AFR Americans for Financial Reform

This Week in Wall Street Reform | Dec. 5–Dec. 11, 2015

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CONSUMER FINANCE & THE CFPB

Congress Shouldn't Muzzle the Consumer Watchdog
Consumer Reports, 12/8
The CFPB was created to help consumers by cracking down on financial scams, credit card abuses, excessive bank fees, bad mortgages and shady lenders. It has already forced industry to return $11 billion to more than 25 million wronged consumers in the four years since it opened its doors. Plus, the Bureau has helped resolve some 700,000 consumer complaints about financial services.

Not surprisingly, the financial industry has repeatedly tried to use its clout in Washington to weaken the CFPB, and these riders in Congress are the latest attempt. If approved, the riders would take away the CFPB's aggressive independence by changing its funding and structure, and they would seriously limit its ability to go after lenders who abuse customers.

Republicans attempt to weaken consumer financial protections
Dean Baker, Al Jazeera, 12/8
The Republicans' big problem with the CFPB is that it seems to be doing its job. The bureau was set up first and foremost to prevent the sort of abusive lending that we saw in the peak years of the housing bubble…

The CFPB has sought to impose higher standards in the mortgage industry and other sectors of consumer finance, ensuring the people understand the terms and the risks involved when they take out a loan. The effectiveness of the CFPB is perhaps best demonstrated by one area of consumer finance where it was prohibited from playing a role: car loans.

Al Jazeera America Highlights GOP Campaign To Gut Consumer Financial Protection Bureau
Media Matters Staff, 12/8
Al Jazeera America highlighted attempts by Republican members of Congress to use an omnibus spending bill meant to avert a government shutdown as a means of defunding a watchdog government agency dedicated to protecting consumers from fraudulent and predatory lending.

Host John Seigenthaler and correspondent Libby Casey discussed congressional Republican attempts to use spending legislation intended to avoid a federal government shutdown on December 11 as a means of gutting the Consumer Financial Protection Bureau (CFPB). As Casey reported, Democrats are defending the organization's role in protecting American consumers, and support a spending resolution that does not include so-called "policy riders." Seigenthaler was joined by Alexis Goldstein of **Americans for Financial Reform** to discuss the important role CFPB plays as "the only federal regulator that is tasked with protecting consumers from financial abuse."

Groups Call On AmEx, Chase, Citi, Toyota, Others To Stop Forcing Customers To Sign Away Their Legal Rights
Chris Morran, Consumerist, 12/10
Once upon a time, if a company wronged a customer — not just by screwing up an order or having poor customer service, but by actually breaking the law — that customer could file a lawsuit and try to hold the company accountable. And if the company wronged lots of customers in the same way, they could join together in a class action. Now, thanks

to the U.S. Supreme Court, companies can get away with breaking the law by simply including a few handy lines of text in their customer agreements and contracts. But just because the company can use this "get out of jail free" card, doesn't mean it should. That's why a coalition of more than 30 groups — including our colleagues at Consumers Union — have sent a letter to the CEOs of American Express, General Electric, JPMorgan Chase, Sears, Citigroup, Toyota, and Discover Financial Services — all of whom use these "forced arbitration" clauses — to stop stripping their customers' of their legal rights.

Did Your Bank Send You a Letter Letting You Opt Out of Arbitration?

Mandy Walker, Consumer Reports, 12/10

In late August, Citibank began sending letters to its credit card and bank account customers allowing them to opt out of forced arbitration… If you opt out of an arbitration clause, you'll have the option to file legal action in court against the company if wrongs you. In the case of Citibank, customers can opt out by writing and mailing a letter back to the company—there is no form to fill out or prepaid envelope to use.

See **joint press release**: "Coalition Calls on Seven Major Corporations to Stop Using Forced Arbitration"

Title lenders fight to keep records secret

Fred Schulte, Center for Public Integrity, 12/9

Three major auto-title lenders have filed legal petitions to block Virginia state officials from releasing company annual reports to the Center for Public Integrity, arguing that doing so would seriously damage their businesses.

The title loan industry, which is dominated by three Georgia-based companies, has come under fire from consumer advocates and some lawmakers for charging interest rates that can exceed 300 percent in some states and seizing the cars of borrowers who fail to repay their loans.

Loan to California shooter puts online lenders under the spotlight

Reuters, 12/10

Prosper Marketplace's $28,500 loan to the husband of the couple that killed 14 people in California last week risks drawing regulatory scrutiny of the online lending industry's "fast and easy" business model. Online lenders such as privately held Prosper and market leader Lending Club Corp are part of a small, but fast-growing industry. They advertise quick, unsecured loans to potential borrowers, giving approval in minutes and money within days. Shooter Syed Rizwan Farook took out the loan from Prosper around the middle of last month, according to a source familiar with the matter. Authorities have said Farook, 28, and wife Tashfeen Malik, 29, were radicalized Muslims. The Federal Bureau of Investigation has said that the Dec. 2 attack is being investigated as an "act of terrorism." "This is certainly not a good storyline to be associated with," said Morningstar analyst Timothy Puls. "There's not a whole lot of regulation on this industry and we think that's coming."

Auto insurance discriminatory?

Lance Haver, Philly, 12/11

Most people agree the cost of car insurance should be tied to obviously relevant factors such as type of insurance coverage, driving record, the car you drive, and how many miles you drive per month.

