makes the tough underlying bill even tougher by giving taxpayers additional safeguards.

Their amendment would stop big banks from high-risk speculation and stop them from investing in hedge funds or private-equity funds. It would impose tough capital requirements on the biggest firms that pose the biggest risks to the financial system.

And it prohibits the conflicts of interest that allow Wall Street firms to bet against the very products they sell to their clients.

Mr. President, financial instruments and securities trading are complex. But this amendment is nothing more than simple common sense.

It stops Wall Street from gambling away other people's money with little risk and large reward. It rejects the rules in place today—which are the same rules that were in place when our economy nearly collapsed—rules that let big banks take home their winnings but ask for all us to cover the loses. And it says to those who game the system: the game is over.

If Republicans are serious about learning from the mistakes of the past, they'll join us. If they agree that protecting middle-class consumers, safeguarding families' savings and protecting seniors' pensions is more important than carrying water for Wall Street millionaires, they'll join us. If they don't, it will be clear to the American people who's on their side, and who isn't.

And even if—in spite of all the evidence to the contrary—they still disagree that taxpayers shouldn't be on the hook for big banks' bad bets, I ask them to at least let us have a vote on this amendment, and let the majority rule.

The Levin-Merkley amendment and this larger bill will help prevent future financial crises. They will guarantee taxpayers that they won't ever again be asked to bail out a out bank that doesn't want to take responsibility for its own mistakes. And they will make sure the disastrous recession our families and businesses have endured for the last several years does not get worse, and never happens again.

Mr. INOUYE. Mr. President, the financial reform bill before the Senate includes a section, subtitle J, section 991, that would permit the Securities and Exchange Commission, SEC, to be ''self-funded,'' meaning that the SEC would set its own budget and collect the subsequent fees from the companies the agency regulates. The effect of this action would be to remove a critical oversight role for the Appropriations Committee.

Currently, Congress sets the amount to be collected and the SEC adjusts their fees during the year accordingly. The provision included in S. 3217 allows the SEC to both set the fee level and adjust the fees accordingly, basically creating a carte blanche approach to SEC budgeting.

I, along with eight of my colleagues, including the vice chairman of the Appropriations Committee, Senator COCHRAN, the chairman and ranking member of the subcommittee with oversight responsibilities for the SEC, Senators DURBIN and COLLINS, along with Senators BYRD, HARKIN, VOINOVICH, MURKOWSKI, and BROWNBACK, have introduced a bipartisan amendment to strike the provision from the underlying bill.

No one disputes the fine job Chairperson Mary Schapiro has done since taking the helm of the SEC. But the foundation of our government is based on checks and balances, not personalities. Agencies should not be given sole authority to negotiate the fees that support their operations with the very institutions over which they regulate. Such a situation allows for absolutely no meaningful oversight by Congress.

However, if Congress is going to concede to the SEC absolute control of its billion-dollar budget, then the agency must have effective internal controls in place. Unfortunately, that is not the case. The Government Accountability Office has faulted the SEC several times in the past for weaknesses in this very area.

So the underlying provision will exempt an agency from the appropriations process and its annual congressional oversight without ensuring that any internal controls are in place for revenue and budget management. While it may not be the intent of the underlying provision, what is clear is that spending for the SEC would go unmonitored.

The amendment I and my colleagues introduced would strike section 991 from the bill, and thus restore the existing fee-based system for the SEC. The existing fee-based system is a successful model that has the annual appropriations bill both trigger the collection of the fees and determine the amount that can be spent. This model is used for other fee-based agencies such as the Federal Communications Commission, the Federal Trade Commission, the Patents and Trademark Office, and parts of the Federal Drug Administration.

It is clear that the House of Representatives does not support the approach included in the underlying Senate bill as they did not include a provision for the SEC to be self-funded in their legislation. I have spoken with my fellow cosponsors of this amendment, and we have agreed not to offer this amendment during the current debate. We take this action in support of the managers' and leaderships' interest in wrapping up floor consideration of the measure and because it is clear that this issue will be resolved appropriately during the conference negotiations on this bill.

## MORNING BUSINESS

Mr. REED. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. REED. Mr. President, I request to be recognized in morning business.

