today; that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 152) was agreed to, as follows:

S. RES. 152

Resolved,

SECTION 1. SPECIAL RESERVE FUNDING.

(a) IN GENERAL.—Section 20(a) of S. Res. 73 (111th Congress) is amended by striking "$4,375,000" and inserting "$4,875,000".

(b) AGGREGATES.—The additional funds provided by the amendment made by subsection (a) shall not be considered to be subject to the 89 percent limitation on Special Reserves found on page 2 of Committee Report 111–14, accompanying S. Res. 73.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15.

Thereupon, at 1:20 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Acting President pro tempore.

EXECUTIVE SESSION

NOMINATION OF GARY GENSLER TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Gary Gensler, of Maryland, to be a Commissioner of the Commodity Futures Trading Commission.

The ACTING PRESIDENT pro tempore. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Gary Gensler, of Maryland, to be a Commissioner of the Commodity Futures Trading Commission?

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

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nevada (Mr. ENSIGN) and the Senator from Ohio (Mr. VOINOVICH).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 6, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—88

Akaka	Enzi	McCaskill
Alexander	Feingold	McConnell
Barrasso	Feinstein	Menendez
Baucus	Gillibrand	Mikulski
Bayh	Graham	Murkowski
Begich	Grassley	Nelson (NE)
Bennet	Gregg	Nelson (FL)
Bennett	Hagan	Pryor
Bingaman	Harkin	Reed
Bond	Hatch	Reid
Boxer	Hutchison	Risch
Brown	Inhofe	Roberts
Brownback	Inouye	Schumer
Bunning	Isakson	Sessions
Burr	Johanns	Shelby
Burris	Johnson	Snowe
Cardin	Kaufman	Specter
Carper	Kerry	Stabenow
Casey	Klobuchar	Tester
Chambliss	Kohl	Thune
Coburn	Kyl	Udall (CO)
Cochran	Landrieu	Udall (NM)
Collins	Lautenberg	Vitter
Conrad	Leahy	Warner
Corker	Levin	Webb
Cornyn	Lieberman	Whitehouse
Crapo	Lincoln	Wicker
DeMint	Lugar	Wyden
Dodd	Martinez	
Durbin	McCain	

NAYS—6

Cantwell	Merkley	Sanders
Dorgan	Murray	Shaheen

NOT VOTING—5

Byrd	Kennedy	Voinovich
Ensign	Rockefeller	

The nomination was confirmed.

NOMINATION OF GARY GENSLER TO BE CHAIRMAN OF THE COMMODITY FUTURES TRADING COMMISSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the nomination of Gary Gensler, of Maryland, to be Chairman of the Commodity Futures Trading Commission.

The nomination is confirmed, and the motion to reconsider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

Under the previous order, there will now be 60 minutes of debate equally divided and controlled between the Senator from Iowa, Mr. HARKIN, and the Senator from Georgia, Mr. CHAMBLISS, or their designees.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, again, to recap what was said, we have voted twice, once to approve Mr. Gensler as a Commissioner of the Commodity Futures Trading Commission and another vote to approve him as the Chairman of the Commodity Futures Trading Commission. I voted yes on both measures. Let me share my reasoning on the nomination of Mr. Gensler.

Honestly, I have had some reservations about this nominee, though certainly not about him as a person. Based upon my meetings with him and our committee hearing, I believe Mr. Gensler is a good and decent man with a strong personal story, and he has certainly shown his intellectual capability and his knowledge of the subject.

I simply had concerns with elements of his background and philosophy, concerning the regulation of over-the-counter derivatives transactions and other financial transactions, and his views on regulations in general.

Mr. President, I chaired a nomination hearing that lasted some time. It was a hearing of substance. Mr. Gensler answered some very tough questions straightforwardly.

It is not possible to know how Mr. Gensler will decide any given question, but he has expressed support for much stronger, more effective reform in the oversight and regulation of derivatives. Of all the things we are doing around here, in terms of banking and bailouts and pronouncements coming from the Secretary of the Treasury, perhaps the construction of the whole thing is centered around how are we finally going to regulate derivatives and swaps. These are over the counter, hidden from view and, quite frankly, they have led to the debacle we have now.

Let me read some excerpts from Mr. Gensler's testimony before the Senate Agriculture Committee, which gives me, again, some positive feelings toward his future chairmanship of the CFTC.

Here is what he said:

> I firmly believe that strong, intelligent regulation with aggressive enforcement benefits our economy and the public.
>
> We must urgently move to enact a broad regulatory regime that covers the entire over-the-counter derivatives markets.

Right on target, Mr. Gensler. He also said:

> The CFTC should be provided with authority to set position limits on all over-the-counter derivatives to prevent manipulation and excessive speculation.
>
> A transparent and consistent playing field for all physical commodity futures should be the foundation of our regulations.

I agree with that.

Lastly, Mr. Gensler said this:

> I believe that the CFTC must work with Congress, with other regulators, and with our global financial partners to ensure that the failures of our regulatory and financial systems, failures which have already taken a toll on every American, never happen again.

Those are all excerpts from the extensive testimony and question-and-answer period of Mr. Gensler before our committee. So now I am prepared to entrust momentous decisions to Mr. Gensler, and I am, of course, supporting the President's choice. Given the fragile state of the economy and financial markets, having a confirmed chairman at the CFTC is of critical importance.

As I said at Mr. Gensler's nomination hearing, these are challenging times, particularly for regulators like the CFTC. Since the Commodity Futures Trading Commission was established 35 years ago, it has never faced more daunting market challenges than those that exist now. The unprecedented price volatility of our markets for physical commodities, such as energy and grains, has hurt our economy. The lack of sufficient regulatory authority and oversight over the derivatives and financial markets has proven disastrous to the entire global economy.

