

Second, the SEC must gain a better understanding of current trading strategies by using its “large trader” authority to gather data on high-frequency trading activity. Just as importantly, this data, once masked, should be made available to the public for others to analyze.

I am concerned that academics and other independent market analysts do not have access to the data they need to conduct empirical studies on the questions raised by the SEC in its concept release. Absent such data, the ongoing market structure review predictably will receive mainly self-serving comments from high-frequency traders themselves and from other market participants who compete for high-frequency volume and market share.

Evidence-based rulemaking should not be a one-way ratchet because all the “evidence” is provided by those whom the SEC is charged with regulating. We need the SEC to require tagging and disclosure of high-frequency trades so that objective and independent analysts—at FINRA, in academia, or elsewhere—are given the opportunity to study and discern what effects high-frequency trading strategies have on long-term investors. They can also help determine which strategies should be considered manipulative.

Third, regulators must better define manipulative activity and provide clear guidance for traders to follow just as Britain’s regulators have done in the area of scrutiny. By providing rules of the road, regulators can create a system better able to prevent and prosecute manipulative activity.

Fourth, the SEC must continue to make reducing systemic and operational risk a top regulatory priority. The SEC’s proposal on naked access is a good first step, but exchanges must also be directed to impose universal pretrade risk tests. If that is solely in the hands of individual broker-dealers, a race to the bottom might ensue. We simply must have a level playing field when it comes to risk management that protects our equities markets from fat fingers or faulty algorithms. Regulators must therefore ensure that firms have proprietary operational risk controls to minimize the incidence and magnitude of any such errors while also preventing a tidal wave of copycat strategies from potentially wreaking havoc on our equity markets.

Fifth, the SEC should act to address the burgeoning number of order cancellations on the equities markets. While cancellations are not inherently bad—they can in fact enhance liquidity by affording automated traders greater flexibility when posting quotes—their use in today’s marketplace, however, is clearly accessible and virtually a *prima facie* case that battles between competing algorithms, which use cancelled orders as feints and indications of misdirection, and have become all too commonplace, overloading the system and regulators alike.

According to the high-frequency trading firm T3Live, on a recent trad-

ing day only a little more than 1 billion of the over 89 billion orders on NASDAQ’s book were ever executed, meaning a whopping 99 percent of total bids and offers were not filled. Cancellations by high-frequency traders, according to T3Live, are responsible for the bulk of these unfilled orders.

The high-frequency traders that create such massive cancellation rates might cause market data costs for investments to rise, make the price discovery process less efficient, and complicate the regulator’s understanding of continuously evolving trading strategies. What is more, some manipulative strategies, including layering, rely on the ability to rapidly cancel orders in order to profit from changes in price.

Perhaps excessive cancellation rates should carry a charge. If traders exceed a specified ratio of cancellations to orders, it is only fair that they pay a fee. The ratio could be set high enough so that it would not affect long-term investors or even day traders and should apply to all trading platforms, including dark pools and ATSs, as well as exchanges.

The high-frequency traders who rely on massive cancellations are using up more bandwidth and putting more stress on the data centers. Attempts to reign in cancellations or impose charges are not without precedent. In fact they have already been implemented in derivatives markets where overall volume is a small fraction of the volume in cash market for stocks. The Chicago Mercantile Exchange’s volume ratio test and the London International Financial Futures and Options Exchange’s bandwidth usage policy both represent attempts to reign in excessive cancellations and might provide a helpful model for regulators wishing to do the same.

Finally, the high frequency trading industry must come to the table and play a constructive role in resolving current issues in the marketplace, including preventing manipulation and managing risk. In order to maintain fair and transparent markets and avoid unintended consequences, market participants from across the industry must contribute to the regulatory process. I am pleased that a number of responsible firms are stepping forward in a constructive way, both in educating the SEC and me and my staff. I look forward to continue to working with these industry players.

We all must work together, in the interests of liquidity, efficiency, transparency and fairness to ensure our markets are the strongest and best-regulated in the world. But we cannot have one with the other—for markets to be strong, they must be well-regulated. So with this reality in mind, I look forward to working with my colleagues, regulatory agencies, and people from across the financial industry to ensure our markets are free, credible and the envy of the world.

Madam President, I ask unanimous consent that links to some of the stud-

ies I have mentioned be printed in the RECORD.

