

## This Week in Wall Street Reform | Jan. 23–Jan. 29, 2016

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### CONSUMER FINANCE & THE CFPB

#### [A Legal Battle Brews Over the Power of America’s Consumer Finance Watchdog](#)

**Yuka Hayashi, Wall St. Journal, 1/24**

In late 2014, an in-house judge for the government’s new consumer-finance watchdog ruled that a New Jersey lender took illegal “kickbacks” from mortgage insurers, boosting costs for borrowers. The company said the decision invoked a new, overly aggressive interpretation of an old law and appealed to the agency chief. That gambit backfired in a big way and launched a legal battle over the man who has become one of the country’s most powerful financial regulators.

When Richard Cordray, director of the Consumer Financial Protection Bureau, responded seven months later, he not only upheld the decision, he ordered lender PHH Corp. to cough up \$109 million in allegedly ill-gotten gains. That was \$103 million—or 17 times—more than the judge sought. Mr. Cordray has said that he applied the law more strictly than had been common since its 1974 enactment, a move he justified as part of his bureau’s postcrisis mission to toughen decades of lax consumer protection.

#### [Why Companies Increasingly Fight Back Against the CFPB](#)

**Rachel Witkowski, American Banker, 1/25**

The Consumer Financial Protection Bureau is receiving more pushback than fellow financial regulators from companies it hits with enforcement orders, likely as a result of the stronger wording the agency uses to publicize the actions. An increasing number of companies that have been cited by the CFPB are either challenging the agency in court or through public statements, even after signing a consent agreement. That is in contrast to how banks and other companies usually respond to actions by the prudential regulators, where firms rarely get publicly combative after agreeing to an order.

Industry observers say the reasoning may be due to how the CFPB promotes its enforcement actions. The agency’s press releases frequently use tough language and even expound on the allegations cited in the agreement. Many firms, particularly nonbanks that may never have been regulated before, aren’t used to that kind of treatment.

#### [CFPB’s Auto Finance Push Hurts Consumers](#)

**Blair Evans, American Banker, 1/25**

The way the Consumer Financial Protection Bureau is regulating the auto finance industry’s relationships with dealers is simply wrong — both legally and ethically. It’s also directly counterproductive to its goal of protecting consumers.

Congress, in its occasional wisdom and, in no small part, as the result of lobbying by the nation’s auto dealers, specifically carved dealers out of the CFPB’s scope of oversight. This apparently did not sit well with the CFPB — which, in a thinly veiled end-around move, attempts to supervise auto dealers through the banks and nonbanks that offer financing to dealers. In effect, since it does not have the statutory authority to do so itself, the CFPB is forcing auto

lenders to police dealers. The lenders must oversee how dealers mark up loans and assess whether there is any discrimination.

### [When collectors call, demand proof of your debt](#)

**David Lazarus, LA Times, 1/26**

A [report](#) to be released Tuesday by the Alliance for a Just Society, an advocacy group, estimates that 77 million Americans have delinquent debt, with the average amount owed topping \$5,000. A composite of consumer loan delinquencies compiled by the American Bankers Assn. found that more obligations went unpaid in the third quarter than in the previous three months. Credit card delinquencies also were slightly higher. "Disciplined financial management by consumers is an essential ingredient for lower delinquencies," said James Chessen, the association's chief economist.

...According to the Federal Trade Commission: "Every collector must send you a written 'validation notice' telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money." That's the law. Period.

### [Operation Choke Point: Life Imitating Arts](#)

**Bruce Fein, Huffington Post, 1/28**

### [It's time to let banks compete with payday lenders](#)

**James Barth and John Jahera, AL.com, 1/21**

The payday loan industry maintains that there's a good reason why its loan rates are so high: payday lenders are small operators that spend up to two-thirds of their revenue to run their stores and they have to pass that cost on to customers. Being more diversified, banks and credit unions don't have this problem; they've already built out their branches and staff them to offer other services. In fact, the top four banks in the U.S. have more locations than all the payday lenders in the U.S. combined. They also don't need to spend heavily on customer acquisition.

This is why the CFPB has been identifying processes by which banks and credit unions can enter the short-term loan market as less-expensive alternatives. The CFPB's proposal is likely to shift the market toward installment loans with smaller payments and make the process less costly for traditional lenders to provide small loans that would otherwise be unprofitable.

### [Lawmaker: Car title loans worse than payday lenders](#)

**Howard Fischer, Arizona Daily Sun, 1/26**

A state lawmaker who fought to rid Arizona of payday lenders now wants new curbs on the title lending industry. Rep. Debbie McCune Davis, D-Phoenix, said the triple-digit interest rates that are charged to consumers are as abusive as those that were charged by now-defunct firms that gave short-term loans based on a promise to repay. In fact, she said, the title loans are sometimes worse because, unlike payday loans, there is no limit on the amount that can be borrowed. McCune Davis wants to require title lenders to live within the 36 percent annual interest cap that applies to other consumer lenders.

