, Senator BRYAN, would have adopted this equitable standard.

With the exception of criminal offenses, all causes of action in the American legal system are subject to a statute of limitations. The theory being that while we want to give plaintiffs an adequate opportunity to recover, people should not live forever under the threat of litigation. The Bryan amendment recognized this and would have achieved that important balance.

The current statute of limitations goes beyond being fair to potential defendants. In fact, as Chairman Levitt pointed out in testimony, the current statute of limitations rewards those perpetrators who conceal their fraud for only 3 years.

I might also note, that in regard to those handful of attorneys who thrive on frivolous litigation, the statute of limitations is of little concern.

If, as we have heard during this debate, attorneys simply scan the newspapers looking for companies reporting bad news, then fill in the blanks on their boiler plate complaints and rush to the courthouse within days of the news reports, what difference does the statute of limitations make?

But for the innocent investor, who is saving for retirement, or to put children through college, or maybe just trying to live a little better life, it may mean the loss of a lifetime of hard work and savings. The failure to extend the statute of limitations will result in legitimate plaintiffs, through no fault of their own, being foreclosed from any recovery. The statute of limitations does matter to the average American investor—it matters a great deal.

AIDING AND ABETTING

One final area that I want to touch upon is the liability of aiders and abetters, those lawyers, accountants and other professionals who assist primary wrongdoers in committing securities fraud. The private cause of action against aider and abettors, is a necessary tool in deterring securities fraud.

Until last year, this private cause of action was available in every circuit in America, provided that the assistance was substantial and had some element of deception or recklessness. However, the Supreme Court eliminated this private right.

Why should aiders and abettors, those people who profit from the fraud, why should they escape culpability? The answer to this question, and it should be obvious to all, is that they should not escape responsibility.

Critics argue that these other professionals work behind the scenes and do not communicate directly with investors—in essence critics argue they are simply doing their jobs on someone elses behalf. Well, in my view there is a vast distinction between vigorously representing your client and perpetuating that client's fraudulent actions.

And that is what we are talking about here—instances where aiders and abettors act recklessly or knowingly in perpetrating fraud. The SEC has been very clear on this issue. Chairman Levitt came to the Senate and indicated that the conduct in question, aiding and abetting, should be deterred and that in light of the Supreme Court's holding, the only effective way to do this is for Congress to act.

I have yet to hear a salient argument as to why a professional—and these are professionals, lawyers, accountants, bankers—who recklessly or knowingly perpetrates a fraud on any investor should escape liability simply because they are not the primary defendant.

CONCLUSION

Mr. President, we have heard from all sides of this debate a constant refrain that we must reign in frivolous lawsuits. I agree with that objective, but the legislation before us is not a balanced approach. It hurts the average American investor, by limiting access to the courts, and limiting the ability to recover money that others have fraudulently taken from them.

I want to commend my colleagues from Maryland, Nevada, and California, as well as my colleague from Alabama for their efforts in improving this legislation. They have offered a number of amendments that could have improved this legislation. The amendments were uniformly rejected—that is regrettable.

This bill is important, and I had hoped that we could end up with legislation which we could all support. However, unless the protection of the average American investor is given greater consideration, I cannot support this legislation.

Mr. KERRY. Mr. President, the legislation the Senate has been considering these past few days has been the subject of intense debate. While the legislation would appear to be rather dry and technical, its effect extends to a wide range of interests. Fraudulent actions by management can destroy an individual investor's retirement nest egg; likewise, a frivolous suit filed against a start-up high-technology company can stop that business dead in its tracks.

Most of us would agree that our goal here is to strike a balance. I have been mindful that there are investors on both sides of the equation, and I have listened carefully to their concerns. I have also spoken with SEC Chairman Arthur Levitt about his agency's concerns and recommendations about enforcing our securities laws.

Me and my staff have met regularly with the high-technology community in Massachusetts on this issue. This sector, which has been the most frequent target of strike suits, is critical to our economic growth and the creation of highly skilled, family-wage jobs. I want this sector to continue to grow and prosper, but frivolous strike suits have a truly chilling effect on start-up high-technology, bio-technology, and other growth businesses. The committee report states: ''small, high-growth businesses—because of the volatility of their stock prices—are particularly vulnerable to securities fraud lawsuits when projections do not materialize.'' Companies in Massachusetts and elsewhere have been hurt, but more importantly the people in those companies—from the CEO's on down—have been hurt by such strike suits.

I can also cite cases where companies in Massachusetts repeatedly misrepresented sales, senior executives had to resign, and some of the companies went bankrupt. In one case a company paid an analyst for a leading national business magazine to publish a favorable report about its projected sales and earnings. Cases remain pending against some of the auditors, so I will not mention names. These fraudulent actions resulted in hundreds if not thousands of investors losing significant amounts, if not all, of their investments. The point is: It is not difficult to find instances of abuse on both sides of the issue.

There is no doubt that this is an extremely complex area of the law, where minor word changes can produce major consequences. For example, directing plaintiffs to plead particular facts demonstrating the state of mind of each defendant at the time the alleged violation occurred seems reasonable to defendants. But for plaintiffs, this standard is more like having to clear a pole vault bar than a high hurdle. I am pleased the committee adopted my amendment regarding the pleadings standard, and believe this example demonstrates the need for careful consideration of the effect of seemingly minor word changes in this area. That is why I believe it is of the utmost importance that we proceed cautiously in amending our Nation's securities laws.

As the committee report notes: ''S. 240 is intended to encourage plaintiffs' lawyers to pursue valid claims for securities fraud and to encourage defendants to fight abusive claims.'' According to some securities litigators, the legislation as presently construed will make it more difficult to pursue

frivolous cases, but not impossible to pursue valid ones, as some have argued during this debate. This legislation should also strengthen the hand of businesses in responding to suits they view as abusive by reducing the incentive they claim the present system imposes upon them for early settlement. If the committee's expectations prove true in practice, then I believe we will have achieved the balance we sought with regard to the initiation of so-called strike suits.

My outstanding concerns with this legislation lie at the conclusion of the process, where it is unclear whether we have achieved a balance comparable to that established at the outset. In light of the limitations on joint and several liability and in aiding and abetting in private actions, I question whether the legislation assures that investors who are victims of fraudulent securities actions will be able to recover all of their losses. Certainly, some of the provisions in the bill will help investors recover a greater share of their losses vis-a-vis the attorneys; however, it is uncertain whether they will be able to recover all their losses, as proponents of the bill claim. Here, it would appear the legislation leans toward protecting proportionately liable defendants rather than toward assuring victims of fraud will recover fully their losses. Unfortunately, the amendments offered on the floor to provide such balance did not prevail.

A title of the legislation that will directly serve investors' interests by requiring early detection and disclosure of fraud is ''Title III—Auditor Disclosure of Corporate Fraud.'' I am proud to have coauthored this title with Representative WYDEN originally as free-standing legislation, S. 630, the Financial Fraud Detection and Disclosure Act of 1993. It places on accountants and company auditors a clear responsibility for early detection and disclosure of illegal actions by management. The provision requires that if an accountant learns of an illegal act that may have a material effect on the company's financial statements, the accountant must inform management, and, if management fails take corrective action, the accountant must inform the board of directors. If the board fails to notify the SEC within 1 day of its notification, and accountant must notify the SEC the following day. Failure to provide this notification will subject the accountant to stiff civil penalties. I believe these clear procedures for early detection and disclosure of fraud by the accountants will serve the interests of both investors and business, and am pleased the committee incorporated this title into the legislation.

The securities litigation reform bill we are about to vote upon is likely to make it more difficult to bring frivolous strike suits, but my preference also would have been to include stronger investor recovery provisions in the sections relating to joint and several liability and aiding and abetting. I was disappointed that amendments on these subjects did not prevail.

On balance, however, this legislation should lead to the creation of a more favorable climate for investors and businesses. Investors should gain better information about the marketplace, more control over securities litigation should they choose to pursue class action suits, and, with the safeguards intended to weed out frivolous suits, investors should also find a climate more conducive to the fullest prosecution of securities fraud cases. A diminished threat of abusive strike suits should strengthen the ability of businesses to raise capital and to provide investors more information. Taken as a whole, therefore, I will support S. 240.

Mr. BIDEN. Mr. President, our securities laws have served this country well for more than 60 years. Remember, the 1933 and 1934 securities acts were borne out of the 1929 stock market crash. Yet, the bill we are debating would topple our well-founded securities laws.

I oppose the so-called Securities Litigation Reform Act—not because I do not think we need some reforms—but, because by supposedly discouraging frivolous lawsuits, this legislation would discourage legitimate suits too.

Let us be honest. Most corporate executives and plaintiff lawyers are responsible. What we should do is target and penalize those who abuse the system. But, we should not close the courthouse door to the many, in an attempt to reform the abuses of the few.

In an effort to fix abuses, this legislation strips safeguards that protect millions of average Americans whose pensions are invested in security plans. The result of which will be to let white collar criminals go free.

I fought for 7 long years in this Chamber to pass a tough, smart, balanced crime bill. And I stood on this floor with my colleagues on both sides of the aisle as we debated who could be tougher on crime.

Yet, here we stand today, debating a bill to give white collar crooks in three-piece suits a free ride. This so-called Private Securities Litigation Reform Act is about white collar crime.

This is about law and order. The financial losses victims suffer can wipe them out.

I realize that securities laws are complex, but the devastating impact of this legislation is simple:

It impacts our senior citizens—with 3 out of 4 seniors relying on investment income to meet some of their day-to-day living expenses.

It impacts police, firefighters, teachers, and labor and automobile union members whose pensions are invested in securities.

Whether you live in a small town or a big city, if you are a small or large investor, this legislation affects you.

I have several major concerns with this legislation. First, investors would have to prove that a corporation made a falsehood with a clear intent to deceive. That's incredibly tough to prove. Under current law, investors must show that unreasonable or reckless predictions of a corporation's performance misled investors. If this bill becomes law, however, companies could get away with making misleading, even fraudulent, statements about their earnings.

Second, accountants, auditors, lawyers, and underwriters are given a free ride—they can escape liability even if they go along with a fraudulent scheme. Some have compared that to giving the driver of a getaway car immunity from prosecution for an armed robbery.

Third, the bill fails to modestly extend the statute of limitations for investment fraud suits, which currently is too short. Instead of a 1- to 3-year statute of limitation, we should give defrauded investors 2 to 5 years. That's reasonable—and it would give victims more time to file suit so that a guilty party does not dodge liability.

Finally, this bill wipes out joint and several liability—leaving crime victims holding an empty bag and unable to get their money back.

We hear a lot of rhetoric about the attack of the vulture lawyers—preying on corporations, stockbrokers, and accountants. But what about vulnerable investors?

Some unfounded lawsuits are filed. Some lawyers do make too much from a suit—leaving defrauded investors too little. But, this massive bill—pushed through with such little examination, without a proper hearing before the Senate Judiciary Committee to assess its impact on our judicial system—is not the answer.

Let us protect the small investor—not let white collar criminals go unpunished. If we pass this bill, mark my words, we will be back here in 2, 3, 4 years undoing it. There will be another Orange County—another huge insider trading scandal—millions of defrauded Americans, parents, hard-working men and women—who will have no recourse and no hope for reimbursement if we let this bill become law.

There is a way to deal with the abuses in securities litigation. I am a cosponsor of a bill introduced by Senators BRYAN and SHELBY, S. 667, the Private Securities Enforcement and Improvements Act of 1995.

In response to the criticism that securities litigation suits are initiated by professional plaintiffs, the Bryan-Shelby bill would require plaintiff class representatives to certify their complaints, outline their interest in the pending litigation, and list any securities suits they might have filed in the prior 12 months.

The Bryan-Shelby bill also would require that multiple securities class actions brought against the same defendant be consolidated and that a lead counsel be agreed upon by the various

plaintiffs, or appointed by the court if no such agreement can be reached.

I believe these new requirements for certification of complaints and the new case management procedures would improve the securities litigation process, without resorting to the extreme measures in the Dodd-Domenici bill, which will shut the courthouse door to millions of valid claims.

The Bryan-Shelby bill also includes a reasonable extension of the statute of limitations for securities liability actions and would restore liability for aiding and abetting if an accountant or lawyer knowingly or recklessly provided substantial assistance to another person in violation of the securities laws.

Mr. President, I commend my colleagues, Senators SARBANES, BRYAN, and BOXER, for leading the effort to improve the Dodd-Domenici bill. Unfortunately, however, we were only able to get a couple amendments approved.

I appreciate my colleagues support—on both sides of the aisle—for my amendment that will maintain a civil RICO action against anyone who has been criminally convicted of securities fraud, thereby tolling the statute of limitations for such a RICO action until the final disposition of the criminal case.

I urge my colleagues to vote against S. 240. To supporters of this bill, I say, OK, you have the Nation's attention now. Let's go back to the drawing board and draft a more reasonable approach based upon the Bryan-Shelby bill to curb the relatively small number of frivolous securities lawsuits without dismantling the entire existing securities litigation process.

Mr. MOYNIHAN. Mr. President, S. 240, the Securities Litigation Reform Act, is intended to deter frivolous securities litigation while protecting the rights of investors to bring legitimate lawsuits. The sponsors of this legislation, arguing that opportunistic attorneys often file these lawsuits after precipitous reductions in stock prices, attempted to strike a delicate balance between these two competing interests.

Unfortunately, the bill fails to strike that balance. The bill would make it too difficult—if not impossible—for small investors to recover losses resulting from securities fraud. S. 240 would establish cumbersome case-filing procedures designed to discourage litigation; shield from liability those who knowingly aid or abet fraudulent schemes; and limit too strictly the liability of those who make misleading or false forward-looking projections of company performance.

While these provisions will deter frivolous lawsuits, they will also discourage meritorious ones. If the amendments offered by Senators SARBANES, BRYAN, and BOXER had been accepted by the Senate, I perhaps could have supported this bill. As it stands, however, this legislation goes too far in protecting corporations and stockbrokers at the expense of small investors. I cannot support it.

Mr. CONRAD. Mr. President, I have reluctantly decided that I cannot vote in support of the version of S. 240 that is in front of us today. As a cosponsor of S. 240, this was a difficult decision. But the changes that have been made in this legislation make this a completely different bill from the version I cosponsored. In my view, this version of S. 240 goes too far and will make it too difficult for innocent investors to recover in legitimate cases of securities fraud.

Mr. President, there is no question that we need to reform the current securities litigation system. Too often when a stock drops suddenly for reasons completely beyond the control of a corporation, the corporation finds itself the subject of a so-called strike suit. These strike suits border on legal extortion: The cost of defending the suit and the risk of huge damages create a strong incentive to settle the case even when the corporation has done nothing wrong. Moreover, these suits have targeted not just the corporation whose stock has dropped, but also the accountants, lawyers and others who participated in the preparation of documents for the Securities and Exchange Commission and the public. These businesses, which often played only a marginal role in the alleged fraud, can nonetheless be held fully liable. Finally, the current system does not serve investors well. In too many cases, lawyers walk away with millions of dollars in legal fees while the plaintiffs whose interests the lawyers are supposed to be serving recover only a small portion of their losses.

