AFR Americans for Financial Reform

This Week in Wall Street Reform | June 17 — 23, 2017

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TRUMP ADMINISTRATION, CONGRESS, AND WALL STREET

Playing Tricks with Dodd-Frank | NY Times (editorial)
[The Treasury report] is designed to please the banks. The **Americans for Financial Reform**, a watchdog group, plans to release a paper showing that the Treasury review endorses almost two-thirds of specific deregulatory requests submitted to the Treasury in May by the Clearing House Association, a big bank lobby.

Trump Admin Goes Even Further than House GOP's All-out Assault on Consumer Bureau and Economic Safeguards | Allied Progress

Treasury's Financial Regulation Report: A Wall Street Wish List | National Council of LaRaza

See AFR report, **Treasury Does Bidding of Big Banks**

Trump Hates Regulations. But What About When They Save Jobs? | Washington Post

President Trump and the Unregulating of America | LA Times (editorial)

Acting Comptroller's Wishlist Echoes Long-held Demands by Banks | American Banker
In his first testimony to Congress, acting Comptroller of the Currency Keith Noreika is set to submit a laundry list of detailed proposals to loosen regulatory restrictions on financial institutions of all sizes — recommendations that appear to jibe with those made by the Treasury Department this month.

Treasury Official: Administration Won't Push to Break Up Banks | Politico Pro
"We concluded that breaking up the banks would be ill-advised for maintaining market liquidity," said Craig Phillips, a counselor to Treasury Secretary Steven Mnuchin.

Gruenberg Opposes Treasury Proposal on Backup Capital Rule | Politico Pro
FDIC Chairman Martin Gruenberg will tell the Senate Banking Committee on Thursday that the Treasury Department's proposed changes to a backup capital requirement would weaken the U.S. banking system.

Banks are required to meet a supplementary leverage ratio measuring equity against debt, which is intended as a backstop to risk-weighted capital requirements. Banks considered systemically important to the global financial system have to meet an "enhanced" version of the ratio.
The Treasury report suggests that cash on deposit at the Federal Reserve, Treasury securities and initial margin for centrally cleared derivatives should not be included in the calculation of a bank's total exposure.

Trump Nominates Dodd-Frank Opponent to Police Wall Street | Financial Times
Donald Trump has taken a big step towards loosening the shackles on Wall Street by nominating a Capitol Hill aide involved in efforts to rip up the Dodd-Frank act as one of the US's most powerful bank regulators.

Jim Clinger, a former aide to conservative lawmaker Jeb Hensarling, was nominated by the president to chair the Federal Deposit Insurance Corporation, a regulator whose tasks include winding down failing banks.

Mnuchin: Some Treasury Posts Won't Be Filled | Politico Pro
Treasury Secretary Steven Mnuchin today said he thinks that some of the political positions at the Treasury Department are redundant.

"There's three or four positions that frankly we don't think we need to fill, that are overlap in government and just unnecessary," he added. "So we have virtually the entire [top staff] either picked or already in the process."

Mnuchin Says Trump Has Made No Decision About Reappointing Yellen | Politico Pro

Noreika Spars with Senate Democrats over Ethics Pledge | Politico Pro
Acting Comptroller of the Currency Keith Noreika today faced off for the first time against Senate Democrats who have complained that the banking lawyer has conflicts of interest and is sidestepping congressional oversight in his temporary role as a bank regulator.

During a Senate Banking Committee hearing, Sen. Chris Van Hollen (D-Md.) asked Noreika whether he would sign the administration's ethics pledge. Noreika responded that he wasn't serving in a position that required it.

See **AFR statement** opposing OCC bid to control consumer protection.

Deutsche Bank Rejects New Request by Democrats for Trump Documents | Politico Pro

See letter from **Americans for Financial Reform** opposing Neomi Rao's Confirmation as Administrator of OIRA.

See Public Citizen's **Report** on the large number of Trump sub-cabinet picks with corporate ties

CFPB AND CONSUMER FINANCE

Consumer groups seek expansion of CFPB's authority | Consumer Affairs
At a time when some in Congress are trying to reduce the power of the Consumer Financial Protection Bureau (CFPB), a coalition of consumer groups is trying to expand the agency's authority.