Her proposal comes as the Consumer Federation of America and the Center for Economic Integrity are releasing a [report](#) today saying the title lending industry has exploded in Arizona since a 2008 statewide vote to kill off the payday loan industry in 2010. It says there were just 159 lending locations at that time; now there are more than 630, a figure they said exceeds the number of payday lenders that surrendered their licenses in 2010.

See [press release](#) and [full report](#).

### [Judge OKs ban against illegal title lender](#)

**Brian O'Connor, Detroit News, 1/27**

An Ingham County Circuit judge approved on Wednesday a preliminary injunction that bars an offshore auto title lender from collecting on illegal loans bearing triple-digit interest rates made to Michigan consumers. The Michigan Attorney

General's office already had issued a temporary restraining order against the company, Liquidation LLC, as well as several associated alias companies. Liquidation and its affiliates is based on a remote Pacific island. It issues loans over the Internet to consumers who pledge their paid-off cars and trucks, charging illegal interest rates of as much as 251 percent and frequently seizing borrower's cars when they can't pay.

Liquidation isn't licensed to lend or do business in Michigan, where title loans and loans charging more than 25 percent annual interest are illegal. The attorney general's office estimates that the cars of more than 60 Michigan borrowers have been repossessed by Liquidation and its spinoffs. Investigators said an estimated 334 Michigan consumers are now making payments on title loans to these companies.

## **DODD-FRANK (AND CONTINUED ATTACKS)**

### **[Opponents dislike Dodd-Frank because it works](#)**

**Editorial, Boston Globe, 1/29**

The Wall Street Journal reported recently that the insurance giant MetLife will reduce its footprint by letting go of a piece of its life-insurance business. Federal regulators have concluded that the insurance giant is a "systemically important financial institution" — essentially, one that is big enough to jeopardize the broader financial system if it collapses and should therefore have to put more money aside just in case. MetLife has concluded that having to do so would keep it from investing in other business activities that it wants to take part in. The company is fighting its designation as systemically important, but will get smaller just in case. Good.

In certain parts of the political spectrum, the 2010 regulatory-reform law is routinely depicted as a failure and a symbol of government overreach. The rhetoric in the Republican presidential debates would have Americans believe that Dodd-Frank is somehow doing the opposite of what it intends. Marco Rubio has claimed that banks are bragging about being deemed too big to fail. Jeb Bush once intimated that the law has weakened capital requirements rather than strengthening them. In a debate Jan.14, Bush listed the law among a litany of conservative boogeymen: "Iran, Benghazi, the Russian reset, Dodd-Frank, all the things. . . that have gone wrong in this country."

Wall Street, of course, dislikes the Dodd-Frank law. Maybe, just maybe, the campaign donations that Rubio, Bush, and other GOP candidates have received — or would like to receive — from the financial industry are getting in the way of their ability to perceive the law's effects accurately.

## **THE ELECTION AND WALL STREET**

### **[Bernie Sanders's fiction-filled campaign](#)**

**Editorial, Washington Post, 1/27**

Mr. Sanders's tale starts with the bad guys: Wall Street and corporate money. The existence of large banks and lax campaign finance laws explains why working Americans are not thriving, he says, and why the progressive agenda has not advanced. Here is a reality check: Wall Street has already undergone a round of reform, significantly reducing the risks big banks pose to the financial system. The evolution and structure of the world economy, not mere corporate deck-stacking, explained many of the big economic challenges the country still faces. And even with radical campaign finance reform, many Americans and their representatives would still oppose the Sanders agenda...Mr. Sanders's success so far does not show that the country is ready for a political revolution. It merely proves that many progressives like being told everything they want to hear.

### **[Note to Hillary: Clintonomics Was a Disaster for Most Americans](#)**

**Robert Pollin, The Nation, 1/26**

The starting point for understanding Bill Clinton's economic program is to recognize that it was thoroughly beholden to Wall Street, as Clinton himself acknowledged almost immediately after he was elected. Clinton won the 1992 election by pledging to end the economic stagnation that had enveloped the last two years of the George H.W. Bush administration and advance a program of "Putting People First." This meant large investments in job training, education, and public infrastructure. But Clinton's priorities shifted drastically during the two-month interregnum between his November election and his inauguration in January 1993, as documented in compelling detail by Washington Post reporter Bob

Woodward in his 1994 book *The Agenda*. As Woodward recounts, Clinton stated only weeks after winning the election that “we’re Eisenhower Republicans here.... We stand for lower deficits, free trade, and the bond market. Isn’t that great?” Clinton further conceded that with his new policy focus, “we help the bond market, and we hurt the people who voted us in.”