Insurance companies base your premium on these factors, along with your credit score and your education. But what if you found out your premium also was affected by your residency in a predominantly African-American or Latino neighborhood? A study by the Consumer Federation of America found that a driver who moved from a predominantly white zip code into a predominantly black zip code with the same car and coverage experienced an average premium increase of $671 - 60 percent higher than if the driver had moved into an economically similar white zip code. In Philadelphia, premium disparities between zip codes were on average less extreme, but shocking nonetheless: $269 more, or a full 30 percent hike, if the driver moved from a mostly white zip code into a mostly black or Latino zip code.

CFPB Takes Action Against Debt Collector for Pursuing Disputed and Unverified Cellphone Debts

Consumer Financial Protection Bureau Press Release, 12/7

Today the Consumer Financial Protection Bureau (CFPB) filed a federal complaint against EOS CCA (EOS), a Massachusetts debt collection firm, for reporting and collecting on old cellphone debt that consumers disputed and EOS did not verify. The company also provided inaccurate information to credit reporting companies about the debt and failed to correct reported information that it had determined was inaccurate. The CFPB filed a proposed consent order that, if entered by the court, would require EOS to overhaul its debt collection practices, refund at least $743,000 to consumers, and pay a $1.85 million civil money penalty.

“After buying a portfolio of debt, EOS soon learned of several red flags that raised doubts about the debt’s validity. Even so, EOS still proceeded to collect certain disputed and unverified debts,” said CFPB Director Richard Cordray. “It is unacceptable that consumers were harmed by these practices and that the company supplied inaccurate information to the credit reporting companies, so today we are taking action to stop it.”

Driver of Choice? The Cost of Financial Products for Unbanked Consumers

Fumiko Hayashi, John Hanson, Jesse Leigh Maniff, Federal Reserve Bank of Kansas, November 2015

This paper examines whether some of the unbanked consumers’ choice of general purpose reloadable (GPR) prepaid cards over checking accounts and alternative financial service (AFS) products can be explained by the cost incurred by those consumers. We compare the three types of products by constructing consumer models based on the actual behavior of GPR prepaid cardholders and applying those models to the fee schedules of actual products offered in the market. Overdrafts are a major factor affecting the cost rankings. For consumers who regularly or occasionally overdraw their accounts, checking accounts are more costly than GPR cards or AFS products. In contrast, for consumers who do not need overdraft capability and short-term credit, GPR cards are more costly than checking accounts. The cost difference across the products clearly explains the former type of consumers’ choice of financial products, while it does not explain the latter type of consumers’ choice.

DERIVATIVES, COMMODITIES AND THE CFTC

SEC Moves Toward Limits on Funds' Use of Derivatives

Associated Press, 12/11

Federal regulators are moving toward imposing restrictions on the use of derivatives by mutual funds, aiming to protect investors in funds that rely on the high-risk transactions. Members of the Securities and Exchange Commission voted 3-1 at a public meeting Friday to propose the limits on derivatives use by mutual funds as well as exchange-traded funds. ETFs, which have been growing in popularity, track a market index or basket of stocks and trade through the day.

U.S. fund industry fears SEC proposal on derivatives may hurt ETFs

Trevor Hunnicut, Reuters, 12/11

A proposal by the U.S. Securities and Exchange Commission to clamp down on how funds use derivatives has industry officials worried that some exchange-traded funds may have to close or change their investment strategy. The rule proposed on Friday would require funds to hold cash reserves to cover potential future losses on derivatives. Funds could agree to limit their derivatives exposure to 150 percent of net assets, or - if they passed a separate risk test - keep derivatives exposure as high as 300 percent of net assets. A number of popular ETFs could be disabled by the rule, some analysts said. Some 163 ETFs representing $26.9 billion in assets use derivatives to double, triple, or provide the opposite of the returns of an index, such as the S&P 500.

Because derivatives may not be as easily traded as stocks and bonds, this could produce more risks. The counterparty might not be able to pay off the terms of the swap during a big sell-off, for example. "The lack of careful controls on derivatives exposure has permitted funds to circumvent leverage limitations," said Marcus Stanley, policy director for **Americans for Financial Reform**, a consumer-advocacy group. "The SEC should ask hard questions about limiting these leveraged ETFs."

DODD-FRANK (AND CONTINUED ATTACKS)

How I’d Rein In Wall Street

Hillary Clinton, NY Times, 12/7

Republicans, both in Congress and on the campaign trail, are dead-set on rolling back critical financial protections. Right now, Republicans in Congress are working to attach damaging deregulation riders to the must-pass spending bill. They’re attempting to defund the Consumer Financial Protection Bureau. They want to roll back common-sense efforts to prevent conflicts of interest by financial managers. And they're trying to undo constraints on risk at some of the largest and most complex financial institutions.

As president, I would not only veto any legislation that would weaken financial reform, but I would also fight for tough new rules, stronger enforcement and more accountability that go well beyond Dodd-Frank… My plan proposes legislation that would impose a new risk fee on dozens of the biggest banks — those with more than $50 billion in assets — and other systemically important financial institutions to discourage the kind of hazardous behavior that could induce another crisis. I would also ensure that the federal government has — and is prepared to use — the authority and tools necessary to reorganize, downsize and ultimately break up any financial institution that is too large and risky to be managed effectively.

