
AMERICANS FOR FINANCIAL REFORM

THIS WEEK IN WALL STREET REFORM December 21–27, 2013

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CONSUMER FINANCE AND CFPB

When the Right to Sue Goes Away

David Lazarus, Los Angeles Times

“If you were to look in your wallet right now, the chances are high that one or more of your credit cards, debit cards or prepaid cards would be subject to a pre-dispute arbitration clause,” Richard Cordray, director of the Consumer Financial Protection Bureau, said during a recent appearance in Dallas. ‘The terms are not subject to negotiation,’ he pointed out. ‘Like the other terms of most consumer financial products, they are essentially take-it-or-leave-it propositions...’

“The U.S. Supreme Court ruled in a 5-4 decision in 2011 that businesses — phone companies, credit card issuers, cable operators — can include arbitration clauses in their service contracts... But the same financial reform law that created the bureau in 2010 gave it the authority to ‘prohibit or impose conditions or limitations on the use’ of arbitration clauses for credit cards, checking accounts and other financial contracts. That’s what regulators are finally getting around to considering.”

Auto Lending Giant Ally Financial Agrees to Pay \$98 Million to Settle Bias Charge

Michael A. Fletcher, Washington Post, 12/21/13

“Ally Financial, one of the nation’s largest automobile lenders, has agreed to pay \$98 million to settle charges that it systematically allowed minorities to be charged more for car loans than whites. The agreement, which federal officials called the government’s largest-ever auto loan discrimination settlement, requires Ally to pay \$80 million to compensate borrowers who were overcharged for loans and an additional \$18 million to the Consumer Financial Protection Bureau’s civil penalty fund.

“The settlement resolves allegations by federal officials that Ally and its sister company, Ally Bank, discriminated by charging 235,000 minority borrowers higher rates than whites in the year following April 2011. On average, black, Hispanic and Asian American customers paid between \$200 and just over \$300 more for auto loans than whites who were equally creditworthy, federal officials charged.”

Consumer Board's 'Guidance' Against Discrimination Angers Car Dealers, Lawmakers
David Sherfinski, Washington Times, 12/22/13

“Despite backing the board and its new chief, even Democrats are expressing concern over an early ruling from the Consumer Financial Protection Bureau warning auto dealers that offering to strike deals on car loan interest rates could be discriminatory. It’s a complex question that has auto dealers steamed and Republicans and Democrats demanding an answer from the CFPB and its chief, Richard Cordray, whose nomination Democrats pursued feverishly.

“Late last week, the Justice Department and CFPB said they struck a \$98 million settlement with Detroit-based Ally Financial. The government said the company violated fair credit laws by charging minority borrowers higher markups on auto loans than white customers. The settlement follows a ‘guidance’ warning this year from the CFPB to car dealers to be vigilant against discrimination when they act as middlemen, offering lower interest rates to gain business.”

CFPB Orders American Express to Pay \$59.5 Million for Illegal Credit Card Practices
CFPB, 12/24/13

FDIC Announces Settlement with American Express Centurion Bank for Unfair and Deceptive Practices
FDIC, 12/24/13

Democratic Lawmakers Call on FTC to Review Marketing Practices of Consumer Reporting Agencies
House Financial Services Committee, 12/18/13

How to Manage the Financial Risk of Investing in College
Alan Benson, Krishna Esteva and Frank Levy, Los Angeles Times, 12/24/13

On-Campus Credit Card Deals Fading Away
Martin Merzer, Fox News, 12/20/13

DERIVATIVES, COMMODITIES AND CFTC

Who Will Keep Financial Reform Going?
Teresa Tritch, New York Times, 12/20/13

“In late November, nine Democratic senators sent President Obama a letter about a vacancy on the five-member Commodity Futures Trading Commission, the agency charged under the Dodd-Frank law with regulating most of the multi-trillion dollar market in derivatives.

“The letter urged Mr. Obama to nominate someone to the post with “demonstrated expertise,” as well as “the experience, skills and independence’ to monitor and advance reforms ‘in the face of extremely stiff industry lobbying.’ The nominee, they said, should be someone who is ‘a true champion’ of ‘market oversight, reform and consumer protection.’