How could Clinton have undergone such a lightning-fast reversal? The answer is straightforward, and explained with candor by Robert Rubin, who had been co-chair of Goldman Sachs before becoming Clinton’s Treasury secretary. Even before the inauguration, Rubin explained to more populist members of the incoming administration that the rich “are running the economy and make the decisions about the economy.”

### [Bernie Sanders Ad Steps Up Attack on Hillary Clinton’s Wall Street Ties](#)

**Peter Nicholas, Wall St. Journal, 1/28**

In a Democratic debate this month, Mr. Sanders was asked how he and Mrs. Clinton differ when it comes to regulating Wall Street. He replied that “I don’t get personal speaking fees from Goldman Sachs.” Mrs. Clinton received \$675,000 for delivering three paid speeches to Goldman after she left the State Department in 2013. Mr. Clinton received \$2.2 million in speaking fees from Goldman between 2005 and 2013, financial disclosure statements show.

The new Sanders spot highlights Goldman’s role in the financial crisis. Earlier this month, Goldman agreed to pay a regulatory penalty topping \$5 billion rooted in the sale of mortgage bonds leading up to the crisis in 2008. A narrator says: “How does Wall Street get away with it? Millions in campaign contributions and speaking fees. ... As long as Washington is bought and paid for, we can’t build an economy that works for people.”

### [Bernie Sanders, Hillary Clinton, and Wall Street](#)

**Dean Baker, Huffington Post, 1/25**

The Dodd-Frank reforms were useful in many areas, most importantly in creating the Consumer Financial Protection Bureau and ensuring that the bulk of derivative trades now occur on exchanges or through clearinghouses, but it is difficult to be very positive about the general direction of the financial industry. The big banks are bigger than ever. As a result of mergers coming in the crisis, the six biggest banks now have more than \$10 trillion in assets, an amount equal to 60 percent of GDP. If people expected Dodd-Frank to end the problem of too-big-to-fail, they have reason to be disappointed. It is difficult to believe that the government would allow J.P. Morgan or Goldman Sachs to go under today, just as they did not allow them to go bankrupt in the crisis.

In assessing the regulatory agendas of the presidential candidates, we have to ask, do we think they would end too big to fail banks? Do we think they would downsize the industry? And finally, will Wall Street criminals have to worry about going to jail? Those are the big questions facing primary voters.

### [Hillary Clinton and Bernie Sanders Battle for Party’s Future](#)

**Patrick Healy, NY Times, 1/24**

### [How Populists Like Bernie Sanders Should Talk About Racism](#)

**Ian Haney-López and Heather McGhee, The Nation, 1/28**

Today’s right-wing, anti-tax, anti-spending agenda succeeds by stoking a deep distrust of the purported beneficiaries of government in thinly veiled dog-whistle language that is almost always about race, whether the conversation is about people who just want “free stuff,” the need to drug-test welfare recipients, “illegal aliens” as rapists and criminals, “runaway spending” under our “Food Stamp president,” or simply that our country is divided between makers and takers. On the basis of such narratives, Republicans routinely win 3 of 5 white votes nationally (and far more in the South), and draw roughly 90 percent of their support from white voters.

Democrats have struggled to respond. Initially, they simply opted to stop talking about race. Eventually, they adopted the GOP’s tactics. Bill Clinton in particular sounded the dog whistle by crusading for welfare reform, a crackdown on crime, and the end of the era of big government. White populists remember Clinton’s betrayals as inviting Wall Street into the Democratic Party, passing NAFTA and repealing Glass-Steagall. But the two trends were connected: Democrats simultaneously gave up on racial liberalism and on pro-working class policies. Progressives have been frustrated ever

since as they watched white working-class voters embrace self-defeating promises to cut taxes on the wealthy, deregulate big business, and undermine workers' rights, sometimes at the urging of Democrats themselves.

This is the race story that Sanders and every progressive leader ought to be telling every time they step to a microphone.

## **ENFORCEMENT**

### **[One Way to Rebuild Our Institutions](#)**

**Sen. Elizabeth Warren, NY Times, 1/29**

I just released a report examining 20 of the worst federal enforcement failures in 2015. Its conclusion: "Corporate criminals routinely escape meaningful prosecution for their misconduct." In a single year, in case after case, across many sectors of the economy, federal agencies caught big companies breaking the law — defrauding taxpayers, covering up deadly safety problems, even precipitating the financial collapse in 2008 — and let them off the hook with barely a slap on the wrist. Often, companies paid meager fines, which some will try to write off as a tax deduction. The failure to adequately punish big corporations or their executives when they break the law undermines the foundations of this great country. Justice cannot mean a prison sentence for a teenager who steals a car, but nothing more than a sideways glance at a C.E.O. who quietly engineers the theft of billions of dollars.