Hillary Clinton Urges Democrats to Block GOP Attempts to Weaken Dodd-Frank Act in Spending Bill Negotiations
Hillary Clinton Press Release, 12/8

Elizabeth Warren praises Hillary Clinton's Wall Street plan
Anne Gearan, Washington Post, 12/7
"Secretary Clinton is right to fight back against Republicans trying to sneak Wall Street giveaways into the must-pass government funding bill," Warren wrote on Facebook.

Warren, an anti-Wall Street crusader who disappointed many very liberal Democrats by refusing entreaties to run for the 2016 nomination, previously oversaw the CFPB. She wants to go farther than Clinton in breaking up big banks, but outlined with approval the areas where their proposals align. "Whether it's attacking the C.F.P.B., undermining new rules to rein in unscrupulous retirement advisers, or rolling back any part of the hard-fought progress we've made on financial reform, she and I agree," Warren wrote.

What Clinton Gets Right, And Wrong, About Wall Street Reform
Isaiah Poole, Campaign for America's Future, 12/8
Clinton's positions are generally pointed in the right direction and she said much that needed to be said. Hence, a key section of her op-ed addressing the efforts by congressional Republicans use the budget process to derail important financial regulations and weaken the Consumer Financial Protection Bureau, the signature achievement of the Dodd-Frank financial reform bill, was immediately saluted by Sen. Elizabeth Warren.

… Clinton repeats the same claim she made in the November Democratic debate: Since many of the firms that were major contributors to the 2008 financial crisis, like AIG and Lehman Brothers, weren't banks, having a Glass-Steagall wall would not have solved the problem. Richard Eskow not only punctured that argument in his "Five Reasons Glass-Steagall Matters" – "the 2008 financial crisis became a systemic threat specifically because too-big-to-fail banks were underwriting the risky bets these companies made" – but also outlined how the repeal of Glass-Steagall made the banking sector worse even outside of the financial crisis.

What Hillary Clinton Gets (and Bernie Sanders Doesn't) About Wall Street
Gary Sernovitz, New Yorker, 12/10
Clinton's beyond-the-banks rhetoric, in the op-ed and in the debate itself, is meant to position her as tougher on the finance industry than Sanders, a move that is hard for her to make convincingly—one has the sense that Sanders would strip every last cufflink off every investment banker, if he could. If you agree with the Democrats that Wall Street should be reformed, though, Clinton's more comprehensive solution better grasps the world of finance today. Not only are Sanders's bogeybanks just one part of Wall Street but they are getting less powerful and less problematic by the year. "It ain't complicated," Sanders said during the debate. But Clinton is right: it is.

Clinton's fox-like, forty-eight-hundred-word plan for smaller, wider reforms contains so many details that it's impossible not to quibble with some of them. But their breadth and diversity capture Wall Street's diffuseness and variability. In finance, there is a divide between the "sell side," the banks selling financial advice and services, and the "buy side," the thousands of asset managers—mainly hedge funds, private-equity funds, venture-capital firms, and mutual funds—that sometimes use the sell side's services to invest money. And if there is a central story of Wall Street since the nineteennineties, it has been the stagnation of the sell side and the rise of the buy side, because of technology, regulation, and new profit opportunities.

Hillary Clinton, Bernie Sanders, and Cracking Down on Wall Street

Dean Baker, Center for Economic and Policy Research, 12/10

The New Yorker ran a rather confused piece by Gary Sernovitz, a managing director at the investment firm Lime Rock Partners, on whether Bernie Sanders or Hillary Clinton would be more effective in reining in Wall Street. The piece assures us that Secretary Clinton has a better understanding of Wall Street and that her plan would be more effective in cracking down on the industry. The piece is bizarre both because it essentially dismisses the concern with too big to fail banks and completely ignores Sanders' proposal for a financial transactions tax, which is by far the most important mechanism for reining in the financial industry. The piece assures us that too big to fail banks are no longer a problem, noting their drop in profitability from bubble peaks and telling readers:

"...not only are Sanders's bogeybanks just one part of Wall Street but they are getting less powerful and less problematic by the year."

This argument is strange for a couple of reasons. First, the peak of the subprime bubble frenzy is hardly a good base of comparison. The real question is should we anticipate declining profits going forward. That hardly seems clear. For example, Citigroup recently reported surging profits, while Wells Fargo's third quarter profits were up 8 percent from 2014 levels.

Spending Deadline Looms and Financial Services Riders Face Tough Climb

Compass Point, 12/7

[White House Press Secretary Josh] Earnest warned that there are "dozens" of GOP riders the president won't accept. He declined to define what constitutes a deal-killer — "This is one of those things that when you see it, you know it," he said — but he did specify that Obama wouldn't support any effort to dismantle the Dodd-Frank Wall Street Reform law or toughen screenings for Syrian refugees.

Senators less than optimistic about bank deal in omnibus

Zachary Warmbrodt, Politico, 12/9

Senators are sending mixed signals about the likelihood that they will reach a bipartisan deal to ease a range of banking regulations, especially in time to be attached to an upcoming omnibus spending bill. "My sense is: dead," Sen. Mark Warner said of the talks.

"We'll see if the Democrats are serious about doing something substantive," Senate Banking Committee Chairman Richard Shelby said. "We're still talking a little bit, but we'll have to see. We don't want something that's not strong." Sen. Sherrod Brown, the top Democrat on the Banking Committee, said he "can't imagine there's going to be an agreement with Shelby on this."

