AFR Americans for Financial Reform

This Week in Wall Street Reform | Oct 28 - Nov 3, 2017

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FORCED ARBITRATION

CFPB chief appeals directly to Trump to save class-action lawsuit rule I Los Angeles Times
In a rare direct appeal to the White House, the director of the Consumer Financial Protection Bureau wrote a letter to President Trump this week, asking him to let stand a rule that makes it easier for consumers to file class-action lawsuits against financial firms.

Trump Signs Bill Scrapping Rule That Made It Easier to Sue Banks I Wall St. Journal
President Donald Trump on Wednesday signed a bill repealing a regulation designed to make it easier for consumers to sue banks, handing the financial industry one of the biggest victories of his term.

The move dealt a blow to the Consumer Financial Protection Bureau, an agency run by an Obama appointee that until now had pressed ahead with its tough regulatory agenda despite pushback from Republican lawmakers and Trump administration officials.

Trump Kills CFPB Arbitration Rule: The Little Guy Loses Again I Bill Moyers

See **joint statement** by AFR and Public Citizen.

Trump Is Creating a Grifter Economy I The Nation (Mike Konczal)

Republicans in Congress have betrayed consumers I Buffalo News (Richard Clements)
Any lingering question as to who Republicans really represent was definitively answered on Oct. 24. The Senate, in a vote opposed by every Democrat and Independent, requiring Vice President Pence to cast a vote to break the 50-50 tie, passed the bill to roll back banking rules in the Consumer Financial Protection Bureau… No doubt, thousands of champagne corks popped all along Wall Street and in bank boardrooms in celebration. Concurrently, millions of Americans were effectively kneecapped in any valid disputes they may have with their bank, broker or any other financial institution.

Congress sides with Wall Street against the little guy I Baltimore Sun (editorial)
Congress handed Wall Street a huge victory last week when the Senate voted to overturn a rule that would have barred banks from using so-called "forced arbitration" clauses to prevent customers from banding together in class-action lawsuits. Such clauses are in the fine print of most mortgage loans, credit card agreements and other financial instruments, and their sole

function is to rig the playing field against the little guy when disputes arise. The banks know that unless individual consumers join with hundreds or even thousands of others with similar complaints, the public doesn't have a prayer of prevailing against Wall Street's armies of corporate attorneys. So they've simply changed the rules in a way that cuts consumers off at the knees.

[It Just Got Harder to Sue Your Bank for Excessive Overdraft Fees]() **I Lawyers and Settlements**

[Consumer Advocates Decry Repeal of Rule Allowing Class-Action Suits Against Banks]() **Financial Advisor**

[Bad for Consumers: Congress Hands a Gift to the Financial Industry]() **I Pittsburgh Post-Gazette (editorial)**
[F]rom Ohio Republican Sen. Rob Portman's statement on his vote to reverse the rule: "This rule would, in most cases, have the practical effect of eliminating arbitration as a tool for dispute resolution entirely, even though many consumers prefer a low-cost arbitration option instead of going to court. In addition, the CFPB's own study reveals that consumers who use the arbitration process frequently get better results than those who hire trial lawyers to file class-action lawsuits."

This is the substance of Mr. Portman's argument against the rule, and not a single one of its claims is true.

[Collins Votes to Repeal Consumer Protection from Forced Arbitration]() **I Maine Free Press**

[Repeal of Mandatory Arbitration Ban Is a Wall Street Giveaway]() **I Regulatory Review (Aaron Jordan)**
This July, the Consumer Financial Protection Bureau (CFPB) issued a final rule banning financial institutions from preventing customers from joining class action lawsuits. After a push by the Trump Administration and Wall Street, Congress narrowly passed a resolution of disapproval under the Congressional Review Act, nullifying the CFPB's action.

Before the CRA vote, Acting Comptroller of the Currency Keith Noreika wrote an op-ed blasting the rule, and the U.S. Department of the Treasury released a report arguing that restricting arbitration would hurt consumers. The U.S. Chamber of Commerce published an article decrying the rule, and leading financial industry attorneys Alan Kaplinsky and Mark Levin argued for wiping away the CFPB's "untethered public policy…that benefits only class action lawyers."