Specifically, the groups – including the Consumer Federation of American, Public Citizen, **Americans for Financial Reform**, and the National Consumer Law Center – are backing legislation to give the agency the power to protect military consumers from exploitation.

Senate Democrats have introduced legislation that would give CFPB direct oversight of the Military Consumer Enforcement Act,

Military Consumer Enforcement Act a Good Thing Lest it Get Trumped | CardTrak
The U.S. PIRG says the CFPB and its Office of Servicemember Affairs have already demonstrated a strong commitment to protecting those who serve. For example, it has taken at least 12 major legal actions against financial firms targeting young servicemembers, older veterans and their families, securing approximately $130 million in relief for them. It has also successfully investigated banks to ensure compliance with the Military Lending Act. And it has handled over 72,000 complaints from the military community.

But the SCRA offers important additional protections that have been, at best, unevenly enforced by other regulators. The SCRA includes provisions that prohibit the eviction of military members and their dependents from rental or mortgaged property, and the law caps interest at 6% on debts incurred prior to an individual entering active duty military service.

See joint statement by **Americans for Financial Reform, Public Citizen, and National Consumer Law Center**. Also see statements by Center for Responsible Lending National and US PIRG.

Why We Can't Lose the Consumer Financial Protection Bureau | LA Daily News (Mike Feuer)
Twelve million consumers have relied on the CFPB's website for basic information on ways they can protect their rights.

Then came Wells Fargo and the scandal in which millions of fake accounts were created without customers' knowledge or permission. The CFPB reached out to us in the Los Angeles City Attorney's Office and, along with the Comptroller of the Currency, quickly became a close and effective partner. Without the CFPB, thousands of consumers from coast to coast would not have gotten relief, especially since my office has no jurisdiction outside California.

My office's collaboration with the CFPB continues to pay dividends. We're now working with the Bureau on a range of matters designed to protect vulnerable people from entities that would prey on them.

Dodd-Frank's "Abusive" Standard: the Dog That Didn't Bark | Credit Slips (Adam Levitin)
There's a whole bunch of blog posts that one could write about the Treasury report, but I want to limit myself here to one item that has long been on the GOP/industry complaint list about the CFPB: that its power to proscribe "abusive" acts and practices is a problem because the term "abusive" is novel and undefined and that this creates uncertainty that is chilling economic growth. Total hooey. The Treasury's report is a lazy document is totally unconnected to the realities of how the CFPB has operated.

How a Tiny Law Meant for Merchants Destroyed the Class-action Lawsuit | The Week
The list of the Trump administration's sins against working Americans is already long. But we will soon be able to add another item: protecting arbitration clauses.

These are legal mechanisms hidden in tons of worker and consumer contracts that essentially force people to settle disputes with businesses in private arbitration, rather than in court or other collective actions. They're a poisonous and ubiquitous practice in the American economy.

The Car Was Repossessed, But the Debt Remains | NY Times
For millions of Americans ...who have shaky credit and had to turn to subprime auto loans with high interest rates and hefty fees to buy a car, there is no getting out. Many of these auto loans, it turns out, have a habit of haunting people long after their cars have been repossessed.

The reason: Unable to recover the balance of the loans by repossessing and reselling the cars, some subprime lenders are aggressively suing borrowers to collect what remains — even 13 years later.

The Bank Fees You Don't Even Know About | PBS Newshour (Lisa Servon)
Say you have $100 in your account, and today you have an automatic student-loan payment of $110 scheduled. The automatic payment will result in a deficit of $10. The bank will charge a $34 overdraft fee, which is typical for big banks. You now have a deficit of $44. Imagine you also use your checking-account debit card that day to purchase $25 worth of groceries. That purchase will trigger another overdraft, and you will be charged another $34. For $135 worth of transactions, you have been charged $78. But it may not stop there. If the account balance remains overdrawn for five consecutive business days, the bank will charge an extended overdraft fee per item, typically between $15 and $35.