In short, the current system does not work. It imposes a burden on entrepreneurial activity and impedes the efficient functioning of our capital markets. As a result, all investors—and the economy as a whole—suffer. That is why I cosponsored S. 240. I wanted to send a strong signal that we need to reform the current system and put an end to frivolous, speculative lawsuits that serve little purpose but to enrich the lawyers who bring them.

At the same time, however, I fully recognize that there are legitimate instances of securities fraud, and we must ensure that we preserve the rights of investors to seek redress in cases of true fraud. We should not protect Charles Keating, Ivan Boesky, or Michael Milken from the investors who lost their life savings as a result of sophisticated swindles. I believed, when I cosponsored S. 240, that it achieved this balance. And I was given assurances that—in a few areas where I thought the bill might go too far in curtailing the rights of investors—modifications would be made to ensure that legitimate suits were fully protected.

Unfortunately, during the Banking Committee markup, S. 240 was significantly changed to the detriment of investors. As reported from the committee, the delicate balance in the original bill was destroyed. Instead of a relatively narrow set of changes targeted directly at frivolous strike suits, the bill that came to the Senate floor contained radical changes that will make it far more difficult to bring any suit, including a legitimate suit where real fraud has occurred.

First, the new version of S. 240 contains a huge expansion of the safe harbor for forward looking statements. S. 240 as introduced directed the SEC to develop an expanded safe harbor to encourage companies to provide more information to the market on their expected future performance. Most observers expected this to result in a relatively modest expansion of the safe harbor. In committee, this provision was amended to provide a statutory safe harbor for forward looking statements unless they are ''knowingly made with the purpose and actual intent of misleading investors.'' SEC Chairman Levitt has expressed the view that this safe harbor will protect knowingly made false, misleading, and fraudulent statements. This will reduce confidence in information and impede the efficiency of capital markets. This is a significant, and potentially dangerous, change from the version of S. 240 I cosponsored. It would make it extremely difficult to prosecute even the most outrageous of statements about expected future performance.

Second, the new version of S. 240 does not contain a necessary, modest expansion of the statute of limitations in securities fraud cases. Pursuant to the Supreme Court's Lampf decision, the statute of limitations in fraud cases is now 1 year from when the fraud was discovered but in no case longer than 3 years from the date the fraud occurred. S. 240 originally proposed to extend the statute of limitations to 2 and 5 years because in sophisticated swindles it may take longer than 1 and 3 years for a fraud to be sufficiently understood to bring suit. This was the most important unambiguously pro-investor provision in the bill. However, during markup this provision was deleted. This is a significant change; it will leave many plaintiffs with strong, legitimate complaints unable to bring suit if a fraud is uncovered too later for them to sue.

Third, the new version of the bill gives control of fraud suits to the biggest investors, virtually excluding small investors from consideration. Under the original bill, the court was required to appoint a plaintiff steering committee that held in aggregate at least 5 percent of the securities involved or securities with a market value of $10 million, whichever is smaller, unless the judge decided a lower threshold was appropriate. This formulation would have allowed a group of small investors to join together to control the lawsuit. But in committee this provision was dropped. In the new version, the court is required to appoint a single lead plaintiff, and there is a presumption that the most adequate plaintiff will be the

class member with the largest financial interest in the case, unless he cannot adequately represent the interests of the class. Unfortunately, in many cases the member with the biggest financial interest will be an institutional investor with interests, for example, holdings of stock in the corporation that are not subject to the suit or strong ties to the board of directors, that may not mirror the interests of most other class members. This provision could lead to significant litigation on whether the presumed most adequate plaintiffs other interests disqualify him and/or to settlements that do not always best serve the interests of the majority of the class members.

Fourth, the new version of the bill for the first time imposes a cap on the damages that an investor can recover. The provision limits damages to no more than the difference between the purchase price of the stock and the value of the security during the 90-day period after information correcting the fraudulent misstatement or omission is made public. Although this may appear reasonable, it creates a strong incentive for the issuer to use the safe harbor for forward-looking statements to puff the stock during this 90-day period and otherwise abuse the system by waiting to correct the misinformation until a stream of positive news can be released simultaneously.

Finally, the new version of S. 240 does not contain a provision restoring liability for aiding and abetting a fraud. In 1994, the Supreme Court ruled that the securities statute does not cover private actions for aiding and abetting. The Chairman of the SEC has testified that aiding and abetting liability should be restored. Although the original version of S. 240 similarly failed to address this issue, when I cosponsored S. 240 it was my understanding that this issue would be addressed before the bill came to the floor. However, the new version of S. 240 restores aiding and abetting liability only for individuals who act knowingly. It does not fully restore liability for other participants in a fraud.

During floor debate, a series of amendments was offered to restore the balance in the original bill. I voted for these amendments. Unfortunately, not one of these important changes was reversed. Thus, the bill that we now have before us remains significantly different from the bill that I cosponsored. In its attempt to root out frivolous lawsuits, this version of the bill will make it far too difficult for small investors to prevail when they have been defrauded by unscrupulous Wall Street dealmakers. I cannot support this unbalanced version of the bill.

It is my hope that the conferees will revisit these issues. We need securities litigation reform, and I would like to vote for a balanced conference report that fixes the many problems in the current system without creating new problems for small investors who have been fleeced by crooks on Wall Street.

Mr. WELLSTONE. Mr. President, today I address my comments once again to the reservations I have regarding an important piece of legislation that by my measuring is moving way too fast through this body, a piece of legislation that I believe may end up hurting legitimately aggrieved citizens; a piece of legislation that, although I believe it is necessary in some form and earnestly want to give it my support, I nonetheless find it difficult to support, given its present form. I am referring, Mr. President, to S. 240.

Mr. President, I have heard the charges—about unethical lawyers looking for deep pockets and hunting for a fast buck, about the tremendous number of meritless suits—some 300—that are filed and settled each year regarding alleged securities fraud. I have had extensive discussions with Minnesota-based companies, many of them new high-technology firms, about the pressing need to plug the legal loopholes that allow companies to be intimidated by unethical attorneys. And I have heard the arguments of my respected colleagues that this bill, S. 240, is the best way to stop such baseless strike suits.

First, with regard to this problem of strike suits, Mr. President, I do not think you will find anyone in this Chamber who believes in their heart that such lawsuits are in any way good for the country. Nobody is arguing on behalf of such behavior. My cautious opposition to this bill—in its present form—should not hide the fact that I consider such actions to be the equivalent of blackmail, and detestable in the extreme.

But Mr. President, there are swindlers and fraudulent securities setups out in the markets, and there are people who are legitimately hurt by such schemes. I have one report that in my State of Minnesota alone over the past decade, more than 25,000 Minnesotans have recovered $28½ million in money that was cheated out of them in stock and securities fraud; $28½ million, Mr. President, and that is just the money that was reportedly recovered. So it certainly would appear to me that in addition to the real problem of the meritless strike suits, there is another real problem—that of ongoing investment fraud.

The task of this bill in my view should be to balance these two needs: To create tighter protections for honest companies who are forced to pay the equivalent of extortion to unethical attorneys, while maintaining the protections that have existed for 60 years for legitimately aggrieved investors.

Does this bill accomplish this delicate balancing act? In my view, no, it does not. It is in my view reckless, not because of how it handles the problem of strike suits, but how it knocks down existing protections for those who have had their savings cheated out of them. One of my colleagues has in fact characterized this bill as addressing ''recklessness''—and I must say that I agree that this bill does deal with recklessness. But I must say that we part company on how and why we reach those conclusions. It is not just the subject of this bill that is recklessness—this bill itself is, by my measurement, reckless in how it turns back 60 years of protections that serve big and small investors alike.

On the surface I admit this bill appears to have very little to do with the average American family. It appears to deal with high-rolling bond salespeople and securities attorneys and CPA's who live and die by the smallest twists and turns of the financial markets. But scratch the surface and who do you find under this bill? Hard-working honest American families, that is who, Mr. President. After all, is it not retirement plans that fuel the economy? Isn't it the typical American family that has provided the capital needed by so many innovative startup firms simply by investing their hard-earned savings in stocks and securities? Is it not this great majority of our country that with $1,000 here, $5,000 there, a pension fund over there, have built the mightiest success stories that make up the American landscape?

Of course it is. But now we are presented with this bill—a complex piece of legislation by anyone's accounting—that will take away some of the protections that have served these millions and millions of investors so well and for so long. Mr. President, I liken this bill to using a sledgehammer to cut a slice of bread: if a little reform of the law is good, then an all out attack on the law must be better. I did not agree when we took a sledgehammer approach in the case of product liability reform, and I don't agree now.

There are hundreds of strike suits filed each year—but there are also thousands of legitimate cases of fraud as well. This bill should balance the two; it should make necessary corrections it seems to me to plug up the legal loopholes that allow unethical lawyers to collect while retaining important, existing investor protections. But is this the approach my colleagues have chosen? Do they propose to discreetly close loopholes, or judiciously plug up the cracks that have allowed the unethical attorneys to target big dollars? No, Mr. President, No, they do not. Instead my colleagues would hammer away at time-tested protections, saying in effect: ''No more. No more lawsuits. Unless you have overwhelming evidence, unless you lost millions, unless you have a sophisticated understanding of securities law, unless you catch the misdeed within a certain limited period, you can no longer sue to recover the money from the swindlers and cheats who robbed it from you.''

I am sure some of my colleagues would object to such a characterization of this bill—but, Mr. President, actions speak as loud as words. We have had many attempts on the floor to make this bill better, to more finely tailor

its language and scope to address the problem of strike suits. For example, we had an amendment on the floor that would have extended the period in which wronged investors could file a suit against those who committed the fraud. That sounds like a good protection to me—and it was an amendment that I supported. But did it pass? The answer is no. And let me emphasize: we have had numerous opportunities to amend this bill, make it better, more closely tailor it to the problems that exist, and I have supported those amendments. But Mr. President, those amendments have been consistently rejected.

Under this bill, investors who bring a legal challenge run the risk of facing a court order to pay the entire court costs, thus discouraging many people from bringing suit who have been defrauded. The bill also takes away the right to sue many of those who aid and abet in the fraud; effectively immunizing from private action lawyers, accountants, and countless others who may have assisted the primary wrongdoers who committee securities fraud.

Another example: This bill provides for extended immunity from private fraud liability for those corporations that release overly optimistic information when they have their first sale of stocks. This extended immunity does not protect investors; rather it is all but an open invitation for crooked corporations and swindlers to promise the Sun, Moon, and stars in their forward-looking statements, only then to take the money and run once it becomes clear that the corporation will never deliver what it promised. And those individuals, or private pension funds, or counties that invested and lost money on such a basis-too bad. Under this bill they are simply out of luck.

Individuals aren't the only ones who will be left with no protections under this bill; counties and municipal governments and public institutions will have fewer protections as well. I have heard several references to Orange County, CA, made on the floor during debate, but Orange County is not the only one hurt by losses from derivatives investments. In Minnesota alone: Dakota County, $2.5 million lost; in Chanhassen $4 million lost; the Minnesota Orchestral Association, $2 million lost; the University of Minnesota, $13-million lost; and Mr. President this is only a partial list. It is no wonder that groups like the Municipal Treasurers Association, the National Association of County Treasurers and Finance Officers, and the National League of Cities are but a few of the organizations opposing this bill as it is currently written.

Mr. President, we have heard the name of Charles Keating—perhaps one of the most famous of swindlers in recent memory—invoked many times on the floor during this debate. Some people say that under this bill, thousands of people would never have been able to recover one thin dime from Mr. Keating. I have also heard some people say that claim is not true, and that this bill will not affect individuals' rights to collect what has been taken from them.

But Mr. President, the fact that we have so many great and respected legal minds disagreeing so harshly over what this bill will actually do should be the issue here. And until I, and the rest of my colleagues, can be convinced beyond reasonable doubt that this bill will not hurt middle America, and will not swindle them out of their chance to prosecute the swindlers, there can be question. I cannot and will not support any measure that hurts those good, honest people who have entrusted us with their best interests.

Thank you, Mr. President, and I yield the floor.

Mr. LAUTENBERG. Mr. President, I believe I bring a somewhat different perspective to the issue of securities than most other Members of this body. Prior to coming to the U.S. Senate, I worked in the private sector. I cofounded a company with two others that today employs over 20,000. After the company went public in 1961, I filed countless statements with the SEC as its CEO. As the CEO, I believed it was important for investors to have as much information as possible.

Each year, I made it a practice to project earnings for the following year. And if those projections needed modification due to changed circumstances, I quickly went to the public to alert them to any revision. This process had significant rewards because investor confidence in my former company caused our stock, which is traded on the New York Stock Exchange, to sell at among the highest price-earnings ratios of all listed securities on any exchange.

As I look back on that period, I know that I was in the forefront of CEO's who provided investors with forward-looking statements on my company's financial health. It made sense to me then. It makes sense to me now. I know many companies want to provide this information but do not because they are concerned about their potential liability should their forecasts turn out to be off the mark. It is not in the public interest for these companies to go out of business because of a lawsuit based on a financial forecast, which despite the company's best efforts, later turns out to be inaccurate.

I remember how much the stock of biotech companies dropped when we were discussing health care last year. Should those companies be held accountable for this drop? Of course not. We want to protect such firms. But I believe this bill goes too far in the effort to do that; in fact, I believe the practical effect of this bill will be to immunize certain fraudulent statements. This is just one example of the many instances in which I believe the legislation is too extreme.

This is unfortunate because S. 240, the Private Securities Litigation Reform Act of 1995, had the potential to be a good bill, perhaps a very good bill. In my judgement, if a few key amendments had been adopted, this legislation would have eliminated current abuses in existing law without sacrificing investor protections. But, those amendments were not. As a result, the bill that will pass the Senate today and go to conference with the House will, I predict, undermine investor confidence in our markets, chill meritorious suits, and leave investors exposed to fraud. I also predict that Congress will revisit this issue in the foreseeable future. I can only hope that the next Charles Keating, whose fraudulent conduct will be facilitated by this bill, will not cost the taxpayers as much as the original.

Too often debate on this bill was reduced to accusations of special interest favoritism. It is a shame that the proponents of this bill believed anyone who opposed this legislation was merely siding with the trial lawyer bar. Likewise, the legitimate concerns of accountants and other deep pockets were downplayed by the opponents of this bill. Mr. President, I oppose S. 240, not because it might hurt trial lawyers and not because I do not believe certain groups are being unfairly targeted as deep pockets, but because it is unfair to investors and because I do not think it will serve as a deterrent to fraudulent behavior.

The sponsors of this legislation cite compelling anecdotal evidence of abuse by the so-called professional plaintiffs and their unscrupulous attorneys. I agree there are abusive securities class actions suits filed every year. I also agree that we need to protect companies, and even other shareholders, from these people. But in our zeal to tackle this problem, we should take care not to stifle legitimate claims.