Derivatives that were touted as managing or reducing risk turned out in practice to magnify risk—or certainly at least to allow banks, insurance companies, and investors to take on totally unsustainable and reckless levels of risk and leverage. If these financial markets and derivatives markets are not properly regulated, we won't have a strong economy. The CFTC plays a vital role in providing oversight in keeping these markets healthy and in keeping the players honest.

It is imperative that we pass strong financial regulatory reform in the Congress, and not just piecemeal, patchwork reform, but comprehensive and fundamental reform that brings full transparency and accountability back to the markets. Earlier this year, I introduced the Derivatives Trading Integrity Act. Our committee will be having a hearing on this early next month. That bill would require all derivatives and swaps to be traded on a regulated exchange. Exchange-traded contracts are subject to a level of transparency and oversight that is not possible in over-the-counter markets. For 60 years, futures contracts traded very efficiently on regulated exchanges.

I believe the burden of proof is on those who say there must be exceptions and loopholes to allow derivatives and futures trading off-exchange to continue. These are touted as customized swaps or customized derivatives. I have asked Mr. Gensler and others to please define for me what a custom swap is. No matter how you define it, it leaves a loophole big enough to drive a Mack truck through. Once there is a derivative that is off the trading boards, that no one knows about, that is shrouded in secrecy, what is to keep someone else from doing another custom derivative on that derivative, and then a derivative on that derivative? That is what got us into this mess in the first place—derivatives on derivatives on derivatives on derivatives, ad infinitum, with nobody knowing what was going on, without anybody knowing the value of each of those.

To this day, Treasury has never been able to tell us how they came up with the value of those derivatives. It is a kind of voodoo. It is some kind of mathematical calculation that they put into a computer somehow. Well, I am sorry; I just don't buy that. I believe they all ought to be on a regulated exchange, open and above board, so anybody can look and see who is trading what. If it is a custom derivative, fine; put it on a trading exchange, a regulated exchange. Let the market decide whether it is customized or not, and then if somebody wants to sell a derivative on that, put it right back on the exchange. To me, that is the only way we will ever get around this.

I keep hearing noises out of Treasury that they want to keep this loophole for some kinds of customized swaps. I know the swaps and futures industry would like to have that. I understand that. But that is what got us into this trouble in the first place. As I said, the burden of proof is on them, I believe, to show why we need this loophole and to somehow define a custom swap, what it really is, and why we don't need to put it on a regulated exchange.

Some suggest that reforming regulations of these markets, like I am suggesting, will limit flexibility and inhibit the incentives of market participants to develop and introduce new financial products, and thus harm the market. Again, I reject that notion. To the extent that financial innovation can be shown to benefit all participants in the market by providing some new hedging opportunities or risk management capabilities, without putting other parties at undue risk, then that is all to the good. However, if these new products are used to obscure risk in the market, or elude or evade accounting rules placed on market participants, then they clearly don't serve the public good and should be prohibited.

That is why I say no more of this behind-the-scenes, over-the-counter trading of derivatives. Put them on a regulated exchange. If it is custom, so what; put it on the exchange. Then a regulated exchange can put margin requirements on the buyers, clearing the floor every day. Other investors can look and see what is going on. It provides for the best transparency possible.

Some are talking about having some kind of a clearinghouse. Again, I don't know about clearinghouses. There are some functions for clearinghouses, I am aware of that. But, again, they just don't function like a regulated exchange, on which we have set regulations, an exchange that can provide for margin calls, and which is open and above board to everyone. Again, these financial innovations we hear about, like credit default swaps, collateralized mortgage obligations, collateralized debt obligations—I did a little history on this. None of those existed prior to 20 years ago. Most of them are within the last dozen years or so.

So I asked the question of a number of people at the Treasury Department, and others—I asked what was the demand for these financial instruments? They didn't exist before, especially credit default swaps. They literally didn't exist before about 10 years ago. What was the public demand or public need for these? There wasn't any. Someone described it to me. It is sort of like Honey Nut Cheerios. I have been eating Cheerios since I was a kid. Did I demand that they put a honey nut inside each of those Cheerios? General Mills had a new idea, and they came up with Honey Nut Cheerios and marketed them with good advertising, and they thought everybody would like Honey Nut Cheerios now.

Fine, but that is what they did with credit default swaps. Some brainiacs up there at MIT—the mathematicians who went to work for the investment houses—said we know how to slice and dice derivatives to the nth degree—these credit default swaps—and we can make a lot of money on that.

But there was no need for that. There was no outcry by banks or insurance companies saying they needed this kind of financial instrument. But they came up with it and marketed it and sold it as a way of better hedging risk when, in fact, it increased and magnified risk. Again, if someone comes up with a financial instrument—a new product, as they say—let's get it out there in the open. If you want it out there, put it in the open and get it on the regulated exchange and let everybody look at it and see what it is. That is why we need better regulation and openness and transparency.

I reject the idea that somehow this regulation of which I speak is somehow going to thwart financial instruments. If we thwart the development of other credit default swaps or collateralized mortgages or debt obligations, wonderful; we should. We should get back to sensible dealings in the marketplace.

Again, no more obscuring of the risk, eluding accounting rules—get them out in the public.

The free-wheeling derivatives markets contributed to a financial crisis from which our economy is only beginning to recover. We are at work in the Agriculture Committee on legislation that will ensure stronger regulation in order to bring transparency and integrity to the derivatives market.