Sen. Coons is right: Laws should not be passed in the dark

Darlene Battle and Rashmi Rangan, Delaware Online, 12/8

If you want to understand why many Americans mistrust their government, you need look no further than the annual rider-fest. It's happening now – a frenzy of backroom deals to take proposals so bad that their sponsors could never get them passed the regular way, and tack them onto big spending bills in an effort to paralyze all resistance. Now, occasionally, there are good riders. The transportation bill included a number of riders that were also included in Brown's "community bank regulatory relief bill." Who would think to look for banking issues in a transportation bill?

Senator Chris Coons (D-Del.) has taken a clear and important stand against this process. Controversial policy measures, he told Politico, should be introduced, debated and approved or disapproved in their own right, not in a package deal with bills that are needed to keep the government running.

See **AFR's Storify** with other members of Congress tweeting their opposition to policy riders.

ENFORCEMENT

Morgan Stanley reaches $225 million settlement with NCUA

Brena Swanson, HousingWire, 12/10

Morgan Stanley (MS) reached a settlement with the National Credit Union Administration for $225 million in order to resolve claims arising from losses related to corporate credit unions' purchases of faulty residential mortgage-backed securities. This is the most recent in a string of settlements from NCUA.

In 2013, the NCUA filed suit against Royal Bank of Scotland (RBS), Morgan Stanley (MS) and eight other institutions over the sale of nearly $2.4 billion in mortgage-backed securities to U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Members United Corporate Federal Credit Union and Southwest Corporate Federal Credit Union.

In October, Barclays (BCS) and Wachovia, now a part of Wells Fargo (WFC), said they would pay a total of $378 million to NCUA as part of two separate settlements stemming from losses related to purchases of residential mortgage-backed securities.

EXECUTIVE PAY

Here's how CEOs cash in on hundred-million-dollar corporate-stock buybacks

Karen Brettell, David Gaffen and David Rohde, Reuters, 12/11

Most publicly traded U.S. companies reward top managers for hitting performance targets, meant to tie the interests of managers and shareholders together. At many big companies, those interests are deemed to be best aligned by linking executive performance to earnings per share, along with measures derived from the company's stock price.

But these metrics may not be solely a reflection of a company's operating performance. They can be, and often are, influenced through stock repurchases. In addition to cutting the number of a company's shares outstanding, and thus lifting EPS, buybacks also increase demand for the shares, usually providing a lift to the share price, which affects other performance markers.

As corporate America engages in an unprecedented buyback binge, soaring CEO pay tied to short-term performance measures like EPS is prompting criticism that executives are using stock repurchases to enrich themselves at the expense of long-term corporate health, capital investment and employment.

Should Buybacks Boost CEO Pay?

Alan Murray, Fortune, 12/11

A Reuters investigative report out yesterday explores the widespread practice of basing CEO compensation on earnings per share, then boosting those earnings through share repurchases. The rise in share repurchases is not so much the result of executive greed as it is a rational response to shareholder pressures in an age of cheap money and slow growth. But there is something perverse about boosting CEO bonuses through buy-backs. The Reuters analysis found that 255 of the companies in the S&P 500 Index reward executives in part by using EPS.

HEDGE FUNDS AND PRIVATE EQUITY FUNDS

Hedge funds must be held accountable in Puerto Rico crisis

Randi Weingarten and Rep. Nydia Velázquez, The Hill, 12/9

More than 30,000 public workers are out of work. The cost of everything from utilities to a college education has skyrocketed. Schools have been closed. Public health and pension benefits cut. And taxes for working families are up. This is today's reality in Puerto Rico. Add to that the fact that the island's governor, Alejandro García Padilla, has declared that the commonwealth's $72 billion debt is not payable. All this has come together to put a vibrant island, home to 3.5 million American citizens, in crisis…We must act to hold accountable the hedge funds that hold an estimated one-third of Puerto Rico's debt, which they originally bought at pennies on the dollar with the hope that they would strike a payday when Congress refused to act.

Throughout this crisis, hedge funds such as Aurelius Capital Management, Brigade Capital Management and Monarch Alternative Capital have aimed to squeeze massive profits out of a community on the brink. They have lobbied hard in Washington for more austerity measures. While this isn't particularly surprising —these "vulture funds" are known to use heavy-handed legal and bargaining tactics to extract maximum profit from failing companies and debt-ridden economies—it is time for these tactics to be brought to light.

How Hedge Funds Are Pillaging Puerto Rico

David Dayen, The American Prospect, Winter 2016

This is a distress call from a ship of 3.5 million American citizens that have been lost at sea," Puerto Rico Governor Alejandro García Padilla said on December 1, begging the Senate Judiciary Committee to help protect his homeland from an unspooling disaster. After issuing bonds for over a decade on everything not nailed down, Puerto Rico now carries $73 billion in debt, a sum that García Padilla had termed "not payable" in June. Successive governments have enacted punishing austerity measures to service the debt, despite a stubbornly depressed economy and poverty rates near 50 percent. Now, after defaulting on smaller loans, it's likely that much of the $957 million due January 1 will go unpaid, bringing more chaos and suffering at the hands of Puerto Rico's creditors.