“With President Obama’s nomination this week of Sandra Bowen, a securities lawyer with the corporate law firm, Latham and Watkins, it is hard to argue that they got their wish.”

The House Edge: Off Limits, but Blessed by the Fed

Gretchen Morgenson, NY Times, 12/21/13

“Areas like electricity are generally off limits to banks because of the risks involved. But with its June 2010 letter, the Fed let JPMorgan take an even bigger role selling electricity in California and the Midwest, saying the push would “reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.”

“Three months later, JPMorgan traders began a scheme to manipulate electricity prices, ultimately forcing consumers in those regions to pay more every time they flicked on a light switch or an air-conditioner, the Federal Energy Regulatory Commission subsequently contended.”

Angry Bart Takes His Parting Shot

William D. Cohan, Bloomberg, 12/24/13

“After almost 30 years in Washington, Bart Chilton will soon be taking his leave. For the past 6 1/2 years, he has been an outspoken member of the Commodity Futures Trading Commission, one of the financial industry’s most important regulators.

“Chilton leaves behind a sobering message: As we long suspected, Wall Street continues to use every trick in its playbook to do whatever it can to eviscerate numerous post-financial-crisis rules. The arsenal includes high-powered lobbyists who outnumber lawmakers 10-to-1; \$1,000-an-hour letter-writing lawyers who gain strength from negotiating over arcana; and the occasional hoodwinking of a president whose knowledge of the ways of finance are close to nil.

Morgan Stanley Sells Oil Trading Business to Russia's Rosneft

Dmitry Zhdannikov and Katya Golubkov, Reuters, 12/20/13

“Morgan Stanley has sold the majority of its global physical oil trading operations to Russian state-run oil major Rosneft, becoming the latest Wall Street firm to dispose of a major part of its commodity business.”

“The deal represents a bold move into the U.S. market by Russia's top oil producer, which is headed by Igor Sechin, a powerful ally of Russian President Vladimir Putin. The Russian state owns almost 70 percent of Rosneft... The purchase will not include Morgan Stanley's oil storage, pipeline and terminalling firm, TransMontaigne Inc., which may help avoid significant scrutiny of the deal in Washington.”

Hedge Funds Cut Gold Bull Bets Amid Record Outflows

Joe Richter, Bloomberg, 12/23/13

Speculators ‘Throwing Money’ at Natural Gas on Icy Blast: Energy

Naureen S. Malik, Bloomberg Government, 12/23/13

ENFORCEMENT

Behind the Headline Numbers of a Mortgage Settlement

Peter Eavis, NY Times, 12/24/13

“Anyone reading the news release would be forgiven for thinking that Ocwen had to pay out \$125 million in refunds and then take a bruising \$2 billion hit on the mortgages it services. But a deeper look at the terms of the settlement tells a different story.

“Ocwen’s refund payment is actually only \$66 million, according to a filing by the company. The firms that handled the mortgages before Ocwen are paying the remainder.”

American Express Forced to Refund Customers, Pay Fine
Jonathan Behr, CBS MoneyWatch, 12/24/13

American Express to Pay \$75.7 Million for Unfair Marketing
Jesse Hamilton and Zeke Faux, Bloomberg, 12/24/13

American Express Units Settle Charges Over Deceptive Practices
Duncan Prial, Fox News, 12/24/13

PNC Paying \$35M to Resolve Loan Claims
Boston Globe, 12/23/13

INVESTOR PROTECTION & SEC

Raters Fail to Follow Criteria, Keep Adequate Records, SEC Says
Matt Robinson, Bloomberg, 12/24/13

“Credit raters failed to follow their own criteria, allowed research analysts to discuss fees with issuers and kept incomplete records, according to a report from the U.S. Securities and Exchange Commission.

“The SEC’s Office of Credit Ratings didn’t name specific companies in its third annual examination report released today, distinguishing them as either larger firms, such as McGraw-Hill Co.’s Standard & Poor’s, Moody’s Corp.’s Moody’s Investors Service and Fitch Ratings, or smaller ones, including Kroll Bond Rating Agency Inc. and DBRS Inc. The regulator also didn’t identify firms in its two prior reports.