In many instances, weak enforcement by federal agencies is about the people at the top. Presidents don't control most day-to-day enforcement decisions, but they do nominate the heads of all the agencies, and these choices make all the difference. Strong leaders at the Environmental Protection Agency, the Consumer Financial Protection Bureau and the Labor Department have pushed those agencies to forge ahead with powerful initiatives to protect the environment, consumers and workers. The Special Inspector General for the Troubled Asset Relief Program, a tiny office charged with oversight of the post-crash bank bailout, has aggressive leaders — and a far better record of holding banks and executives accountable than its bigger counterparts.

See Senator Warren's [full report](#).

### **[Warren Releases 'Rigged Justice' Report](#)**

**Bridget Bowman, Roll Call, 1/29**

As Congress considers overhauling the criminal justice system, Sen. Elizabeth Warren, D-Mass., is working to show that law enforcement is "shockingly weak" when it comes to corporate crimes. Warren's office released a 13-page report on Friday, titled "Rigged Justice: 2016; How Weak Enforcement Lets Corporate Offenders Off Easy," which argues that the justice system is rigged in favor of corporations and executives who commit crimes. The report highlights 20 cases that, in Warren's staff's view, demonstrate how the federal government failed to hold corporations and executives accountable for breaking the law.

"When government regulators and prosecutors fail to pursue big corporations or their executives who violate the law, or when the government lets them off with a slap on the wrist, corporate criminals have free rein to operate outside the law," according to the report. "They can game the system, cheat families, rip off taxpayers, and even take actions that result in the death of innocent victims—all with no serious consequences."

### **[Elizabeth Warren Challenges Clinton, Sanders to Prosecute Corporate Crime Better Than Obama](#)**

**David Dayen, The Intercept, 1/29**

### **[5 Ex-Brokers Cleared in London Libor Trial](#)**

**Chad Bray, NY Times, 1/27**

In a major setback for British prosecutors, a jury on Wednesday acquitted five former brokers of charges that they helped a onetime trader at UBS and Citigroup manipulate an important benchmark interest rate known as Libor. The London jury is continuing to deliberate over one remaining count of conspiracy to defraud against a sixth broker, Darrell P. Read, who worked at the British financial firm ICAP, after it was unable to reach a verdict. The jury went home for the day on Wednesday and will return Thursday morning.

The jury found Mr. Read not guilty on a separate conspiracy count on Wednesday. The acquittals, coming just a day after the jury began deliberating, are a blow to British authorities, who have been criticized for not being as aggressive as the United States Justice Department in prosecuting financial crimes. The trial of the six began in October and is the second in Britain to focus on the Libor scandal.

## **EXECUTIVE PAY**

### [Executive Pay, Share Buybacks And Managerial Short Term Behavior](#)

**ValueWalk, 1/26**

Pressure on managers of public companies to meet quarterly earnings is one of the most often-cited drivers of corporate behavior focused on short term value extraction, which often comes at the expense of long-term value creation—reduced investing to meet earnings targets. When asked how much of their companies' quarterly earnings or revenue targets could be put at risk to pursue an investment with a positive net present value that would boost profits by 10 percent over the next three years, a majority of more than 1,000 C-level executives and directors surveyed by McKinsey & Company and Canada Pension Plan Investment Board responded that their companies would not be willing to accept significantly lower quarterly earnings for this kind of investment, and nearly half said short term pressures reduce their companies' willingness to pursue investments with less certain returns. The vast majority felt the most pressure to deliver financial results in two years or less, despite the fact that 86 percent said using a longer time horizon to make business decisions would positively affect financial returns and innovation.

...The design of stock compensation, the main component of executive pay, may exacerbate that focus on short term results. Performance triggers for stock compensation that are tied to near-term indicators, such as earnings per share or one-year share price increases, encourage executives to focus more on short term share price and accounting measures than on long-term performance.

### [Big crony CEO pay grab — effects beyond greed!](#)

**Ralph Nader, Litchfield County Times, 1/27**

As the New Year gets underway, the highest-paid CEOs of many large corporations have already paid themselves more than the average worker will earn in the entire year! By the end of the first week of January, the highest-paid CEOs had already made as much as their average workers will earn over 8 years. An analysis by Equilar, a consulting firm specializing in executive pay, found that on average, the 200 highest-paid CEOs make approximately \$22.6 million a year, or almost \$10,800 an hour, a 9.1% increase from the previous year. Meanwhile, the Census Bureau reports the average household earns approximately \$53,000 a year.

Over the past fifty years, the pay gap between many highly-paid CEOs and their employees has increased dramatically. In 1965, when they also liked to be rich, CEOs made approximately twenty times as much as their average employee, meaning they would earn their workers' average pay by the third week of January, and since the 1980s, the average difference and greed have increased. Highly-paid CEOs now make 303 times as much as their employees in a year, according to a study by the Economic Policy Institute.