In many ways, the Puerto Rico situation is sui generis, resulting from a patchwork of laws and obligations on an entity that is not really a country and not really a U.S. state. But looked at another way, Puerto Rico is just the latest battlefield for a phalanx of hedge funds called "vultures," which pick at the withered sinews of troubled governments. In Greece, Argentina, Detroit, and now Puerto Rico, vultures have bought distressed debt on the cheap, and then used coercion, threats, and legal action to secure a massive windfall, compounding the effects on millions of citizens.

Private Equity Fees Are Sky-High, Yes, but Look at Those Returns

Steven Davidoff Solomon, NY Times, 12/8

Critics love to complain about private equity and its exorbitant fees. But imagine if retail investors — people like you and me — were suddenly allowed to invest in the funds managed by private equity giants like the Blackstone Group, Kohlberg Kravis Roberts & Company and Apollo Global Management. If all the barriers and regulations came down, you could probably guess what would happen. Hordes would flood the offices of these firms, racing to invest. It would make a Black Friday line at Target look Zen.

The reason is obvious. As an asset class and with the right fund, private equity is nigh unbeatable, well worth the fees paid. Take, for example, the California Public Employees' Retirement System, or Calpers, the nation's largest pension system. It recently disclosed that it had paid $3.4 billion in fees for the last 25 years for private equity funds. Such a large number revived a debate about whether pension funds are getting what they pay for from Wall Street.

CalPERS and Private Equity: A Second Opinion

Eileen Appelbaum, Center for Economic and Policy Research, 12/9

The usually perceptive Deal Professor, Steven Davidoff Solomon has swallowed CalPERS' staff's spin on the more than $3.4 billion the California public employees' pension fund has paid to private equity firms in performance fees (so-called carried interest) hook, line, and sinker. In "Private Equity Fees Are Sky-High, Yes, but Look at Those Returns," Davidoff Solomon accepts uncritically CalPERS report of its return on its risky PE investments — a report that the industry publication, Private Equity International in its November 27 Friday Letter, labeled a private equity public relations coup. Those high fees are worth it in Davidoff Solomon's view because of CalPERS stellar private equity returns. If only!

Davidoff Solomon failed to note that CalPERS' staff did not provide information in this report on the risk-adjusted return to its risky private equity investments. The staff provided misleading information because its risk-adjusted PE returns were awful: CalPERS investments in private equity have underperformed its risk-adjusted benchmark over the last 10 years and in 3-year and 5-year sub-periods. The staff no doubt expected to pull the wool over the eyes of public sector workers and taxpayers in California, but has surely succeeded beyond its wildest dreams with this endorsement in The New York Times by someone who should know better. Indeed, over the last 10 years, the pension fund's PE investments underperformed its stock market benchmark by about 300 basis points. In layman's language, this means CalPERS would have had exactly the same return over this period if it had invested in the stock market index it uses in its benchmark. Actually, CalPERS would have had a much higher return from investing in this stock market index because it could have invested the $3.4 billion of its members' retirement savings that it paid PE firms in performance fees.

Hedge Fund Copycats Draw Record Money as Clients Seek Safety
Nishant Kumar, Bloomberg, 12/11

HIGH SPEED TRADING AND FINANCIAL TRANSACTION TAX

Ten EU Countries Agree on Some Aspects of Financial Transactions Tax
Viktoria Dendrinou, Wall St. Journal, 12/8
Ten European Union countries that have pledged to impose a tax on financial transactions on Tuesday reached a compromise on some aspects of the levy, and gave themselves another six months to agree on the remaining key issues, including the rate of the tax and the use of its proceeds.

Finance ministers representing 11 EU countries had aimed to strike a deal by the end of this year on the basic form of a tax on financial transactions, after missing a previous official deadline of the end of 2014. But the tentative agreement reached Tuesday falls short of a full political deal and doesn't address several major aspects of the tax, underlining the political differences countries face on the remaining issues.

European Breakthroughs on Financial Transaction Tax
Sarah Anderson, Huffington Post, 12/8
A year ago, France, on behalf of that country's financial industry, was pushing to water down the tax in two ways - by completely exempting derivatives trades and by applying the tax only to the net value of securities transactions at the end of the trading day. These loopholes would've substantially reduced the revenue and regulatory benefits of the tax. Fortunately, the bankers lost on both counts. The 10 governments have agreed to levy the tax on derivatives and all shares transactions, including intra-day trading.

The Wall Street lobby and their European counterparts also appear to have lost a major battle over the scope of the tax. According to the statement, they have accepted two European Commission-proposed anti-avoidance mechanisms - one based on residence (a transaction will be taxable if at least one of the parties resides in a participating EU member state) and another based on issuance (a transaction will be taxable if the instrument is issued in one of those countries). The tax will also apply to both buyers and sellers, and so some U.S. investors will be hit. For example, a U.S.-based hedge fund will be taxed on trades with a German firm.

See **AFR Press Release**.

High frequency trading taking its toll on Wall St jobs
Ian Bollard, HITC, 11/7
A new study suggests that millions of prospective finance jobs have been lost since 2000 and countless billions in capital was not created due to the proliferation of robotic trading platforms.

'We would have over 13,000 publicly listed companies today instead of the paltry 5,000 we now have', David Weild, chief executive of Weild and former Nasdaq vice chairman, told The Post. And that has also resulted in subdued volumes, with stock market participants sidelined by a dearth of initial public offerings, Weild said. Weild also placed blame on Washington regulators, who he said have hugely restrained the number of offerings since rules were changed and amended over the past three decades.