It's quite possible that the chain reaction started with a common miscalculation: You presumed that a check you had deposited into your account would clear before the student-loan payment came due. But your check took a day longer than usual to clear. Banks depend on these miscalculations. In 2014, Americans paid nearly $32 billion in overdraft fees.

DERIVATIVES, COMMODITIES, AND THE CFTC

US Derivatives Market Prepares for Repo Rate to Replace Libor | Global Capital
A global committee of banks has voted to replace Libor as the reference rate for some financial products with a broad Treasury repo finance rate, in a move that will ring in the changes for US derivatives markets.

CFTC's Bowen Will Leave Agency, Saying Regulator 'Frozen in Place' | Politico Pro
"My hope is that by leaving early I can inspire key policy decision-makers to confirm four nominees as soon as possible," she said.

The CFTC currently has only two of its five commissioner seats filled. Bowen's resignation would leave the derivatives regulator without any Democrats.

EXECUTIVE COMPENSATION

Republican Repeal Bill Removes Penalty on Insurance CEO Executive Pay | St. Louis Post-Dispatch
Both the House and Senate repeal measures would free insurance companies from a part of the Affordable Care Act — also known as Obamacare — that effectively makes it more expensive for them to pay their CEOs.

Typically, when corporations pay taxes, they can save money by deducting the pay their employees receive from the income they report to the federal government. That fact effectively reduces the cost of firms' payroll, encouraging employers to hire and pay their workers more than they would if corporations had to pay taxes on wages and salaries as well.
But Obamacare created an exception to the general corporate rules that applied specifically to the insurance industry. Under the law, companies are only allowed to deduct up to $500,000 for each executive — including stock options and other forms of payment.

Mylan Shareholders Vote Against Executive Pay, Re-elect Board | Reuters

FEDERAL RESERVE

Warren Asks Yellen to Remove Wells Fargo Board Members | Politico Pro
Sen. Elizabeth Warren today called on Federal Reserve Chair Janet Yellen to remove a dozen Wells Fargo directors who served on the bank's board as its fake account scandal was brewing.

In a letter to Yellen, the Massachusetts Democrat said the failure of Wells Fargo's board to establish adequate risk-management practices violated Federal Reserve regulations and constituted "unsafe and unsound practices" under the Fed's guidance.

The Fed should "show the rest of the banking industry that poor risk management practices will not be tolerated," she added.

Wells Fargo Scandal Grows More Political | American Prospect
Sen. Elizabeth Warren renewed her attack on Wells Fargo & Co., urging the Federal Reserve to remove the 12 directors who were on the board when bank employees set up legions of fake customer accounts.

Congress empowered the Fed to remove board members if they violate the law or engage in unsafe business practices that cause banks with federal deposit insurance to suffer losses, Warren, D-Mass., wrote in a letter Monday to Fed Chairwoman Janet Yellen.

"I urge you to exercise your legal authority to remove the holdover Wells Fargo board members," Warren wrote. "The board did nothing to stop rampant misconduct" that led to "more than 5,000 bank employees creating more than 2 million fake accounts over four years" between 2011 and 2015, Warren added.

INVESTOR PROTECTION AND THE SEC

NYSE Chief Warns About Activist Investors | Politico Pro
The growth in the number of activist investors agitating for changes at public companies is leaving firms feeling "outgunned," the head of the New York Stock Exchange warned Wednesday.

Tom Farley, president of NYSE, which is owned by Intercontinental Exchange of Atlanta, raised concerns about impediments he sees to stock markets, such as shareholder proposals and proxy advisory firms, as well as activist investing.

White House Said Close to Naming SEC Nominees | Reuters

MORTGAGES AND HOUSING

Small Banks Could Be Erased from Mortgage Market Thanks to CHOICE Act | American Banker
Certainly, the concept of loosening credit markets to provide a broader lending market to address the needs of all Americans is sensible. However, it has to be implemented in a manner that does not disadvantage the community lender in favor of the largest institutions and does not pin all hopes of avoiding another financial catastrophe on a handful of executives whose personal short-term goals might obfuscate macro-long-term considerations.