I want to make it clear at the outset that I am not against all derivatives. Certain derivatives have a functional value in hedging and reducing risk. But, again, they should be in the open.

We are at work in the Agriculture Committee to do that—bring transparency and integrity to the derivatives markets. In the meanwhile, the CFTC must be at full capacity to keep watch over the markets. We are counting on Mr. Gensler to be a strong voice at the helm of this important agency.

With that, I yield the floor.

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

Mr. CHAMBLISS. Mr. President, I will speak a minute on Mr. Gensler. Before I do, I thank the chairman for making sure we got this nomination to the floor for confirmation. We have wrestled with this nomination for several months now, and I will talk about that.

CDC'S NEW EXPANDED CAMPUS

I thank Senator HARKIN also for coming to Atlanta last Friday. We had a great tour of the new campus—the fully expanded campus at the Centers for Disease Control, where we had the opportunity to talk with folks firsthand who are dealing with the H1N1 virus. We both were reinforced about the fact that issue is in the hands of highly skilled professional people at the Centers for Disease Control. Senator HARKIN has been very much a supporter of the CDC for years in his position on the Appropriations Committee.

I thank him for taking time to come down on a day that is very important to his family and to visit with us and to also hold the nutrition hearing on the CDC campus. We had an excellent hearing, and we are going to be working together to get our nutrition reauthorization bill to the floor in the very near future.

NOMINATION OF GARY GENSLER

Mr. President, I rise to support the nomination of Gary Gensler to be Chairman of the Commodity Futures Trading Commission. Mr. Gensler's nomination comes at a critical time. Our Nation is facing very challenging issues in trying to address this economic downturn. Many businesses, as well as the economy, depend upon the commodity markets—both physical and financial commodities—to help manage costs, to hedge against risk, to access liquidity, and to stay competitive. It is a time where we really need these markets to be performing at their best, to be functioning transparently and without manipulation.

The CFTC has been operating with an Acting Chairman for approximately 23 months now and a fully confirmed commission has not been in operation since 2006. This situation is largely due to the recurring politics surrounding the nomination process. While not all Senators will ever agree with everything that any nominee supports, I am very concerned with the need to have a fully seated Commodity Futures Trading Commission. The American people deserve no less, particularly in these difficult times.

As Congress seeks to deal with the current economic crisis and examines our financial system, it is absolutely essential that the CFTC and the Senate Committee on Agriculture, Nutrition and Forestry are engaged in the debate. Given our responsibility to ensure that the commodity markets function properly, the CFTC must be engaged in discussions occurring both within the administration and within Congress relative to restructuring our financial system and products that operate within it. The need for properly functioning commodity markets is of utmost importance to those utilizing products based on interest rates, exchange rates, debt, and credit risks.

Last year, we witnessed a major market disturbance and a subsequent myriad of theories as to the cause of the meltdown. Economists will study for years to theorize just exactly what caused the economy to buckle when it did. In the meantime, we owe it to the American public to ensure that the regulators who oversee these industries are properly vetted and seated with the backing of the Senate.

Frankly, this vote has been too long in coming. One of President Obama's first nominations for his new administration was that of Gary Gensler to be Commissioner and Chairman of the CFTC. His nomination was announced on December 18, 2008, and we officially received this nomination on President Obama's first day in office—January 20, 2009.

For the last few years, I have witnessed the troubling trend of stalled CFTC nominations. The process starts with the President sending Congress the nomination, the Senate Agriculture Committee holds a confirmation hearing, and that is as far as it goes. In the case of Gensler, two of my Senate colleagues placed a hold on his confirmation, which, in terms of Senate procedure, effectively stalls the nomination in its tracks. This has happened with almost every nominee to the Commission in recent years.

With Senate approval of this nomination, our job is still far from complete in ensuring that the CFTC has a full slate of Commissioners. We currently have two Commissioners with expired terms. I would encourage the President to quickly send us the nominations of the two remaining Commissioners so that we can act quickly on both of them. It is my understanding that the President, if he hasn't already sent one of those nominations over, will be sending one over today. I urge him to send the second one so that we can deal with both of them at the same time and for the first time in several years have a fully confirmed and seated Commodity Futures Trading Commission.

With respect to Mr. Gensler, I have had the opportunity to visit with him, to go through his hearing with him, and to observe him. He is qualified, he is capable, he knows the issues, and he is prepared for the job. I urge all of my Republican colleagues to vote in favor of this nomination because I think this is one time where we have the opportunity in a bipartisan way to say to the President: If you send us reasonable and qualified nominees, we are not going to stand in your way. We are not going to be obstructionists. We are going to help you put the right kinds of people in place.

I am very pleased to say—since we have had the vote today—that every single Republican who voted today voted to confirm Mr. Gensler.

Let me close by talking for 1 second about the comments my colleague from Iowa, Senator HARKIN, made with respect to the overall financial markets and our need to modify some of the regulatory process.

I agree with him that we need more transparency in the market. We don't know—and I don't know that we will ever know—what caused this meltdown last year, but the one thing I do know is that as policymakers we have an obligation to make sure that when someone buys a product on a commodities market, they should have the assurance that somebody from a regulatory standpoint is looking over the shoulder of the individuals who administer those markets, so that when they buy something, they know it is exactly what was sold to them. They should have the assurance that they are going to have the opportunity—with the risks they have in value or sometimes go lower in value but that it will be their decision that causes that and not some manipulation of the market that causes that. The chairman and I have some disagreements over the direction in which we go, but there is no disagreement with the fact that there needs to be more transparency in the market.