INVESTOR PROTECTION AND THE SEC

[SEC's White: Too many auditors not following U.S. securities laws]

Lisa Lambert, Reuters, 12/10

The U.S. Securities and Exchange Commission is concerned that financial auditors are not living up to the requirements of securities laws, Chair Mary Jo White told a meeting of certified public accountants on Wednesday. "In the worrisome column, we still observe too many instances where companies and their auditors have not discharged their responsibilities adequately under the securities laws and professional standards," White said at the national conference of the American Institute of CPAs. She said recent inspections by the Public Company Accounting Oversight Board had found "significant deficiencies" in assessing and responding to risks of misstatement, auditing accounting estimates, and work performed by some firms in cross-border audits.

House committee approves easing accredited-investor standard

Mark Schoeff Jr., InvestmentNews, 12/9

The House Financial Services Committee Wednesday morning overwhelmingly approved legislation that would ease restrictions on the kind of investors who can purchase unregistered securities. The bill, written by Rep. David Schweikert, R-Ariz., drew strong bipartisan support and was approved in a 54-2 vote.

The measure would expand the definition of "accredited investor." Under current rules, that designation is limited to people who have $1 million in net worth, excluding the value of their house, or make $200,000 annually, $300,000 for couples.

See joint AFR/CFA letter on HR 2187 and HR 3784, and related joint letter on proposed Financial Accounting Standards Board changes affecting "materiality" and "notes to financial statements."

Why an Old Scam Keeps Landing in Your Inbox

Daniel Huang and Aruna Viswanatha, Wall St. Journal, 12/7

MORTGAGES & HOUSING

A Revolving Door Helps Big Banks' Quiet Campaign to Muscle out Fannie and Freddie

Gretchen Morgenson, NY Times, 12/8

Seven years after their dubious lending practices helped push the United States economy to the brink of disaster, the nation's largest banks are closing in on a long-sought goal: to unseat Fannie Mae and Freddie Mac, the mortgage finance giants, and capture their share of the profits in the country's $5.7 trillion home loan market. Taking place largely behind the scenes, the movement to take over the mortgage market has been propelled in part by a revolving door between Washington and Wall Street, an investigation by The New York Times has found.

While the big banks' effort to enshrine their vision into law has failed so far, plans to replace Fannie and Freddie — which have long supported the housing market by playing a unique role as so-called government-sponsored enterprises, or G.S.E.s — are still very much alive. The Obama administration has largely embraced the idea, and government regulators are being pushed to put crucial elements into effect.

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

Wall Street Mounts Final Push to Kill Tougher U.S. Broker Rules

David Michaels and Cheyenne Hopkins, Bloomberg, 12/8

Wall Street may get one more shot to derail rules championed by the White House that would put tighter restrictions on brokers who advise Americans on saving for retirement.

While financial firms trying to kill the regulations still face long odds, the industry's new life could come from a provision that Republican lawmakers and some Democrats are trying to tuck into the $1.1 trillion government spending bill being debated in Congress, said three people familiar with the matter. The amendment would force the Obama administration to give brokers, insurers and other companies that sell investment products 30 more days to weigh in on the rules before they could be finalized, said the people, who asked not to be named because the spending bill is still being negotiated.

The stakes are high for industry trade groups that have been engaged in a five-year lobbying battle against efforts to make brokers act in their customers' best interests…The one-month delay would give brokers another chance to comment on the plan, and would compel Labor to study that feedback. The agency would then have to consider those comments as it crafts a final rule. If the rules haven't been implemented by the time Obama leaves office, the next administration, particularly a Republican one that opposes the effort, could undo them before they can be enforced.

See CFA/AFL fact sheet, "Don't Be Fooled: One More Comment Period Means No More Rule;" and Save Our Retirement coalition background paper, "Delay Could Spell Death for Fiduciary Rule." See also AFR Facebook post and graphic.

Spending Bill Becomes Battleground For Retirement Advice Rule

Yuka Hayashi, Wall St. Journal, 12/8

Investor advocates are working to thwart any effort to attach provisions to the spending bill that would roll back the retirement advice rules and other regulations aimed at protecting investors. Advocacy groups, including CREDO Action and Americans for Financial Reform, delivered to Congress a set of petitions on Monday with signatures from over 200,000 people opposing the use of the budget process as a "vehicle for backdoor financial deregulation."

Labor Secretary Thomas Perez is scheduled to appear Tuesday on the Daily Show, a comedy and news program, where he is expected to defend the new rule.

The effort to knock down the fiduciary standard rule is among several items the financial industry is hoping to have inserted into the spending legislation. In addition, they're seeking a provision that would exempt more firms from being subjected to more stringent regulations as "systemically-important financial institutions."

Johnson to Mikulski and Cochran: Include fiduciary rider

Marianne LeVine, Politico, 12/11

Sen. Ron Johnson urged Senate Appropriations Committee Chairman Thad Cochran and Ranking Member Barbara Mikulski to include a rider in the omnibus spending bill that would defund the Labor Department's proposed fiduciary rule. In a letter sent Wednesday, Johnson said that according to material obtained by the Committee on Homeland Security and Governmental Affairs, which he chairs, the Labor Department "disregarded numerous concerns raised by the career, nonpartisan, professional experts" at the Securities and Exchange Commission, the White House Office of Information and Regulatory Affairs and the Treasury Department.