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

## PRIVATE POOLS OF CAPITAL

Mr. REED. Mr. President, like many of my colleagues, I have several amendments that have been filed. At this moment, it is not possible to call up all the amendments, but I wish to speak to one of them and hope that prior to the conclusion of our debate, I will have the opportunity, and I hope my colleagues do have an opportunity, to call up amendments that are still important to the legislation and deserve consideration by the body.

My amendment would require registration with the Securities and Exchange Commission for private equity funds, hedge funds, and venture capital funds that are larger than $100 million. It recognizes that large pools of capital without any connection to regulatory authority could pose a systemic risk. It is a function, as we found out, in some cases, that if they make erroneous judgments, that could cause a systemic problem.

This proposal has been embraced by a wide cross-section of interested and knowledgeable parties. It has the support of the Obama Administration. It has the support of the North American Securities Administrators Association, who represent State securities regulators. It has the support of the Private Equity Council, the Managed Funds Association, Americans for Financial Reform, the AFL–CIO, and AFSCME. It has broad-based support, and I think it is part of the major effort of this legislation to increase transparency and, as a result, to preclude and prevent fraud, particularly when we are dealing with these large pools of private capital.

Private equity firms' activities can often make or break companies, resulting in a significant loss of jobs. We have seen of the 163 nonfinancial companies that went bankrupt last year, nearly half were backed by leveraged buyout firms.

There are startling examples of companies, going concerns that employ thousands of Americans, that are acquired by private equity companies. Their business model, in many cases, is to leverage that company by borrowing extensively and by using these proceeds to purchase the company and then hopefully to repay themselves handsomely. If they are at a point in which the company is burdened with too much debt, they will either attempt to sell it off or they are forced into bankruptcy. The result, unfortunately, in many cases, is thousands of working men and women in this country lose their jobs. The company goes bust. There is nothing left.

This behavior has to, at least, be on the radar screen, if you will, of the regulators. They have to know that these funds above $100 million are operating. There are many other examples we can cite.

The bill before us has one category. That is hedge funds. We have to recognize there are other major private pools of capital, venture capital funds and private equity funds that should also have to register. The other thing we have to recognize is that the regulatory capacity of any agency is limited. What we have seen over the last several years is a situation where regulators may have had the authority, but they did not have the resources, or they saw situations where certain activity was regulated and other activity was not.

What this amendment argues for is to ensure that we recognize both the potential dangers of large pools of private capital and the limitations of regulations to really differentiate between the pools. That is why the amendment I propose provides no categorical exemptions for these private pools. The rationale is that I do not think, frankly, the regulators can keep up with private funds that can describe their business plan in a way to qualify for an exemption but very well might be conducting the same type of behavior that causes concerns. So I have suggested, and it has been supported by a wide number of individuals and institutions, that we provide this broad-based registration requirement—firms above $100 million would be required to have Federal registration. That is something, I think, that is important. Therefore, we have proposed the amendment.

The investors in these firms deserve, I think, our protection as well. The benefits to the financial system outweigh, in my view, the modest associated costs, and as a result I think we could and should move forward. Many of these firms, frankly, if you have $100 million under management or for investment, and if you don't have good financial controls, I think we have to ask ourselves: Should these firms be operating? Should they be allowed to continue to operate?

The second aspect of this, too, is that the infrastructure of compliance—the infrastructure of risk management—is built into these firms. If it is not, frankly, we should ask: Why are they still doing business? The cost of registration—and this is simply registration; simply telling the Federal regulators, the SEC, that we are doing business like this; we have a certain amount of assets under management or investments that we are managing, and several other items of basic information—has been estimated to be rather modest compared to the money under management and the other operational expenses of these firms.

So again, I think this is a valuable amendment. It is a valuable amendment that reinforces the basic tenets of this legislation—transparency, accountability, and giving our regulators an overall view of the financial situation—the money that is there, the types of business activities that are there—so that they can develop appropriate information for their regulatory endeavors.

The other point I would make is that if we were to stop the camera today and look at the financial scene, we might make judgments that, well, this entity is not very large, this particular entity doesn't do the type of business, et cetera. With the dynamism of our economy, which is a value, going forward 2 or 3 years, those firms could change dramatically, and something that seemed innocuous today could be systematically risky in the future. It might be called the same thing, but its functions are different.