There are some customized products that are going to be very difficult to regulate, and we have to be careful that we don't stifle markets in this country. They have worked well for decades and decades, and they will continue to work well if we make sure that we have the right policies in place and that we don't let the Federal Government get too much engaged in the process, to the point where these individuals who make the decisions to trade on markets inside the United States get the feeling that the Government is becoming too engaged in the process and therefore they are going to take their business elsewhere, which they can do. Every product that is bought on the market in the United States can be bought in an overseas market. It can be bought from New York City or my hometown of Moultrie, GA, just as easily as it can be bought on the U.S. market. So we have to make sure we regulate those markets in the right way but that we don't overregulate them so that we drive those customers overseas to markets, because we want to continue to encourage a strong and viable commodities market in this country.

As we move through the process of seeking to change our regulatory process, I look forward to working with the chairman, as well as any number of other Members of this body who have a lot of information about this issue. And believe you me, it is an extremely complex issue, but it is one we need to address, and we need to make sure at the end of the day that we have done our work in the right way and in a way that will be complementary of the markets and not in a way that is going to be conflicting toward the markets.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Vermont.

Mr. SANDERS. Mr. President, for the past 5 months, I blocked consideration of the nomination of Gary Gensler to head the Commodity Futures Trading Commission, the CFTC. As a strong supporter of President Obama, I took no particular pleasure in doing that. But given Mr. Gensler's history as a senior executive of Goldman Sachs for 18 years and the role Mr. Gensler played in deregulating the financial services industry as a senior Treasury Department official from 1991 to 2001, I did not believe Mr. Gensler was the right person at the right time to help lead this country out of the financial crisis we find ourselves in today. In my view, we need a new vision of what Wall Street should be—one that is not obsessed with quick profits, bubble economies, and huge compensation packages for top executives. We need financial institutions which will invest in a productive economy and which will help create millions of decent-paying jobs as we rebuild our Nation and rebuild the middle class.

I am happy to say that last week I had a productive meeting with Mr. Gensler, the second meeting I have had with him. While Mr. Gensler is clearly not the nominee I would have chosen for this position, nor were his answers all that I would have liked, there is no question in my mind that he is a stronger nominee today than he was 5 months ago when I first met him.

In preparation for the meeting last week, I outlined a number of issues I wanted Mr. Gensler to respond to, and let me highlight some of Mr. Gensler's written replies for my colleagues.

In terms of strongly regulating credit default swaps and other derivatives—something Mr. Gensler opposed in the Clinton administration—Mr. Gensler now says:

I believe we must urgently move to enact a broad regulatory regime that covers the entire over-the-counter- derivatives marketplace. As a key component of this reform, we should subject all derivatives dealers to: Conservative capital requirements; business conduct standards; recordkeeping requirements, including an audit trail; reporting requirements; and conservative margin requirements. I believe that the CFTC should be provided with authority to set position limits on all OTC derivatives to prevent manipulation and excessive speculation. Such position limit authority should clearly empower the CFTC to establish aggregate position limits.

Mr. Gensler also wrote to me saying:

I will work closely with Congress to pass legislation that will mandate registration of hedge fund advisers. In addition, I will work with agency staff to review all previously granted exemptions from registration.

Finally, Mr. Gensler told me in writing that he supports:

. . . actions to close the ''London loophole'' and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with position limitations and reporting and transparency requirements that are applied to trades made on U.S. exchanges.

Mr. President, I ask unanimous consent to have printed in the RECORD all of Mr. Gensler's written responses to me dated May 14, 2009.

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

GARY GENSLER, NOMINEE FOR CFTC CHAIRMAN

(Response to Senator Sanders, May 14, 2009)

1. The CFTC should produce quarterly reports on its website describing the role derivatives trading activities have in influencing prices for each major energy commodity, including home heating oil and crude oil.

I believe that we must urgently move to enact a broad regulatory regime that covers the entire over-the-counter derivatives marketplace. This regime should consist of two main components. One component is the regulation of the derivatives dealers themselves. The other component is the regulation of the marketplace. I believe it is best that we implement both of these complimentary components to bring the needed transparency, accountability and safety to the trading of OTC derivatives.

Market efficiency and price transparency for OTC derivatives should be significantly enhanced by:

requiring the clearing of standardized products through regulated central counterparty clearinghouses;

moving the standardized part of these markets onto regulated exchanges and regulated, transparent electronic trade, executions systems;

requiring development of a system for timely reporting of trades and prompt dissemination of prices and other trade information;

requiring that all OTC transactions, both standardized and customized, be reported to a regulated trade repository; and

requiring clearinghouses and trade repositories to, among other things, make aggregate data on open positions and trading volumes available to the public and to make data on any individual counterparty's trades and positions available on a confidential basis to the CFTC and other regulators.

I also believe the CFTC should promote greater transparency by providing more useful and comprehensive data to the public. In my opinion, the rapid growth in commodity index funds was a contributing factor to a bubble in commodity prices—including home heating oil and crude oil—that peaked in mid-2008. The expanding number of hedge funds and other investors who increased asset allocations to commodities also put upward pressure on prices. Notably, though, no reliable data about the size or effect of these two influential groups has been readily accessible to market participants. I believe the CFTC should promote greater transparency and market integrity by regularly providing the public with better data regarding the role of non-commercial traders in energy and other markets.

If confirmed, I will work with the Congress to provide the CFTC with the additional authority it needs to improve the transparency of the OTC derivatives market. I will also work with the CFTC staff to use the tools at the agency's disposal to protect consumers, investors, and farmers by promoting transparency through more sophisticated data collection and dissemination.