Johnson described the fiduciary rule as a "solution in search of a problem" and said he was "troubled by the Labor Department's noncooperation" with the Committee's request for certain documents about the rulemaking process. A copy of the letter was sent to Senate Committee on Homeland Security and Governmental Affairs ranking member Tom Carper, Senate Majority Leader Mitch McConnell, Senate Minority Leader Harry Reid, and Senate HELP Committee Chair Lamar Alexander and Ranking Member Patty Murray. A Labor Department spokesman described the letter as "fraught with inaccuracies."

Don't Let Financial Advisers Off the Hook

Arthur Levitt Jr., Bloomberg, 12/7

Ronald Reagan used to say that the surest way to live forever was to become a federal program. If that's right, the surest way to die is to be studied by Congress. In Washington, becoming the subject of legislative scrutiny virtually guarantees inaction, the disappearance of funding and political support, and ultimate demise.

That's precisely why congressional Republicans are insisting on the need to "study" further an Obama administration proposal to make financial advisers more accountable. The proposal in question, put forward by the Department of Labor, would target the conflicts of interest that can arise when advisers attempt to steer their clients into high-fee, high-risk investments.

The Labor Department is attempting to update the fiduciary standard, raising the bar for any advice given by brokers working with retirement investors. If instituted, financial advisers will have to place a client's interests above their own or those of their firm. That doesn't seem like too hard a standard to meet, but not all advisers deliver on it. And to this point, nothing in the law has made them do so.

Here's why we need the "conflict of interest" rule and why journalists need to report on it.

Jared Berstein, On The Economy, 12/11

The NYT has a great piece on a whistle-blower at JP Morgan, who tried to blow the whistle on financial advisers that were putting their own interests ahead of their clients. Yet somehow, the piece fails to mention the Obama administration's proposed conflict of interest rule, designed to address precisely this problem. That omission is particularly egregious in that the COI rule was last seen in the crosshairs of the current budget debate (the R's had a "rider" on the budget bill to block the rule's implementation).

According to the piece, this guy, John Burris, "avoided [recommending] what he considered unsuitable, expensive and underperforming investment products, including some offered by JPMorgan, which drew criticism from his bosses." He also complained repeatedly about co-workers who, incentivized by the bank to sell their own products, failed to put their client's interest above their own.

Portman, Cardin to Perez: Congress needs to be involved on fiduciary rule

Marianne LeVine, Politico, 12/8

Senators Rob Portman and Ben Cardin said Congress has a "clear role to play" in making sure that any changes to the fiduciary standard "achieve the right policy outcome." In a letter sent Friday to Labor Secretary Tom Perez, Portman and Cardin warned the Labor Department's proposed fiduciary rule could have "unintended consequences" on low and middle-income savers' access to retirement advice and could hurt small businesses.

The senators wrote that given Congress' jurisdiction "over every aspect of the savings landscape," lawmakers should be involved in any retirement policy updates. They said Congressional involvement "can take many forms," including designing a legislative alternative to the fiduciary rule, as a bipartisan group of House lawmakers are doing, or "acting in close coordination with the [Labor Department] to provide input and receive updates on the proposed rule."

STUDENT LOANS & FOR-PROFIT EDUCATION

Caesars Takes Aim at Law Aiding Creditors

Matt Jarzemsky, Wall St. Journal, 12/6

Caesars Entertainment Corp. is lobbying to roll back a Depression-era creditor-protection law that could complicate the casino giant's financial restructuring, according to people familiar with the matter.

The Las Vegas company and its owner, Apollo Global Management LLC, have been working to support legislation that would amend the Trust Indenture Act of 1939, the people said. Some lawmakers, including Democratic Sen. Harry Reid of Nevada, have pushed to include the measure in a sweeping spending bill that Congress must pass by Friday to avoid a government shutdown, they said.

Reid rankles Dems with push for casino rider in funding bill

Alexander Bolton, The Hill, 12/7

Senate Minority Leader Harry Reid (D-Nev.) is kicking up a storm with liberals in his caucus by pushing an amendment to the government funding bill that would help Caesars Entertainment Corporation, a Nevada-based gaming giant in danger of bankruptcy. Reid is pushing to add a provision to the year-end omnibus that would help Caesars avoid bankruptcy by allowing it to restructure debt incurred by a subsidiary out of court, according to Senate and K Street sources.

[Congress Is About To Gut A Depression-Era Law To Help Wall Street]
Zach Carter, Huffington Post, 12/4
Congressional negotiators are considering gutting a Depression-era financial law in order to help private equity firms overpower pension funds and other investors in major bankruptcy cases. The item is being discussed as a potential policy rider for a spending bill to avert a government shutdown, according to sources familiar with the talks.
The change would allow investors who own a majority of a troubled company's debt to implement a new payment plan without input from a federal bankruptcy judge. As a result, big-ticket bondholders could extract punishing financial concessions from other investors -- including pension funds -- without government supervision.
"This is about screwing pension funds to help private equity firms," said one Democratic aide.

[Marco Rubio wants to expand for-profit schools' role in higher education]
Ledyard King, USA Today, 12/4
Rubio wants to change accreditation rules to let more vocational schools and online universities take advantage of the roughly $130 billion a year in federal loans and grants — but only if they meet certain benchmarks tied to student outcomes and debt repayment.