[Wells Fargo misses opportunity to abandon forced arbitration]() **I SF Chronicle**
Abandoning forced arbitration, even with Congress protecting the practice, would have gone a long way for Wells Fargo to earn back consumer trust and repair its tattered reputation.

Instead, the bank opted to stick with a practice it hardly uses anyway.

CFPB AND CONSUMER FINANCE

Payday Loan Limits Draw Quieter Response than Arbitration Rule I Morning Consult
Despite a flurry of skepticism from lawmakers and financial firms about the small-dollar lending rule while it was pending, the final version, released on Oct. 5, was met with a divided response from the financial services industry.

Gynnie Robnett, a campaign director at **Americans for Financial Reform**, which supports more regulation of the financial services industry, said by phone Thursday that the small-dollar lending industry has “everything at stake” and will likely continue to push for a resolution.

“But I think the circumstances of that fight are much different than the arbitration fight, and I think we are in a good place to have that fight,” Robnett said.

Will Congress kill rule to keep predatory loan sharks at bay? I Arizona Republic (Linda Valdez)
The military recognized it as a problem a decade ago and sought congressional help. In 2006, Congress passed the Military Lending Act, which caps interest rates for active service members at 36 percent.

Arizonans saw it as a problem in 2008 when voters outlawed payday loans. Since then, car title loans, which also have triple-digit interest rates, have proliferated in Arizona, says Cynthia Zwick, executive director of the Arizona Community Action Association.

Large banks uncertain of path forward on small-dollar loans I American Banker

As OCC Steps Backward on Payday Lending, Banks Shouldn’t Follow I Morning Consult

How a Main Line payday lender used an Indian tribe and an empty computer server to make millions I Philadelphia Inquirer
[A]s government witnesses have testified over the last month, the server contained no information, did nothing, and ultimately was as empty as the business relationship Hallinan had forged with his American Indian partners.

While Hallinan continued to rake in up to $3 million a month on loans issued from his Bala Cynwyd headquarters, prosecutors have said, he had the Guidiville tribesmen guarding a worthless box…

“If these guys are really serious about their responsibilities, then we’re dealing with the wrong tribe,” [Hallinan] wrote to [his partner] Neff in a 2012 email. “These guys are getting carried away with their ‘ownership.’ We have to put an end to it now if we can’t get this straightened out.”

New Workplace Perk: Loans for Low-Income Employees I Wall St. Journal
More U.S. employers are teaming up with financial institutions such as credit unions to offer small personal loans to their workers, offering employees a way to bridge financial crunches without turning to high-cost payday loans.

Lower-income workers' pay is stagnating, propping up demand for small consumer loans. A Federal Reserve survey last year found 44% of Americans had difficulty covering an emergency expense of $400. Many low-income workers lack credit history and access to credit cards or bank loans.

Trump wants to sack CFPB chief but fears turning him into hero for the left I CNBC
An Oval Office bill signing attended by lawmakers and financial services interest groups devolved into a venting session about Richard Cordray… Rep. Jeb Hensarling, who chairs the House Financial Services Committee and will retire at the end of his term in 2018, remarked that President Donald Trump would expend less energy undoing the CFPB's actions if he removed Cordray...

In response, Trump went around the room and asked what he should do about Cordray, who has three months until the Feb. 1 filing deadline to run for governor of Ohio. According to three of the attendees, the view shared by Trump and the White House view is not to make Cordray a "martyr..."

Hensarling and Rep. Sean Duffy were said to push doggedly for Cordray to be fired, suggesting they could write letters to expedite the process. But a White House official notes the views were not unanimous, with Rep. Patrick McHenry disagreeing with his Capitol Hill colleagues.

