

As we pass this piece of legislation today, we would do ourselves a favor, I think, passing an amendment that would prohibit proprietary trading in derivatives by banks and also passing the amendment I just sent to the desk that would provide regulation for risky hedge funds that have at least \$1 billion or more in assets. It is a handful of hedge funds, perhaps fewer than 50. They have aggressive leverage. It seems to me that while I would like to be more aggressive in the regulation of hedge funds, at least this should be a start in dealing with this issue.

Mr. President, I will not offer a third amendment. I will offer only these two amendments. I believe that the legislation is inappropriate at this time, and I intend to vote against the legislation on final passage. As I have said on a couple occasions this afternoon, I think this is a giant step backward. I think it is exactly the wrong direction for our country. I think it does nothing for ordinary people, does not address any of the issues. It is something that will make a number of the largest enterprises in this country that are already making substantial profits very, very happy. I guarantee every Member of this body that if this legislation is passed, when you wake up day after day, week after week, and month after month, you will read the news of more and more and more mergers and greater concentration.

Then don't you come to the floor of the Senate and talk to me about competition and don't you come to the floor of the Senate and started preaching about free markets. The opportunity to respond to real competition and free markets, in my judgment, is, by turning this legislation down, enforcing strong antitrust enforcement, and being thoughtful about the things we have to do in the future to preserve the safety and soundness of our banks and, yes, to encourage investment and encourage economic activity in other sectors of our economy.

Let me conclude by saying I am not someone who thinks that big firms are bad. I don't believe that at all. Nobody is going to build a 757 jet airplane in the garage in Regent, ND. Economies of scale are important. Some of the largest enterprises in our country have contributed mightily to this country and its economy. But I also believe that what contributes most to this country is good old-fashioned healthy competition, broad-based economic ownership. I know it is a timeworn and, some consider, old-fashioned Jeffersonian notion of democracy that broad-based economic ownership is what eventually guarantees economic freedom and what eventually underscores and guarantees political freedom as well. That is something that is very important to this country's future.

We do not advance in that direction by passing legislation that will further concentrate and further provide inducements for more mergers and big-

ger, more concentration and bigger companies. That will not advance this country's interests.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAMM. Mr. President, our current blueprint is that we are going to vote on the unitary thrift amendment at 3:45. Each side will have 3 minutes to speak on that issue. I will ask Senator GORTON to speak on behalf of the majority.

At the conclusion of that vote, the Shelby amendment will be considered. That is the amendment which would allow banks to provide broad financial services within the structure of the bank rather than through the holding company. We have agreed to a 2-hour debate on that amendment. If we were on that amendment, say, at 10 after 4, we would be through with that amendment at 10 after 6.

I do not know of another major amendment. I urge my colleagues who have amendments, since we have a lot of Members hoping not to be here tomorrow—Members walking by do not object to that, I assume—who would like to catch a flight back to their States at a reasonable hour, if they could, not to convenience me or to convenience my colleague, Senator SARBANES, but to convenience all 100 Members of the Senate, I urge Senators who have amendments to come to the floor and present them. Please don't show up at 6:10 and say, oh, by the way, I just had an idea last night while I was having dessert that I would like to redo the whole banking system of the United States of America and I would like to change the number of people on the Federal Reserve Bank board and I talked to the newspaperman today and he thought it was a great idea.

If you have an amendment, I hope you will come and let us look at it and talk about it. Hopefully, we can take some of these amendments and save time. I urge my colleagues, for the convenience of all of our Members, if you have amendments, to come down here before 4 and let us talk about them.

Please don't show up when the Shelby amendment is finished at 6:10 and say I have all these ideas and I want to deal with them.