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

[www.qsg.com](http://www.qsg.com)

“Liquidity Charge® & Price Reversals: Is High Frequency Trading Adding Insult to Injury?” February 11, 2010

“Beware of the VWAP Trap,” November 11, 2009

[http://www.themistrading.com/article\\_files/0000/0519/THEMIS\\_TRADING\\_White\\_Paper\\_Latency\\_Arbitrage\\_December\\_4\\_2009.pdf](http://www.themistrading.com/article_files/0000/0519/THEMIS_TRADING_White_Paper_Latency_Arbitrage_December_4_2009.pdf)

[http://www.itg.com/news\\_events/papers/AdverseSelectionDarkPools\\_113009F.pdf](http://www.itg.com/news_events/papers/AdverseSelectionDarkPools_113009F.pdf)

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### UNEMPLOYMENT RELIEF

Ms. MIKULSKI. Madam President, I come to the floor of the Senate to say to my colleague from Kentucky: Let the unemployment bill go. Let’s free the unemployment compensation bill, the bill that will fund COBRA health insurance benefits and put people back to work building highways, and let’s pay doctors the fees they deserve for saving lives and improving lives. Of all of the bills in the United States of America, why are we holding up this one? I think it is outrageous, and I think it is egregious.

My Lord, look at this. Right now in the United States of America, 400,000 American citizens are not receiving their unemployment benefits. They have been laid off. They have been pushed around. They have been pushed out. And now the Senate will not act to extend their benefits.

Then there are the health insurance benefits called COBRA, and 500,000 Americans are not getting that. Who gets COBRA benefits? No, it is not a snake—although there are a lot of snakes around. It means that if you were laid off from a company, you have the opportunity to, with your own money out of your own pocket, be able to buy insurance and get a modest subsidy to help you through this. My gosh, why can’t we do this?

Then there are the thousands of doctors who are not being paid. There are the highway people who are not being paid.

I gave you national statistics, but I am a Senator from Maryland. I want you to know that tonight there are 4,700 unemployed workers in my State who are not going to get their unemployment benefits—4,700 unemployed workers. That is money they could use to provide their families with a safety net for food, housing, heat, and for the expenses and activities of daily living.

This isn't just a number. It is not a statistic. We are talking about 4,700 families who won't have a source of income to get them through this very difficult time.

Then there is COBRA. Again, COBRA pays 65 percent of the cost of health insurance for people who have lost their jobs. In Maryland, there are 9,282 people—close to 10,000—who have lost their benefits. COBRA makes sure they have health care. We are talking about someone, for example, who worked for a company all of his life, and then he was laid off because it was part of the great layoff that is going on in my State. He went to buy health insurance, and he is buying it through COBRA. It costs almost four times what it cost where he worked. At the same time, he has health problems. He is a diabetic. He is a father. He wants to work and, most of all, he wants to have health insurance for himself and his family. But, oh, no, we are holding it up because of something called pay-go.

Then what else are we doing? We are not paying our doctors. Regardless of how one feels about health insurance reform, you can't have health reform without doctors.

The opposition to health care reform, like Mr. BOEHNER, says we have the best health care system in the world. If we have the best health care system, why aren't we paying our doctors what they deserve? These are highly skilled people who work sometimes day and night to be able to save lives or improve lives. They assume the risks of medical management of highly complex cases. Why are we cutting their pay by 21 percent? I don't see those guys over there cutting their pay 21 percent until we figure out how to pay for our salaries. Why are we cutting doctors 21 percent?

I am so frustrated about this. Whether it is job reform, health care reform, mortgage reform, in this body, when all is said and done, more gets said than gets done.

The American people are as mad as they can be, and they don't want to take it anymore. I feel the same way. I am sick and tired of all these obstruction tactics that prevent people from getting the benefits they need to take care of their families or fund the programs that create jobs.

If we are going to have job reform and health reform, I think we need Senate reform. I am old-fashioned. I believe the majority rules. I think 51 ought to be a magic number. I am so tired of the tyranny of the 60. Oh, we need 60 votes—60 votes, a super-majority every time, except for the Pledge of Allegiance. I come back to wanting the majority rule. This is why I stand four square for filibuster reform.