Consumer bureau harms Americans when it picks the winners and losers I The Hill (Richard Hunt)

Cordray broke no rules regarding run for governor, federal ethics office says I Cleveland Plain Dealer

DERIVATIVES, COMMODITIES, AND THE CFTC

CFTC Orders Morgan Stanley to Pay $350,000 for Omitting Futures and Options Data From Large Trader Report I CFTC Press Release

CFTC Issues Primer On Virtual Currency, Virtual Tokens And ICOs I Mondaq

Cattleman's Associaion asks for more CFTC oversight I The Fence Post
Citing a news report that the Chicago Mercantile Exchange is planning no more changes to the live cattle contract, the U.S. Cattlemen's Association has asked the Senate Agriculture Committee to increase oversight of the Commodity Futures Trading Commission and consider appropriators' unwillingness to provide more money to the agency that oversees the futures industry.

EXECUTIVE PAY

CEO Pay Ratio Disclosure a 'Pain in the Butt' for Companies I Bloomberg BNA
Publicly traded companies are required to report to the Securities and Exchange Commission the compensation ratio between their CEO and the median worker starting in 2018, or for the

first fiscal year starting after Jan. 1, 2017. The rule was included in the Dodd-Frank Act and has drawn criticism from Republicans and business groups such as the U.S. Chamber of Commerce…

One big worry for companies is the reaction from employees, shareholders, and the public, analysts said. “Members of top management are used to seeing numbers” on compensation, Ellerman said, “but this will be the first time average employees are seeing it, and they are not going to understand it and are going to be shocked by the number.”

FEDERAL RESERVE

Why the Federal Reserve Could Look Totally Different Next Year I NBC
President Donald Trump's nomination of Jerome "Jay" Powell as the next Federal Reserve chair is predicted to bring little change to the central bank’s incremental rate increases and unwinding of recession-era quantitative easing, although the multimillionaire and former investment banker brings a Wall Street-friendly skepticism of regulation.

Powell, 64, has served on the Fed’s Board of Governors since 2012, after a career spanning law, private equity and the Treasury Department under George H.W. Bush. Although a Republican, he has a history of dovish monetary policy-making decisions in the vein of current Fed chair Janet Yellen.

Trump Picks Federal Reserve Insider Jerome Powell To Be Its Chairman I NPR

Trump’s choice of Powell signals steady policy at Federal Reserve I Washington Times
The disrupter in chief decided to stay very much inside the box with one of his biggest economic appointments as President Trump confirmed Thursday that he was nominating Federal Reserve insider and monetary moderate Jerome Powell as the next chairman of the nation’s central bank.

Under Powell, Wall Street Can Expect Steady Wins on Regulation I Bloomberg
In Jerome Powell, banks won’t get a Federal Reserve chairman who is hell-bent on ripping up financial rules. But in some ways, that’s better for Wall Street. With a resume steeped in industry experience and long-standing relationships with financial executives, Powell is expected to take a measured approach to rolling back regulations adopted in the wake of the 2008 economic crisis. He’s seen as a practical, not ideological, watchdog who will be able to get things done. That gibes with what big banks have long expected from President Donald Trump’s presidency. They want the Fed and other agencies to take the lead in easing post-crisis constraints, particularly because the Republican-controlled Congress has made little headway dismantling the Dodd-Frank Act.

Federal Reserve appoints new secretary of FOMC I Housing Wire
The Federal Reserve Board announced it appointed a new secretary for the Federal Open Market Committee Wednesday. Soon-to-be Secretary James Clouse will succeed the committee’s current secretary, Brian Madigan, effective November 26.

INVESTOR PROTECTION AND THE SEC

Day Trader Profited from Hacked Brokerage Accounts, SEC Says I Wall St. Journal
A day trader based near Philadelphia earned more than $700,000 by trading against investors whose brokerage accounts had been hacked, the Securities and Exchange Commission alleged in a lawsuit filed Monday.

The SEC said such account-intrusion schemes are a growing type of threat from hackers targeting ordinary investors.

“We are committing substantial resources to combating cyber-based threats to protect investors and our markets from intruders who manipulate the system,” SEC enforcement co-director Stephanie Avakian said in a statement announcing the lawsuit.

New SEC guidance could raise bar for some shareholder measures I Reuters
Companies may have new grounds to keep shareholder proposals on social or ethical matters from coming to a vote at their annual meetings under guidance published late on Wednesday by the U.S. Securities and Exchange Commission.