Amendments were offered that would have tempered the Senate bill's overreaction to the purported securities litigation boom. There were amendments to: provide aiding-and-abetting liability in private implied actions; insert a safety net to ensure that small investors are able to fully recover their losses; extend the statute of limitations period on these claims, thus making it more difficult for bad actors to hide their fraud; and an amendment I cosponsored with Senator SARBANES that would not have insulated fraudulent statements as a result of the overly broad safe harbor provision in the bill. All were defeated.

In opposing these amendments, the sponsors of the bill cited some of the more egregious practices of professional plaintiffs and certain lawyers. What they do not mention is that this behavior would have been curbed by noncontroversial provisions contained in S. 240, provisions not affected by the amendments I mentioned above. These would include: prohibitions against referral fees and attorney conflicts of interest; requirements that the share of the settlement awarded to the name plaintiffs be calculated in the same

manner as the shares awarded to all other members of the class and that the name plaintiff certify that he did not purchase the security at the direction of his attorney; a prohibition against excessive attorneys' fees; and an assurance that all members of the class have access to information held by counsel of the name plaintiff.

I did not want to have to vote against a bill to curb frivolous securities lawsuits because I believe there are problems. I have met with accountants and executives of high-technology companies and have heard about their legal nightmares. But I have also heard from the director of my State's bureau of securities, the North American Securities Administrators Association, AARP, dozens of consumer groups, and some organizations with large pension funds.

Mr. President, I cannot in good conscience vote for a bill I believe will insulate fraudulent conduct, prevent investors injured by fraud from fully recovering damages, and chill meritorious litigation. In our rush to reform the problems detailed by the sponsors of this bill, we have overreacted.

Mr. CHAFEE. Mr. President, I am pleased to be a cosponsor of S. 240, the Private Securities Litigation Reform Act, which the Senate approved today. This proposal has been introduced by Senators DOMENICI and DODD year after year without ever reaching the full Senate for consideration. Finally, this year, the Senate debated and approved securities reform without substantial changes to the Domenici-Dodd bill, as reported by the Banking Committee.

Our's has become an increasingly litigious society. Opportunistic lawyers are prepared to spring into action with the least provocation. In the case of securities fraud suits, this class of attorneys claims to have the interests of small investors in mind, but the level of compensation they exact compared with the compensation received by their clients tells quite a different story.

As many as 300 securities fraud suits are filed annually. An astonishing 93 percent of these suits are resolved out of court, with an average settlement of more than $8 million each.

It is no accident that so many of these suits are settled out of court. That is one of the major problems addressed by S. 240. Under current law, every defendant can be found jointly and severally liable—or liable for the entire settlement cost—regardless of the extent of the defendant's involvement. It has become the practice of some lawyers to name as many deep pocket defendants as possible. Frequently, the fear of being held 100 percent responsible and the enormous cost of diverting substantial resources to defending against these suits leads these defendants to settle. S. 240 applies proportionate liability, enabling the court to determine the extent of a defendant's involvement and determining liability on the basis of that involvement.

S. 240 seeks to reduce abusive practices by prohibiting brokers or dealers from receiving a referral fee from attorneys seeking clients for class action suits; giving the court authority to determine whether a conflict of interest exists if an attorney is also a shareholder; and, by prohibiting funds discharged by the SEC from being used for attorneys' fees.

It seeks to limit frivolous lawsuits by eliminating professional plaintiffs, prohibiting attorneys' fees from exceeding a reasonable percentage of damages awarded, and giving courts the authority to appoint lead plaintiff on the basis of greatest financial loss rather than continuing the practice of naming lead attorneys based on who filed the suit first.

I believe that we have approved a bill that will benefit shareholders and corporations alike. Shareholders will have more information on which to base their investments and corporations will be able to operate in an environment free of meritless lawsuits. I commend Senators DOMENICI and DODD for proposing this worthwhile legislation and Chairman D'AMATO for moving it so swiftly through the legislative process.

Mr. PELL. Mr. President, today as the Senate comes to the conclusion of the debate over the Securities Litigation Reform Act, I state my support for this legislation. It has been a long process to achieve reform in this area and the Senate has worked for several years to craft legislation which will adequately address the problems in the laws which govern our securities industry without creating others. I commend the efforts of those most directly involved, particularly my good friend and colleague Senator DODD, for their commitment and hard work in bringing this bill to final passage.

The need for some type of reform in this area is universally acknowledged, even by those who have most vociferously opposed the version of reform contained in the final bill. Indeed, the bill had 51 cosponsors, an indication of overwhelming consensus that congressional action is necessary to correct a glaring problem. Simply put, the securities industry has been plagued by abusive and frivolous lawsuits for years. These lawsuits have been encouraged by a system that far too often does more to reward creative lawyers and undeserving plaintiffs than it does to protect the integrity of the securities markets and legitimate investors. The end result has been the unnecessary escalation of business costs as companies are forced to pay legal costs to defend against these meritless actions. In a growing number of cases, these escalated costs, combined with the chilling effect of the threat of groundless litigation, have resulted in bankruptcies, reluctance to release pertinent investment information, and in many cases, the decision to forego the formation of startup enterprises altogether. The latter has particularly been the case for fledgling high-technology companies, the next generation of American industry. As we strive to compete in the world marketplace, it becomes even more imperative that we work to discourage those aspects of our legal system which foster frivolous, costly, and unnecessary litigation.

I do not claim that this bill is perfect in all aspects. Indeed, some 17 amendments were offered to the legislation as we considered on the Senate floor and I supported many of them. I share the concerns expressed that as we rewrite our securities laws to eliminate abusive lawsuits, we must also protect the rights of legitimately wronged investors to have their day in court. Of particular concern are those small investors, many times senior citizens and those with stakes in pension funds, who face formidable odds in bringing actions against large corporations. Accordingly, I voted for stronger protection against fraudulent and misleading statements by corporate executives as well as for an alternative dispute mechanism which would have discouraged frivolous actions without the use of the courts. I also supported giving even the smallest investor a voice in choosing who would control suits brought on behalf of a large class of plaintiffs, an effort to ensure that everyone would be represented in legal actions, no matter how big or small. Unfortunately, these and other efforts to improve the bill were not supported by a majority of the Senate. However, even though these amendments did not succeed, the legislation as a whole merited support for its work to reform our legal system in a constructive way to curb unnecessary lawsuits in our securities industry without removing adequate protection for those legitimately harmed by fraud and wrongdoing.

Again, I commend the good work done by all involved with this legislation. There are still significant differences with the House that need to be worked out so I fear that we still have a way to go before the process of securities law reform is completed. With passage today, however, the Senate has taken an important step toward achieving that goal.

The PRESIDING OFFICER. Under the previous order, the committee amendment in the nature of a substitute, as amended, is agreed to, and the clerk will read S. 240 for the third time.

The bill was ordered to be engrossed for a third reading, and was read for the third time.

The PRESIDING OFFICER. Under the previous order, the Banking Committee is discharged from further consideration of H.R. 1058, and the Senate will proceed to its immediate consideration.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause of H.R. 1058 is stricken, and the text of S. 240, as amended, is inserted in lieu thereof.

The clerk will read H.R. 1058 for the third time.

The bill was read for the third time.

The PRESIDING OFFICER. Under the previous order there will now be 30 minutes of debate divided in the usual form.

Mr. SARBANES. Mr. President, I yield 5 minutes to the distinguished Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I thank the Chair.

Mr. President, at this stage of the debate I acknowledge that the die is cast and this bill will pass. I must say that I believe it is a terrible mistake.

This has not been about whether you are for curtailing frivolous lawsuits or not. There is no disagreement on that. The provisions that deal with containing frivolous lawsuits I think enjoy a vast majority of our support, and certainly this Senator.

I have asked myself. Why are we doing this? Why are we undergoing all of this exercise? For the last 6 decades we have enjoyed the world's safest securities markets. They are the envy of the world. Could it be because there is a litigation explosion? The facts belie that. In the past 20 years, the number of cases filed in class action lawsuits remain about between 290 and 315 a year. There are some 235,000 civil filings each year. So that cannot be the reason. There are some 14,000 companies that have filings with the SEC. Each year only about 140 out of those 14,000 are brought in as party defendants in these class action cases.

Is it because there has been an inability to raise capital in our markets? In the past 20 years, the amount of capital raised has increased by 58,000 percent. So it certainly cannot be that.

Mr. President, this is clearly—as I observed at the beginning—a Trojan horse that brings us to the floor of the U.S. Senate to shield a large number of people from liability for their misconduct. Under securities action no one who is simply negligent or grossly negligent is liable. So it is extremely difficult. What this has all been about, in my view, is to emasculate the private individual, the private investor, from securing relief and recover from investment fraud.

I have prepared a little chart here which I think indicates the number of hurdles that have to be surmounted in order to get to the finish line. It will be more difficult to get these cases brought because of the limitations imposed. The shorter statute of limitations. The surrender of control of the wealthiest plaintiff which in effect becomes the lead plaintiff presumptively under this. The automatic discovery stage prevents the plaintiff from ascertaining what the state of mind is of the defendants who have perpetrated the fraud. The safe harbor provisions, that the distinguished Senator from Maryland has talked about; aiders and abettors—they are home free. They do not have any liability at all. The RICO liability has been wiped out.

Ultimately, if you are able to perform a feat that even Edwin Moses would have difficulty performing, and you get to the finish line, the prospect of recovery is greatly reduced because we have eliminated the concept as between those who are guilty of reckless misconduct or totally innocent. We are simply saying that those who are guilty of reckless misconduct only have proportionate liability, and the plaintiff, the investor who is damaged, does not recover the full amount.

That overturns hundreds and hundreds of years of legal precedent. For a social and economic policy that I just cannot comprehend as between the innocent party and the wrongdoer whose conduct is at least reckless, we are saying give the reckless actor immunity from the suit. In the case of the aider and abettor and in the other case where he may be a primary violator, we simply say he or she is only liable for the proportionate share. That makes no sense.

In the 1980's, Congress enacted the infamous Garn-St Germain. Within a decade, the savings and loan industry in America imploded and the American taxpayer was asked to write a bill which constitutes hundreds of billions of dollars.

I forecast that, as a consequence of the enactment of this kind of legislation, we are going to see innocent investors by the thousands deprived of their day in court. Fifty major newspapers in America who have looked at this issue have concluded that what we are about to do is a tragic mistake.

Mr. President, as I said at the outset, I acknowledge that this legislation will pass this Chamber, but I believe that we will rue the day and that our markets will be less secure and what the proponents may intend to accomplish will, indeed, have a countereffective result.

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

Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 5 minutes.

Mr. BENNETT. Mr. President, the debates have been made. I remember the comment by my colleague from Connecticut during the Whitewater hearings when he said everything that needs to be said has been said but not everybody has said it. So I will try not to say too much about this.

Contrary to those who say, gee, everything has been wonderful up until now, the facts clearly demonstrate that there has been a serious problem. It has affected that portion of the stock market that most needs the entrepreneurial thrust of venture capital, and this bill will correct it.

I made all of the arguments that I intend to make. I simply want to make one additional observation. This problem has generated action in the House of Representatives. Now it is generating action in the Senate. In my view, the Senate bill is more responsible than the House bill. I congratulate the authors of the bill, Senator DOMENICI and Senator DODD, the chairman of the committee, Senator D'AMATO, in seeing to it that the Senate version is more responsible than the House version. I look forward to working with them in a conference committee to see that the Senate approach be adopted in every possible circumstance as there are differences between the Senate and the House.

These men have worked very hard, very responsibly and intelligently on this bill, and I for one have been delighted to have had the opportunity to work with them. I commend the work product to the entire Senate and, if you will, to the President himself when it gets to him for his ultimate signature.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 5 minutes.

Mr. DODD. Mr. President, I thank the Chair. Let me begin by thanking my colleague from New Mexico, Senator DOMENICI, Senator D'AMATO, Senator BENNETT, and others who have been present in the Chamber here almost for a week now. We considered 17 amendments and one motion to commit on this bill.

Let me also express my appreciation to my colleague from Maryland, my colleague from California, and my colleague from Nevada, all of whom have been actively involved in this legislation, along with the Senator from Pennsylvania, with a number of amendments that have been offered to this bill.

We have spent several years on this legislation. We have crossed the threshold of whether or not this was an area of the law that needed repair and significant repair. I would say to my colleagues that we can put behind us the days that we have rued, in a sense, the days when you ended up with somewhere between 93 and 98 percent of these cases all being settled, never going to litigation because, frankly, the system was designed in a way to produce settlements even when cases lack merit because of the outrageous costs involved. This was an area of the law where, frankly, a number of people had turned a profession into a business,

and we had lost the essence of the practice of law in the area of securities litigation.

This is a piece of legislation that we think goes a long way to protecting investors on all sides. It leaves that door very wide open for legitimate plaintiffs to bring their cases. It also makes it possible for those legitimate defendants to make sure that they will end up paying the price that they are required to pay, where they do something wrong. But it also protects the innocent investor of those very same companies from not being charged the cost of frivolous lawsuits and meritless litigation.

It is a technical area of the law but one that we think is going to do a great deal in terms of making it possible particularly for these smaller start-up companies, the bases of economic growth in the 21st century, the high-tech firms, the biotech firms, the ones that have the great volatility in the earliest stages of their development as industries and businesses from being preyed upon by meritless litigation.

There is still in the views of many, including this Senator, some legitimate discussion about the area of safe harbor. I feel very strongly that we should have a true safe harbor. My view is that in conference we are going to have to revisit the issue. We had a very close vote on an amendment offered by the Senator from Maryland.

I would love to be able to tell all of my colleagues that I am entirely satisfied everything we have done is absolutely going to work. I do not know that. I do know this, that we have corrected a significant problem and we have plugged up pleadings that were so loose that virtually almost any case that could be brought could lead to significant discovery, such as the situation where you had Peat Marwick on a $15,000 contract ending up at $7 million in legal fees. We stop the practice where you have Ratheon Corporation acquiring a firm and within 90 minutes of that announcement a lawsuit gets filed.

Those are the kinds of situations that were occurring, that we will have cleaned up with this legislation that I hope we are about to pass.

Is it perfect in every aspect? Anyone who will tell you that cannot say so with absolute certainty. This much we can say, that the previous situation, the situation that exists today, is a mess and it needs and demands to be cleaned up. And in this Senate bill we have moved great lengths toward achieving that goal.

Let me also underscore the comment made by the Senator from Utah. The House bill, in my view, goes way too far, way too far, and it is my fervent hope that we will not support the House-passed legislation.

Let me say here to my colleagues, as someone who has worked a long time along with my colleague from New Mexico on this—and I use this opportunity—that efforts to weaken this Senate bill by the House are going to cause this Senator serious reservations about recommending to his colleagues, if we come back with that, that it ought to be supported.

We have a long way to go yet with this legislation before it is done, but this is an opportunity for us to go on record to say the present system does not work; it needs to be changed.

We have made those changes here. For those reasons, I think the product we have produced is deserving of support. Again, it may not be perfect. We do not know that. Time will test that through the legal system of this country. But we think it does go a great way toward solving the kinds of problems where lawsuits were filed right and left without the kind of adequate protections for investors and innocent defendants.

For those reasons, I ask my colleagues to support this bill.

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

Who yields time?

