

the average investor would not want to invest in. Investors want their companies to be run by people who know more about finance than they do, just as they want our homes built by people who know more about construction than they do. Sure, it is good to know the broad outlines about how a house is built. But we expect construction workers to use their specialized knowledge, knowledge that is difficult to convey to a layperson.

The same holds true in the world of corporate management. Even after these accounting reforms are up and running, accounting is still going to sound like a foreign language to most people, and plenty of run-of-the-mill business decisions are going to sound complex to outsiders. Critics will accuse anything with a footnote of being a loophole, just another example of "crony capitalism." They will put pressure on America's businesses to simplify their businesses so that it can be "transparent" to outsiders. But we cannot give in to the urge to insist that corporate finance be intelligible to high-school students, and we cannot allow pressure groups to dictate how to organize a business.

We have seen unjustified awards destroy the careers of many good doctors who can no longer get malpractice insurance just because juries end up being swayed by emotion and genuine human suffering rather than by the difficult medical issues at hand. We cannot let the same thing happen to corporate America.

Finally, I want to address an overarching question: Do we really live in a world where a couple of crafty and unscrupulous executives can destroy an entire Fortune 500 company? Is our market economy really a house of cards that needs the ever-present support of the Federal Government to keep from falling down? I do not believe the evidence supports these pessimistic conclusions. The companies that have been in the news made bad business decisions generated by what Chairman Greenspan called "infectious greed," which they covered up with accounting chicanery. It was the bad business decisions that were the root cause here, made far worse by the fact that the mistakes were successfully covered up for so long.

By tightening the auditor's scrutiny of business decisions, we expect that in the future, bad decisions will be uncovered sooner, before too much damage is done to the company and to its stock price. But business decisions will continue to be made, both good and bad, and companies will continue to rise and fall as customers and shareholders vote with their dollars. That, as Secretary O'Neill noted, is the "genius of the market."

And that brings me to my final point. If auditors uncover a serious problem with a company's books, who will fix it? Surely, in most cases, the board of directors will act aggressively to sack the problem executives and install a

new team that will work hard to put things right. Especially with the incentive of stock options and stock ownership, the new management team, facing auditor scrutiny, will have strong reasons to do the best they can to boost shareholder value. The punishments dealt by the stock market are already giving corporations a strong incentive to reform, as stockholders press for clarity and boards of directors interrogate their CEOs and demand answers.

But what about those occasional situations where the directors are either incompetent or out of touch? In practice, it is very difficult for shareholders to replace directors on their own. There are sometimes millions of individual shareholders, each of whom has little incentive to put in the time and effort of replacing their directors. It is almost always easier to sell the badly-performing stock than it is to replace incompetent directors. At this point, our last best hope is that much-maligned character from the 1980s, the hostile takeover artist.

The Sarbanes bill uses the phrase "protection of investors" over 20 times. But who protects investors better than someone who invests a large sum of cash into a failing company, kicks out the old, ineffective, perhaps even corrupt management, and installs new leaders dedicated to maximizing long-run shareholder value? But while we have seen numerous large mergers over the last decade, why have we not seen as many genuinely hostile takeovers? The answer, of course, is legislation. In this case, it was not federal law but state laws that stemmed the tide of hostile takeovers, as laws made it easier for sloppy management to fend off takeover advances. So even if improved audits uncover corporate incompetence or worse, shareholders could still be left with bad managers and worthless investments.

The accounting reform legislation on which we have worked will break new ground in the realm of investor protection. It will increase transparency and punish wrongdoers. But that is only half the battle against corporate mismanagement. The second half of the battle comes when directors and shareholders take action to purge the ineffective executives and restore the profitability of their investments. In time, I hope Congress takes action to assist them. The combined calls by the President and the Senate for directors with greater independence is a strong step in that direction.

In closing, I want to draw attention again to the true foundation of our nation's prosperity—our nation's workers, the most productive in the world. Whether they work in a factory, behind a desk, or on a farm, the American worker can produce more in an hour than any other worker in the world. That is because they have access to better tools, better knowledge, better education, and in particular, better organizations. From old-economy stal-

warts such as Ford to new-economy innovators like Intel to our ever-modernizing agribusiness sector, our economy's large organizations help to coordinate the activities and innovations of countless numbers of people so that we can accomplish more with our scarce time. The quality of American automobiles, the speed of American-designed microprocessors, and the produce of America's farms keep increasing each and every year. I am confident that our accounting reforms, if enforced prudently, will help to strengthen the American corporation's ability to innovate. And by doing so, all Americans will reap the rewards.

Mr. President, I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The bill clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

Hagel Amendment No. 4315 (to amendment No. 4299, as amended), to provide Medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs.

AMENDMENT NO. 4315

The PRESIDING OFFICER (Ms. LANDRIEU). Under the previous order, there will now be 120 minutes for debate on the Hagel amendment No. 4315, with 60 minutes each under the control of the Senator from Nebraska, Mr. HAGEL, or his designee, and the Senator from Massachusetts, Mr. KENNEDY, or his designee.

Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will yield myself such time as I might use.

Madam President, yesterday we had a very important debate, and we also had the Members of the Senate voting on two important measures for the prescription drug program. I am a strong supporter of the proposal that was offered by the Senator from Florida, Mr. GRAHAM, and Senator MILLER from Georgia. That amendment achieved 52 votes in the Senate. A majority of the Members voted in favor of a program based upon the Medicare system, a program that closes the great loophole that is part of our Medicare system, which so many of our seniors are faced with every single day.