According to the report, known as a “staff legal bulletin” and posted on the agency’s website, the SEC will take new account of a proposal’s “economic relevance” and its significance when companies ask for permission to skip votes on measures affecting less than five percent of their assets, earnings or sales.

Equifax clears three who sold nearly $2 million in company shares I PoliticoPro

MORTGAGES AND HOUSING

CFPB launches mortgage delinquency tracker I Mortgage Professional
The Consumer Financial Protection Bureau (CFPB) has launched the Mortgage Performance Trends, an online tool that tracks delinquency rates nationwide.

Aside from national data, the tracker also provides data on mortgage delinquency rates for 50 states and the District of Columbia at the county and metro-area level featured through interactive charts and graphs.

The tool looks at two general categories of mortgage delinquency rates. The first is comprised of those who are 30 to 89 days behind on their mortgage payments, while the second category looks at serious delinquencies, which are those more than 90 days overdue.

Self-employed turn to non-bank lenders to crack the housing market I CNBC
An increasing share of aspiring U.S. homebuyers are getting mortgages from "non-banks" that can accommodate borrowers in ways traditional lenders may not.

Six of the top 10 home lenders by volume now fall into this category. Customers include the self-employed and those who rely on bonuses as a substantial part of their income. Even homeowners who simply want to preserve cash for other investments often can find a way.

REGULATION IN GENERAL

[After Equifax, Firms Will Step Up Trojan Horse Efforts to Eliminate State Privacy Laws] I US PIRG (Ed Mierzwinski)

RETIREMENT INVESTMENT AND DOL FIDUCIARY RULE

[Is DOL Using A Back Door To The Kill Fiduciary Rule?] I Financial Advisor
The Consumer Federation of America is calling out the Department of Labor on its proposal to delay full implementation of its fiduciary rule another 18 months, saying the delay is a thinly veiled attempt to kill the investor protection rule using a backdoor mechanism not found in law...

"If they finalize the rule as they've proposed it, then there is a strong likelihood that we would sue," said Micah Hauptman, the CFA's financial services counsel, in an interview with Financial Advisor. "We're not ruling anything out, and all options are on the table, but we need to see the final rule before we make a final decision about whether we'd sue."

[OMB receives rule providing for 18-month delay] I Investment News
The Labor Department has sent a final rule for an 18-month delay of its fiduciary regulation to the Office of Management and Budget for review.

The OMB posted on its website Thursday morning a notice that it had received the delay language from DOL. If the OMB approves the delay measure, which is likely, it will be returned to DOL. The DOL will then release it publicly. It's unclear how long the process will take.

The DOL fiduciary rule, which requires brokers to act in the best interests of their clients in retirement accounts, was partially implemented in June. Under the delay proposal, implementation of the enforcement mechanisms of the rule would be delayed from Jan. 1, 2018, to July 1, 2019, while DOL re-assesses the impact of the rule under a directive from President Donald J. Trump. That review could lead to substantial changes in the remaining parts of the rule.

[Trump Administration Sued Over Delay Of Fiduciary Rule] I Forbes
A newly formed watchdog group that has tasked itself with exposing unethical conduct within the Trump administration has filed a lawsuit in federal court against the U.S. Department of Labor, demanding the agency's records related to a rollback of its much-maligned fiduciary rule.

American Oversight, which was formed in March to serve as a check on the current administration, claims it is non-partisan despite figures within the group having strong ties to Democrats.

"The Department of Labor's attempts to roll back the overtime and fiduciary rules are yet additional examples of how the Trump administration has sided with well-connected businesses over the working Americans whose interests the president claims to represent," said AO Executive Director Austin Evers, who most recently served as a senior counsel at the State Department.

STUDENT LOANS AND FOR-PROFIT SCHOOLS

CFPB issues 50-state snapshot of student debt I National Law Review
The CFPB has issued a “50-state snapshot of student debt,” which provides student debt data on a state-by-state basis.