If You're Afraid of Arbitration Clauses, Maybe the Real Estate Deal Has Bigger Issues | Bellingham Herald

If you're seriously concerned that the purchase that you are considering may be headed for trouble or that the seller may be dishonest, don't sign a contract – with or without an arbitration clause – and start looking for a different property that's offered by someone who makes you feel more comfortable.

PRIVATE EQUITY

Why We Should Close the Private Equity Loophole | Chicago Business (Daniel Biss, Emanuel Welch)

REGULATION IN GENERAL

Paralysis by Analysis is Not Regulatory Reform | Reg Review (Robert S. Adler)

To be clear, I have no disagreement with [CPSC] Commissioner Mohorovic's proposition that improving agency functioning is a good thing. But my colleague's approach prescribes an all-too-familiar nostrum for regulatory reform: impose "paralysis by analysis" by regulating the regulators. In other words, my colleague proposes that we should improve the rulemaking process by having regulators jump through even more hoops than they currently face. The hoops are different, but the obstacles are the same.

SOX Exemption Saves Plenty, Costs More, Study Says | Compliance Week

A new academic study claims to have arrived at a numeric computation of the cost and benefit of exempting smaller companies from Sarbanes-Oxley internal control auditing — and it suggests investors are not necessarily better off for the exemption.

Academics at the University of Washington and Georgetown University say smaller companies that are exempt from Section 404(b) of Sarbanes-Oxley, which requires companies to have their Section 404(a) internal control reports audited, are saving plenty in audit fees, but losing even more in terms of lower operating performance and market values.

Grenfell Tower Disaster Gives 'Bonfire of Regulations' Whole New Meaning | Washington Post

So loathed, in fact, is "regulation" in Britain that the expression "bonfire of regulations" is a phrase that is used frequently, evocatively and emphatically, in headlines and conversations, especially by the current Conservative government.

But the fire at Grenfell Tower, a blaze that last week engulfed a high-rise apartment building in one of the wealthiest boroughs of London, has suddenly given a horrific new meaning to that expression. Although it's still too early for final conclusions, all of the preliminary evidence shows that the fire began in one apartment and then spread with unprecedented speed thanks to the cladding, a form of insulation recently added to the outside of the building. This particular type of cladding was flammable, and in other countries, including the United States and Germany, there are clear regulations forbidding its use on high-rise buildings. The company that worked on Grenfell Tower nevertheless put it on the building's exterior, either because (and this is still a point of debate) there weren't such regulations in Britain, or because they were easily violated.

Grenfell Tower Fire: Mindless Deregulation, Senseless Harm | NY Times (editorial)

RETIREMENT INVESTMENT AND DOL FIDUCIARY RULE

Despite Complaints, Fiduciary Rule Phase-In Is Going Smoothly | St. Louis Today
From the way some financial companies complained about the Labor Department's fiduciary rule, you'd have thought it would cause their world to come crashing down.

News flash: The rule is partially in force, and the financial world remains afloat. Some firms say the June 9 effective date was almost a non-event.

Taking Financial Planning and Fiduciary to The Hill | The Hill (Shannon J. Pike)

Republicans Press New Bill to Kill Fiduciary Rule | Fin Sum
Despite the fiduciary rule having gone into effect on June 9th, there are still some major developments going on with regards to the rule that advisors need to know about. The newest piece of info is that since the CHOICE Acts look to face long odds in the Senate, Republican lawmakers have forged ahead and drafted a new financial bill, the Affordable Retirement Advice for Savers Act, which would also overturn the rule in case the CHOICE act fails.

Bill to Kill Fiduciary Rule Alive in Senate | NASDAQ
A new Republican bill to kill the fiduciary rule is alive in the Senate. Everyone has been expecting the Senate, which has more Democrats, to kill off any efforts to overturn the rule. For instance, no one expects the CHOICE Act to make it out alive. However, in a clever piece of politics, the Republicans have created not one, but two fallback bills to eliminate the rule.