## **HEDGE FUNDS AND PRIVATE EQUITY FUNDS**

### [Manchin calling for U.S. Senate hearing on possible railroad merger](#)

**Shauna Johnson, Metro News, 1/26**

U.S. Senator Joe Manchin (D-W.Va.) is calling for a hearing "as soon as possible" in front of the U.S. Senate Committee on Commerce, Science and Transportation focused on the possible merger of Canadian Pacific Railway and Norfolk Southern. After seeing a \$28 billion offer for Norfolk Southern rejected three times for being "grossly inadequate," in the words of Norfolk board members, the Canadian company is pursuing what Manchin called a "hostile takeover" during a press conference Tuesday in Charleston.

Manchin specifically named Bill Ackman, founder and CEO of Pershing Square Capital Management, a hedge fund management company, and Hunter Harrison, CEO of Canadian Pacific Railway, as potential witnesses for the future, still unscheduled Capitol Hill hearing. “I cannot believe they’ll be making this hostile takeover to make investments in Norfolk Southern and in the United States of America,” Manchin said of the questions he wants to ask about the intentions of those with Canadian Pacific, Canada’s 2nd largest railroad.

## **HIGH SPEED TRADING AND FINANCIAL TRANSACTION TAX**

### **[The Need for a Tax on Financial Trading](#)**

**Editorial, NY Times, 1/28**

A financial transaction tax — a per-trade charge on the buying and selling of stocks, bonds and derivatives — is an idea whose time has finally come. A well-designed financial transaction tax — one that applies a tiny tax rate to an array of transactions and is split between buyers and sellers — would be a progressive way to raise substantial revenue without damaging the markets. A new study by researchers at the nonpartisan Tax Policy Center has found that a 0.1 percent tax rate could bring in \$66 billion a year, with 40 percent coming from the top 1 percent of income earners and 75 percent from the top 20 percent.

Such a tax would also bring the United States more in line with other countries. There are already financial transaction taxes in Britain, Switzerland and South Korea as well as in Hong Kong and other developed markets and emerging nations, generally at rates of 0.1 percent to 0.5 percent on stock transfers. In addition, 10 countries in the European Union, including Germany and France, have agreed to apply a common financial transaction tax starting in 2017, though relentless lobbying by investment banks and hedge funds threatens to delay and even derail the effort.

### **[Financial Transaction Tax Would Be Damaging](#)**

**Peter Van Doren, CATO Institute, 1/28**

An editorial in today’s New York Times calls for a financial transactions tax – a tenths of a percent charge on the market value of every trade of a stock, bond, or derivative. My Working Papers column two years ago described the pitfalls of such a tax. While tax rates in the range of tenths of a percent sound small they would have large effects on stock values. Bid-ask spreads are now 1 cent for large cap stocks. A 0.10 percent tax would add 5 cents to the spread for a \$50 stock.

## **INVESTOR PROTECTION AND THE SEC**

### **[Elizabeth Warren takes another swipe at Mary Jo White — and Barack Obama](#)**

**Steve Goldstein, MarketWatch, 1/29**

Sen. Elizabeth Warren still isn’t a fan of Securities and Exchange Commission Chairwoman Mary Jo White, as she took another dig at the regulator as well as at President Barack Obama in an op-ed released Friday. Warren didn’t mention White by name in her commentary in the New York Times, which argues that the Obama administration’s record on enforcement falls short even as it has, in her words, “a substantial track record” on agency rules and executive action.

Warren, the Massachusetts Democrat, said the securities regulator is “suffering under weak leadership.” She said the SEC was far behind on issuing congressionally mandated rules to avoid the next financial crisis and lamented the waivers it’s granted to “lawbreaking companies.”

### **[Tech Startup Funding Frenzy Prompts SEC Scrutiny of Brokers](#)**

**David Michaels, Bloomberg, 1/27**

Slumping valuations for once-hot technology companies after they go public are drawing increased scrutiny from U.S. regulators. Securities and Exchange Commission Chair Mary Jo White expressed concerns that some stock brokers may be painting too-rosy of a picture of private tech companies. Anytime there is a “significant” change in how much a company is worth after an initial public offering, it raises questions about the impact on investors who purchased unlisted shares, White said Tuesday. “You have to make sure you don’t have some very aggressive promoters taking advantage of that climate,” she said in an interview after speaking at a securities conference in Coronado, California.

...The SEC has separately been investigating whether brokers that help shareholders unload their stock in private companies may be violating federal laws. In some instances, firms have designed derivatives that serve as the financial equivalent of hard-to-sell stock, a structure that may not comply with a Dodd-Frank Act restriction on selling equity-based swaps to individual investors. In a Nov. 25 complaint against one marketplace for unlisted shares, the SEC said private share sales may be illegal because they lack a registration statement and aren't done through a regulated broker.

### [How Startups Hide Investor-Unfriendly Practices](#)

**Louise Lee, Wall St. Journal, 1/24**

Entrepreneurs on the verge of an initial public offering often face a stark fact: The company has policies that investors won't like. So, what do they do? In some cases, they try to hide those rough spots by making their official documents hard to understand.