Schools win accreditation if they meet or exceed federally approved standards that are set by regional boards, whose members come from already accredited schools. Schools must be accredited to qualify for federal financial aid, including Pell Grants. Because four-year schools help set the standards, many alternative private schools and academies specializing in career training have had a difficult time winning accreditation. Critics of Rubio's proposal say it would benefit for-profit schools that have come under sharp scrutiny by government regulators for high-pressure recruiting tactics and failure to deliver on their promises of success in the job market.

Rubio went out of his way to help one for-profit school — Corinthian Colleges — when California state regulators and federal education officials investigated it last year for false advertising, deceptive marketing and misrepresenting job placement rates. Last year, Rubio asked the Education Department to "demonstrate leniency" after regulators restricted Corinthian's access to federal financial aid.

[Rubio's Take on Higher Ed]
Michael Stratford, Insider Higher Ed, 12/10

[This is what good government looks like: Why Elizabeth Warren is the senator America needs]
David Dayen, Salon, 12/8
Warren criticized the Education Department last week for the hurdles and delays to cancelling loan debt for defrauded students. But her behind-the-scenes work with the IRS cleared the way for blanket debt relief, by ensuring that students wouldn't face a tax nightmare and further administrative headaches in the process.

[Elizabeth Warren Pans Education Department For Drawn-Out Debt Relief Process]
Shahien Nasiripour, Huffington Post, 12/4
Sen. Elizabeth Warren (D-Mass.) on Friday slammed the Obama administration for imposing unnecessary roadblocks on allegedly defrauded for-profit college students eligible for debt cancellations, joining other prominent lawmakers and consumer groups urging Education Secretary Arne Duncan to stop prolonging distress for swindled student debtors.
The rebuke comes as Duncan prepares to leave office this month amid persistent questions about the U.S. Department of Education's shoddy oversight of dodgy colleges. During his roughly seven-year term, Duncan presided over a doubling of outstanding national student debt to $1.3 trillion, as well as the largest failure of a college chain in U.S. history.

[The Education Department Is Dragging Its Feet On Student Debt Forgiveness]
Molly Hensley-Clancy, BuzzFeed, 12/8

[Fall of a For-Profit]
Ashley Smith, Insider Higher Ed, 12/8

[Briarcliffe College Plans to Close in 2018]
Insider Higher Ed, 12/10

[Who's Profiting From $1.2 Trillion of Federal Student Loans?]
Janet Lorin, Bloomberg, 12/11

[Should Anyone Be Eligible for Student Loans?]
Joshua Mitchell, Wall St. Journal, 12/6
A surge in the share of Americans defaulting on their student debt is generating support for an obvious but controversial idea: restrict who can borrow for higher education. For decades, the federal government has imposed no underwriting standards in its student-loan program. Just about any American can borrow as much as $57,500 for college—and essentially unlimited amounts for graduate school—with little regard for the person's ability to repay. Everyone taking out federal loans in a given year pays the same interest rate.

Supporters of that no-questions-asked policy say it guarantees every American a shot at a degree and a secure middle-class income. Imposing underwriting standards would deny a higher education to many poor people who can't get loans from private lenders, they argue.

[The Surprising New Effort to Tackle the Student-Debt Crisis]
Mike Konczal, Rolling Stone, 12/7
…While these arguments are being led by academics and activists, there's another group of interested parties: Professional business groups, representing members of their occupation, are also telling a story about student loans. Their worry is that even when things work out for young people, and they graduate from a good school and get a job, their life stories are still significantly altered as a result. Student debt has serious consequences for the type of work people can do, and how they can do it, as well as their transitions between the stages of life, from building a family to retiring. These are stories that are much harder to pick up in the data, but business interests see them every day. Student loans have grown faster and more pervasive than our ability to measure them, and there's concern that these changes are happening in ways we aren't seeing until it's too late.

OTHER TOPICS

[”The Big Short” Somehow Makes Subprime Mortgages Entertaining]
Angela Watercutter, Wired, 12/11
Nothing about "The Big Short" should add up. It's a movie about the subprime mortgage crisis of 2008, by the guy who made Anchorman. Yet, it works—and even more weirdly, you walk out understanding the fineries of the situation that kicked off the great recession.

That's because director Adam McKay, who adapted his movie from Michael Lewis's book of same name, realized that the economic meltdown happened because people thought they couldn't understand something they easily could have grokked. "Economics is actually fascinating, it's the language of power—but somehow we've been conditioned to treat it like it's boring," McKay says. "I figure if I'm getting into it, and I'm the guy who did Step Brothers, what's going on here?"

[Debunking "The Big Short": How Michael Lewis Turned the Real Villains of the Crisis into Heros]
Yves Smith. Naked Capitalism, 12/13
I hate to give any attention to Michael Lewis' The Big Short, since the wildly popular book told a fundamentally misleading story of the crisis which sadly has become conventional wisdom. And it wasn't just harmlessly inaccurate; it directed public and even lawmaker attention away from the real drivers of this debacle.

Absent the actions of the subprime shorts that Lewis lionized, the US would have suffered a S&L-level housing criss (which at the time was seen as a serious blow to the banking system and the economy), not a global financial crisis that came perilously close to taking down systemically important capital markets firms around the world. And let us not forget that the way in which the financial system was rescued represented the greatest looting of the public purse in history.