CFPs, Including Brokers, May Have to Adhere to a Stricter Fiduciary Duty | Investment News

CFP Seeks to Limit Ambiguity with New Standards | Wealth Management
The CFP Board has released a draft of proposed changes to its Code of Ethics and Standards of Conduct, and will receive public comments on the new standards for the next 60 days. The new standards provide clarity around CFP certificants' fiduciary duty as well how they represent their compensation.

The CFP standards have not been updated since January 2009, and the board expects to adopt the new ones by the end of the year.

For SEC Fiduciary Rule, Regulate Titles First: CFA Institute | Benefits Pro

What the New Fiduciary Rule Won't Do for You | Forbes (Erik Carter)
Last week, the Department of Labor's "Conflict of Interest" rule went into effect. The rule basically requires that advisors providing advice on qualified retirement accounts and IRAs act as fiduciaries in their clients' best interest. Before the rule, many advisors were only required to provide advice that was "suitable" to their clients, a much lower standard.

However, don't let the new rule lull you into a false sense of complacency. Just because an advisor is required to act as a fiduciary doesn't mean they'll always provide you with the best advice.

Before You Pay for Financial Advice, Read This Guide | NY Times

The Case for A Single Fiduciary Standard Based on the Investment Advisers Act of 1940 | Investment News

STUDENT LOANS AND FOR-PROFIT SCHOOLS

Trump Administration Taps Financial Services Executive to Lead Student Aid Office | Politico Pro
A. Wayne Johnson, a financial services executive with a background in the private student loan industry, has been tapped by the Trump administration to head the Federal Student Aid office. Johnson would replace James Runcie, who quit last month after a dispute with Education Secretary Betsy DeVos.

The office oversees the federal government's massive $1.3 trillion student lending operation, disburses Pell grants and regulates colleges and universities.

DeVos Appointee to Head Student-Loan Program Has Done His Homework | Wall Street Journal

Education Secretary DeVos is Giving for-profit Colleges a Break | Redlands Daily Facts
Few probably expected either President Donald Trump or his Secretary of Education Betsy DeVos to maintain the regulations put in place by the Obama Administration to hold for-profit colleges more responsible for their marketing practices and the effectiveness of their programs.

Trump, after all, ran his own for-profit university, which became the target of a class-action lawsuit. That lawsuit was eventually settled when Trump agreed to pay $25 million to former students who claimed they were deceived.

On Thursday, Department of Education officials said they are putting the brakes on the borrower defense regulation set to take effect July 1 and rolling back the existing gainful employment rule. DeVos said rule committees will work to improve both regulations.

[Unpacking the Borrower Defence Rules Postponement](#) | US News

Last fall, ...the Department of Education released updated rules, called the borrower defense to repayment regulations, to provide relief to federal student loan borrowers defrauded by their schools. These rules were meant to streamline an evaluation process for such claims and help ensure that schools, not the U.S. taxpayer, would foot the bill for loan discharges. The rules also updated disclosures to current and prospective students and banned many mandatory arbitration clauses in school enrollment contracts.

On June 14, the Department of Education announced that due to pending litigation, it is indefinitely postponing implementing the majority of these rules, which were due to take effect on July 1. The department also announced its intention to re-evaluate these rules.

Watchdog Agency Blasts Government Contractor for Mishandling Student Loan Forgiveness Program | Washington Post

Flawed payment processing, botched paperwork and inaccurate information from FedLoan Servicing is derailing hundreds of public-sector workers from receiving student loan forgiveness, the Consumer Financial Protection Bureau said in a report Thursday.

"Borrowers working in public service should not miss out on key consumer benefits because their student loan servicer failed to comply with the law," CFPB Director Richard Cordray said in prepared remarks for a bureau event in Raleigh on Thursday.