I am heart and soul a reformer, sometimes a little too mouthy. Some people say I am a little too feisty. But I want to get the job done. I am ready to duke it out in the arena of ideas, present our

best arguments, present our best cases, take a vote, and see how it turns out.

I hope when I offer amendments I win, but if I lose because I get less than 51, I feel I have gotten a square deal. But if I have to go after 60, I feel I am inhibited by the tyranny of 60.

I believe the filibuster is a dated, arcane tactic that belongs to another century and another Senate. I wish to see the filibuster rule either ended or modified.

There are those on our side of the aisle who say: Don't do that. What happens if we lose control, we might need it. Maybe if majority ruled, we would not lose control. Most of all, maybe the American people would see us actually debating, discussing, amending, and voting on ideas. Right now, the other side hides behind procedure. It hides behind process, it muddies the water, and the people are starting to catch on.

I am calling on our institution to seriously consider Tom Harkin's legislation. I think Senator HARKIN is on to something. Senator HARKIN and I are great respecters of the Senate and its traditions. We understand the filibuster and when it was used for great and grand debates on, for example, the expansion of civil rights in our country.

Under the Harkin proposal, you would get four shots at it. I think my colleague from Kentucky would like it. He is a baseball icon. You get three strikes and you are out. Maybe we would get four bites at the apple. The first time you vote if you don't get 60, it would fail. The second time you would need 59 votes or it would fail. The third time you would need 57 votes or it would fail. The fourth time, 53 votes and then we would come back to 51.

We are not for throwing away the filibuster, but we are for modifying it. Hopefully, it will bring us to a Senate that wants more function as the greatest deliberative body in the world. Now we are the greatest delayed body in the world. We don't deliberate; we delay. We don't do constructive things; we do obstructive things. This is not the Senate the American people want. They want us to debate ideas. They want us to do due diligence on those ideas, to make sure they are sensible, that they are affordable, that we are doing something that accomplishes the great missions of our country. I want, again, majority to rule.

I call upon the Senator from Kentucky and the other party: Let this bill go. Bring it out. Please, let us have a vote on it so tonight, when the families in Maryland go to bed, they can be sure that tomorrow when they awaken, their safety net of unemployment compensation is there; that they can buy their health insurance through COBRA, that gifted and talented doctors will know they will be paid and reimbursed and acknowledged for the great services they are performing. That is what the United States should be doing. There is plenty of money for other things.

When they talk about how they want this to be pay as you go—I voted for pay-go. I did. But we are in an emergency situation, and I believe this calls us to act now, and I hope we act tonight.

I hope we can all work together, and when more is said, the less gets said and more gets done.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I ask unanimous consent to speak in morning business for up to 5 minutes.

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

#### TRIBUTE TO AMBASSADOR ANNE PATTERSON

Mr. KAUFMAN. Madam President, I rise again to pay tribute to one of our Nation's great Federal employees.

From the day of its creation as the first executive department in 1789, the State Department has carried out the important work of American diplomacy, pursuing peaceful relations between the United States and other nations around the world. When our role as a world power grew in the late 19th century, our diplomats became peacemakers among nations. Since the end of World War II, we heavily invested our time, treasure, and human capital in the preservation of global peace during a time wrought with potential for war and mass destruction.

Today, in the aftermath of the Cold War and the September 11 attacks, our State Department personnel, and our Foreign Service officers in particular, work tirelessly to promote the American values of liberty and international cooperation.

Stationed in every region, they daily endure risks to their health and safety. They leave behind family and a familiar culture. These talented and dedicated men and women are the living embodiment of President Kennedy's declaration that, while we must never negotiate out of fear, we must never fear to negotiate.

Those in the Foreign Service must pass a rigorous examination and be prepared to serve in any of our 250 posts around the world. They have jobs as consular officers assisting Americans abroad, political or economic officers analyzing trends in foreign countries and promoting U.S. interests, management officers running our embassies or public diplomacy officers who share the story of America with foreign audiences.

The most senior and successful diplomats may become ambassadors, the public face of our Nation and the President's personal representatives abroad.

One distinguished Ambassador whose career exemplifies the work of our Foreign Service is Anne Patterson.

A native of Arkansas, Anne studied at Wellesley College and the University of North Carolina. She first joined the Foreign Service in 1973 as an economic