The Senator from Maryland.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 9 minutes and 55 seconds; the Senator from New York has 7 minutes and 16 seconds.

Mr. SARBANES. I yield myself 6 minutes.

The PRESIDING OFFICER. The Senator is recognized for 6 minutes.

Mr. SARBANES. Mr. President, I think perhaps the best analogy that was used was by the Senator from Nevada earlier in this debate when he said what we have here is a Trojan horse moving forward under the pennant of frivolous lawsuits, but hidden within the Trojan horse are a lot of problems. That is this legislation. This legislation goes too far. I listened to my colleagues, and they get up and they talk about horror stories. And I do not quarrel with those horror stories. I think we need to bring those under control. And those of us on this side have consistently made that point.

But this bill goes too far. It overreaches. It is excessive. As one article said in U.S. News & World Report, ''Will Congress Condone Fraud?'' And then it concludes saying that, ''The pendulum is swinging much too far,'' and says, ''Unfortunately, some major investor frauds may have to take place before again it moves back toward the center.''

I want to avoid those major investor frauds. And that was what the whole effort to try to amend this legislation was about over the last few days.

Now, we are ignoring the advice of all of the regulators, Democrats and Republicans. The SEC, both under the former Chairman and under the current Chairman of the SEC, the 50 State securities regulators, the Government Finance Officers Association, they have all come in. They have all said, ''Yes, we want to get at the problem of frivolous lawsuits. Yes, there are reasonable ways to try to do it.'' Then they have made the point that this bill goes too far.

Now, we tried to correct it. We tried to correct the safe harbor provision, which is potentially one of the most dangerous features in this legislation. We urged the Senate to leave that to the SEC. That is where it ought to be, with the experts. The Senate rejected that.

We then said, ''Well, at least let us get a proper standard.'' We came very close on that issue, a vote of 48–50 with respect to getting a standard that was a more reasonable standard and that would not shield, as the Chairman of the SEC told us, not shield willful fraud.

The distinguished Senator from Nevada has pointed out, under the proportionate liability provision, innocent investors who are defrauded are now going to bear the burden of their loss ahead of people who participated in the fraud. I want to repeat that. People who participated in the fraud will be shielded from bearing the full burden of the fraud, and that burden will be thrown upon the innocent investor.

We sought to extend the statute of limitations from 1 to 3 years to 2 to 5 years. There is a lot of concealment that goes on in these fraud cases. And if you talk to people who get caught up in it as victims, they will tell you that often they cannot discover the fraud within a 3-year period. The SEC, once they know about a fraud, takes 2 years to bring the action. This bill requires people to act within 1 year.

We tried to restore aiding and abetting. The aiders and abettors are dancing down the street right now with this legislation. They will go scot-free. It is not a question with aiders and abettors, whether it is going to be recklessness as a standard, or whether you are going to go to a higher standard than recklessness—actual knowledge, actual intent. There is no liability for aiders and abettors. None. It is gone. This bill will make it harder for defrauded investors to bring legitimate suits and to recover their losses.

And I say to my colleagues, because a number have cosponsored this legislation at the outset, the legislation which they cosponsored had in it two very important provisions that we tried to add by amendment that are not in the bill before us. The original legislation extended the statute of limitations. The original legislation extended this statute of limitations so it took care of that particular provision. Now we have dropped that in this legislation that is before us.

And the original legislation sent the safe harbor issue, one of the most difficult and complex issues to deal with, sent it to the SEC where, I submit to you, it ought to be. That is where that ought to be made. Now they are trying to write the standard right in this bill.

So the original bill, which people cosponsored, took care of two of the issues that we have argued on the floor

of the Senate over the last few days. Why would we want to make it more difficult for defrauded investors to bring legitimate suits and make it more difficult for them to recover their losses in an effort to get at frivolous suits, which we support? This bill has gone so far, has swung the pendulum so far over that it is going to penalize, in a significant way, legitimate investors.

Now, this is bad not just for the individual investor, but it is bad for the country, it is bad for economic growth. Our markets, which are the marvel of the world, depend upon the confidence of the investors.

The PRESIDING OFFICER. The time is expired.

Mr. SARBANES. The confidence of the investor will be undermined by this legislation. I urge my colleagues to vote against it.

Mr. President, I reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

Mr. D'AMATO. Mr. President, I yield 4 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 4 minutes.

Mr. DOMENICI. Thank you very much, Mr. President.

I would like to thank the Senator from Connecticut, Senator DODD. Mr. President, I say to the Senator from Connecticut, Senator DODD, let me stay here on the floor, even though I only have a few moments, it has been a pleasure working with him on this legislation. I first got interested after I read some articles that led me to think this part of the judicial system of America was not working. That is how I got involved. I read three or four articles. I could not believe what I was reading. I was naive enough to think since it was so patently wrong, all I had to do was work on the bill and get someone like Senator DODD to help and it would all come through. I found that was not the case.

And the reason it is not the case is because this bill is bad for about 90 lawyers in America. This bill is bad for about 90 lawyers in America, not the plaintiff's bar—about 90 lawyers. And let me tell you, Mr. President, they are rich lawyers, because look at this little chart. They file these kinds of lawsuits. And out of every dollar in judgments, verdicts or settlements—here is the dollar—the high side of what the investors get is 14 cents. In many cases it is not 14 cents it is half that.

Now, let me tell you, if you start with a system that does that and is monopolized by a group of barristers who 20 years ago or 25 or 30, when I was in law school, would have been found guilty of champerty. We learned about two things you should never do, and one of them, my friend from Georgia will remember, is commit champerty, which said you should not promote unnecessary legislation that inures more to your benefit as a lawyer than to your client's. This is the epitome of that. They would not get through the door today.

The judges of yesteryear would say, ''Get rid of this kind of lawyer.'' So they are out there with gobs of money running advertisements all over the country like they are for the investors. They are 14 cents for the investor. They are 14 cents for the investor and 86 cents for themselves, the investigators who work for them, and all the other experts that they use.

Now, tell me you cannot fix that. If we could not fix it, I would give up on the U.S. Senate and say we are going to leave this up to lawyers and their entrepreneurial minds. And we are stopping that.

Essentially, under this reform lawyers are going to represent a class of people, not a select plaintiff that they choose as pet plaintiffs. Lawyers are going to be more responsible to the courts. Lawyers are going to have less fun running around getting facts.

And, Mr. President, clearly this bill is balanced.

Reform is supported by more than 19 major associations, 10 of the biggest public pension funds, 12 State pension fund administrators and regulators, and hundreds of companies—the list reads like who is who in making America's economy great.

The bill Senator DODD and I introduced has 51 cosponsors.

We heard a lot about Charles Keating. There is not a Senator in this body that would protect Keating. This bill has nothing to do with Keating. His name is well known. This bill has a lot to do with slowing down a group of entrepreneurial lawyers whose names are not well known.

The current system needs reform. It is a system that has given us millions for lawyers and pennies for plaintiffs.

When Congress enacted our securities laws, the 1933 and 1934, the basic foundation was disclosure of information and deterrence.

Congress did not by statute create the class action securities law suit under 10b and rule 10b–5. The courts created them. However, in the last decade, every significant Supreme case on the topic has scaled down the scope of the 10b–5 class action cases. It shortened the statute of limitations. It abolished aiding and abetting liability. The Court also seemed to be inviting Congress to legislate in this area. Today we are taking that historic step.

This bill gives investors a better system 12 ways:

First, it puts investors with real financial interests, not lawyers in charge of the case.

It puts investors with real financial interests, not professional plaintiffs with one or two shares of stock in charge of the case. It includes most adequate plaintiff; plaintiff certification; ban on bonus payments to pet plaintiffs; settlement term disclosure; attorney compensation reform; sanctions for lawyers filing frivolous cases; restrictions on secret settlements and attorneys' fees.

Second, it provides for notification to investors that a lawsuit has been filed so that all investors can decide if they really want to bring a lawsuit. It is likely that people trusted to manage pension funds and mutual funds—institutional investors—will get more involved (most adequate plaintiff provision).

Third, it puts the lawyers and their clients on the same side (reforms that change economics of cases, proportionate liability, settlement terms disclosure).

Fourth, it prohibits special side-deals where pet plaintiffs get an extra $10,000 or $15,000. It protects all investors, not just the lawyers' pet plaintiffs, so that settlements will be fair for all investors.

Fifth, it stops brokers from selling names of investors to lawyers.

Sixth, it creates an environment where CEO's can, and will talk about their predictions about the future without being sued. It gives investors a system with better disclosure of important information (safe harbor).

Seventh, it contains better disclosure of how much a shareholder might get under a settlement and how much the lawyers will get so that shareholders can challenge excessive lawyers' fees.

Eighth, no more secret settlements where attorneys can keep their fees a secret (restrictions on settlements under seal).

Ninth, it limits amounts that attorneys can take off the top. It limits attorneys' fees to a ''reasonable amount'' instead of confusing calculations (attorney compensation reform, banning lodestar method of calculating fees).

Tenth, it provides a uniform rule about what constitutes a legitimate law suit so that it will no longer matter where a case is filed. Investors in Albuquerque will have the same rules as investors in New York (pleading reform). It stops fishing expeditions where lawyers demand thousands of company documents before the judge can decide if the complaint is so sloppy that it should be dismissed on its face (discovery stay).

Eleventh, it will make merits matter so that strong cases recover more than weak cases. It will make sure people committing fraud compensate victims. It improves upon the current system so that victims will recover more than six cents on the dollar.

Twelfth, by weeding out frivolous cases, it gives the lawyers and judges more time to do a good job in protecting investors in meritorious cases. High-technology companies' executives can focus on running their companies and growing their businesses. Investors will get higher stock prices and bigger dividends.

S. 240 does exactly what Chairman Levitt said the system should do, protect all investors—not just a few.

I ask unanimous consent to have inserted in the RECORD the numerous organizations that have real interests, like money managers who have handled our money, who say this bill is a good bill. I also ask unanimous consent that some letter of support from various pension fund groups be printed in the RECORD.

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

SUPPORTERS OF SECURITIES LITIGATION REFORM

American Business Conference: Members of the American Business Conference include 100 chief executive officers of high-growth companies with revenues over $25 million. ABC serves as a voice of the midsize, high-growth job creating sector of the economy.

American Electronics Association: The American Electronics Association represents some 3,000 companies in 44 states that span the breadth of the electronics industry, from silicon to software, to all levels of computers and communication networks, and systems integration.

American Financial Services Association is a national trade association for financial service firms and small business. Its 360 members include consumer and auto finance companies, credit card issuers, and diversified financial services firms.

American Institute of Certified Public Accountants: The American Institute of Certified Public Accountants is the national professional organization of over 310,000 CPAs in public practice, industry, government, and academia.

Association for Investment Management and Research: The Association for Management and Research is an international nonprofit membership organization of investment practioners and educators with more than 40,000 members and candidates.

Association of Private Pension and Welfare Plans: The Association of Private Pension and Welfare Plans membership represents the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies, law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Association of Publicly Traded Companies: The Association of Publicly Traded Companies has an active membership of over 500 corporations consisting of a broad cross section of publicly traded companies, especially those traded on the NASDAQ national market.

BIOCOM/San Diego (Formerly the Biomedical Industry Council): BIOCOM/San Diego is a business association representing over 60 biotechnology and medical device companies in San Diego, CA.

Biotechnology Industry Organization: The Biotechnology Industry Organization represents more than 525 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agriculture and environmental biotechnology products.

Business Software Alliance: The Business Software Alliance promotes the continued growth of the software industry through its international public policy, education and enforcement programs in more than 60 countries, including the U.S., throughout North America, Asia, Europe and Latin America. BSA represents leading publishers of software for personal computers.

Information Technology Association of America: The Information Technology Association is a major trade association representing over 5,700 direct and affiliated member companies which provide worldwide computer software, consulting and information processing services.

National Association of Investors Corporation: The National Association of Investors Corporation is the largest individual shareowners organizations in the United States. NAIC has a dues-paid membership of investment clubs and other groups totalling more than 273,000 individual investors.

National Association of Manufacturers: The National Association of Manufacturers is the nations's oldest voluntary business association, comprised of more than 13,000 member companies and subsidiaries, large and small, located in every state. Its members range in size from the very large to the more than 9,000 small members that have fewer than 500 employees each. NAM member companies employ 85% of all workers in manufacturing and produce more than 80% of the nation's manufactured goods.

National Investor Relations Institute: The National Investor Relations Institute, now in its 25th year, is a professional association of 2,300 corporate officers and investor relations consultants responsible for communication between corporate management, shareholders, security analysts and other financial publics.

National Venture Capital Association: The National Venture Capital Association is made up of 200 professional venture capital organizations. NVCA's affiliate, the American Entrepreneurs for Economic Growth, represents 6,600 CEOs who run emerging growth companies that employ over 760,000 people.

Public Securities Association: The Public Securities Association is the international trade association of banks and brokerage firms which deal in municipal securities, mortgage and other asset-backed securities, U.S. government and federal agency securities, and money market instruments.

Securities Industry Association: The Securities Industry Association is the securities industry's trade association representing the business interests of more than 700 securities firms in North America which collectively account for about 90% of securities firm revenue in the U.S.

Semiconductor Industry Association: The Semiconductor Industry Association represents the $43 billion U.S. semiconductor industry on public policy and industry affairs. The industry invests 11% of sales on R&D and 15% of sales on new plant and equipment—more than a quarter of its revenue reinvested in the future—and thus seeks to improve America's equity capital markets.

Software Publishers Association: The Software Publishers Association is the principal trade association of the personal computer software industry, with a membership of over 1,000 companies, representing 90% of U.S. software publishers. SPA members range from all of the well-known industry leaders to hundreds of smaller companies; all of which develop and market business, consumer, and education software. SPA members sold more than $30 billion of software in 1992, accounting for more than half of total worldwide software sales.

MANAGERS OF PRIVATE OR PUBLIC PENSION FUNDS

Champion International Pension Plan: Champion Internation Pension Plan controls over $1.8 billion in total assets.

Connecticut Retirement and Trust Fund: The Connecticut Retirement and Trust Fund invests over $11 billion on behalf of over 140,000 employees and beneficiaries.

Eastman Kodak Retirement Plan: Eastman Kodak Retirement Plan manages over $10.9 billion in total assets and is ranked as one of the largest 60 pension plans in the U.S.

Massachusetts Bay Transportation Association: With over 12,000 participants, the Massachusetts Bay Transportation Association controls over $772 million in total assets.

New York City Pension Funds: Over $49 billion have been invested in the fund to insure the retirement security of 227,000 retirees and 138,000 vested employees.

Oregon Public Employees' Retirement System: Assets controlled by the fund total over $17.2 billion. The Oregon Public Employees' Retirement System is ranked among the largest 30 pension plans in the U.S.

State of Wisconsin Investment Board: One of the 10 largest pension funds in the United States, the State of Wisconsin Investment Board manages over $33 billion contributed by the State's public employees.

State Universities Retirement System of Illinois: The State Universities Retirement System is ranked as one of the country's 100 largest pension funds with total assets of $5.3 billion.