2. Establish conflict of interest rules and firewalls limiting energy infrastructure affiliates from communicating with energy analysts and traders.

I believe we need to adopt a comprehensive plan for the regulation of over-the-counter derivatives markets. As a key component of this reform, we should subject all derivatives dealers to:

conservative capital requirements;

business conduct standards;

record keeping requirements (including an audit trail);

reporting requirements; and

conservative margin requirements.

The CFTC should have the authority to protect against fraud, manipulation, excessive speculation, and other market abuses within the OTC derivatives markets, including all energy derivatives, and by the derivatives dealers.

Working with the Congress, such authorities to subject dealers to business conduct standards and to protect against market abuses could include the establishment of rules relating to conflicts of interest. If confirmed, I look forward to working with other Federal agencies and the Congress to achieve these objectives.

3. (a) Work with the Federal Reserve to prohibit bank holding companies from trading in energy commodity derivatives markets and owning energy infrastructure assets.

Given the recent changes in the structure and composition of the financial and energy industries this is an important issue. Generally, I believe the CFTC must be ever vigilant in its oversight to protect the public against fraud, manipulation, excessive speculation, and other market abuses in the energy, agricultural and financial commodity markets. As described in my answers above, we need to adopt a comprehensive plan for the regulation of over-the-counter derivatives—including those trading energy derivatives. This should subject all dealers, including those held by bank holding companies, to a robust regime of prudential supervision and regulation. More specifically, I believe that derivatives dealers, including those held by bank holding companies, should be subject to business conduct standards as described in Question 2, and speculative position limits as described below in Question 3(b).

If confirmed, I look forward to working with the Federal Reserve, other regulators, the Administration, and the Congress on this important issue.

(b) The CFTC should promulgate rules to make sure that all bank holding companies that engage in derivatives trading are subject to speculation limits.

A transparent and consistent playing field for all physical commodity futures should be the foundation of the CFTC's regulations. Position limits must be applied consistently across all markets, across all trading platforms, and exemptions to them must be limited and well defined.

As part of the comprehensive plan described above, the CFTC should be provided with authority to set position limits on all OTC derivatives to prevent manipulation and excessive speculation. Such position limit authority should clearly empower the CFTC to establish aggregate position limits across markets in order to ensure that traders are not able to avoid position limits in a market by moving to a related exchange or market.

If confirmed by the Senate, I will ask the CFTC staff to undertake a review of all outstanding hedge exemptions, to consider the appropriateness of these exemptions, and to evaluate potential practices for instituting regular review and increased reporting by exemption-holders.

4. Mr. Gensler should work to promulgate regulations within 3 months to require hedge funds that are engaged in derivatives trading to register with the CFTC.

The Administration has proposed that all advisers to hedge funds (and other private pools of capital, including private equity funds and venture capital funds) whose assets under management exceed a certain threshold should be required to register. If confirmed, I will work closely with the Congress to pass legislation that will mandate registration of hedge fund advisers as part of a comprehensive package of regulatory reform. In addition, if confirmed, I will work with the agency staff to review all previously granted exemptions from registration as commodity pool operators.

Furthermore, as part of the comprehensive reform of the derivatives market, the CFTC should have the authority to police all activities in the OTC derivatives markets—including transactions entered into by hedge funds. If confirmed, I look forward to working with other Federal agencies and the Congress to achieve these objectives.

6. Mr. Gensler should support revoking all ''no-action'' letters for Foreign Boards of Trade that solicit or accept business from the U.S.

I support actions to close the ''London Loophole'' and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with the position limitations and reporting and transparency requirements that are applied to trades made on U.S. exchanges. Furthermore, I believe any foreign futures exchanges that have terminals in the United States to which our investors have access and whose contracts are based on the same underlying commodities should have consistent regulation applied, including position limits.

If confirmed by the Senate, I look forward to working with the Congress to give the CFTC unambiguous authority to promulgate rules and standards to achieve these goals. Such rules and standards governing treatment of Foreign Boards of Trade should replace the issuance of ''no-action'' letters in this regard.

Mr. SANDERS. Mr. President, needless to say, I am encouraged by the commitments Mr. Gensler made to me to regulate hedge funds, to make sure banks are not allowed to manipulate the price of heating oil and crude oil, and to prevent the enormous conflicts of interest that exist with respect to our energy markets, among many other things.

In addition, last week the Obama administration introduced a comprehensive plan to—for the very first time—significantly regulate credit default swaps and other over-the-counter derivatives. Exempting these investments from regulation was a huge mistake that led to the $180 billion taxpayer bailout of AIG, the collapse of Lehman Brothers, and greatly contributed to the worst financial crisis since the Great Depression.

Last March, I and a number of other Senators asked the President to support strong regulations on these risky investment schemes. The President's proposal accomplishes many—not all but many—of the goals we have been advocating. While this plan is not as strong as I would have written and may have loopholes in it that need to be closed, I believe we are headed in the right direction to make sure a financial crisis of this magnitude never occurs again.

As a result of the greed, the recklessness, and the illegal behavior of Wall Street, our country has been thrown into a deep recession which has caused intense suffering for millions of our people. We need to end the current era of financial deregulation which largely caused this crisis and move to a new Wall Street which understands the need for long-term productive investment and job creation rather than short-term profits, outrageous salaries, and a bubble economy. We need to break up financial institutions that are too big to fail. If a company is too big to fail, that company is too big to exist. We should do the same thing to the banking industry that Teddy Roosevelt did to break up the oil companies. And we should stand up today, on behalf of the American people, to our modern-day robber barons. Most importantly, we need to end the era of deregulation that has led to the worst financial crisis since the Great Depression.