I make a final point in this regard. In some respects, legislation that was considered here in the 1990s looked at derivatives, looked at securitization as a phenomenon that would be static and that wouldn't change. But we know it changed, and it changed in a way the regulators didn't anticipate and weren't prepared to anticipate. So mortgage funds in the 1990s were based on those old-fashioned 20 percent down, a FICO score of 680, income sufficient to amortize the mortgage over the lifetime. The mortgages they were securitizing in 2005–2006—no money down, no income statement, liar loans, et cetera—was a different product. And yet we legislated for products and for business entities that transformed dramatically in the subsequent years.

We have to provide our regulators with the flexibility to not only deal with the problems of today but to fairly anticipate a dynamic and changing financial situation. That is at the heart of this legislation also. So I hope we have an opportunity to further debate this and to offer it and to ask colleagues for their consideration.

With that, I yield the floor to the Senator from Michigan.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I want to briefly come to the floor to talk about what happened here today. We saw the long arm of Wall Street come to the Senate and reach right into this Chamber. It should not have happened. We all should have learned the lesson as to what Wall Street plunged us into. And the idea that Wall Street could do this, through a number of Republican Senators who objected to our even coming to a vote on the so-called Merkley-Levin amendment, is nothing less than shameful. But that is what happened.

We have been going back and forth, a Democrat and a Republican amendment, and it came time for Senator DODD, who is a cosponsor of Merkley-Levin, to offer this amendment, to bring this up to the floor, and it was rejected. It was rejected by the Republican leadership acting through the manager of the bill.

This amendment has been worked for many days. We have attempted very hard, and succeeded in addressing a number of concerns which were raised, but what we insisted upon and will continue to insist upon and will not yield on is our determination that banks not engage in risky bets. Our commercial banks have access to the Fed window. That is taxpayer money. Our commercial banks have access to the Federal Deposit Insurance Corporation. It guarantees that the accounts will be paid. We cannot permit—we cannot allow—banks to engage in risky bets and then expect to be bailed out by taxpayers. That happened to us. It got us into big trouble. We are in a deep recession as a result of what the Wall Street banks did.

There were a lot of other contributors. They were not alone. Our subcommittee hearings were prepared over many months. In fact, the investigation lasted about a year and a half, with millions of documents that were subpoenaed and brought into the subcommittee's offices. What our hearings showed is that upstream we had a number of banks and mortgage companies that were willing to package bad loans, in many cases loans that they knew were fraudulent, and in some very serious cases loans that they knew were likely to go into default. Nonetheless—and the e-mails show this—those upstream banks decided they were going to bundle these mortgages—these dubious risky mortgages, many of which were likely to default—they were going to securitize these mortgages and ship them downstream, where Wall Street was panting for these bundled securitized mortgages because then they were going to slice them and dice them and cut them up into these collateralized deals, which were so complicated and very difficult to explain to the public.

Nonetheless, what happened is the public took a bath, and a number of firms on Wall Street did very well, including Goldman Sachs. It did extremely well through their dealings. Some of the e-mails from Goldman Sachs show how well they did, while everybody else was losing their homes, losing their jobs, and most banks were losing money. In one of their e-mails Goldman Sachs said:

> Much of the plan began working by February as the market dropped by 25 points and our very profitable year was underway.

So the market dropped 25 points and the profitable year at Goldman Sachs was underway. Why? Because they bet against their own clients.

As Senator MERKLEY pointed out—and he has been a real pleasure to work with as a partner—we had a situation here where Goldman Sachs was selling billions of dollars of securities—many of which they knew contained bad assets, and their own e-mails show it—selling to their clients with their right hand and with their left hand betting heavily against those same securities. The way they bet against them is a complicated story—going short, betting short, the big short, using those default swaps, which were described earlier on the floor of the Senate. But they were making a lot of money out of the losses of their clients.

What added insult to injury—the injury was the conflict of interest and betting against something they were selling, and not even disclosing that fact, by the way, to their clients and customers. But the insult that was added was when their own e-mails, over and over again, show that their own salespeople were describing these securities that they were selling to our pension funds and our educational institutions as junk and worse. That is the insult. The underlying injury is the conflict of interest.