Teachers Retirement System of Texas: The Teachers Retirement System of Texas controls over $36.5 billion in total assets on behalf of its 700,000 members.

Washington State Investment Board: With assets totaling over $19.7 billion, the Washington State Investment Board is ranked in the largest 25 pension funds.

NATIONAL ASSOCIATION OF INVESTORS CORPORATION,
Royal Oak, MI, July 19, 1994.

Hon. CHRISTOPHER DODD,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: I am writing to you as Chairman of the National Association of Investors to congratulate you on your sponsorship of the Private Securities Litigation Reform Act of 1994 (S. 1976) and to promise the support of the National Association of Investors Corporation.

NAIC is, we believe, the largest individual shareowners organization in the United States. We currently have a dues paid membership of investment clubs and other groups totalling more than 273,000 individual investors. NAIC has been in operation since 1951 and our members are the direct owners of shares in our nation's industry. We are a cross-section of the nation's population including individuals from every race, political persuasion and economic level.

Our purpose as an organization, is to help individuals learn the benefits provided by being an owner of a business and to learn how to do so successfully. Since our founding, nearly 4 million people have taken our training programs and a high percentage of our members enjoy an earnings rate on their securities equal to or exceeding that of the S&P 500 Index.

The current situation in the law permits and even encourages the filing of lawsuits with very little merit against corporations. The benefits derived from these suits are going primarily to attorneys.

However, these payments are actually coming from the pockets of serious, lifetime owners of the corporations like our members.

These unmerited suits take corporate executives away from the main task of running the business and building it for their shareowners.

Even more importantly, the fear of these kinds of suits causes executives to release less information about the business to shareholders because of the fear that this could lead to their being sued.

Our members devote about 25% of their investments to smaller companies and many of

these companies are high technology companies that have been a particular target of attorneys filling these questionable suits.

Again let me say that our members appreciate your interest in solving these problems and thus helping the great mass of the nation's investors by reducing the threat of a large and mischievous expense.

Yours respectfully,

THOMAS E. O'HARA,
Chairman, Board of Trustees.

JULY 19, 1994.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

Hon. PETE V. DOMENICI,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS DODD AND DOMENICI: As pension fund managers, we are responsible for safeguarding the investments of thousands of individuals in the securities markets. In making investment decisions on behalf of these individuals our success depends on both the integrity of the market and the vitality of the American economy.

For these reasons, we are writing to applaud your initiative in addressing the fundamental problems of the securities fraud litigation system. We agree that the current system is not protecting investors and needs reform. Under the current system, defrauded investors are receiving too little compensation, while plaintiffs' lawyers take the lion's share of any settlement. Moreover, meritless litigation costs companies millions of dollars—money that could be generating greater profit for the company and higher returns for investors. Finally, the fear of such meritless litigation has caused many companies to minimize the amount of information that they disclose—the opposite of what we need to do our job effectively.

Thank you again for pursuing long overdue reforms on the securities litigation system. We look forward to working with you to make the system work for all investors.

Sincerely,

Mr. John J. Gallahue, Jr., Executive Director, Massachusetts Bay Transportation Authority, Retirement Fund; Dr. Wayne Blevins, Executive Director, Teachers Retirement System of Texas; Mr. Alan G. Hevesi, Comptroller, The City of New York, New York City Pension Funds; Mr. John A. Ball, Senior Vice President, Champion International Corp., Champion International Pension Plan; Mr. Joseph M. Suggs Jr., Treasurer, State of Connecticut, Connecticut Retirement and Trust Funds; Mr. Jim Hill, Treasurer, State of Oregon, Oregon Public Employees' Retirement System; Ms. Patricia Upton, Executive Director, State of Wisconsin Investment Board; Mr. Kenneth E. Codlin, Chief Investment Officer, State Universities Retirement System of Illinois; Mr. Gary P. Van Graafeiland, Senior Vice President, Secretary and General Counsel, Eastman Kodak Co., Eastman Kodak Retirement Plan; Mr. Basil J. Schwan, Executive Director, Washington State Investment Board.

THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE TREASURER, STATE HOUSE,
Boston, MA, March 22, 1995.

Hon. ALFONSE D'AMATO,
Chairman, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: I am writing you as Treasurer of the Commonwealth of Massachusetts and, in that capacity, as sole Trustee of the state's largest public pension fund for state teachers and employees. I would like to join with those elected officials around the country who are urging your committee to enact legislation to curtail the epidemic of meritless securities legislation which has begun to have a negative impact on the effectiveness and productivity of our nation's businesses and the capital formation process itself.

The concern about, and the reaction to, meritless lawsuits has caused industry, as well as accounting, law and insurance companies, to increase their costs and price tags ultimately paid by the consumer and the investing public, including a large percentage of our retirees and pension holders. Therefore, I urge your committee to enact legislation to eliminate these well-known abuses to our legal system. In doing so, I would urge the avoidance of ''lawyer bashing''. Although there is a sizable portion of the bar that generates and unduly profits from these meritless suits, the overwhelming percentage of lawyers represent their profession well and are constructive participants in our judicial system. I also urge caution in establishing a ''losers pay'' system to ensure that we do not preclude the middle class and the poor from bringing meritorious causes of action before our courts.

I am confident your committee will find a way to overhaul the current securities litigation system and pass meaningful legislation which will enhance the capital formation process in our country and enure to the economic benefit of millions of individuals and retirees who invest in corporate America for their own security.

Sincerely yours,

JOSEPH D. MALONE,
Treasurer and Receiver General.

STATE OF OHIO,
OFFICE OF THE TREASURER,
Columbus, OH, March 10, 1995.

Senator ALFONSE D'AMATO,
Chairperson, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: As Treasurer of the State of Ohio, my office regularly issues debt and purchases securities on behalf of the people of the State of Ohio. In addition, my office is designated by law as the custodian of the assets of the State's pension funds. In the exercise of my responsibilities, I have become concerned that securities litigations, and the threat of securities litigation has begun to negatively impact the capital formation process essential to the economic growth for my state and the nation.

Under present law, attorneys have an incentive to file unsubstantiated claims, because there are no penalties for the filing of a meritless claim. Attorneys will file first and then use the discovery process to see if there is any merit to continuing the claim. In many cases, defendants have settled even unsubstantiated claims because it is more cost efficient to settle an unsubstantiated claim rather than to defend a lawsuit.

Furthermore, the amount of damages that plaintiffs have typically recovered represents only a percentage of their initial claims; but the lawyers who bring the claim extract substantial fees from any lawsuit filed. A system that was intended to protect investors now primarily benefits their lawyers.

The fear of meritless lawsuits has also caused many companies to minimize the amount of information they disclose to the public which is the opposite intent of the federal securities laws. Moreover, the fear of meritless lawsuits has caused accounting, law, and insurance firms to increase their costs to clients, discontinue service in some cases, and cause outside executives to refuse to serve on company's board of directors.

Federal legislation is needed to restore the protections that the 10B–5 action is supposed to provide and to eliminate the abuses of the system. At a minimum, legislation should address the liability scheme that rewards lawyers bringing meritless lawsuits and reduce the costs that the system imposes on the capital markets and business expansion.

Pension fund participants and other investors depend on the integrity of the market and the prospects of the economy. The current securities litigation system undermines both. I urge the Congress to pass meaningful reform legislation to protect the economic security of millions of individuals who invest in the securities markets.

Sincerely,

J. KENNETH BLACKWELL,
Treasurer of State of Ohio.

TREASURER OF THE
STATE OF ILLINOIS,
Springfield, IL, March 16, 1995.

Hon. CAROL MOSELEY-BRAUN,
Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: As the state official responsible for safeguarding the investments of public employees' pension funds, I am concerned about abuses in the securities litigation system that threaten investors' interests and impose unnecessary costs on the economy.

Abusive securities lawsuits are frequently filed on the basis of little more than a drop in a company's stock price. Enormous liability exposure and the onerous cost of mounting a defense leave companies with little choice but to settle, regardless of their culpability. Typically, plaintiffs recover only a small percentage of their damages, while lawyers extract substantial fees from the transactions. A system that was intended to protect investors now primarily benefits their lawyers.

Because shareholders are on both sides of this litigation, it merely transfers wealth from one group of shareholders to another. However, it wastes millions of dollars in company resources for legal expenses and other transaction costs that otherwise could be invested to yield higher returns for company investors. In addition, the fear of meritless litigation has caused many companies to minimize the amount of information they disclose, precisely the opposite of what investors need to invest safely and wisely.

Federal legislation is needed to restore the protections that the 10b–5 action is supposed to provide and to eliminate the abuses that plague the system. At a minimum, legislation should address the liability scheme that rewards lawyers for bringing abusive suits and reduce the cost that the system imposes on the capital markets and business expansion.

Pension fund participants and other investors depend on the integrity of the market and the prosperity of the economy. The current securities litigation system undermines both. I urge the Congress to pass meaningful reform legislation to protect the economic security of the millions of individuals who invest in the securities markets.

Sincerely,

JUDY BAAR TOPINKA,
State Treasurer.

STATE OF CALIFORNIA, DEPARTMENT OF CORPORATIONS, OFFICE OF THE COMMISSIONER,

Los Angeles, CA, February 9, 1995.

Re H.R. 10—The Securities Litigation Reform Act.

Hon. JACK FIELDS,

Chairman, Telecommunications and Finance Subcommittee, Committee on Commerce, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN FIELDS: As Commissioner of Corporations, I am responsible for the administration of the securities laws of the State of California. Before being appointed Commissioner of Corporations, I was an attorney in private practice specializing in corporate transactions, including securities offerings. It is an honor and privilege to present to you the following views concerning H.R. 10, the Securities Litigation Reform Act currently before your subcommittee.

I believe there is a compelling need to reform the current system of securities litigation. The problem with the current system is two-fold. First, the current system too often promotes the filing of meritless claims. Perhaps more importantly, the current system does not adequately serve the interests it is designed to protect—the interests of defrauded investors. Before I comment on particular provisions of H.R. 10, I would like to provide some background information with respect to this latter problem.

Defrauded Investors—Class Action Victims. At the January 19 Telecommunications and Finance Subcommittee hearing, the principal beneficiaries of the current system, class action attorneys, were its strongest defenders. While it is not surprising that the class action bar might put its interest in the status quo ahead of the nation's interest in a dynamic entrepreneurial economy, I have been concerned that, too often, class action lawyers appear to put their interests ahead of their clients'. The class action bar's handling of a number of cases arising out of the Prudential limited partnership scandal exemplifies this abuse of the current system.

In the 1980s, Prudential Securities engaged in a widespread pattern of sales abuses in its marketing of limited partnership investments. To settle charges stemming from these abuses, Prudential pled guilty to criminal securities law violations and entered into a comprehensive settlement with the Securities and Exchange Commission and securities regulators from 49 states. As part of this comprehensive settlement, an independent arbitration process was established to address aggrieved investors' claims. According to the Independent Claims Administrator's January 20, 1995 report, however, more than 100,000 claims or parts of claims have been rejected because they had been settled as part of a class action lawsuit. My office has received letters from scores of investors in this situation. Frequently, these investors didn't even know that their claim was part of a class action settlement. Now many feel they've been victimized twice—once by Prudential and another time by the class action litigation system ostensibly designed to protect their interests.

In the VMS Realty Partnership case, limited partnership interests were sold to thousands of unsuitable investors, often on the basis of materially misleading statements. A class action suit based upon these abuses was brought by Milberg, Weiss, Bershad, Hynes & Lerach, the nation's largest class action law firm. Despite the strong evidence of securities law violations, this case was settled for less than 8 cents on the dollar. While this may have represented a significant recovery for the lawyers, it woefully undervalued the investors' claims. Investors who opted out of the class action settlement and are now participating in the independent arbitration process are frequently receiving 100% of their losses. In addition, these investors haven't had to share their recovery with a lawyer ''representing their interest.''

The Energy Income Limited Partnership case provides another example of this type of abuse. Again, this case involved a pattern of securities law violations, which Prudential acknowledged when it pled guilty to criminal securities violations. After some discovery, the lead class action lawyers recommended that the court approve a $37 million cash settlement. After a number of state securities regulators strenuously objected, the judge deferred ruling on the proposed settlement.

Because of the regulators' action, the total settlement offer was ultimately increased more than three-fold to $120 million. At the point, the class action lawyers affirmatively fought my office's efforts to require that they clearly explain to their clients what the settlement offer meant to them—for good reason. Those investors who did not accept the settlement and are now participating in the independent arbitration process are frequently recovering 100% of their losses. Investors who accepted the recommendation of ''their lawyers'' and participated in the class action settlement, have had to accept roughly 25–30 cents for each dollar of loss.

These cases illustrate the flip-side of the abuses in the current system of class action litigation; not only are bad cases overvalued, but strong cases are too often undervalued. While quick settlement of these cases may serve the lawyers' interests, it frequently does not serve the interests of the defrauded investors.

Provisions of H.R. 10. H.R. 10 effectively addresses many of the current abuses of the securities class action litigation system. As the following analysis of certain of the provisions of H.R. 10 reflects, however, I would like to respectfully submit several suggested changes for the Subcommittee's consideration.

SECTION 202. PREVENTION OF LAWYER-DRIVEN LITIGATION

Section 202 puts in place several much-needed safeguards against certain abuses in the current system. It is important that the prosecution of securities claims be directed by the aggrieved investors, not by the lawyers. I would respectfully suggest however, that Section 202(a) be revised to evidence a strong preference for having a steering committee of investors perform this function rather than an appointed guardian ad litem. Those investors who are seeking to recover their losses are, on balance, likely to have a more complete commonality of views with the investor class than a court-appointed third party.

Section 202(b) does address a particular problem associated with class action settlements—woefully inadequate disclosure of the settlement terms. The settlement notice that was sent to investors in the Prudential Energy Income Limited Partnership case illustrates this problem. While the notice contained lengthy and complicated descriptions of the procedural history of the case, the paragraph that described the mechanism to determine what investors would receive in the settlement was buried near the back of the notice. In addition, the formula to calculate the settlement awards was nearly incomprehensible to average investors. As I noted earlier, the lead class action lawyers fought my office's efforts to make the description of the settlement terms more understandable to investors.

While Section 202(b) does provide some improvement over the current system of disclosure, I would respectfully suggest that it be amended to provide, at a minimum, that the amount that an investor could expect to receive in the settlement, on a per share or per unit basis, be prominently disclosed in the settlement notice. Section 202(b) might also be amended to require that the settlement notice be understandable to an average investor and focus more attention on the substance of the class action settlement, including the information now called for in Section 202(b), and less attention on the procedural history of the case.

SECTION 203. PREVENTION OF ABUSIVE PRACTICES THAT FOMENT LITIGATION

One of the most egregious abuses of the current system of class action securities litigation, the professional plaintiff, is effectively addressed by the elimination of bonus payments and limits on those investors who can serve as class representatives. I do have one suggested change, however. While it is important that class action representatives have a meaningful economic stake in the proceeding, I would respectfully suggest that Section 21(k) of the Securities Exchange Act, to be added by Section 203(a), be amended to reduce the amount of required investment from $10,000 to $5,000. While the amount of the minimum investment is admittedly a judgment call, I encourage the Subcommittee to strike the balance more in favor of the interests of small investors.