I thank my colleagues in advance for their cooperation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAMM. Mr. President, I ask unanimous consent that the pending unanimous-consent agreement that we are operating under be temporarily set aside so that Senator SCHUMER can offer an amendment. If I understand the amendment correctly, I intend to accept it, and I assume Senator SARBANES will accept it. I think it is important to go ahead and get that amendment out of the way. Whenever he is ready, I wanted to be sure that we were in a position that he could be recognized without undoing any of the agreements on the vote at 3:45, or the unanimous-consent request on the Shelby amendment, starting whenever that vote is finished.

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

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

The PRESIDING OFFICER (Mr. FITZGERALD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

VISIT WILD AND WONDERFUL WEST VIRGINIA

Mr. BYRD. Mr. President, May 2-8 is National Tourism Week, and I would like to take a few minutes to encourage anyone planning their summer vacation—and this is the time; this is the time to plan the summer vacation. Let me tell you where the place is. This is the place: West Virginia. Anybody who is planning the summer vacation—or looking farther ahead to next year's winter vacation—should consider my favorite destination: West Virginia.

I have been in Rome. I have traveled to Agra. I have seen the Taj Mahal. I have walked in the shadows of the pyramids. I have seen the Pantheon and the Parthenon. I have met with great leaders all over the world, face to face, such as the late President Sadat and Generalissimo Chiang Kai-Shek. I joined with the Generalissimo and the madam on their birthday up at Sun Moon Lake many years ago. But let me tell you, after having been to these four points of the compass, my favorite destination is still West Virginia. And I have visited Texas, may I say to my friend, the senior Senator from the Lone Star State. I made 26 speeches in the Bible Belt of Texas in 1960. I traveled over the northeastern part of Texas making speeches—26 in 3 days. I even took my fiddle with me and played a few tunes. Anyhow, there is just nothing like West Virginia. That is my favorite destination.

Within an easy drive of much of the Nation, West Virginia offers one delight after another, whether for families, adventurers, romantic couples, or groups.

If you are interested in history, may I say to my Senate colleagues, West Virginia has plenty, from delicate millennia-old fern and trilobite fossils embedded in her coal seams and rock outcroppings to the monumental burial mounds of the mysterious Adena people that date back to 1000 B.C. And I can tell you about history that goes much farther back than that.

Frontier forts that mark West Virginia's time at the leading edge of American expansion are scattered across the State, and are populated with costumed, re-enactors who can weave fascinating true stories of the sometimes harrowing escapades experienced by our Nation's early settlers. Point Pleasant, WV, marks the site of the first land battle of the Revolutionary War. Numerous Civil War battlefields abound from West Virginia's tumultuous birth as a State, none more famous than Harper's Ferry, where in 1859 abolitionist John Brown led a raid on the U.S. arsenal, sparking a chain of events leading to that epic struggle.

Industries that sparked a different kind of revolution still operate in West Virginia, from the steel mill in Weirton, WV, where we have the largest ESOP in the world—that is, Employee-Stock Option Plan—to the coal mines in southern West Virginia. In Beckley, you can visit a coal mine and see firsthand the danger and effort involved in extracting the compressed energy that still provides almost half of the Nation's electricity. And those who love classic locomotives would feel at home there, as several steam excursions offer the opportunity to chug behind a puffing engine as it clickety-clacks through scenes of pastoral harmony.

West Virginia's history sings through the music festivals scheduled across the state throughout the year, ranging from classical to country, bluegrass to jazz. History also comes to life in the fine crafts produced in small village potteries and quilting bees as well as by storied West Virginia glass makers whose wares have been presented to presidents and foreign heads of state. And history continues to be made by her artisans, musicians, and writers, many of whom are accessible at craft and music festivals, or through factory tours.

West Virginia is not just for lovers of history, however. It is also for lovers of fun. The state boasts a great array of state parks with lodges and cabins perfect for family entertainment. All these one can see in West Virginia. At these public parks, as well as at many privately-owned facilities, activities can be found to suit everyone in the family, from golf courses designed by the greats in the game to horseback riding along mountain trails, from fishing in coursing streams or placid lakes to hiking to breathtaking vistas, and, of course, skiing at five major ski resorts.