That's the conclusion of a recent study that examined IPO-related documents of 1,655 companies that went public between 1995 and 2011 and analyzed how the companies presented their corporate-governance provisions. The findings: Firms with less investor-friendly policies, such as limiting shareholder amendments, were more likely to camouflage those practices using highly complex words and sentences. They were also more likely to do so if they knew they weren't under much scrutiny—if they had little analyst coverage, for instance, or if their IPO was part of a crowd of offerings. And the obfuscation often paid off, the researchers discovered. A firm that used such camouflage was less likely to see its shares underpriced, and thus raised more capital than a company that didn't use camouflage.

### [SEC Expected to Give Unusual Refund for Insider-Trading Penalty](#)

**Aruna Viswanatha, Wall St. Journal, 1/25**

A federal appeals court's landmark 2014 Newman ruling continues to roil enforcement for insider trading cases. The latest wrinkle: The Securities and Exchange Commission is expected to refund a \$21.5 million settlement that hedge fund Level Global entered into in 2013 to resolve allegations that it profited from trades on corporate secrets about Dell Inc. and other technology firms. Experts said that the refund may be unprecedented. One of the now-defunct firm's co-founders, Anthony Chiasson, was criminally convicted in 2012 of using inside information he learned from a "criminal club" of hedge-fund analysts, who allegedly sought out and shared such secrets.

But a federal appeals court in 2014 overturned his conviction and that of a portfolio manager at another hedge fund, Todd Newman, saying that their receipt and use of the information did not count as illegal insider trading under the law. That unexpected ruling set in motion a chain of events that led prosecutors at the end of last year to drop charges against another seven men who had been convicted or pleaded guilty to related allegations of insider trading. Late Friday, a lawyer filing a request in the name of Level Global cited the decision and asked a federal court in New York to vacate the previous settlement and order the SEC to return the money it paid: \$21,514,275.63.

### [S.E.C. Is Criticized for Lax Enforcement of Climate Risk Disclosure](#)

**David Gelles, NY Times, 1/23**

## **MORTGAGES & HOUSING**

### [America's foreclosure crisis isn't over](#)

**Robert Hennelly, CBS News, 1/26**

Today, foreclosures are down nationally, and the number of mortgages that are current on their payments is on an upward swing at 93.9 percent, according to a report issued last month by the Office of the Controller of the Currency. The OCC survey is based on an analysis of 42 percent of the nation's mortgages.

The number of homeowners who are "underwater," with a house that's worth less than what they owe on their mortgage, was down to 4.3 million in the third quarter of 2015, compared to 5.2 million in 2014, according to CoreLogic, a real estate analytics firm. For context, back in 2011, 11.6 million households were underwater. Mark McArdle, the Treasury Department's deputy assistant secretary for financial stability, told CBS MoneyWatch that the Obama administration's efforts to help homeowners played a pivotal role in these improvements to the housing market...McArdle acknowledged this effort isn't complete. "While the housing market has recovered in many parts of



the country," he said, "several areas and states are still struggling, and we will continue to help homeowners and communities in those places still recovering from the housing crisis."

### [CBO lowers estimate of Fannie, Freddie cost](#)

**Jon Prior, Politico, 1/25**

Government-controlled mortgage giants Fannie Mae and Freddie Mac are projected to require about \$11 billion in assistance from the Treasury between 2017 and 2025, according to a Congressional Budget Office [forecast](#) released today. That's about \$7 billion less than what CBO estimated in August. "CBO expects that Fannie Mae and Freddie Mac will guarantee fewer mortgages over the next decade and that those mortgages will have lower associated fair-value costs," according to the report.

The CBO also estimated the two companies will send \$20 billion in net payments to the Treasury in 2016. CBO does not count the payments Fannie and Freddie would send to Treasury after this year. Unlike the administration, CBO considers Fannie and Freddie as government agencies for budget purposes. Under the current bailout arrangement, Fannie and Freddie send all of their profits to Treasury, but the profits have slowed after one-off tax benefits and large settlements with banks have dried up.

## **POLITICAL INFLUENCE OF WALL STREET**

### [Trade Groups Tell Businesses to Keep Quiet on Spending](#)

**Dave Levinthal, Time, 1/27**

Three of the nation's leading trade associations have a message for their member corporations: Resist activists who demand you disclose more details about your politicking than the law requires.

"The strategy of pressuring companies to voluntarily disclose the details of their spending on public policy engagement for the purpose of reducing that engagement is, in fact, their ultimate goal," wrote U.S. Chamber of Commerce President and CEO Tom Donohue, Business Roundtable President John Engler and National Association of Manufacturers President and CEO Jay Timmons in a letter dated Oct. 13 and obtained by the Center for Public Integrity.

