

College basketball game on December 16, 1978, in which he scored 19 points and had 14 assists—perhaps his best performance in college—only to discover later that this particular game was part of a notorious point-shaving scandal. No doubt this first-hand experience drove him in his later quest to weed out corruption at the Department of Justice.

More seriously, though, Mr. Fine has served in a variety of professional roles and always in an exemplary fashion. He is currently the Director of the Special Investigations and Review Unit in the Department of Justice's Office of the Inspector General, where he has supervised a variety of sensitive internal investigations, including the FBI's handling of the Aldrich Ames case. He also worked as an Assistant U.S. Attorney for the District of Columbia, where he prosecuted more than 35 criminal jury trials. His academic credentials are stellar as well. He is a Rhodes Scholar and he was graduated magna cum laude from Harvard Law School. Finally, though this is a political appointment, Mr. Fine is non-partisan—exactly the type of appointee that a Republican President might very well consider keeping on. He worked as an Assistant U.S. Attorney during the Reagan and Bush administrations, and has never been involved in a political campaign.

As this session of Congress comes to a close, a position as important as the Inspector General should have been filled. I'm only sorry that an individual as outstanding as Mr. Fine was not confirmed.

COMMODITY FUTURES MODERNIZATION ACT OF 2000

Mr. HARKIN. Mr. President, I want to thank and commend Chairman LUGAR for all of his hard work and leadership in bringing the Commodity Futures Modernization Act to the point of this final, agreed upon bill, which will be a part of the appropriations measure passed later today. I am pleased to have had the opportunity to work with Chairman LUGAR on this important legislation and to cosponsor it.

This bill will bring much-needed modernization, legal certainty, clarification and reform to the regulation of futures, options and over-the-counter financial derivatives. At the same time, it maintains regulatory oversight of the agricultural futures and options markets and continues and improves protections for investors and the public interest with regard to futures, options and derivatives.

The legislation carries out the recommendations of the President's Working Group on Financial Markets. Members and staff of the Working Group, especially the Department of the Treasury, the Commodity Futures Trading Commission and the Securities and Exchange Commission, were instrumental in helping to craft the bill. And it is significant that this final version of the bill is strongly supported

by all members of President's Working Group on Financial Markets. I ask unanimous consent that a letter from the Working Group be printed in the RECORD at the conclusion of this statement.

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

(See Exhibit 1.)

Mr. HARKIN. After many years of effort, this legislation resolves a number of very difficult issues regarding the trading of futures on securities—issues that have caused a great many headaches as well as disparities in the markets over the years. I am pleased that we have been able to arrive at solutions that clear away regulatory impediments to market development, while maintaining and strengthening investor protections and addressing margin and tax issues in order to avoid giving any market an inappropriate competitive advantage over others involved in related transactions.

Clearly, modernizing the regulatory scheme for futures and derivatives must be balanced with maintaining and strengthening protection for individual investors and the public interest. The principal anti-fraud provision of the Commodity Exchange Act is section 4b, which the Commodity Futures Trading Commission has consistently relied upon to combat fraudulent conduct, such as by bucket shops and boiler rooms that enter into transactions directly with their customers, even though such conduct does not involve a traditional broker-client relationship. Reliance on section 4b in such circumstances has been supported in federal courts that have examined the issue, and is fully consistent with the understanding of Congress and with past amendments to Section 4b, which confirmed the applicability of Section 4b to fraudulent actions by parties that enter transactions directly with customers. It is the intent of Congress in retaining Section 4b in this bill that the provision not be limited to fiduciary, broker-client or other agency-like relationships. Section 4b provides the Commission with broad authority to police fraudulent conduct within its jurisdiction, whether occurring in boiler rooms and bucket shops, or in the e-commerce and other markets that will develop under this new statutory framework.

I would also like to discuss my views regarding the substantial regulatory changes for electronic markets in derivatives relating to non-agricultural commodities. Essentially, those commodities are energy and metals. With particular regard to energy, given the recent high volatility in energy markets—with dramatic price increases for gasoline, heating oil, natural gas and electricity—we must take great care in whatever Congress does affecting the way in which markets in energy function. In the Agriculture Committee, I worked to remove an outright exclusion from the bill and basically to continue with the substantial exemption

the Commodity Futures Trading Commission had already granted for energy and metal derivatives. Later, there were further negotiations to arrive at the provisions on this subject that are in this bill.

