Committee On Finance
Max Baucus, Chairman

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STATEMENT OF CHAIRMAN MAX BAUCUS
SENATE FINANCE COMMITTEE
HEARING ON CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION

Today, we are addressing the inter-related issues of corporate governance and executive compensation. After the collapse of Enron, we have been inundated with reports of accounting restatements, disclosure concerns, and SEC fines. Congress is reacting to all of this with hearings. That's one thing Congress does well – hearings. Now we are turning to legislation. Just in the Senate, various committees are working on legislation involving more than a dozen complex issues. For our part, the Finance Committee is working on three pieces of legislation: pensions, tax shelters, and executive compensation and stock options. Other committees are looking at accounting standards and oversight, financial reporting, insider trading, and the liability of corporate directors. At the same time, corporations are also reacting from the collapse of Enron. Corporations are reforming their practices. We now see delays in financial reports, as internal changes are made to reflect improved, and hopefully more conservative, accounting practices. The Financial Accounting Standards Board is considering reforms and the Securities and Exchange Commission appears to be cracking down on enforcement. Given all that is coming at us – is there a risk of overdoing it?

With that in mind, I think it is critical for us to take a step back from the canvas, to look at the bigger picture. Before we get too far down the road, we should take a good look at where we are and what got us to this point. Otherwise, this committee, and every other relevant committee, will be working with blinders on. I want to ensure that if legislation to address the problems highlighted by the Enron collapse is passed by Congress, that it is meaningful and effective legislation. It is important that we not miss the mark. On behalf of employees in corporations across our nation, we must not miss the mark.

That's where today's first panel comes in. The subject, broadly put, is corporate governance. In other words, the system of oversight and management of a corporation carried out by the board of directors, management, and investors. I am told, by experts whom I trust, that the Enron case is symptomatic of a broader problem with corporate governance. In a nutshell, too many people are supposed to provide disinterested expertise but, instead, have a stake in the outcome that prevents them from fully serving investors, potential investors, and the general public. An example is the increasing number of earnings statements that have to be corrected to provide a more accurate accounting. Alan Greenspan recently stated that "CEOs, under increasing pressure from the investment community to meet short-term elevated expectations, in too many instances have been drawn to accounting devices whose sole purpose is arguably to obscure potential adverse results. Outside auditors . . . have sanctioned such devices, allegedly for fear of losing valued corporate clients." I fully understand that the Finance Committee does not have jurisdiction over many of the specifics of corporate governance, but questions of corporate governance are at the heart of the problems at Enron and at other companies. Therefore, we must keep these questions firmly in mind as we do our own work here on the Finance Committee.

The second panel is about a related, but a much more specific issue; executive compensation. The issue of executive compensation in the Enron context is, in many respects, the flip-side of the pension issue. Rank-and-file workers at Enron, and thousands of companies across the country, participate in qualified pension plans such as defined benefit plans and 401(k) plans. We discovered by the Enron example that it is possible for workers to lose a lifetime's worth of savings in these plans. But media reports indicate that some executives may not be playing by the same rules they are imposing on their workers. Rank-and-file Enron employees lost their pension savings. Now they must stand in line as part of the bankruptcy proceeding. In contrast, it appears that some Enron executives received their executive compensation without being subject to the same bankruptcy process – they protected their pension savings. The Finance Committee is going to fully explore these reports. If it turns out that the reports are true, we're going to figure out how it happened, how widespread the practice was, and whether our laws should be changed to avoid similar outcomes in the future.

Another aspect of the executive compensation issue is stock options. Today, stock options comprise an increasing percentage of the typical CEO's pay package, and efforts have been made in the past to explore their treatment for accounting purposes. A number of our witnesses today will discuss both the tax and accounting questions.

Finally, our original panel included a witness who would have helped the Committee understand an issue known as split-dollar life insurance. Split-dollar life insurance raises issues associated with executive compensation, and is appropriate in any conversation exploring the deferral of taxation on income. Unfortunately, our witness will not be appearing today, so we hope to pursue this issue further at a later date.

I am confident that Congress will be exploring the issues surfaced by Enron's bankruptcy for a long time to come. Many of these issues are complex, and do not lend themselves to easy resolutions, but I look forward to hearing from our panels today as we begin the debate.