## **REGULATORY "REFORM"**

### [The Price of Requiring Regulators to Do More Cost-Benefit Analysis](#)

**David Zaring, NY Times, 1/22**

A bipartisan, if mildly conservative, group of senators has indicated that it will introduce legislation intended to increase the rule-making requirements on Wall Street regulators like the Securities and Exchange Commission and the Consumer Financial Protection Board. As Senator Ron Johnson, the chairman of the Homeland Security and Governmental Affairs Committee, has put it, the "long-term growth of living standards depends on periodically lightening the regulatory load – the equivalent of scraping barnacles off the bottom."

The legislation would require more math and permit less flexibility by those regulators. But it would also limit Congress's own ability to require the government to embrace good governance values like "transparency" and "honesty," if the S.E.C.'s most recent rule-making is any guide. The senators have suggested that they would impose cost-benefit analysis requirements on America's financial regulators. No important rule could be passed without establishing that the dollar impositions on the financial industry would not be outweighed by the dollar benefits created by the rule.

### [Liberal group stands with Warren against bipartisan regs reform package](#)

**Lydia Wheeler, The Hill, 1/28**

Liberal activist organization Credo Action has launched a petition aimed at destroying a regulatory reform package that the group says would weaken Wall Street watchdog agencies. The petition, which has 6,410 signatures so far, asks Senate Democrats to stand with Sen. Elizabeth Warren (D-Mass.) against bills that it says would sabotage financial regulation.

The New York Times reported last week that the package, being worked on by a bipartisan group of lawmakers, is likely to include a measure to subject independent agencies such as the Consumer Financial Protection Bureau and the

Securities and Exchange Commission to a strict cost-benefit analysis and review process for major rules. Credo Action said the bills would undermine regulators that are needed to make sure capitalism works. "They make sure markets are fair, protect our air and our water, and ensure that we're not taken advantage of giant corporations or gouged by Wall Street banks," the group's petition said. "We need to reform and strengthen our regulators and make sure they are always working for us, not tie up their hands."

See [petition](#) from AFR and National People's Action.

### [Lawmakers plot to curb independent regulators](#)

**Darrell Delamaide, USA Today, 1/26**

The overview of the report makes its bias clear. The main "findings" are that environmental regulations are "a top concern of industry leaders," that new workplace rules "will harm businesses due to increased compliance costs and additional burdens placed on employers," that regulatory agencies "frequently underestimate the implementation costs and broader effects" of rules, that Dodd-Frank financial regulations have a "ripple effect" on business and need "streamlining."

Alone among the findings highlighted is a single bullet point to the effect that "labor organizations, consumers and progressives" actually like many regulations because they protect health, public safety, the public and the environment. Their main complaint is that timelines for implementation are often too generous. This hardly does justice to the extensive comments defending regulations and criticizing corporate malfeasance from respondents such as the AFL-CIO, Center for Progressive Reform, Coalition for Sensible Safeguards, Consumer Federation of America, Consumers Union, Environmental Defense Fund, and Public Citizen.

### [Democrat Mark Warner teams up with Republicans to weaken consumer protection, other financial reform](#)

**Joan McCarter, Daily Kos, 1/25**

### [Bill requires proof of 'necessity' before regulation adopted](#)

**Howard Fischer, Arizona Daily Sun, 1/28**

State lawmakers are moving to effectively stand state regulation of businesses on their head, requiring government agencies to prove their rules and restrictions are necessary. On a 5-3 margin Wednesday the House Commerce Committee voted to require every city and county government and state agency to review every regulation and detail how each is necessary to protect public health, safety or welfare. It then mandates that the restrictions be modified or repealed if they do not serve those purposes.

More to the point, it allows anyone who believes any rule or ordinance is excessive to sue. And if the government does not prove its necessity -- and the burden would be on the government, not the person challenging the rule -- a judge would be required to void it.

## **RETIREMENT SECURITY & FIDUCIARY DUTY RULE**

### [AIG says if the government won't let them screw over retirees, they won't play](#)

**Joan McCarter, Daily Kos, 1/27**

The latest massive offense the Obama administration has done to Wall Street is to come up with a rule telling financial services companies that their first duty is to their clients. That's such an offensive requirement, Republicans in Congress have even been trying to derail it. Because nothing should stand in the way of profits for Wall Street, including the nest eggs of senior citizens. To prove how awful the whole idea is, American International Group Inc. (AIG) decided they had to sell off, admitting that if they can't screw old people out of money, then why bother?

### [AIG Blasts DOL Rule, LPL Says Go With It](#)

**Alex Padalka, Financial Advisor IQ, 1/29**

The Department of Labor's proposed fiduciary rule has few supporters in the industry but not everyone plans to fight it. The head of AIG is blaming the rule for having to sell the firm's broker-dealer operations, Bloomberg reports, while

several broker-dealers are complaining they'll be hurt on fees dealing with so-called orphan accounts, according to WealthManagement.com.