While I still have certain reservations about the energy and metals markets, I recognize the need for compromise, particularly in considering the overall importance and positive features of this legislation. This bill's language and Congressional intent is clear that the Commodity Futures Trading Commission retains a substantial role in ensuring the honesty, integrity and transparency of these markets. For exempt commodities that are traded on a trading facility, this bill clearly specifies that if the Commission determines that the facility performs a significant cash market price discovery function, the Commission will be able to ensure that price, trading volume and any other appropriate trading data will be disseminated as determined by the Commission. This bill also clearly continues in full effect the Commission's anti-fraud and anti-manipulation authority with regard to exempt transactions in energy and metals derivatives markets.

I also want to mention and express appreciation for the cooperation of Chairman GRAMM and Ranking Member SARBANES of the Banking Committee in completing this bill. With respect to banking products, the language of the bill clarifies what is already the current state of the law. The Commodity Futures Trading Commission does not regulate traditional banking products: deposit accounts, savings accounts, certificates of deposit, banker's acceptances, letters of credit, loans, credit card accounts and loan participations.

The language of Title IV of this bill is very clear and very tightly worded. It requires that to qualify for the exclusion, a bank must first obtain a certification from its regulator that the identified bank product was commonly offered by that bank prior to December 5, 2000. The product must have been actively bought, sold, purchased or offered—and not be just a customized deal that the bank may have done for a handful of clients. The product cannot be one that was either prohibited by the Commodity Exchange Act or regulated by the Commodity Futures Trading Commission. In other words—a bank cannot pull a futures product out of regulation by using this provision.

For new products, Title IV is also abundantly clear: the Commodity Exchange Act does not apply to new bank products that are not indexed to the value of a commodity. Again, the plain language is clear and the intent of Congress is clear that no bank may use this exclusion to remove products from proper regulation under the Commodity Exchange Act.

Lastly, Title IV allows hybrid products to be excluded from the Commodity Exchange Act if, and only if, they pass a "predominance test" that

indicates that they are primarily an identified banking product and not a contract, agreement or transaction appropriately regulated by the CFTC. While the statute provides a mechanism for resolving disputes about the application of this test, there is no intent that a product which flunks this test be regulated by anyone other than the CFTC.

Once again, I commend Chairman LUGAR and Congressman TOM EWING, the Chairman of the Subcommittee on Risk Management, Research and Specialty Crops, as well as all staff involved for their outstanding work in making this important legislation a reality.

EXHIBIT 1

DECEMBER 15, 2000.

Hon. TOM HARKIN,
*Ranking Member, Committee on Agriculture,
Nutrition, and Forestry U.S. Senate, Wash-
ington, DC.*

DEAR SENATOR HARKIN: The Members of the President's Working Group on Financial Markets strongly support the Commodities Futures Modernization Act. This important legislation will allow the United States to maintain its competitive position in the over-the-counter derivative markets by providing legal certainty and promoting innovation, transparency and efficiency in our financial markets while maintaining appropriate protections for transactions in non-financial commodities and for small investors.

Sincerely,

LAWRENCE H. SUMMERS,
*Secretary, Department
of the Treasury.*

ARTHUR LEVITT,
*Chairman, Securities
and Exchange Com-
mission.*

ALAN GREENSPAN,
*Chairman, Board of
Governors of the
Federal Reserve.*

WILLIAM J. RAINER,
*Chairman, Commodity
Futures Trading
Commission.*

INCREASING THE FEDERAL DEPOSIT INSURANCE LEVEL

Mr. JOHNSON. Mr. President, I rise today to briefly discuss S. 2589, the Meeting America's Investment Needs in Small Towns Act, or the MAIN Street Act as I call it. Not only is Main Street the acronym formed by this title, but it goes to the heart of why this legislation is necessary.

As we move into the new economy, money is flowing from our small towns and communities to the larger financial markets. While each individual investment decision may make sense, the cumulative effect is a wealth drain from rural America. Money invested in Wall Street is not invested on Main Street. Wall Street wizards can work wonders with a portfolio, but they don't fund a new hardware store down the street. They don't go the extra mile to help a struggling farmer whose family they have served for years. And they don't sponsor the local softball team.

By increasing the federally insured deposit level, we can help community

banks and thrifts compete for scarce deposits. My legislation will account for the erosion to FDIC-insured levels from 1980. It will index these levels into the future, protecting against further erosions.

Under current calculations, the immediate impact would be to almost double the insured funds, from \$100,000 to approximately \$197,000. The long range impact of this legislation would be to make locally based financial institutions more competitive for deposits, help stem the dwindling deposit base many areas face, and lead to new investments in our communities.

Congress last addressed the issue of a deposit insurance increase in 1980. At that time, we increased the insured level from \$40,000 to \$100,000. Congress has not adjusted that level since 1980. In real terms, inflation has eroded almost half of that protection.