Every season in West Virginia offers its own attractions. In the springtime,

coursing white water thunders through rocky causeways bedecked in snowy rhododendron and dogwood, vibrant redbud and delicate trillium. In summer, cool springs bubble in shadow-filled woods where wild ginseng grows, while in meadows, Queen Anne's Lace, purple coneflowers, golden Rudbeckia, and blue chicory weave a madras plaid of wildflowers as ruby throated hummingbirds flit among the honeysuckle. In the fall, West Virginia's sugar maples, tulip poplars, sweetgums, and hickories flame in colors rivaling any in New England, and herds of whitetail deer and flocks of elusive wild turkeys fatten on the beechnuts, walnuts, and acorns. Winter's snows fall thick and white, creating an austere beautiful palette of linear grey, black, and blue shadows on the hillsides that make the color and light of numerous Christmas festivals a welcome contrast.

If enjoying the scenery is not enough for the daredevil in you, then see if you can tame Seneca Rocks with a pair of climbing shoes, a bag of chalk, and a length of rope. Venture into the depths of Organ Cave in Ronceverte, where Thomas Jefferson, when he visited, did little more than sample the over forty miles of passages that have been mapped to date. Or challenge the mighty Gauley River, or the wild and scenic New River, in a raft or kayak, to learn just how powerful and devious a few thousand cubic feet of water can be when they are moving at great speed over car-sized boulders. Set your mountain bike upon trails that will strain your thighs as well as your bike brakes. Then, to relax, float lazily down the South Branch of the Potomac River in West Virginia, where it still looks as it must have to the early settlers, with mist rolling off the crystal waters as they wend their way between canyon-like walls, with bald eagles soaring overhead.

When the day is done, you can count on good food and a soft pillow anywhere in West Virginia. Bed and Breakfast establishments cater to every fancy, from homespun log cabins bedecked in quilts to antique-filled 'stately ladies' whose names reflect their historic pasts. Romance is easy to find before a crackling fire laid on a stone grate or on a porch swing overlooking the last violet rays of sunset. Hidden in the hills, too, are grand resorts and spas offering every amenity for the weary traveler. Some colonial-era spas are still active, while others have been more recently developed, but all offer blissful relaxation. Some also offer award-winning water. Berkeley Springs was founded by George Washington and others and originally called Bath after the spa town in England. The world famous Greenbrier in White Sulphur Springs lists royalty as well as Presidents, Senators, and Governors in its guest book.

The comforts of your home away from home may make it difficult to get out of bed, but the allure of shopping is strong in those hills. Outlet malls with

true bargains compete with artist studios, artisan workshops, and factory stores to fill your car trunk, but with only a little planning, your Christmas and birthday giving may be highlighted by unique and thoughtful treasures.

Of course, the greatest treasure in West Virginia is her people. Friendly, smiling, and helpful, they can even make getting lost a pleasurable adventure. So do come, do come and share in the beauty, in the history, in the romance, in the adventure that is West Virginia. Come a tourist and leave a friend.

I hope I have sparked a little curiosity in the state that I am so proud to represent. As long winded as politicians are reputed to be, and it may be the case in my instance, I could filibuster for days on the things to see and do in West Virginia without beginning to name everything. For more information, come by and visit my office. My staff will give you a telephone number for the State's official travel guide so you can visit West Virginia, and you can also find a lot of these things on the World Wide Web.

I yield the floor and I thank Senators for listening.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank the Senator from West Virginia. It was pure delight to sit here and listen to the virtues of his State. I have now a thirst, a curiosity, to visit the parts of the State that I haven't been to.

Anyone who thinks that eloquence is no longer around, all they have to do is listen to our friend, the Senator from West Virginia, and they are sure to know it has reached its senatorian heights.

I thank the Senator. I am glad I had the pleasure of listening to his beautiful and rapturous remarks about his wonderful State.