Our amendment, as the Senator from Oregon described, goes after the proprietary trading, which is highly risky, in one part of the amendment. Another part of the amendment goes directly at the conflicts of interest which were exemplified by what Goldman Sachs did. Then they tell us in the Permanent Subcommittee on Investigations: Well, that is the way Wall Street does business. You just don't understand.

Well, Main Street understands. We understand the values that Wall Street exemplified in these last years by selling junk to clients and then betting against them. We understand very well what went on, because we, the people of the United States, ended up paying for those bets. When they won the bets, they made out like bandits. Wall Street—Goldman Sachs—won many of those bets because they bet against the very securities that they thought were dubious. But there were also a lot of banks that lost bets, that didn't do what Goldman Sachs did, but nonetheless got stuck with these bad securities. And what happened then? Because of the proprietary trading of those banks and risky securities, they ended up losing a lot of money and the taxpayers had to bail them out.

So the taxpayers of this country lose either way. Our pension funds, our educational institutions lose out to a Goldman Sachs, with their conflicts of interest against their own clients—essentially dealing with themselves as a client against the interest of the person they were selling securities to. You have the Goldman Sachs on the one hand making a lot of money that way. You have the banks, which lost money because of those risky bets on the other side of the bet, ending up being at the public trough and having to be bailed out because they were too big to fail and would have plunged us even more deeply into a deeper recession or a depression had they not been bailed out.

We are trying to prevent that from happening again. The Merkley-Levin amendment is trying to go right to the heart of that problem, and that problem is a very deep one, involving the examples which the Senator from Oregon I believe cited but, if not, let me very briefly summarize. Wall Street has attempted to argue that proprietary trading, which our amendment would seek to end in a very thoughtful way, without hitting the kind of activities that are client oriented, that should be allowed—Wall Street has attempted to argue that proprietary trading was not a significant factor in the downfall of our financial system. The numbers here tell a very different story.

By April of 2008, the Nation's largest financial firms had suffered $230 billion in losses based on their proprietary trading. So by the end of 2008, taxpayers put up hundreds of billions of dollars in so-called TARP funds to avoid the collapse of our economy. One example of the damage here: In 1998, Lehman Brothers had $28 billion in proprietary holdings. Less than 10 years later—2007—its proprietary holdings had soared more than 10 times to $313 billion in those kind of high-risk bets. When the values of the holdings declined in 2007 and 2008, Lehman Brothers then lost $32 billion. Those losses exceeded Lehman Brothers' net worth. By September of 2008, the firm collapsed in the largest bankruptcy in our history.

That is what we are trying to prevent a recurrence of in our amendment. And what happened? Because the Republican leadership decided they would use a parliamentary approach here to stop Merkley-Levin from even being offered, we have been unable to get the remedy for that kind of a catastrophe happening again to the floor of the Senate for a vote.

That is a tragedy which is lying in wait, if we allow it to exist. So Senator MERKLEY and I—the Presiding Officer now and I—are going to do everything we possibly can in the few hours that remain before the cloture vote to prevent the Republican obstruction from succeeding. We are going to continue to try tomorrow morning to see if we can't get our amendment considered by the Senate. We simply cannot stand by and do nothing. We have seen too many massive costs to the taxpayers.

Another example was with Bear Stearns. Bear Stearns lost more than $3 billion, thanks to an investment of about $30 million in two hedge funds. So the losses at Bear Stearns, because of the leverage they used and were allowed to use under existing law, which we would not allow them to use—their losses were 100 times greater than the original investment that crippled the bank and led to an emergency sale to JPMorgan Chase.

We have to protect depositors and taxpayers from the risk of this high-risk proprietary trading at the commercial banks. We have to protect taxpayers from the dilemma of having to pay for Wall Street's risky bets or watch our financial system disintegrate. We have to protect investors and the financial system at large from the conflicts of interest that too often represent business as usual on Wall Street.

We worked with Senator DODD. As Senator MERKLEY pointed out, Senator DODD and his staff worked very closely with us. Senator DODD supports our amendment. So the chairman of the Banking Committee wants our amendment to be considered, and even he cannot persuade the Republican leadership to not use a parliamentary gimmick to stop us, to thwart us, to stymie us from bringing this remedy to the floor of the Senate.