“One large company and five smaller firms didn’t follow their own methodologies in determining ratings, the SEC said in its report on Nationally Recognized Statistical Rating Organizations or NRSROs. Four smaller companies failed to separate analytical and business divisions, and all large and six smaller firms didn’t keep adequate records related to ratings actions.”

When Do Fund Managers Deserve Coal In Their Stockings?
Timothy Spangler, Forbes, 12/27/13

“... It is important to bear in mind at all times that the fund, as principal, delegates decision-making power to the fund manager, an agent. In the case of investment funds, the agent is often itself a legal entity (such as a corporation) with its own matrix of agency relationships. If a human being walks into a room and claims to be acting on behalf of the fund, it will be always necessary to work through the various levels of agency in order to determine how that claim to authority was developed.

“Most importantly, the fund’s agent (the fund manager) will have a distinct advantage in its transactions with its principal (the fund)... As a result, the principal will both be very dependent on its agent, and also potentially face significant procedural impediments and inefficiencies in conducting the corporate actions necessary to oversee and monitor the agent...”

MORTGAGES/FORECLOSURES

New Mortgage Rules Won't Knock Out Many Borrowers

Peter Coy, Bloomberg, 12/27/13

“Are you in the market for a house and worrying about whether it will be harder to get a mortgage after Jan. 10, when new federal rules kick in? Don't fret...

“The conservative Heritage Foundation argues that the rules ‘unleash predatory regulators’ and unfairly restrict borrowers’ choices without dealing with what it says are the real causes of the housing bubble and bust—namely, loose monetary policy and various rules promoting homeownership for low-income families. On the whole, though, the rules won't make a huge difference for most families—simply because lenders have already tightened lending standards drastically. The best evidence for that is the Mortgage Credit Availability Index published by the Mortgage Bankers Association. According to the association, the index would have stood at around 800 in 2007 if it had existed at the time. It's around 110 now, meaning it's much harder to get a mortgage than before the housing crash.”

FHFA to Delay Increase in Mortgage Fees By Fannie, Freddie

Nick Timiraos, Wall St. Journal, 12/20/13

“Rep.. Mel Watt (D., N.C.), the incoming director of the regulatory agency that oversees Fannie Mae and Freddie Mac, said Friday night he would delay an increase in mortgage fees charged by the housing-finance giants, which was announced earlier this month by that agency.

“Mr. Watt was confirmed by the Senate to head the Federal Housing Finance Agency on Dec. 10 and is set to be sworn in on Jan. 6, he said in an email on Friday.

“Upon being sworn in, ‘I intend to announce that the FHFA will delay implementation’ of the loan-fee increases ‘until such time as I have had the opportunity to evaluate fully the rationale for the plan,’ he said in a statement. The FHFA signaled that it would increase certain fees charged by Fannie and Freddie that are typically passed on to mortgage borrowers on Dec. 9, on the eve of Mr. Watt's Senate confirmation.”

SYSTEMIC RISK

Regulators Weighing Key Exemption from Volcker Rule

Rob Blackwell, American Banker, 12/27/13

“Federal banking regulators are exploring whether to exempt collateralized debt obligations backed by trust-preferred securities from the Volcker Rule, the agencies said on Friday. The announcement was the most recent in a rapidly developing stand-off between banks and regulators over the controversial rule, which is designed to ban proprietary trading and prevent banks from investing in hedge and equity funds.

“The issue has already sparked a lawsuit by the American Bankers Association, which is seeking emergency court relief before some community banks may be forced to take millions of dollars in write-downs on certain CDOs at yearend. Regulators are due to respond to that lawsuit by Monday morning. Prior to that, however, the agencies acknowledged Friday they are looking to see whether it would be ‘appropriate and consistent’ with the Dodd-Frank Act to carve out all CDOs backed by Trups from the Volcker Rule.”

U.S. Bank Group Launches Volcker Rule Legal Challenge

Sarah N. Lynch, 12/23/13

“The court filing, the first legal challenge to the Volcker rule, says the provision in question is, among other things, ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...’

“At issue is a provision of the rule that prohibits banks from owning more than 3 percent of any individual hedge fund or private equity fund, and bars banks from investing more than 3 percent of their total equity capital in private funds.

“The banks worry that the provision will force them to sell their interest in collateralized debt obligations backed by so-called trust-preferred securities, a type of security that has characteristics in common with equity and debt instruments.”