Mr. BYRD. Let me thank the Senator for his courtesy, for his patience in allowing me to proceed. I think I took a bit of advantage of his being off the floor temporarily. I thank him very much for his kind words, especially about West Virginia.

Mr. DOMENICI. Will the Senator yield?

Mr. SCHUMER. I am delighted to yield to the Senator from New Mexico.

Mr. DOMENICI. Senator BYRD, I want to say you commented that you could filibuster for many days about the beauty of your State. I am particularly pleased that you did it this way rather than a filibuster.

A filibuster for some has a little bit of a negative connotation, and the remarks made don't deserve the slightest interference from anything else, just a straight up great speech about your State.

I was glad to be here.

Mr. BYRD. Mr. President, I thank our friend, the distinguished Senator from New Mexico. He is always most generous in his remarks concerning me and I am very grateful.

When I saw his fine wife this morning as I came into the Capitol, I started the day off right.

I thank the Senator for his kind words.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The Senate continued with the consideration of the bill.

AMENDMENT NO. 314

(Purpose: To make an amendment with respect to ATM fee reform)

Mr. SCHUMER. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 314.

Mr. SCHUMER. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

TITLE VII—ATM FEE REFORM

SEC. 701. SHORT TITLE.

This title may be cited as the "ATM Fee Reform Act of 1999".

SEC. 702. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following:

"(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

"(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

"(i) the fact that a fee is imposed by such operator for providing the service; and

"(ii) the amount of any such fee.

"(B) NOTICE REQUIREMENTS.—

"(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

"(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

"(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

"(i) the consumer receives such notice in accordance with subparagraph (B); and

"(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

"(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

"(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term 'automated teller machine operator' means any person who—

"(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

"(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

"(iii) HOST TRANSFER SERVICES.—The term 'host transfer services' means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator."

SEC. 703. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting ";; and"; and

(3) by inserting after paragraph (9) the following:

"(10) a notice to the consumer that a fee may be imposed by—

"(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

"(B) any national, regional, or local network utilized to effect the transaction."

SEC. 704. FEASIBILITY STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic and transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee which will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(2)(D)(ii) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

(2) Implementation and operating costs.

(3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.

(4) The period of time which would be reasonable for implementing any such notice requirement.

(5) The extent to which consumers would benefit from any such notice requirement.

(6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.

(c) REPORT TO CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and

(2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, how such requirement should be implemented.

SEC. 705. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.

Section 910 of the Electronic Fund Transfer Act (15 U.S.C. 1693h) is amended by adding at the end the following new subsection:

"(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i)."

Mr. SCHUMER. Mr. President, I very much appreciate the chairman from Texas accepting the amendment, which he has told me he will do, and I believe he mentioned it on the floor.

This important amendment involves, very simply, disclosure on ATM machines of fees. As many may know, on April 1, 1996, Visa and MasterCard, which run the largest ATM networks in the United States, ended their prohibition against surcharging ATM users. Before that, there could not be a second surcharge. This fee was in addition to any fee already imposed on a transaction from other bank customer withdrawals.

Three years later, 93 percent of all banks are imposing ATM surcharges on customers. That is 31 percent more than last year. The bigger the bank, the more likely they are to surcharge and at a higher rate. What this means is, if you have a BankAmerica card and you go to a Bank One machine, you will pay two fees, one to the Bank One machine—which everyone expects to pay—and the other to the BankAmerica card. People are paying two fees. It is very difficult to figure out what they are.

When the banks first started charging these fees, many of them didn't bother to tell their customers they would be charged. They had to figure it out by looking at the monthly statement. For anyone who has looked at their monthly bank statements and all the fine print, it is clear that the fees were not transparent. So, unsurprisingly, there was an outcry. I took to the House floor, when I was in that body, to show that banks were not disclosing these fees. I remember surveying the banks in New York City and finding out they were not disclosing them.