Under the current system, litigants are responsible for their own attorneys' fees. This can present two problems. Defendants in class action cases may feel coerced to settle a frivolous case to avoid the often high costs of litigation. In addition, the amount received by defrauded investors is reduced by the attorneys' fees, and, as a result, investors can never fully recover their losses. H.R. 10 addresses these problems by requiring the loser in a securities litigation case to pay the opposing side's legal fees in all cases.

While the solution offered by H.R. 10 should help weed out frivolous claims and afford investors an opportunity to receive full compensation for their losses, a strict loser-pays rule could put a significant and unwarranted barrier to investors, particularly small investors, seeking to recover losses allegedly associated with the defendant's fraudulent conduct. Putting too high a barrier to investors' claims could also undermine the important role that private securities litigation serves as an adjunct to governmental enforcement of the securities laws.

To address this concern, I would respectfully recommend that Section 21(m) be amended to require that the plaintiffs be obligated to pay the defendant's legal fees in those cases where (i) the case is dismissed on the pleadings or pursuant to a defendant's motion for summary judgment or (ii) the court otherwise finds at the end of the case that it was substantially without merit.

SECTION 204. PREVENTION OF ''FISHING EXPEDITION'' LAWSUITS

One of the most problematic elements of class action litigation is the prospect that a defendant who played a small role in the alleged securities law violation could be liable for the entire amount of investor losses. This prospect can be among the most coercive elements of securities litigation that compel so-called ''deep pocket'' defendants to accept unfair settlement proposals. H.R. 10 responds to this concern by requiring that plaintiffs show that the defendants were guilty of actual fraud.

I am concerned, however, that this solution to the problem associated with the rules of joint and several liability goes too far. Such a knowing fraud standard may encourage participants in the securities offering process to put a premium on remaining ignorant of the facts and undermine their commitment to do appropriate due diligence. To

avoid the unintended consequences associated with an absolute knowing fraud standard, I would respectfully suggest that Section 204 be amended to entitle investors to hold defendants who engaged in reckless conduct, not constituting knowing fraud, proportionately liable for their losses. Defendants who engaged in knowing fraud should remain jointly and severally liable for all investor losses.

While I respectfully recommend that certain changes be made to H.R. 10, I believe that H.R. 10 represents a significant step forward to correct certain of the problems in the current class action litigation system, and I want to urge the Subcommittee to continue to proceed with this important piece of legislation.

Very truly yours,

GARY S. MENDOZA,
Commissioner of Corporations.

STATE OF NORTH CAROLINA,
DEPARTMENT OF THE TREASURER,
Raleigh, NC, May 3, 1995.

Senator ALFONSE D'AMATO,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR D'AMATO: As State Treasurer and fiduciary for the North Carolina Retirement Systems and the State of North Carolina, I am writing to add my support for securities litigation reform legislation. I agree that the current securities fraud litigation system is not protecting investors and needs reform.

It is my understanding that the legislation was passed by the House of Representatives by an overwhelming bipartisan vote on March 8, 1995. Your support for these long overdue reforms would be greatly appreciated.

Sincerely,

HARLAN E. BOYLES,
State Treasurer.

STATE OF SOUTH CAROLINA,
OFFICE OF THE STATE TREASURER,
Columbia, SC, April 17, 1995.

Hon. ERNEST F. HOLLINGS,
Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: As State Treasurer of South Carolina, I am concerned that abusive and meritless securities litigation inflicts tremendous harm on the capital formation process that is vital to the economic growth of South Carolina and the United States. Accordingly, I would like to join with those elected officials nationwide who are urging the Senate to pass meaningful reform legislation that would discourage meritless litigation and thereby enhance the capital formation process.

Under present law, attorneys have no disincentive to file unsubstantiated claims, because there are no penalties for filing such claims. Similarly, defendants are often pressured to settle meritless claims by the staggering costs of defending lawsuits in our overburdened courts.

Our nation's securities laws were enacted to protect investors and to improve our capital markets. However, the perverse incentive of attorneys to file meritless claims has created the exact opposite of the intended effects of our securities laws. Abusive lawsuits, triggered by a small group of lawyers, inflict tremendous harm on our nation's financial system and on the individuals and organizations drawn into them.

Our securities system was structured to provide broad disclosure of information to investors so they could make informed decisions. But there is overwhelming evidence that issuers of corporate securities filings include only limited disclosure, influenced largely by the threat of lawsuits. Additionally, lawyers, not investors, control the litigation system and reap the lion's share of financial rewards.

Growth companies are the most critical sector of our nation's economy as they provide the majority of new jobs. Unfortunately, such companies are also the target of an inordinate number of abusive lawsuits. These lawsuits undermine the confidence of investors and produce a higher cost of capital in the United States. This higher cost of capital puts us at a disadvantage with foreign competitors and harms workers, consumers, and investors.

Once again, I urge the Senate to pass meaningful reform legislation to enhance our economic future and to protect the investments of the State of South Carolina and those of individual investors.

Very truly yours,

RICHARD ECKSTROM,
State Treasurer.

STATE OF DELAWARE,
OFFICE OF STATE TREASURER,
Dover, DE, March 21, 1995.

Hon. ALFONSE M. D'AMATO,
U.S. Senate,
Washington, DC.

DEAR SENATOR D'AMATO: As Treasurer of the State of Delaware, I have become concerned that abusive securities litigation is negatively affecting the capital formation process essential to the economic growth of my state and the nation.

Problems with the current system have been well-documented in Congressional hearings, academic studies, and by the first-hand experiences of corporate executives and investors. Abusive lawsuits—often triggered merely by a stock price drop—and easy and inexpensive for plaintiffs' lawyers to bring. Once a company is sued, they are forced to settle, even if they are innocent, to avoid the high costs of fighting a meritless lawsuit. Such abusive class action litigation diverts corporate capital away from R&D, business expansion and job creation. High-technology and other high-growth companies are prime targets to these lawsuits, simply because of the inherent volatility of their stock prices.

Investors are also being harmed by the current system as it shortchanges people who have been victimized by real fraud. Studies show that plaintiffs receive 14 cents for every dollar of recoverable damages, at best, and a substantial portion of the settlement fund usually goes to the plaintiffs' attorneys. The plaintiffs' lawyers who specialize in these cases profit from bringing as many cases as possible and quickly settling them, regardless of the merits. Valid claims are being undercompensated in the current system because lawyers have less incentive to vigorously pursue them.

Investors lost out in another way. Studies show that abusive 10b-5 lawsuits are chilling voluntary corporate disclosure of information that would be useful to investors. A recent survey by the American Stock Exchange revealed that 75% of the corporate CEOs surveyed limit the information disclosed to investors out of fear of meritless lawsuits.

Federal legislation is needed to restore the protection that the 10b-5 action is supposed to provide while eliminating the abuses in the current system. Meaningful reform must include remedying the existing liability structure that creates the incentive to bring and settle meritless lawsuits. Legislation should also reduce the costs that the system imposes on the capital markets and on business and economic growth.

I urge Congress to pass securities litigation reform legislation to protect the investments of my state and of the millions of individual Americans who invest in the securities markets.

Sincerely,

JANET C. RZEWNICKI,
State Treasurer.

STATE OF COLORADO,
DEPARTMENT OF THE TREASURY,
Denver, CO, April 10, 1995.

Hon. ALFONSE D'AMATO,
Chairman, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: As the Treasurer of the State of Colorado, my office issues debt and purchases securities on behalf of the people of the State of Colorado. With such responsibility, I am concerned that securities litigation and the threat of securities litigation are beginning to negatively impact our nation's business by hindering the capital formation process essential to the economic growth of Colorado and the nation.

Under the present law, attorneys are given an incentive to file unsubstantiated claims because there are no penalties for filing meritless claims. Attorneys will file claims on the basis of little more than a drop in a company's stock prices and then, through discovery, will determine if there is any merit to continuing the claim. Because of the liability exposure and the tremendous cost of defending a claim, companies are often left with no choice but to settle the unsubstantiated suit.

Additionally, the plaintiffs typically recover only a small percentage of their claim, as the lawyers extract large fees for bringing the suit. A system that was intended to protect investors now seems to benefit the lawyers.

The fear of meritless lawsuits has also caused many companies to minimize the amount of information they disclose to the public which is the exact opposite of the intent of the federal securities laws. This fear has also caused accounting and insurance firms to increase their costs to clients, discontinue service in some cases, and cause outside executives to refuse to serve on a company's board of directors.

Federal legislation is needed to restore the protections that the 10B–5 action is supposed to provide and to eliminate the abuse of the system. At a minimum, legislation should address the liability scheme that rewards lawyers for filing meritless suits and reduce the costs that the system imposes on the capital markets and business expansion.

Thank you for your consideration of this important issue.

Sincerely,

BILL OWENS,
State Treasurer.

ASSOCIATION OF PRIVATE PENSION
AND WELFARE PLANS,
Washington, DC, March 17, 1995.

Hon. PETE V. DOMENICI,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS DOMENICI AND DODD: On behalf of the membership of the Association of Private Pension and Welfare Plans (APPWP), I am writing to commend your efforts in pursuing reform of the securities litigation system. The APPWP is a national trade association for companies and individuals concerned about federal legislation affecting all aspects of the employee benefits system. The APPWP's members represent the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies,

law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Your initiative is necessary to address the critical problems with today's securities litigation system. As you have correctly noted, investors are ill-served by the present system. Because issuers fear abusive litigation, they have sharply curtailed the amount of information they are willing to disclose, leaving investors without information essential for intelligent decision making. To the detriment of shareholders, abusive securities litigation distracts companies from their principal tasks, discourages the development of new businesses and inhibits sound risk-taking. Finally, the existing litigation system encourages suit regardless of merit and the cost forces defendants to settle regardless of merit.

We support your efforts to change these skewed incentives, to encourage voluntary disclosure by issuers of securities and to transfer control of securities litigation from lawyers to investors. We look forward to working with you to make these reforms a reality.

Sincerely,

LYNN D. DUDLEY,
Director of Retirement Policy.

[From the Legal Times, February 1995]

TIME TO WAKE THE SLEEPING BEAR

(By Nell Minow)

In January of this year, the U.S. District Court for the Southern District of New York issued a decision dismissing a group of shareholders class actions against the Philip Morris Cos. The court noted that less than five hours after Philip Morris announced that its 40-cents-per-package price reduction on Marlboro cigarettes could reduce its operating earnings by as much as 40 percent, the first class action was filed.

The court further noted:

''[The first action was filed] by a plaintiff who had bought 60 shares of stock during the alleged class period. Four more lawsuits were filed that day, and on the very next business day . . . five additional lawsuits were commenced . . .. I note that in the few hours counsel devoted to getting the initial complaints to the courthouse, overlooked was the fact that two of them contained identical allegations, apparently lodged in counsel's computer memory of 'fraud' form complaints, that the defendants here engaged in conduct 'to create and prolong the illusion of [Philip Morris'] success in the toy industry.'''

In other words, in the race to the courthouse, the plaintiffs' lawyers had not even taken the time to do a ''global search and replace'' on a previous complaint, apparently against some toy company, to reflect the fact that the product Philip Morris was reporting on so ''fraudulently'' was actually cigarettes.

This demonstrates one-half of the problem in the current system for shareholders litigation. Most shareholder lawsuits are brought by people who care little, if at all, for shareholders as a group. The plaintiffs and their lawyers make grand statements about the integrity of the markets, but the primary motivation—and the primary outcome—is their own returns.

Typically, plaintiffs get a small award, and their lawyers get a large one. These merit less suits are filed whenever the stock performance is worse—or better—than the company predicted, and then settled by insurance companies for too much money (because insurers don't want to risk sending a complicated case to the jury).

The other half of the problem is that cases with merit are settled for too little or never brought at all. Because of free-rider and collective-choice issues, along with conflicts of interest, those shareholders with a meaningful stake have not been heard from.

The state of shareholder litigation is reminiscent of a line by William Butler Yeats: ''The best lack all conviction and the worst are full of passionate intensity.'' The system falls to protect shareholders from genuine abuses, but still deters managers from disseminating useful and legitimate information. The current proposals for securities litigation reform—a Senate bill, S. 240, that is similar to one introduced last year and a House bill, H.R. 10, that is part of the Contract With America—do a better job with the first half of the problem than with the second.

The current rules and procedures for securities class actions and derivative actions were designed to overcome the problem of collective choice. In certain cases, no one shareholder can justify the time and expense necessary to bring a lawsuit for only a pro rata share of the rewards. So the procedures were established to create incentives for participation in suits challenging fraudulent statements.

But the system fails to take into account the unusual makeup of the class of potential securities plaintiffs. The shareholder community is too diffuse, too diverse, and subject to change too frequently to be addressed meaningfully as a group.

More important, the disincentives for participation are strong. Can we see the trustees of the IBM Corp.'s pension fund joining, as plaintiffs, in a shareholder action against the management of the General Motors Corp., no matter how much is at stake?

Having created a system for filing suits that does not eliminate the powerful disincentives for legitimate plaintiffs, we are left with the tiny but highly prosperous community of ''Wilmington filers.'' The ambulance chasers of securities law, these people have made an industry out of nuisance suits. Anthony Bonden described them like this in the December 1989 issue of The American Lawyer (''The Shareholder Suit Charade''):

''Welcome to the plush and intimate confines of the Delaware chancery court, home turf of the Wilmington filers, the shareholder lawyers who sue any deal that moves. They are the bottom scrapers of the M&A world, the Wall Street Journal clippers with the mysterious professional plaintiffs. Racing to the courthouse on the merest rumor of a deal, they file triplicate copies of one another's suits—complaints that themselves read like duplicates from every other case. They are ''rapacious jackals,'' in the memorable words of Chicago federal judge Charles Kocoras in 1982, ''whose declared concern for the corporate well-being camouflages their unwholesome appetite for corporate dollars.'' And they are the ''pilgrams''—early settlers—litigators who never have to prove their mettle in a trial.''

What we want is for shareholders with a meaningful stake to file suit to enforce limits on corporate directors and managers who have neglected or abused their obligation to be candid about the company's status and prospects. We do not want shareholders with microscopic stakes to file dozens, even hundreds, of nuisance suits and to settle on terms that benefit the plaintiffs a little, their lawyers a lot, and their fellow shareholders not at all. We want to encourage corporate communication about the company and its prospects, but we want to discourage communication that is misleading or fraudulent.

The proposals before Congress address these goals with the following important and urgently needed reforms: The Racketeer Influenced and Corrupt Organizations law should not apply to ordinary securities cases. Forward-looking statements, as defined by the Securities and Exchange Commission, should have some ''safe harbor'' protection. Plaintiffs should bear the burden of proving that the defendant had ''actual knowledge'' that a statement was false or that a relevant statement was omitted. And a stay of discovery should be provided once a motion to dismiss, based on the safe harbor for forward-looking information, has been filed.