Could Volcker Rule Be a ‘Stealthier’ Way to Cut U.S. Debt?

Ian Talley, Wall St. Journal, 12/26/13

Banks Test How Far They Can Push Back Against the Volcker Rule

Matthew Goldstein and Peter Eavis, NY Times, 12/24/13

Bankers Say Clarification of CDOs Under Volcker Falls Short

Jesse Hamilton and Cheyenne Hopkins, Bloomberg, 12/20/13

ABA Says Volcker Rule's CDO Provision Will Cause 'Substantial' Harm To Community Banks

Andrew R. Johnson, Wall St. Journal, 12/25/13

Goldman Real-Estate Play Skirts Volcker Rule

Craig Karmin and Justin Baer, Wall St. Journal, 12/22/13

OTHER TOPICS

How Thomas Curry Is Trying to Redeem the OCC

Rachel Witkowski, American Banker, 12/23/13

“Thomas Curry is an unlikely turnaround artist. When his nomination to head the Office of the Comptroller of the Currency was announced last year, most industry players saw him as a safe choice unlikely to alter the status quo. Some questioned whether he was the right pick to address the industry's problems and the agency's battered reputation.

“Yet during this year, particularly the past few months, Curry has begun reasserting the OCC's role in banking regulation, giving candid speeches telling banks about the need to focus on operational risk and warning about dangers posed to institutions by a lack of attention to cybersecurity. Perhaps more important, he appears willing to directly confront some of the cultural problems facing his agency, including conducting an unprecedented public review of the OCC's supervisory processes by three foreign regulators.”

Financial Repression From The Obama Administration: How Savers May Be Forced To Buy Federal Debt

William Tucker, Forbes, 12/23/13

“As still another showdown over the national debt looms, some experts are concerned that the

Obama Administration is poised to begin forcing Americans to stock their retirement accounts with low-return government bonds. Richard Cordray, director of the Consumer Financial Protection Board, told *Bloomberg News* that his new regulatory agency was mulling a move to control the \$20 trillion that Americans have invested for retirement. He specifically mentioned 401(k) plans and IRAs.

“That’s one of the things we’ve been exploring,” Cordray told *Bloomberg* reporter Carter Dougherty in January. Cordray’s seemingly stray comment was largely ignored by mainstream and financial media, but won the attention of fund managers and economists.

“CFPB will be clearly overstepping its bounds if it makes a blatant political move to present itself as a protector of senior citizens,” says Mark Calabria, director of financial regulation studies at the Cato Institute. “Congress chose to leave oversight for retirement products at the SEC and Department of Labor. With the creation of the CFPB, Dodd-Frank is attempting to do for the rest of consumer finance what the federal government has done to the mortgage market — to completely politicize it and subject it to twisted incentives that ultimately cost both consumers and the taxpayer.”

Chase Relaxes Limits on Debit Cards Used at Target **David Goldman, 12/24/13**

“JPMorgan Chase has loosened the security restrictions it put on debit cards used at Target during the retailer's massive breach. The bank said customers can withdraw up to \$250 per day in cash from ATMs, and they can spend up to \$1,000 using their Chase debit cards.

“On Saturday, Chase had imposed much stricter limits of \$100 in cash and \$300 in purchases. Chase customers can withdraw more money if they show up in person at a bank branch. In a customer service notice, Chase said the restrictions were made to ‘defend against fraud’ and ‘to help keep Chase accounts safe.’

“Our focus right now is protecting the accounts,” said JPMorgan Chase (JPM, Fortune 500) spokeswoman Patricia Wexler. “We continue to monitor this fluid situation closely.”

Cards Stolen in Target Breach Flood Underground Markets **Krebs on Security, 12/13/13**

Bailouts Leave a Legacy of Cronyism: Opposing View **Mark Calabria, USA Today, 12/22/13**

Target Credit Card Hack: What You Need to Know **Gregory Wallace, CNN Money, 12/23/13**

Detroit Reaches New Settlement With Banks **Bloomberg, 12/24/13**

Weekend Reading: Skipping the Wall St. ‘Wolf’ **Eric Owles, New York Times, 12/20/13**