I thank Senator DODD, Senator MERKLEY, and his staff for working so closely with us. We have worked with the Treasury Department very closely, with the Securities and Exchange Commission closely, to make sure we would fix the problems we target without endangering legitimate market activity or activity that is on behalf of clients instead of on behalf of the banks. A number of our colleagues worked with us to make sure there would not inadvertently be restriction of activities that did not cause and would not cause this kind of financial crisis again. Federal Reserve Chairman Paul Volcker endorsed our amendment, as did business leaders such as John Reed, former chairman and CEO of Citibank, and major organizations for Wall Street reform.

But as we stand here and sit here at 9:30, we are stymied. Unless we can unlock this tomorrow morning, there is going to be a cloture vote later on that day which, unless we can figure out a way to make our amendment germane postcloture, will prevent us from getting a vote on this amendment.

Are we serious about reforming the worst excesses of Wall Street? On this side of the aisle, we are. On the Republican side of the aisle, what we have seen now is obstruction, a decision that has been made that they are going to protect Wall Street instead of Main Street. Wall Street has a long arm and hundreds of lobbyists swarming around this Senate. They are determined to stop us from taking up the Merkley-Levin amendment.

There is going to be a dramatic opportunity tomorrow. There is going to be another effort made to have our amendment considered. At least one effort will be made tomorrow, and maybe more, because it is absolutely essential that the average American out there, the average family, that average business on Main Street that we are trying to make sure has funds available to it for its needs—they are going to be looking, hopefully, at this body tomorrow when a decision is going to be made as to whether the reforms that are so critically important to preventing a reoccurrence of this disaster, this economic disaster, will prevail.

Again, I thank Senator MERKLEY for all he has done, for the huge energy he has put in, he and his staff working so closely with us, with the Treasury Department. I am proud to have the name ''Levin'' come after the name ''Merkley'' in Merkley-Levin. Someday—hopefully it will be tomorrow—we are going to get Merkley-Levin considered by the Senate. It is a sad day when the power of Wall Street can overwhelm and overcome the determination of the American people to reform it, to get that cop back on the beat on Wall Street.

We will know tomorrow morning or tomorrow afternoon very early as to whether Wall Street's effort to thwart this Chamber's majority view that the Merkley-Levin reform be voted on—and a majority that would clearly adopt it—whether Wall Street succeeds or not we will know, at least short term, by about noon or 1 o'clock tomorrow afternoon.

I yield the floor.

## TRIBUTE TO RICHARD MOE

Mr. REID. Mr. President, today I wish to recognize Mr. Richard Moe on the occasion of his retirement for the outstanding contributions he has made during his half-century career in American politics and the preservation of our Nation's rich heritage. On May 31st, he will retire as the National Trust for Historic Preservation's seventh president after 17 years of distinguished work and achievement. He will have been the longest serving president since Congress chartered that organization back in 1949 to protect some of the country's most important historic places.

His legacy, however, is not just limited to a litany of successes in the preservation of our most treasured historic and cultural resources. That stewardship alone is an accomplishment beyond measure because of the priceless value these places and objects provide us and subsequent generations of Americans into posterity. In honoring Richard Moe's decades of work, though, I would be remiss if I did not call attention to his great devotion to public service as well. Some of those years were spent right here in the Halls of the Senate when he worked for our esteemed former colleague, Walter Mondale. It would be difficult to understand his deep commitment to the Nation and its heritage, a hallmark of his presidency at the National Trust, without mentioning his dedication to serving the American people through those whom our voters have elected.

A native of Duluth, MN, Richard Moe graduated with a bachelor of arts degree in political science from Williams College in Massachusetts. He began his career in politics as administrative assistant to Minneapolis Mayor Arthur Naftalin in 1961 and then as administrative assistant to Minnesota Lieutenant Governor A. M. Keith until 1966. He studied law at the University of Minnesota and passed the Minnesota State bar in 1967. That same year, he became financial director of the Minnesota Democratic-Farmer-Labor Party, eventually rising to chairman, the second youngest in DFL's history. He held that post until 1972, when he joined the Washington office of Senator Mondale and served as his administrative assistant. In 1977, Richard Moe became Vice President Mondale's chief of staff and a member of President Carter's senior staff where he undertook a number of special assignments on behalf of that administration. Following those years at the White House, he joined the Washington office of the New York law firm Davis, Polk & Wardwell and became a partner.

