

preborrow securities for future trades only if too many fails have already occurred. This is somewhat akin to a "one free bite at the apple" approach, something regulators attempt to avoid. The reason is because, in practice, it turns out to be a "free bite at the apple" each time a manipulative trader switches brokers—something a manipulative trader can easily do with no penalty.

But this rule has proved effectively unenforceable according to former SEC Commissioner Roel Campos and others. Current SEC regulations allow traders to short a stock if the trader "reasonably believes that it can locate and borrow the security by the settlement day."

Reasonableness includes merely glancing at a list of easy to borrow stocks, with no need to continue to locate even if the list is faulty. Let me repeat. Reasonableness includes merely glancing at a list of easy to borrow stocks, with no need to continue to locate even if this list is faulty. That rule, the mother of all loopholes, is much too vague to have any real effect. Any trader who passed Finance 101 could provide proof that he or she "reasonably believed" the shorted stocks could be located. In fact, the provision of a false locate is beneficial for generating commissions on the trade.

Ultimately, many commentators and I believe the SEC cannot bring cases against the gravest violators of this rule, because it does not have the means to prove intent. The rule is, in effect, unenforceable. The SEC has, in fact, not brought a single enforcement case for naked short selling. We must change the rules so the SEC Enforcement Division can do its job.

Even former SEC Chairman Christopher Cox said the SEC is:

... concerned that the persistent failures to deliver in the market for some securities may be due to loopholes in Regulation SHO.

It is too difficult to prove a trader's motives necessary for proving a fraud violation. I strongly believe the SEC needs to strengthen its rules, surveillance, and the enforcement regarding naked short selling to prevent market manipulation and loss of investor confidence.

Again, according to Robert Shapiro:

... there is considerable evidence that market manipulation through the use of naked short sales has been much more common than almost anyone has suspected, and certainly more widespread than most investors believe.

Furthermore, indicators the SEC typically uses to determine the effects of abusive short selling do not accurately reflect the extent of the problem. The so-called Threshold List provided by the SEC tracks sustained fails to deliver of over 10,000 shares, accounting for at least 5 percent of a company's outstanding shares.

According to Shapiro, this list does not capture the naked short sales that occur frequently that are under this threshold, and it does not capture the

large volume of short interests that can spike during the 3-day settlement period. Nor does it capture any trades that occur outside of the Depository Trust and Clearing Corporation, so-called ex-clearing trades.

Let us look to other countries. Other countries have taken proper steps to make sure rules that prevent naked short selling are clear and easy to enforce. According to EuroMoney, naked short selling is:

... a situation specific to the U.S. markets.

Alan Cameron, head of clearing, settlement and custody client solutions at BNP Paribas Securities Services in London, says he has seen little to indicate similar instances of fails to deliver in Europe. Some European countries such as Spain impose strict fines on failures to deliver. It's not an issue here in Europe.

Therefore, I strongly believe that the SEC must adopt new policies in order to protect the damage to investor confidence and, yes, the damage to our economic recovery that is being caused by naked short selling.

Today, along with Senators ISAKSON and TESTER, and Representative CAROLYN MALONEY, who cochairs the Joint Economic Committee, I wrote to SEC Chairman Mary Schapiro on this subject. Our letter urged that the Commission establish a pilot program to study whether a strict preborrow agreement would work effectively to end the problem of naked short selling. Such a pilot program would lead to the collection of data about stock lending and borrowing and the costs and benefits of imposing a preborrow requirement on all short sales.

Recently, Senators LEVIN, GRASSLEY, and SPECTER, in connection with the release of a General Accountability Office study analyzing recent SEC actions to curb abusive short selling, called for the SEC to consider imposing a strict preborrow requirement on short sales as the best way to end abusive short selling.

I strongly agree. As I have said, a preborrow requirement would address the problem at its most fundamental level and it should be urgently considered by the SEC as it rethinks its regulations and enforcement approach in this area.

Moreover, the system by which stocks currently are loaned and borrowed can and should be greatly improved, improving efficiency and producing cost savings. For example, centralized systems for loaning and borrowing stocks might better enable the SEC to impose fair rules on stock loans and borrowers in connection with short sales as well as enhance the SEC's ability to provide regulatory oversight to prevent naked short selling.