While I am still not convinced that Mr. Gensler is the independent leader we need at this time to head the CFTC, the strong commitments he has made recently in support of serious regulations of the financial industry lead me to believe he now understands the direction we as a nation have to go. Mr. Gensler certainly is a knowledgeable person and he has the ability to do a very fine job if he is willing, in fact, to stand up for the American people and assume the courage, the great deal of courage, he will need to stand up to the very powerful financial institutions which have so much control over what goes on here in Congress. In fact, this may be Mr. Gensler's ''Nixon in China'' moment.

I hope this turns out to be the case, and I look forward to working with Mr. Gensler as he assumes the Chair of the CFTC.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise today to discuss the administration's truly historic announcement last week that in writing they supported bringing unregulated ''dark'' over-the-counter derivative markets under full regulation for the very first time.

For months I have been urging the Obama administration to move quickly and propose strong regulatory controls on these markets, to require transparency in derivatives trading, and to restrict market manipulation.

With the announcement last week by Secretary Geithner of these new regulations, the administration has come down decisively against dangerously unrestricted trading. They have come down on the side of imposing order on a marketplace whose collapse made the current recession much deeper and more painful for average Americans than it needed to be.

The administration's commitment to bringing a ''dark'' market into light is very important. Congress has received a written commitment from the administration that they will bring the unregulated over-the-counter derivatives market under full regulation for the very first time.

This means they have correctly identified three goals of regulatory reform of the over-the-counter derivatives markets. First, if Congress and the administration push through, we will finally gain transparency in the ''dark'' markets. All derivatives transactions and dealers will be brought under prudent regulation and supervision. That means even those that are customized derivatives, not just the OTC market; so prudent regulation and supervision, including capital adequacy requirements, antifraud and antimanipulation authority, very clear transparency and reporting requirements.

Second, standardized trading of physical commodities and derivatives will finally be required to trade on fully regulated exchanges.

Third, the administration is also committed to opposing position limits on regulated markets to prevent any market player from amassing large positions that can harm markets. I have received assurances from the White House that the administration believes these position limits should be applied in the aggregate across all markets.

I still remain concerned about Mr. Gensler's nomination to chair the Commodities Futures Trading Commission. Mr. Gensler was at the Department of the Treasury a decade ago and helped push through a bill, passed by Congress, that provided an ironclad protection against the regulation of financial products such as credit default swaps and derivatives at the heart of this financial crisis. The unfettered speculation that resulted helped bring about not only the energy crisis in my region but decades of other problems that contributed to the demise of AIG, Lehman Brothers, and Bear Sterns.

I believe we need new blood at the CFTC and all regulatory agencies. We need people who will move us from a world of unregulated toxic assets to a world of transparency and aggressive oversight. For nearly three decades the financial industry has had its way in Washington, successfully pushing deregulation in the name of innovation. Time-tested regulatory policies that protected investors and consumers since the Depression were systematically eroded. Many factors led to the present economic meltdown, but we know that chief among them was the policy advocated by Mr. Gensler of not fully regulating the derivatives market.

A decade ago, at the end of the 106th Congress, in the dark of night, Congress passed a law known as the Commodities Futures Modernization Act. But instead of modernizing commodities trading, it took us back in time to the day when securities trading was subject to wild speculation. This law, backed by Mr. Gensler, provided ironclad protection against regulation and oversight of derivatives and has caused many problems. One courageous regulator at the time, then CFTC chairwoman Brooksley Born, warned Congress and the financial community that unregulated derivatives would expose the economy to serious dangers. But some in Washington blocked her efforts, including many on Wall Street. One high-ranking Treasury official charged with pushing these deregulation bills through Congress was Gary Gensler, a former high-ranking executive at Goldman Sachs. As Under Secretary of the Treasury, Mr. Gensler testified before Congress that he opposed regulating the derivatives market. Mr. Gensler, as we know, was wrong. Just yesterday Brooksley Born received recognition for her courage in standing up to the powerful financial interests in proposing tough rules. She was presented with the Profile in Courage award by the John F. Kennedy Foundation.

Remarkably, the Senate is now considering confirming Mr. Gensler to serve as chair of the CFTC, the same agency Brooksley Born chaired and the same agency Mr. Gensler worked so hard to defang in his previous tenure as Under Secretary of the Treasury. That is why I oppose his confirmation to run the CFTC at a critically important time when we need more financial regulation in these agencies. In the months ahead I will be looking forward to working with the CFTC and the President's working group on financial markets and the Department of the Treasury to actively engage Congress on the reforms that need to be passed into law.

I will be looking to the CFTC to do its job, to prevent excessive speculation from stopping the Nation's economic recovery.

I will be looking to Mr. Gensler to earn the trust of Congress and provide oversight over the commodities and derivatives markets.

Mr. DURBIN. I rise to support the nomination of Gary Gensler for Chairman of the Commodity Futures Trading Commission.

I have a keen interest in the leadership of the CFTC, based on my chairmanship of the appropriations subcommittee that funds the agency and because the state of Illinois is home to some of the most important futures exchanges in the world. During this crisis of confidence in our economic system, the CFTC needs a Senate-confirmed chairman at the helm to oversee this complex and growing industry.

Mr. Gensler's experience includes stints on Wall Street, in the Clinton Treasury Department, and with the Senate Banking Committee. He knows how the world of futures trading works, and he understands how to get things done at both ends of Pennsylvania Avenue.