These measures will reduce the number of sloppy, race-to-the-courthouse actions, like the ones filed against Philip Morris, and put less pressure on insurers to settle. They will also encourage use of alternate dispute resolution. Indeed, the ADR provisions in the current bills should be strengthened, perhaps even requiring referral to a certified mediator with a background in securities law, who would resolve as many issues as possible.

To reduce the conflicts of interest between plaintiffs and their fellow shareholders, the proposals provide for appointment of a guardian ad litem or a plaintiff steering committee. This makes other aspects of the bills—including a minimum requirement for stock ownership and a limit on the number of actions a plaintiff can bring—unnecessary and possibly counterproductive. As long as there is an independent mechanism for ensuring that the interests of all shareholders are met, the identity and the holdings of the name plaintiff are unimportant. Indeed, an individual shareholder may be an excellent representative of the group.

Litigation reform efforts in fields where corporations pay big awards always raise the question of the English, or ''loser pays,'' rule. The theory is that ''loser pays'' discourages frivolous suits. But in this context, it is unnecessary.

There are already sufficient penalties available for frivolous suits. Furthermore, judges can penalize litigants by refusing to approve attorney fees, as the U.S. District Court in Maine did in a 1992 case, Weinberger, et al. v. Great Northern Nekoosa Corp., et al.

Lawyers had filed suit on behalf of the shareholders of Great Northern Nekoosa, a takeover target of the Georgia-Pacific Corp. Since the ultimate deal was better for shareholders than the proposal on the table at the time that the suit was filed, the attorneys argued that they had made an important contribution for which they deserved to be paid. Georgia-Pacific agreed to pay them $2 million, subject to what was expected to be routine approval by the court.

Instead, the court refused to allow any payment at all, issuing a decision with detailed objections to almost every item and calculation put forward to support the $2 million in fees. The judge ruled that even had the law firms justified their involvement, they had overbilled by 80 percent: ''Exaggeration, rather than restraint, has been the watchword of the plaintiff's counsel's entire exercise. . . . [Even a Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.''

Since the plaintiffs bar normally takes these shareholders cases on a contingency basis, a decision like the one in the Georgia-Pacific case is a powerful deterrent to frivolous and unnecessary suits.

But just as we have to address the problem of too many bad suits, we need to address the problem of too few good ones. Institutional investors, including pension funds and money managers, often ignore notices of shareholders suits. It is almost unheard of for them to file one. The ''loser pay'' rule will only make this problem worse.

On the contrary, to encourage large shareholders to take on the task—and the commercial risk—of filing suit against major corporations, we may need to compensate them for the time and resources they expend. A steering committee, as in bankruptcy cases, could review such awards.

The Department of Labor, which has jurisdiction over ERISA and Taft-Hartley pension funds, has already raised the consciousness of the pension-fund community about its obligations with regard to proxy voting. The department could do the same with regard to shareholder litigation. Along with the other agencies that have jurisdiction over institutional investors—the SEC, the Internal Revenue Service, and the banking agencies—the Labor Department should establish a standard for evaluating a potential suit as one would any other asset.

To produce real reform—by encouraging suits brought to hold management's feet to the fire and discouraging suits brought to line the pockets of plaintiffs and their lawyers—institutional investors must be persuaded to share the burden of bringing shareholder litigation. When the system does not provide adequate incentive for them to protect their own interests and those of their fellow shareholders, it is institutional investors and their beneficiaries whom the system has failed the most.

TESTIMONY OF MARYELLEN ANDERSEN, INVESTOR AND CORPORATE RELATIONS DIRECTOR, CONNECTICUT RETIREMENT & TRUST FUNDS AND TREASURER OF THE COUNCIL OF INSTITUTIONAL INVESTORS, BEFORE THE SENATE BANKING SECURITIES SUBCOMMITTEE, JULY 21, 1993

Good morning. My Washington advisor ordered me not to start by telling you who I am and who I represent. She says you already know, or you wouldn't have invited me. She also says it is silly to read a string of titles and numbers, and it puts everyone to sleep.

So I won't read you a string of titles. But I think it is critical to emphasize that if there is *any* constituency here today that has every reason to get the securities litigation system right, and no reason to want to skew the system to favor anyone, it is the constituency I represent.

This is the constituency. I am here representing the public employees and retirees of the state of Connecticut. As some of you know, the state pension system invests over $9.54 billion dollars on behalf of over 140,000 employees and beneficiaries. I am also the Treasurer of the Council of Institutional Investors, whose members invest over $600 billion on behalf of many more millions of union, public, and other corporate employees and beneficiaries.

Why do we care about this legislation? We care because we are the largest shareholders in America. We are ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs by merely paying ten dollars and filing a meritless cookie cutter complaint against a company or its accountants when that plaintiff is disappointed in his or her investment. Our pensions and our jobs depend on our employment by and investment in our companies. If we saddle our companies with big and unproductive costs that other companies in other countries do not pay, we cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as the population ages.

But we are also the shareholders who want to preserve our ability to sue when it is appropriate. We are the shareholders who are benefitted if the SEC or private parties bring appropriate law suits that police our markets and care for millions of individual investors who might not otherwise be able to protect themselves.

Let me emphasize this point. As the largest shareholders in most companies, we are the ones who have the most to gain from meritorious securities litigation. The awards directly and positively affect our returns. So, besides the general value that meritorious lawsuits have for keeping our markets clean, they have direct immediate financial value to us. We certainly, therefore would be foolish to advocate any change that would discourage the proper enforcement of our securities laws.

However, we are also both the employees and taxpayers who depend on corporate employers and a corporate tax base, and we are the millions of individual consumers of corporate goods and services. In both of these roles we are the ones who pay the cost of *all* corporate litigation, meritorious and otherwise. We pay by not getting raises, we pay by higher prices, we pay through lower shareholder returns. You must remember, in other words, that whenever you see a deserving plaintiff awarded, we are the ones paying the price. We are also the ones paying the settlements when the lawsuits are frivolous. And we are the ones paying the huge lawyers' fees. Since the Council of Institutional Investors' average retiree makes only $552 a month, we feel we are pretty needy and deserving too.

In short, we are the ones who are hurt if the system doesn't work right or efficiently, and we are the ones who stand to benefit most if it does.

And, with all due respect to the other parties present, I believe we are the ones with both the interest and the expertise necessary to address these issues and come up with solutions that are genuinely in the public interest.

What, then, do we think? I think most of us feel that despite all the strong language and political blood letting that this legislation has produced; there is reason to believe the system isn't yet working right.

There is still major disagreement about whether there are a huge number or a small number of frivolous securities strike suits filed. There is disagreement about whether the recent growth in the number of these suits is temporary or permanent. But whether the number is large or small, and whether the problem is temporarily worse than usual or not, the problem is one to be addressed: it is in our collective interest to look for ways to reduce or eliminate any frivolous or inefficient efforts to use our legal system and our private markets like a shareholder lottery.

There are also still major disagreements about the size and utility of the legal, administrative, settlement, and lost opportunity costs generated by the present system. But we all know that because of the tremendous number of these cases the costs are very significant. It is in our collective interest to look for ways to reduce these costs and insure that every dollar spent is spent as efficiently as possible and is as likely as possible to go to innocent victims, affected shareholders, and public administrative costs, not on individuals whose wealth depends on generating lawsuits more-or-less regardless of merit.

So I am here to offer to work with those who have every interest in getting this matter right—with labor, with the business community, with other investors, and with you and the SEC—to offer up our best effort at identifying and addressing securities litigation reform to protect our jobs and our pensions.

I am not here to endorse this specific piece of legislation or to pretend to be an expert on the intricacies of this bill or this issue more generally. I am not an accountant or a securities lawyer—my Washington advisor says this makes me ''a civilian.'' But one needn't be an expert to realize the importance of this issue and to conclude that this issue must be addressed to ensure that the system protects us as investors, employees, retirees, and citizens.

I close by repeating my offer to have the Council work with you, the SEC, labor, and business to try to reach constructive solutions to this and other litigation-related problems.

Mr. DOMENICI. I thank the Senator from New York for yielding. And I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I yield the remainder of our time to the distinguished Senator from California, who has been such a powerful advocate throughout this debate.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mrs. BOXER. Mr. President, I thank my ranking member so much. Since people are thanking people for working with them on this, I just have to say what an honor it has been to take this issue to the floor of the U.S. Senate with two of my role models, frankly, Senator SARBANES and Senator BRYAN. I have been so honored to be part of this team because when we started, we were really laughed at in some ways saying, ''Well you'll never get any votes for anything.'' By God, we actually won a couple of amendments.

We came close to fixing the safe harbor provision. I think we have shown with tenacity that we can make our points, and I am going to try to do that in the last couple of minutes.

Why do we need securities laws in the first place? Clearly, it is to protect the average investor. There are so many tears being shed here for corporate directors, and, by the way, most of them are wonderful, honorable, decent people in the community and they help the engine of economic growth, but I have not seen any tears shed on the other side for the victims of securities fraud.

I hear bashing of lawyers, that is in. Sure, bash, bash, that is the politics of the nineties. Every time we put up an amendment, bash the lawyers, beat the amendment.

But what we are about is saying get rid of the frivolous lawsuits, but do not give fast-moving insiders and others a chance to make a quick buck at the expense of the small investor.

I am going to tell you what some of the press have said about this bill relating to S. 240. The St. Louis Post-Dispatch: ''Don't protect securities fraud.'' That is what they think this bill does.

Contra Costa Times: ''Why would any Member of Congress vote to protect those involved in fraud at the expense of investors?''

Seattle Post-Intelligencer: ''The legislation is opposed by the U.S. Conference of Mayors, the Government Finance Officers, the American Association of Retired Persons, and the North American Securities Administrators Association.''

''S. 240 is bad news for investors. It would tie victims in legal knots while immunizing white-collar crooks against having to pay for their misdeeds.'' The Raleigh, NC, News and Observer.

The Philadelphia Inquirer: ''A crook is a crook, and S. 240 would relax penalties for many stock crooks.''

And then we have Jane Bryant Quinn of Newsweek: ''S. 240 makes it easier for corporations and stockbrokers to mislead investors.''

The Seattle Times: ''This legislation has proceeded almost unnoticed because it is hideously complicated.''

It is so complicated it is bad for the average investor. I hope we will register a ''no'' vote on this final passage.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have heard a lot said about this bill. I want to first commend Senators DOMENICI and DODD for their stewardship. Senator DOMENICI outlined how he detected a system that was more interested in making huge profits for lawyers and not give a whit about the so-called victims. In many cases, there were no victims until the small investors, people who had invested in companies that these lawsuits were manufactured against, became the victims.

Let me tell you about the people who brought these suits. About 30 percent of these suits were brought by one law firm—by one law firm. They went out and they hired their plaintiffs. Sixty-five plaintiffs appeared in two cases, 12 plaintiffs appeared in three cases, 3 plaintiffs appeared in four cases. They appeared to get their bonuses, $10,000, $15,000, $20,000—and by allowing their names to be used these plaintiffs allow the lawyers to race to the courthouse.

Let me tell you what this bill does. It ends the use of professional plaintiffs. I have not heard anybody say anything about that. It forces lawyers to work for real clients. We say the pension funds, the little guys who have invested in them, they should select who the lawyers are.

This bill will empower courts to weed out frivolous cases. It gives defendants the leverage to fight cases when they did nothing wrong. Now they cannot fight, they have to surrender, otherwise they are hit for millions of dollars in costs or damages, so even if you win you lose.

S. 240 will require accountants to report fraud to authorities. Nobody says anything about that. It gives the SEC the ability to go after bad guys, a power which they do not have today.

It will get more information to investors by making it so that people can make projections without being sued. It is a good bill, and it is long overdue. We would rectify a terrible situation that exists at the present time by passing this bill.

Mr. President, I urge the adoption of S. 240. I yield back the remainder of my time.

Mr. President, 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. Under the previous order, the bill having been read the third time, the question is, Shall the bill, H.R. 1058, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

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

The result was announced—yeas 70, nays 29, as follows:

[Rollcall Vote No. 295 Leg.]

YEAS—70

Abraham	Gorton	Mikulski
Akaka	Gramm	Moseley-Braun
Ashcroft	Grams	Murkowski
Baucus	Grassley	Murray
Bennett	Gregg	Nickles
Bradley	Harkin	Nunn
Brown	Hatch	Packwood
Burns	Hatfield	Pell
Campbell	Helms	Pressler
Chafee	Hutchison	Reid
Coats	Inhofe	Robb
Cochran	Jeffords	Rockefeller
Coverdell	Johnston	Roth
Craig	Kassebaum	Santorum
D'Amato	Kempthorne	Simpson
DeWine	Kennedy	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Stevens
Domenici	Kyl	Thomas
Exon	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feinstein	Lugar	Warner
Ford	Mack	
Frist	McConnell	

NAYS—29

Biden	Dorgan	Levin
Bingaman	Feingold	McCain
Boxer	Glenn	Moynihan
Breaux	Graham	Pryor
Bryan	Heflin	Sarbanes
Bumpers	Hollings	Shelby
Byrd	Inouye	Simon
Cohen	Kerrey	Specter
Conrad	Lautenberg	Wellstone
Daschle	Leahy	

ANSWERED ''PRESENT''—1

Bond

So, the bill (H.R. 1058), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 1058) entitled ''An Act to reform Federal securities litigation, and for other purposes'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Private Securities Litigation Reform Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

Sec. 101. Elimination of certain abusive practices.
Sec. 102. Securities class action reform.
Sec. 103. Sanctions for abusive litigation.
Sec. 104. Requirements for securities fraud actions.
Sec. 105. Safe harbor for forward-looking statements.
Sec. 106. Written interrogatories.
Sec. 107. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 108. Authority of Commission to prosecute aiding and abetting.
Sec. 109. Loss causation.
Sec. 110. Study and report on protections for senior citizens and qualified retirement plans.
Sec. 111. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 112. Applicability.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

Sec. 201. Limitation on damages.
Sec. 202. Proportionate liability.
Sec. 203. Applicability.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

Sec. 301. Fraud detection and disclosure.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) PROHIBITION OF REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

''(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.''.

(b) ATTORNEY CONFLICT OF INTEREST.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(f) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, if a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(i) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, in which a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(c) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(g) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by

private parties seeking distribution of the disgorged funds.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—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 new paragraph:

''(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

SEC. 102. SECURITIES CLASS ACTION REFORM.

(a) RECOVERY RULES.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(h) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(j) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award to any representative party serving on behalf of a class of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with

clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(b) APPOINTMENT OF LEAD PLAINTIFF.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(i) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new subsection:

''(k) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

SEC. 103. SANCTIONS FOR ABUSIVE LITIGATION.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(j) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934

(15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(l) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions in accordance with Rule 11 of the Federal Rules of Civil Procedure on such party or attorney.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

(a) SECURITIES ACT OF 1933.—

(1) STAY OF DISCOVERY.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(k) STAY OF DISCOVERY.—In any private action arising under this title, during the pendency of any motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.''.