As one commentator has written in EuroMoney in December 2008, the:

... SEC knows it has to introduce the preborrow rule if it wants to eliminate fails to deliver for good. As long as there are companies on the Regulation SHO list, then the problem is not being solved. The only sus-

tainable solution to making naked short-selling is a rule requiring both pre-borrow and a hard delivery. ... for Bear Stearns: only a pre-borrow could put a brake on the naked short-selling.

I urge the SEC to invite a balanced group of commentators, including members of the investing public, to air these issues publicly as it continues efforts to draft and promulgate additional rules to end abusive short selling.

I know there are critics of a preborrow requirement who claim it would limit liquidity. This is not so, and there is no meaningful evidence to support this argument. Indeed, the recent study by Robert Shapiro disproves the claim. Other knowledgeable sources, such as Harvey Pitt, former SEC Chairman and founder of LendEQS, an electronic stock loan transaction firm, believe the opposite would occur, because lending would increase.

In Hong Kong, the imposition of a preborrow requirement has been quite successful. Hong Kong implemented the preborrow rule after the Asian financial crisis of 1997 to 1998, when its markets collapsed. In late 2008, while the United States saw an exponential increase in fails to deliver, Hong Kong avoided large spikes in short sales almost completely. Other countries, such as Australia and many other EU members, have also successfully maintained preborrow requirements for years. The United States must urgently address the issue of abusive short selling. If we want to protect our markets, investors, and companies from caustic manipulation, we need better rules.

In closing, I urge the SEC to act decisively, both by following through and reimposing the substance of the prior uptick rule and through a pilot program to study the effects of a strict preborrow requirement. It is way past time to put an end to naked short selling, once and for all.

Mr. President, I yield the floor, and 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. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. REID. I ask unanimous consent we proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

15TH ANNIVERSARY OF THE PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA

Mr. REID. Mr. President, I rise to call to the attention of the Senate the 15th anniversary celebration of the Progressive Leadership Alliance of Nevada, also known as PLAN. PLAN is a

consortium of more than 25 organizations in Nevada that strives for social, economic, and environmental justice throughout the State. PLAN is dedicated to improving the future of all Nevadans by fostering relationships and building bridges between our communities. By working with diverse constituencies, PLAN is involved in impacting policy decisions in our great State of Nevada.

The Progressive Leadership of Nevada was established in 1994 as a non-profit organization focusing on advocacy and education. Among its many accomplishments, this outstanding coalition helped Nevada become the 11th State in our Nation to enact the Employment Non-Discrimination Act and the 13th State to extend hate crimes legislation. Additionally, PLAN was instrumental in making Nevada's tax system more equitable, passing death penalty reforms, and increasing human services funding.

I commend the Progressive Leadership Alliance of Nevada for its 15 years of continued support and achievements on behalf of the Silver State. Thanks to the leadership of everyone at PLAN, Nevada continues to ensure protections and advancement of all citizens.

THE TRAVEL PROMOTION ACT OF 2009

Mr. GRAHAM. Mr. President, today I rise to recognize the importance of the tourism industry to our country and the State of South Carolina, and to express my support for the passage of initiatives like the Travel Promotion Act of 2009 and a spouse travel tax deduction that seek to bolster an industry that is a vital component to the economies of so many communities and States.

South Carolina is home to some of the most unique destinations for leisure or business travel in the world. From the trails of Table Rock Mountain in the Blue Ridge, to the quaint mill villages throughout the South Carolina National Heritage Corridor, to a kayak excursion in the Congaree Swamp National Park, to a horse carriage ride through the streets of historic Charleston, the Palmetto State is a wealth of natural, cultural, recreational and historic opportunities for any visitor. Golf Digest magazine selected 11 of South Carolina's more than 500 golf courses as some of the top 100 public courses in the Nation for 2009. Conde Nast Traveler magazine named Charleston as the No. 2 destination in the country, rounding out 16 consecutive years as one of the magazine's top 10 travel destinations in America. The list goes on. The one-of-a-kind history, landscape and culture of our State help all visitors to understand our pride in the motto "Smiling Faces, Beautiful Places."