He is going to need that expertise. Last week, Treasury Secretary Geithner announced the administration's proposal for reregulating the over-the-counter derivatives markets. If confirmed, Mr. Gensler will be charged with implementing much of that vision. The proposal will require far more transparency and responsibility from derivatives traders that have long operated in the shadows. The massive derivatives exposures taken on by AIG and other largely unregulated financial firms can't continue. Mr. Gensler will be responsible for seeing to that.

Mr. Gensler will also be charged with eliminating the excessive speculation in the oil and agriculture markets that helped lead to $140 barrels of oil last summer. I worked with many of my colleagues to attempt to address that issue last year, and many regulatory improvements were included in last year's farm bill. But the CFTC can do more.

I met with Mr. Gensler in my office several months ago after President Obama nominated him for this position. I asked him about his role during the Clinton administration in which he advocated weakening CFTC oversight over futures trading. Mr. Gensler admitted that those reforms had gone too far, that he had learned from those mistakes, and that more sensible regulation by the CFTC is needed. I expect him to stick to that sentiment and to aggressively monitor trading under the CFTC's jurisdiction.

I look forward to working with Mr. Gensler to ensure that the CFTC is adequately funded and that the agency provides strong and sensible regulation under his leadership. The future stability of our economy depends on it.

Ms. MIKULSKI. Mr. President, I rise today in support of Gary Gensler's nomination to be Chairman of the Commodity Futures Trading Commission.

I have known Gary for many years—when he worked in the Senate during the Clinton administration, and as a community leader in Maryland. I know him to be a man of principle and great intelligence with a deep understanding of all areas of domestic finance and how to turn ideas into workable policy. During this time of great financial turmoil and uncertainty, we need someone with these skills to lead the Commodity Futures Trading Commission.

I enthusiastically support Gary Gensler's nomination for this important position on President Obama's economic team, and I applaud the administration for working to address my colleagues' concerns so Gary can finally be confirmed.

I have three criteria for considering nominees: competence, dedication to the mission of the department, and integrity. Gary Gensler clearly meets these criteria. His experience in all areas of domestic finance is stellar. He has worked in the executive branch, the Congress and on Wall Street. He was a top economic adviser to Senator Paul Sarbanes on the Senate Banking Committee. And he worked under Larry Summers during the Clinton administration as Under Secretary of Treasury.

The Commodity Futures Trading Commission is an essential part of the financial regulatory system. Its decisions affect everyone who purchases food or commodities including consumers and small businesses. I have always stood for strong regulation with teeth. I applaud President Obama for choosing an economic team that is committed to this kind of reform. And I am convinced Gary will be a great asset in carrying it out.

We faced similar challenges in 2003. Enron had just exposed giant cracks in our regulations, flushed the savings of hundreds of thousands of people, and put our broader economy at risk. Congress needed to act boldly to set up new regulations, just as we do now. Those new regulations were called Sarbanes-Oxley. They were championed by Senator Sarbanes and his top economic advisor at the time—Gary Gensler. They rewrote the rules of corporate America. They made business more accountable, shined light where others were afraid to look and stood up to big business.

Gary has integrity and a strong family. I have gotten to know Gary and his family as his wife Franchesca struggled and succumbed to breast cancer. I saw the strength of Gary and his three wonderful daughters: Anna, Lee and Isabel. He has tried to help others whose loved ones have cancer, and he was honored for his work on behalf of the American Cancer Society.

President Obama has inherited a mess. Our economy is teetering and people have lost faith in the institutions that are supposed to protect them. We need a Chairman of the CFTC who will enforce our laws, reform our regulatory system and guard us against fraud and abuse. I have full confidence that Gary Gensler is up to this challenge. He will be a strong, effective and reform minded Chairman of the Commodity Futures Trading Commission. I urge my colleagues to support his nomination.

Mr. DODD. Mr. Chairman, I rise in support of the President's nomination of Gary Gensler to be the Chairman of the Commodity Futures Trading Commission. I have known Gary for some time and believe he is a dedicated and thoughtful public servant who has emerged over the years as a leader within his field and a person of real integrity.

Mr. Gensler's previous career with the investment banking firm of Goldman Sachs and in the Treasury Department, as well as his new work assisting this administration, along with his intelligence, experience and personal skills, will enable him to be an effective Chairman of the CFTC.

I am aware of his work in connection with the Commodity Futures Modernization Act of 2000, a bill that contributed to deregulation of derivatives markets. With the benefit of hindsight, we can see the harms that an absence of regulation over credit default swaps, for example, can cause and the need for regulation in the derivatives markets. I have talked with him about these regulatory issues, and I know he recognizes the importance of an energetic, assertive regulatory approach.

I fully expect Mr. Gensler to use his talents and skills to effectively regulate the markets, learn from the past and exercise his clear and independent judgment to protect and promote the integrity of the futures markets, and to protect taxpayers. I expect the Senate will continue to exercise oversight of decisions made by the CFTC that may impact the broader financial markets.

Mr. DORGAN. Mr. President, I wish to address today's vote to confirm Mr. Gary Gensler as a Commissioner and Chairman of the Commodities Futures Trading Commission, CFTC. I have serious reservations about this nomination and am voting against it. Let me explain why.

Mr. Gensler was a key proponent of deregulation in the late 1990s and he specifically advocated that swaps and other derivatives not be regulated. I had the opposite view. I argued at the time that such deregulation would result in banks making very risky bets which would ultimately lead to massive taxpayer bailouts to save the financial system.

I regret that I was right. We now know the disastrous consequences of the push to deregulate. We will long regret repealing the protections put in place after the Great Depression of the 1930s and the view that the market knows best and regulation was the enemy.