The report states that the complaint data “reflects over 50,000 student loan complaints and over 10,000 debt collection complaints related to private or federal student loan debt, submitted through September 30, 2017.” The CFPB began accepting private student loan complaints in March 2012, debt collection complaints in July 2013, and federal student loan servicing complaints in February 2016.

SYSTEMIC RISK

When Does Consumer Debt Become a Systemic Risk? I Wall St. Journal (Gunjan Banerji)
U.S. consumers have been going deeper into debt than almost any other developed nation, triggering one global rating firm to ask whether consumer loans are creating a “systemic risk” in the market.

Consumer loans –consisting of everything from credit card debt to auto loans to mortgages–have increased across developed countries by about $2 trillion since the first quarter of 2007, hitting almost $30 trillion earlier this year.

U.S. loans make up almost half of the global consumer debt growth, as domestic investors have piled on student loans, mortgage debt and more amid ultra-low interest rates over the past decade. U.S. household debt levels have repeatedly reached new records over the past few years.

See new AFR briefing paper, “**AIG: From Bailout to Deregulation**”

TAXES

Senate littered with tax reform land mines I Politico
The fanfare surrounding the House GOP tax plan on Thursday masked a brewing storm in the other chamber.

Senate Republicans will have to sway a host of GOP swing votes as they try to jam through their own tax overhaul with almost no margin for error. Fiscal hawks are squawking about how tax legislation could balloon the deficit. Moderates like Sen. Susan Collins of Maine are worried tax cuts will disproportionately favor the rich. Even an Obamacare-related row could bubble up and trip up passage.

See new video, **“Give Millions, Get Back Billions: Elizabeth Warren joins Monopoly Man to skewer Paul Ryan’s tax scam”**

Despite Trump Campaign Promise, Billionaires' Tax Loophole Survives Again | ProPublica
As recently as late September, his chief economic adviser, ex-Goldman Sachs executive Gary Cohn, insisted that the administration was set on closing what's also referred to as the "hedge-fund loophole," though hedge funds profit from it less than private-equity firms. "The president remains committed to ending the carried interest deduction," Cohn told CNBC....

Yet the sweeping tax legislation released by House Republicans leaves the treatment of carried interest untouched.

Digging Into the Details of Trump's Tax Reform Plan | Bloomberg (Barry Ritholtz)
The long-awaited tax reform and/or tax cut proposal is finally here. Its name makes no bones about it: The Tax Cuts and Jobs Act has lots of the expected goodies in it, as well as a few surprises. There are plenty of interesting ideas in the proposal, which is one part reform and two parts tax cut.

There is a significant debate to be had over whether now is the point in the economic cycle to introduce such a substantial stimulus. This is not that debate. Instead, I want to look at the plan's specifics, primarily these highlights.

Trump's Tax Cuts Are the Biggest Wealth Grab in Modern History | Fortune (Josh Hoxie)

See **statement by Take on Wall Street Campaign**.

Activist Groups Develop Alternatives to GOP Tax Plan | Institute for Policy Studies (Sarah Anderson)

Half a Tax Reform | Wall St. Journal (editorial)

Tax plan would cut affordable housing supply by 60 percent | PoliticoPro
The tax proposal would do away with private activity bonds, a growing source of financing for low-cost housing. The cuts would reduce the supply of new affordable rentals by more than 85,000 units a year, or more than 60 percent, according to an analysis from Novogradac and Co.

GOP Tax Bill Keeps the $50 Billion Line in the Sand for 'Big Banks' | Wall St. Journal
There's plenty of talk in Washington that the $50 billion regulatory boundary that separates big banks from their smaller peers isn't the right measure. But the Republican tax bill unveiled Thursday seems to lend its support to that line, at least in one important way.

Under the proposed new tax plan, banks with more than $50 billion in assets would no longer get a deduction for paying premiums to the Federal Deposit Insurance Corp. Although the bill's overall cut in the corporate tax rate will be a boon for most banks, the loss of the FDIC-assessment deductibility will sting. Charles Peabody, an analyst at Compass Point Research & Trading, estimates this could shave 1% to 2% off the 2018 earnings per share at some of the biggest banks.