Every bank or thrift customer knows that the FDIC insures deposits up to \$100,000. For many people, that notice symbolizes that the financial might of the United States government stands behind their banking institution. We learned the hard lessons of the 1930s, and created the FDIC to protect and strengthen our financial system.

In rural communities across America, local banks serve as the hub of the town. Every business in town relies on the bank for funding. The banker knows the town, and the town knows the banker. In many ways, each knows it disappears without the other.

Individuals in these towns like to know who is handling their money. They like the idea that their funds are secure in their home town. And, they like the fact that their money can be leveraged into other investments that will improve their communities. The more deposits a bank has, the more loans it can make. These loans are made locally, and serve as an investment in local communities.

The MAIN Street Act will help preserve these small towns and communities. It will bring greater liquidity to community banks and promote growth and development. I look forward to working with the FDIC and other banking leaders as we seek to update our banking insurance protections to allow small banks to compete with other investment opportunities available. I ask unanimous consent to have printed in the RECORD an article by Bill Seidman which further outlines some of the issues surrounding federal deposit insurance.

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

\$200,000 OF FDIC INSURANCE? THE BATTLE HAS JUST BEGUN

The battle is on—in one corner there's the proverbial David in the person of the FDIC Chairman Donna Tanoue, and in the other corner, three giant Goliaths—Senate Banking Committee Chairman Phil Gramm, Treasury Secretary Lawrence Summers, and Federal Reserve Board Chairman Alan Greenspan.

Technically the conflict is over the FDIC's Deposit Insurance Option Paper (published in

August), which suggested (some said foolishly) that deposit insurance coverage should be increased from \$100,000 to \$200,000 per depositor. As the paper pointed out, such an increase would compensate for the last 20 years or so of inflation since the insurance level was set at \$100,000. The new ceiling might also help to meet an increasingly difficult problem for community banks—obtaining sufficient deposits to meet growing loan demand. Core deposits as a source of funding for community banks have steadily declined and largely are being replaced by loans from the Federal Home Loan Banking System.

Once this idea was floated, Senator Gramm, and ever-pure free marketer, reacted with a resounding "No way—not on my watch!" At a recent Senate committee hearing (on an unrelated subject) Gramm gained support for his position from the secretary of the Treasury and the Fed chairman. Treasury said it doesn't agree with the proposal because it increases risk taking and possible government liability; Greenspan said "no" because he feels it's a subsidy for the rich. (I guess he's been in government so long that anyone who has over \$100,000 is really rich.)

Do these opinions nix the possibility for a change in the deposit insurance ceiling? I don't believe so. This is a complex issue that will require congressional hearings and much research, because it relates to "too big to fail" policies and overall financial reform. Here are some of the important points to be weighed in this debate.

Increasing deposit insurance brings more financial risk to government—Possible, but unlikely, since the bank insurance fund has never cost the Treasury a penny (the thrift insurance fund is the one that went broke. Even Chairman Tanoue and Fed Governor Meyer have pointed out that the greatest risk to the fund is likely to be the failure of a large complex bank. Moreover, the risk is much greater to the federal government when it supports a huge home loan bank financing institution (another quasi-governmental agency such as Fannie Mae or Freddie Mac)—where any trouble means big trouble.

It distorts the operations of the free market—This is also referred to as creating a "morale hazard," the idea being that FDIC depositors won't have to worry about the condition of the bank. Of course, the so-called free market is out of kilter anyway, what with the Federal Reserve's discount window and the Treasury's bailout of Mexico and half of Asia through the IMF. In fact, the government seldom does anything that doesn't impact the free market (think environmental protection, antitrust, regulation of good drugs, bad drugs, and so on). The issue of whether to increase the deposit insurance ceiling has less to do with distortion of the free market than it does with whether this particular action in total is "good for the country." (In the case of Mexico, for instance, the free marketers decided that a U.S. bailout of rich U.S. business leaders was good for the country and the world; bingo, the funds were granted.)

It's a subsidy for the rich—It's debatable whether FDIC insurance is a subsidy at all. Most economists (though not Greenspan) doubt that there is much of a subsidy because the banks have paid for all of the insurance and the insurance fund has covered any losses.

Now that I've laid out the opposing views, here are several good reasons for approving the FDIC deposit guarantee increase:

It will level the competitive playing field—Historically, governments have protected all bank depositors when very large banks are in trouble, thus providing an implicit guarantee of unlimited insurance for those institutions (e.g., Japan, Saudi, Korea, Thailand,