The costs for these views and actions have been monumental. Taxpayers and American families have paid the price. Our government has spent, lent or guaranteed more than $13 trillion responding to the financial meltdown. In addition, U.S. household wealth has decreased by almost $13 trillion as home values plummet and stock markets crash.

But, that is not all. As our gross domestic product goes down, our unemployment rate goes up, getting close to 10 percent, and, when combined with those working part time who want to work full time, is actually higher than 15 percent.

However, we must not forget that the real cost of these disastrous policies is much more than dollars and statistics. The real costs are lifetime savings vanished, jobs lost, careers shattered, homes foreclosed, neighborhoods destroyed, retirements deferred, colleges unaffordable and the American dream for too many of our neighbors devastated.

Now that all this wreckage has happened and now that he has been nominated for the CFTC, Mr. Gensler has stated that he has changed his views on the need for and importance of regulation. I welcome those new views and look forward to him putting his words into action. If he does, I will be one of the first to come to the floor to applaud him.

I met with him privately and Mr. Gensler was candid and forthright about changing his views. In our meeting and in his testimony before the Senate Agriculture Committee, Mr. Gensler made clear that he now understands how important the CFTC is as one of the key regulatory agencies charged with protecting the integrity of our markets.

I stressed to him that America can no longer afford a do-nothing CFTC. The CFTC has to be a cop on the beat. It has to vigilantly monitor the commodities markets and aggressively act to ensure that they are not being manipulated or distorted by speculators or anyone else. It has to act quickly in an unbiased and nonideological manner to protect those markets and consumers.

In my view, Mr. Gensler does not have to wait to put his words into action. Last year, the CFTC acted like the three monkeys: see nothing, hear nothing, and do nothing, as oil prices skyrocketed from $50 to almost $150 and a gallon of gas approached $5. Like a parrot, the CFTC said over and over this was caused by the fundamentals of supply and demand, ignoring all facts to the contrary, including massive speculation from Wall Street pouring investment cash into the commodities markets.

The CFTC must investigate whether or not speculators were able to manipulate and distort the commodities markets. I believe they did and they will do it again unless they are thoroughly investigated by an agency that takes its mission to protect markets and consumers seriously.

While I am prepared to be surprised by Mr. Gensler and I hope I am, I simply cannot vote for someone to lead such an important agency after he had such a critical role in ensuring that derivates were not regulated, which caused so much devastation across our country. I look forward to Mr. Gensler proving my concerns unwarranted.

Mr. CARDIN. Mr. President, I have known Gary Gensler for many years in both a personal and professional capacity and I believe he is an ideal choice to chair the Commodity Futures Trading Commission, CFTC. He will draw on his many years of experience to help the President create a 21st century regulatory framework to ensure that an economic crisis like the one we are experiencing will not happen again. Today, we face a crucial time for the commodities markets, for our financial system, and for our entire Nation. The failure of the regulatory framework that governs our financial markets helped create the current economic crisis.

As we look forward to fixing the systemic problems in our Nation's economy, the CFTC Chairman will play a crucial role. We need someone with the tremendous depth and breadth of experience that Gary Gensler possesses. Gary served in the Department of Treasury from 1997 to 2001, first as Assistant Secretary for Financial Markets and later as Under Secretary for Domestic Finance. As Under Secretary of the Treasury, Gary was the senior adviser to Treasury Secretary Robert Rubin and later to Secretary Lawrence Summers on all aspects of domestic finance. The office was responsible for formulating policy and legislation in the areas of U.S. financial markets, public debt management, the banking system, financial services, fiscal affairs, Federal lending, and government-sponsored enterprises. In recognition for this service, Gary was awarded Treasury's highest honor, the Alexander Hamilton Award. He subsequently acted as a senior adviser to Senator Sarbanes, who chaired the Senate Banking Committee, on the Sarbanes-Oxley Act, which reformed corporate responsibility, accounting, and securities laws. More recently, Gary led the Securities & Exchange Commission Agency Review Team for the Obama-Biden Presidential Transition Team.

Before Gary joined Treasury, he worked on Wall Street for 18 years at Goldman Sachs. He became a partner at the age of 30—at that time, one of the youngest partners in the firm's history. He joined the firm in the mergers and acquisitions department in 1979 and assumed responsibility for the firm's efforts in advising media companies in 1984. He subsequently joined the fixed income division in the mortgage department and then directed Goldman's fixed income and currency trading efforts in Tokyo during two record years. His last role was cohead of finance, responsible for worldwide controllers and treasury for Goldman Sachs.

Gary graduated summa cum laude from the University of Pennsylvania's Wharton School in 1978, with a bachelor of science in economics. He received a master's of business administration from the Wharton School's graduate division in 1979 and passed the Certified Public Accountancy exam. Gary is a member of the board of Enterprise Community Partners, the Park School, the RFK Memorial Foundation, and the Washington Hospital Center. He also serves as audit committee chair of Strayer Education, Inc., and WageWorks, Inc., and he serves on advisory boards for Johns Hopkins University Center for Talented Youth and New Mountain Capital. He previously was treasurer of the Baltimore Museum of Art and The Bryn Mawr School, as well as a board member of East Baltimore Development, Inc., and the University of Maryland Baltimore County.

We all know that we face a grave time for our economy. But we also face a time of tremendous opportunity to learn from past mistakes and make certain they are not repeated. I know that Gary Gensler will draw on his many years of experience in the public and private sectors to help the new administration guide our economy through these troubled times to a stronger future.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate concurs