(2) PRESERVATION OF EVIDENCE.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(l) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 36. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

''(a) MISLEADING STATEMENTS AND OMISSIONS.—In any private action arising under this title in which the plaintiff alleges that the defendant—

''(1) made an untrue statement of a material fact; or

''(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

''(b) REQUIRED STATE OF MIND.—

''(1) IN GENERAL.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this title, specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind.

''(2) STRONG INFERENCE OF FRAUDULENT INTENT.—For purposes of paragraph (1), a strong inference that the defendant acted with the required state of mind may be established either—

''(A) by alleging facts to show that the defendant had both motive and opportunity to commit fraud; or

''(B) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.

''(c) MOTION TO DISMISS; STAY OF DISCOVERY.—

''(1) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—In any private action arising under this title, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsections (a) and (b) are not met.

''(2) STAY OF DISCOVERY.—In any private action arising under this title, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

''(3) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.

''(d) LOSS CAUSATION.—In any private action arising under this title, the plaintiff shall have the burden of proving that the act or omission alleged to violate this title caused any loss incurred by the plaintiff. Damages arising from such loss may be mitigated upon a showing by the defendant that factors unrelated to such act or omission contributed to the loss.''.

SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) SECURITIES ACT OF 1933.—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 13 the following new section:

''SEC. 13A. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the purpose and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) during the 3-year period preceding the date on which the statement was first made—

''(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

''(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(I) prohibits future violations of the anti-fraud provisions of the securities laws, as that term is defined in section 3 of the Securities Exchange Act of 1934;

''(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(III) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock, as that term is defined in section 3(a)(51) of the Securities Exchange Act of 1934, and the rules, regulations, or orders issued pursuant to that section;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934; or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company, as that term is defined in section 3(a) of the Investment Company Act of 1940;

''(C) made in connection with a tender offer;

''(D) made in connection with an initial public offering;

''(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d) of the Securities Exchange Act of 1934.

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement that are not compensated through final adjudication or settlement of a private action brought under this title arising from the same violation.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the purpose and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) during the 3-year period preceding the date on which the statement was first made—

''(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

''(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(I) prohibits future violations of the anti-fraud provisions of the securities laws;

''(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(III) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e); or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in financial statements prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company;

''(C) made in connection with a tender offer;

''(D) made in connection with an initial public offering;

''(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d).

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement that are not compensated through final adjudication or settlement of a private action brought under this title arising from the same violation.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

''(g) REGULATORY AUTHORITY FOR FORWARD-LOOKING STATEMENTS.—

''(1) IN GENERAL.—The Commission shall review and, if necessary to carry out the purposes of this title, promulgate such rules and regulations as may be necessary to describe conduct with respect to the making of forward-looking statements that the Commission deems does not provide a basis for liability in any private action arising under this title.

''(2) REQUIREMENTS.—A rule or regulation promulgated under paragraph (1) shall—

''(A) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

''(B) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

''(C) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 shall be deemed not to be in violation of this title.

''(3) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this subsection limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

SEC. 106. WRITTEN INTERROGATORIES.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period '', except that no person may rely upon conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962''.

SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AIDING AND ABETTING.

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the section heading and inserting the following:

''LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS''; AND

(2) by adding at the end the following new subsection:

''(e) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under paragraph (1) or (3) of section 21(d), any person that knowingly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation issued under this title, shall be—

''(1) deemed to be in violation of such provision; and

''(2) liable to the same extent as the person to whom such assistance is provided.''.

SEC. 109. LOSS CAUSATION.

Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Any person'';

(2) by inserting '', subject to subsection (b),'' after ''shall be liable''; and

(3) by adding at the end the following:

''(b) LOSS CAUSATION.—In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.''.

SEC. 110. STUDY AND REPORT ON PROTECTIONS FOR SENIOR CITIZENS AND QUALIFIED RETIREMENT PLANS.

(a) FINDINGS.—The Congress finds that—

(1) senior citizens and qualified retirement plans are too often the target of securities fraud of the kind evidenced in the Charles Keating, Lincoln Savings & Loan Association, and American Continental Corporation situations;

(2) this Act, in an effort to curb unfounded lawsuits, changes the standards and procedures for securities fraud actions; and

(3) the Securities and Exchange Commission has indicated concern with some provisions of this Act.

(b) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall—

(1) determine whether investors that are senior citizens or qualified retirement plans require greater protection against securities fraud than is provided in this Act and the amendments made by this Act; and

(2) if so, submit to the Congress a report containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

(c) DEFINITIONS.—For purposes of this section—

(1) The term ''qualified retirement plan'' has the same meaning as in section 4974(c) of the Internal Revenue Code of 1986; and

(2) the term ''senior citizen'' means an individual who is 62 years of age or older as of the date of the securities transaction at issue.

SEC. 111. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period '', except that no person may rely upon conduct that would have been actionable as fraud in the purchase of sale of securities to establish a violation of section 1962'': Provided however, That this exception shall not apply if any participant in the fraud is criminally convicted in connection therewith, in which case the statute of limitations shall start to run on the date that the conviction becomes final.

SEC. 112. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 or title I of the Securities Act of 1933 commenced before the date of enactment of this Act.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

SEC. 201. LIMITATION ON DAMAGES.

Section 36 of the Securities Exchange Act of 1934, as added by section 104 of this Act, is amended by adding at the end the following new subsection:

''(e) LIMITATION ON DAMAGES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in any private action arising under this title, the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the value of that security, as measured by the median trading price of that security, during the 90-day period beginning on the date on which the information correcting the misstatement or omission is disseminated to the market.

''(2) EXCEPTION.—In any private action arising under this title in which damages are sought, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the median market value of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.''.

SEC. 202. PROPORTIONATE LIABILITY.

Title I of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 38. PROPORTIONATE LIABILITY.

''(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in any private action arising under this title. Nothing in this section shall affect the standards for liability associated with any private action arising under this title.

''(b) LIABILITY FOR DAMAGES.—

''(1) JOINT AND SEVERAL LIABILITY.—A person against whom a judgment is entered in any private action arising under this title shall be liable for damages jointly and severally only if the trier of fact specifically determines that such person committed knowing securities fraud.

''(2) PROPORTIONATE LIABILITY.—Except as provided in paragraph (1), a person against whom a judgment is entered in any private action arising under this title shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that person, as determined under subsection (c).

''(3) KNOWING SECURITIES FRAUD.—For purposes of this section—

''(A) a defendant engages in 'knowing securities fraud' if that defendant—

''(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the material representations of the defendant is false; and

''(ii) actually knows that persons are likely to rely on that misrepresentation or omission; and

''(B) reckless conduct by the defendant shall not be construed to constitute knowing securities fraud.

''(c) DETERMINATION OF RESPONSIBILITY.—

''(1) IN GENERAL.—In any private action arising under this title in which more than 1 person is alleged to have violated a provision of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning—

''(A) the percentage of responsibility of each of the defendants and of each of the other persons alleged by any of the parties to have caused or contributed to the violation, including persons who have entered into settlements with the plaintiff or plaintiffs, measured as a percentage of the total fault of all persons who caused or contributed to the violation; and

''(B) whether such defendant committed knowing securities fraud.

''(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories, or findings, as appropriate, under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each person found to have caused or contributed to the damages sustained by the plaintiff or plaintiffs.

''(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

''(A) the nature of the conduct of each person; and

''(B) the nature and extent of the causal relationship between that conduct and the damages incurred by the plaintiff or plaintiffs.

''(d) UNCOLLECTIBLE SHARE.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(2), in any private action arising under this title, if, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the judgment is not collectible

against that defendant or against a defendant described in subsection (b)(1), each defendant described in subsection (b)(2) shall be liable for the uncollectible share as follows:

''(A) PERCENTAGE OF NET WORTH.—Each defendant shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

''(i) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net financial worth of the plaintiff; and

''(ii) the net financial worth of the plaintiff is equal to less than $200,000.

''(B) OTHER PLAINTIFFS.—With respect to any plaintiff not described in subparagraph (A), each defendant shall be liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability under this subparagraph may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (c)(2).

''(2) OVERALL LIMIT.—In no case shall the total payments required pursuant to paragraph (1) exceed the amount of the uncollectible share.

''(3) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

''(e) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to subsection (d), that defendant may recover contribution—

''(1) from the defendant originally liable to make the payment;

''(2) from any defendant liable jointly and severally pursuant to subsection (b)(1);

''(3) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

''(4) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

''(f) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b) and (c) and the procedure for reallocation of uncollectible shares under subsection (d) shall not be disclosed to members of the jury.

''(g) SETTLEMENT DISCHARGE.—

''(1) IN GENERAL.—A defendant who settles any private action arising under this title at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

''(A) by any person against the settling defendant; and

''(B) by the settling defendant against any person, other than a person whose liability has been extinguished by the settlement of the settling defendant.

''(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

''(A) an amount that corresponds to the percentage of responsibility of that person; or

''(B) the amount paid to the plaintiff by that person.

''(h) CONTRIBUTION.—A person who becomes liable for damages in any private action arising under this title may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

''(i) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in any private action arising under this title determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d) may be brought not later than 6 months after the date on which such payment was made.''.

SEC. 203. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 commenced before the date of enactment of this Act.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

SEC. 301. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

''SEC. 10A. AUDIT REQUIREMENTS.

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

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

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

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

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

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

''(A)(i) determine whether it is likely that an illegal act has occurred; and

''(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

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

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the accountant in the course of the audit of such accountant, the independent public accountant concludes that—

''(A) the illegal act has a material effect on the financial statements of the issuer;

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

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement; the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

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

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

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

''(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law.''.

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to each annual report—

(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

(2) for any period beginning on or after January 1, 1997, with respect to any other registrant.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. D'AMATO. Mr. President, I send an amendment to the title to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Amend the title so as to read:

''An act to amend the Federal securities laws to curb certain abusive practices in private securities litigation, and for other purposes.''

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. D'AMATO. Mr. President, I ask unanimous consent that S. 240 be placed back on the calendar.

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

Mr. D'AMATO. Mr. President, I would like to take just a few seconds to thank a very dedicated staff. Laura Unger, for the dedicated job she has done in a very complex bill—really, without her work, not only during the process on the floor but in committee, we would not have had this legislation. And our staff director, Howard Menell.

Let me also say it was a pleasure working with the ranking member, Senator SARBANES, handling a complex piece of legislation like this with a divergence of opinions. I think we demonstrated the process can work when people are willing to work at it in good will.

Notwithstanding differences of opinion, I could not ask, I think, for fairer debate, et cetera, as we tried to keep this moving. So I thank my colleagues. And certainly Senator DOMENICI and Senator DODD did an excellent job on this bill, bringing it to the point we could bring it to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I would like to reciprocate to the chairman of the committee with respect to his sentiments. I point out, I think this legislation was considered in a way that I would hope all legislation can be considered. We had opening statements. Then we moved from opening statements to taking up amendments. We considered the amendments seriatim, we had good debate on the amendments, voted on the amendments, then we had closing statements, and then we went to final passage of the bill.

So I hope Members will agree, I know a number of Members I talked to felt we had a good consideration of it. People had a chance to express their points of view. We resolved them and moved forward.

I thank the chairman of the committee for his effort to construct a fair framework in which to address this legislation.

I thank my colleagues, and I want to acknowledge in particular the staff work of Mitchell Feuer, Andy Vermilye, and Brian McTigue, all of whom worked indefatigably on this legislation.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I thank the managers of the bill. I think they did demonstrate we can have an orderly debate and not waste any time. I do not remember there being very many quorum calls. It took a while, but it is a very important piece of legislation, and I want to comment both the managers and also my good friend, the chairman of the committee, Senator D'AMATO. I think this is probably his first major bill as chairman. I think he has done an outstanding job and I appreciate it very much.

Everybody has had a chance to debate. Nobody was shut off. There were not any cloture motions filed. There was not any time wasted. In fact, I was home last night watching on C–SPAN when you were all up here—watching you on C–SPAN, watching you debating until 9, 9:30, 10 o'clock. I commend the managers.

Mr. SARBANES. Will the majority leader yield for a question? Does it look better to watch it on C–SPAN than to watch it in person?

Mr. DOLE. It is better because you are further away. It was very interesting. The Senator from Pennsylvania was speaking and the Senator from Utah was answering. It was fairly quiet up here. It was fairly quiet at home, too, at 10 o'clock at night.

In any event, I thank the Democratic leader for his cooperation, too, and members of the staff on each side and others who participated in this bill.

Mr. DASCHLE. Mr. President, I associate myself with the remarks of the majority leader and his compliments for both managers of the bill just passed.

This is not an easy piece of legislation, both because of its complexity as well as its controversy. But I must say that our colleagues on both sides of the aisle have certainly acted in a very responsible manner. We have had a good debate. As the distinguished Senator from Maryland has said on a number of occasions, it is a debate that I think bears even closer watch and closer consideration as we go through the final stages of passage of this very important piece of legislation.

I particularly want to single out the distinguished Senator from Maryland, the ranking member, for his extraordinary work in leading our caucus in this effort and in sharing, as he has, his very valuable insights on a number of the ramifications of the bill and the amendments pending. He did an outstanding job and I deeply appreciate his leadership in this regard.

Let me also commend my colleague, the distinguished senior Senator from Connecticut, Senator DODD, for his advocacy of the legislation. While we differed on many of the issues pertaining to the bill, he, too, ought to be commended for the way with which he conducted this debate.

This has been a good debate. I appreciate very much the cooperation of the Republican leadership in ensuring that all Senators have the opportunity to present their amendments and to be heard as completely as they were heard, now, over the last several days.

I hope, now, as we turn to the budget conference report, that colleagues will use the time available to us, beginning at noon, to present their views. We will have 10 hours of debate. It is very important that we utilize this time as efficiently and as appropriately as we can. So I encourage colleagues on this side of the aisle to come to the floor beginning at noon to make their remarks and to utilize the opportunities that we will have over the course of the next several hours to express ourselves on this budget resolution.

So, again Mr. President, I commend our managers on the bill just passed, and hope we can have a good debate on the budget conference report beginning at noon.

I yield the floor.

UNANIMOUS-CONSENT AGREEMENT—BUDGET CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask unanimous consent that at 12 noon—this has been cleared by the Democratic leader—the Senate begin 4 hours debate to be equally divided in the usual form on the budget conference report, and that when the Senate receives the conference report to cover the budget, House Concurrent Resolution 67, there be 6 hours remaining for consideration.

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

Mr. DOLE. I hope we may be able to use some more time later in the day.

MORNING BUSINESS

Mr. DOLE. Mr. President, I also ask unanimous consent there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each, between now and 12 noon.

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

REGULATORY REFORM

Mr. DOLE. Mr. President, we have had our colleagues, a number on each side—five, six, seven on each side—meeting in Senator DASCHLE's office on reg reform. They have made some progress. I am not certain what will be the final result.

We hope this afternoon, at least at 4 o'clock, to either go to reg reform or to try to proceed to reg reform—I think it depends on what happens during talks in the afternoon—to demonstrate, first of all, we are gaining a lot of support for the bill and, second, that it would be on the table, on the floor when we come back after the recess. We are not quite there yet, but I think they are working in good faith on each side.

The PRESIDING OFFICER. The Senator from South Dakota.