The sum of these treasures is an economic engine that drives the prosperity of our State. The tourism industry is the second largest industry in

the State of South Carolina. In 2007, the industry generated \$17.2 billion and employed more than 12 percent of the State's workforce. Not only does tourism generate more than \$100 billion in tax revenue and employ more than 7 million individuals nationwide, but the industry also encourages investment, attracts new business, and enhances the quality of life for local residents. Tourism is truly the lifeblood for many communities not only in South Carolina but throughout America.

Unfortunately, the economic downturn is taking its toll on the tourism industry. I remain concerned with the impact that the recession continues to have on the decisions of domestic and international leisure travelers, and on business meetings travel. Families and individuals are tightening their belts, afraid to spend hard-earned money in an unpredictable economy that could still worsen. International travel to the United States has declined since September 11, 2001, despite the weak dollar enabling most overseas travelers to do and see even more in our country.

Domestic business travel accounts for about one-fifth of all trips to South Carolina each year. More and more companies are hesitant to book perfectly legitimate corporate meetings and conferences in destinations like Greenville and the South Carolina coast for fear that they will be singled out for irresponsible spending during an economic recession. According to a Meetings and Conventions magazine study, more than half of those interviewed believed that recent harsh criticism against meetings and events has influenced their companies' decisions to hold such events. We must not allow the irresponsible behavior of some to damage public opinion regarding business travel for responsible organizations.

In the first 3 months of 2009, hotel occupancy in South Carolina was down more than 12 percent, with losses in all of our traditional tourist and business meeting destinations. Tourism-related tax revenue is down 5 percent from this time last year. These are only a couple of real numbers that directly impact employment and local economies in South Carolina, a State currently suffering from one of the highest unemployment rates in the Nation at 12.1 percent.

While I believe the economy will rebound eventually, consumer confidence is not showing sufficient signs of improvement. We must encourage international travelers, Americans, and American business to continue to travel for leisure and to hold appropriate destination corporate meetings and conferences, despite the downturn in the economy. I remain committed to exploring new ways to accomplish this goal in the U.S. Senate.

I recently signed on as a cosponsor to S. 1023, the Travel Promotion Act, as I believe it is a significant step in restoring and encouraging overseas travel to the United States. While I supported a

measure for the Senate to proceed to this legislation last week, I was unable to support cloture on S. 1023 as I do not believe the majority provided the minority with sufficient opportunity to offer amendments. My vote was unrelated to the substance of the legislation, and I am disappointed that the Senate was unable to complete action on the bill this week.

The Travel Promotion Act facilitates collaboration between various stakeholders in the tourism industry so that they may share ideas on how best to promote travel to America. South Carolina welcomes about 1 million international travelers each year. While this number may be low compared to other tourism destinations, overall South Carolina benefits greatly from their visits as international travelers tend to stay longer and spend more in our hotels, restaurants, shops, cultural sites and more. Through this legislation, I am hopeful that efforts to encourage travel to our country will benefit South Carolina.

To encourage business travel nationally, I authored legislation, S. 261, which would allow for a spouse to deduct travel expenses such as transportation, food and lodging expenses, when traveling with his or her spouse on business travel. Business travel accounts for more than 20 percent of all travel in South Carolina. I strongly believe that restoring this tax deduction would encourage additional travel and subsequent exploration of work-travel destinations. It is my hope that Congress will act on this legislation in a timely manner.

Now is an opportune time to travel, as nearly all tourism destinations are offering packages and deals to entice families and corporate meetings to choose their respective areas. Hotel rates are some of the lowest we have seen in years, while gas prices remain affordable. I am hopeful that families and corporations will take advantage of this opportunity, and consider South Carolina for their next destination.

It is vital that Congress recognize the importance of the tourism industry to our country, and encourage all Americans to continue to travel. I look forward to working with my colleagues on new ways to support the tourism industry.

ADDITIONAL STATEMENTS

COMMENDING MAJOR GENERAL THOMAS F. DEPPE

● Mr. BAUCUS. Mr. President, today I join my colleague Senator TESTER in recognizing and paying tribute to MG Thomas F. Deppe, Vice Commander of Air Force Space Command, and his wife Eileen for their lifetime of service and unfaltering dedication to the U.S. Air Force and our great Nation.

As both an airman and leader, spanning 42 years of military service, General Deppe's contributions to our Nation's strategic deterrence and space