In 1993, he was selected president of the National Trust and forever changed the face of that important organization. Richard Moe's leadership there has taken the organization and the historic preservation movement into the 21st century. His first goal was to make it financially independent and strong. A major portion of the National Trust's funding used to come from the Federal Government. This is no longer the case. The National Trust now adheres to his more entrepreneurial focus on building relationships with private funders. As a result, and through two capital campaigns, the organization's endowment increased by $200 million during his Presidency.

He has broadened the National Trust's original congressional mandate far beyond the red velvet cords of house museums and brought historic preservation into the full and diverse spectrum of the national public policy arena. When in 1993 the Manassas National Battlefield Park and the surrounding countryside were threatened by an incompatible theme park and commercial development, he rallied such opposition to sprawl, poor planning, and the loss of our country's open spaces that the proposal was defeated.

He has focused his organization's attention beyond the importance of just protecting the historic America we know that was built after Jamestown, and called attention to the earlier cultural and historic treasures of the first Americans on our great public lands. And as our national consciousness has turned increasingly toward protecting our environment and conserving precious resources, Richard Moe has led his organization's role in fostering a more sustainable country under the simple but powerful message that preserving and reusing historic buildings is the greatest form of recycling.

His passionate interest in history and especially the events of the Civil War led to a deep and personal commitment to the restoration of President Lincoln's Cottage just 3 miles north of this Chamber. Now, solely as a result of Richard Moe's vision, this once forgotten "Camp David" of President Lincoln, where one of our most respected and celebrated Presidents lived and worked, is open to the public for the first time.

In the midst of all these accomplishments, Richard Moe wrote a Civil War history in 1993, "The Last Full Measure: The Life and Death of the First Minnesota Volunteers," and coauthored "Changing Places: Rebuilding Community in the Age of Sprawl" in 1997.

In 2007, he was awarded the National Building Museum's Vincent Scully Prize, which recognized his leadership in moving historic preservation into the mainstream of public policy and expanding the public's awareness of our heritage's stewardship. That same year he also received the American Historical Association's Theodore Roosevelt-Woodrow Wilson Award for Public Service. Let me add to the many acknowledgements such as these my gratitude to Richard Moe and that of the entire Senate for his indelible contributions to our American political life and for his unceasing care for our national heritage. I know that even in retirement, he will continue to serve the people of the United States and I wish him well.

## HONORING OUR ARMED FORCES

### LANCE CORPORAL JOSHUA M. DAVIS

Mr. GRASSLEY. Mr. President, I rise to recognize the sacrifice of a brave young Iowan, LCpl Joshua M. Davis, who died from wounds he received while supporting combat operations in Helmand Province, Afghanistan. He was 19 years old. Josh's loss will be felt very deeply in his hometown of Perry, IA, where his drive and leadership skills were recognized early on as a member of the football and wrestling teams and SkillsUSA. He was determined to serve his country and joined the Marine Corps right after high school, even graduating a trimester early to start basic training. Accounts describe Lance Corporal Davis as humble, but his sense of patriotism and service humbles me and makes me proud to be an Iowan. Learning about the life of this remarkable young man makes the knowledge of his tremendous sacrifice all the more poignant. My thoughts and prayers will be with his family at this time, including his father Dave, his mother Beverly, and all those touched by his loss. I cannot adequately express the debt of gratitude we owe, but I ask all Senators to reflect on, and pay tribute to, the life of a great American, LCpl Joshua Davis.

## IN SUPPORT OF JUDGE EDWARD CHEN

Mr. INOUYE. Mr. President, I rise to speak in support of Edward Chen, nominee for Federal judgeship in the United States District Court for the Northern District of California. Judge Chen has been a respected Federal magistrate judge for over 8 years. He is held in high regard by his judicial colleagues and by the attorneys, litigants, and witnesses who have appeared before him, including non partisan prosecutors and law enforcement officials. Judge Chen has issued hundreds of rulings in accordance with the rule of law, and without bias or unfairness. He has facilitated the fair settlement of hundreds of cases, ranging from complex business disputes to civil rights claims. For these reasons, Judge Chen received