Consumer Agency Condemns Abuses in Loan Forgiveness Program | NY Times

Don't Ease Rules on For-profit Colleges | SF Chronicle (editorial)

SYSTEMIC RISK

U.S. Could Ease Volcker Rule, Exempt Smaller Banks - Fed Official | Complinet

U.S. bank regulators have room to ease the Volcker Rule that limits how much Wall Street may gamble with customers' money, Federal Reserve Governor Jerome Powell said. The Volcker Rule is meant to prevent banks from using customer deposits to make risky bets but implementing the rule has proven complicated, industry and regulators agree. "We look forward to working with the other four Volcker Rule agencies to find ways to improve the regulation," Powell said in prepared testimony to Congress he is due to deliver on Thursday. The Fed is just one of several leading bank regulators that must agree to any reform of the Volcker Rule.

Bank Stress Tests Could Embolden Trump's Deregulatory Agenda | The Street

"[T]he Trump administration will likely use the findings to support its push for deregulation," said Cap Alpha analyst Ian Katz, according to Politico. "That should be good for the banks and their investors."

He said it gives Treasury Secretary Steven Mnuchin, National Economic Director Gary Cohn and

Republican lawmakers hoping to ease bank regulations a new line of argument: "If even the stern taskmasters at the Fed think everything is OK, regulators and members of Congress should get on with it and start deregulating already."

The impetus towards deregulation is already in motion on Capitol Hill and on Wall Street as the 10-year anniversary of the financial crisis approaches.

U.S. Regulators, Lawmakers Support Volcker Rule Revamp at Hearing | NY Times

What Are the Fed's Stress Tests? | WSJ
A stress test is an examination of what would happen to a bank if it ran into trouble. At its core, the test is a mathematical forecast of what would happen to a bank given certain events, such as a significant increase in unemployment or a drop in oil prices. In the Fed's tests, the central bank is the teacher and the banks are the students. The banks are required to submit their tests, also called "capital plans," to the Fed. The Fed then decides whether the banks pass or fail, i.e. whether it approves or rejects the plans.

Big Banks Clear First Phase of Federal Reserve Stress Tests | NY Times

Fed, FDIC to Endorse Extending Timeline for Living Will Submissions | NY Times

Powell: Fed Still Plans to Integrate GSIB Surcharge With Stress Tests | Politico Pro
Federal Reserve Gov. Jerome Powell said today the central bank still plans to incorporate an extra capital requirement for global systemically important banks into its annual stress tests.

"That is the plan, yes," Powell, the Fed's regulatory czar, told Sen. Sherrod Brown (D-Ohio) at a Banking Committee hearing but added that the central bank has no specific date for when to do that.

Shares Plunge as China Voices Concern Over 'Systemic Risks' | NY Times

Mathematical Confirmation: Rewiring Financial Networks Reduces Systemic Risk | Phys
A tax on systemically risky transactions could reshape financial networks into a new structure that is less vulnerable to cascading financial system shocks such as the 2008 financial crisis, according to new IIASA research published in the *Journal of Economic Dynamics and Control*.

By taxing the transactions that create greater risk of network failure, the tax, known as a Systemic Risk Tax (SRT), would essentially rewire the financial system into a more resilient form.

OTHER

Reaching the Unbanked: Lessons from a San Francisco Experiment | American Banker
San Francisco's Bank On program has notched some wins since its 2006 creation. The city's unbanked rate fell from 5.9% in 2011 to 2.1% in 2015.

"What's really key to our work going forward [is] ensuring that people feel they can trust financial institutions and they can trust the financial system itself," said Sean Kline, director of the city's Office of Financial Empowerment.

FINRA Charges Wells Fargo with Options Reporting Failures over a Decade; Imposes $3.25 Million Fine | Complinet
The Financial Industry Regulatory Authority on Wednesday said it settled with Wells Fargo Securities charges of supervisory failures that led to gaps in its options reports that went on for nearly a decade. Wells paid $3.25 million, in the biggest fine assessed by the self-regulator this year for reporting violations. FINRA found that Wells lacked "any system of supervision to ensure compliance with reporting obligations" for large options positions for a period that lasted from January 2008 to March 2014, when it revamped its compliance. Despite the fixes, FINRA found numerous reporting violations in the unit until March 2017.