Yet LPL Financial's executives say they're rolling with the rule, according to Financial Advisor magazine, and some broker-dealers say all a firm needs to do is to offer "bionic" financial advice to beat the fee pressure, according to WealthManagement.com...The rule is causing a lot of hyperbole among advice industry players and "blaming the rule for things that they would have done otherwise," Barbara Roper, director of investor protection for the Consumer Federation of America, tells Bloomberg. After all, the AIG Advisor Group sale to an investment fund and a Canadian pension investment manager is part of a broader initiative to improve results following pressure from activist investor Carl Icahn, Bloomberg reports.

### [Tick, tick, tick ... FINRA rewrites 'culture,' 'conflicts of interest' and 'ethics' into a farcial 'best interests' code after DOL drops a bomb on its suitability ethos](#)

**Ron Rhoades, RIA Biz, 1/29**

FINRA recently advanced a "best interests" standard — raising industry hopes that the organization had finally given ground in the cause of enforcing principled care of financial advisory clients in the wake of the Department of Labor's crackdown on loose readings of what it means to be a fiduciary. See: Snakes and ladders: What to expect in the unexpectedly triumphant final DOL fiduciary rule. The positive signals sent by the Financial Industry Regulatory Authority Inc., the stock brokerage-owned regulator of stock brokers, came in its institutional utterance of words that are de facto expletives in polite Wall Street society.

Those words include "culture," "conflicts of interest" and "ethics" — three areas where Wall Street has proven incorrigible due to its reliance on delivering financial advice in the form of conflict-ridden product sales. Yet a closer look reveals that the introduction of these inconvenient words into discourse are FINRA feints — helped along by brokerage lobbying organization SIFMA — intended solely to distract from the perpetuation of a decades-long deception. It includes a rewrite of a centuries-old, strict, legal standard to a new suitability regime, together with casual disclosure of conflicts of interest combined with securing the customer's uninformed consent. The end effect is the status quo.

### [Labor Department's Tougher Retirement Advice Rule Nears Completion](#)

**Yuka Hayashi, Wall St. Journal, 1/29**

The Obama administration has advanced to the final stages a controversial, closely watched rule imposing tougher requirements on financial firms offering retirement advice, as officials race against the clock to implement a policy President Barack Obama has identified as a personal priority. The White House Office of Management and Budget confirmed Friday that it has received from the Labor Department a final version of the regulation for review, the last step before the rule can be announced publicly.

The rule, which would require retirement advisers to put their clients' financial interests above their own, has survived multiple attempts by financial companies and some lawmakers to derail it. The OMB review is a procedural step that is unlikely to change the rule substantially, but the timing is crucial for officials eager to have it take effect before President Obama leaves office early next year.

### [DOL fiduciary rule arrives at OMB](#)

**Mark Schoeff Jr., InvestmentNews, 1/29**

A Labor Department rule that would raise investment advice standards for retirement accounts took its last step toward finalization Thursday night. The DOL sent the measure to the Office of Management and Budget, which indicated receipt of the regulation on its website Friday. The OMB has up to 90 days to review the rule, but is likely to expedite the process. After the OMB signs off, the DOL will release the final rule publicly — perhaps as early as March and likely by April.

### [DOL Fiduciary Rule Lands at OMB for Review](#)

**Melanie Waddell, ThinkAdvisor, 1/29**

## [White House rolls out plan to boost retirement savings](#)

Peter Schroeder, The Hill, 1/26

## STUDENT LOANS & FOR-PROFIT EDUCATION

### [Federal Trade Commission sues DeVry University for deceptive advertising](#)

Danielle Douglas-Gabriel, Washington Post, 1/27

DeVry University, one of the nation's largest for-profit colleges, misled consumers about the employment and earnings of its graduates in numerous radio, television, online and print advertisements, according to a lawsuit filed Wednesday by the Federal Trade Commission. The government agency is accusing the school of deceiving consumers about the likelihood of finding a job, with claims that 90 percent of DeVry graduates seeking employment land jobs within six months of graduation.

To arrive at that number, the university counted numerous graduates as working in their field when they were not, according to the complaint. A 2012 graduate who majored in business administration was working as a server at a restaurant, while another with a degree in technical management was working as a rural mail carrier.

### [DeVry Drops After U.S. Accuses It of Job-Prospect Deception](#)

David McLaughlin and Andrew Harris, Bloomberg, 1/27

DeVry Education Group Inc. fell as much as 21 percent after the U.S. accused the for-profit college chain of lying about the likelihood its students would find desirable jobs and earn more than those enrolled at other schools.

The Federal Trade Commission said DeVry deceived consumers by claiming that 90 percent of graduates seeking employment landed jobs in their field within six months of graduation. "Educational institutions like DeVry owe prospective students the truth about their graduates' success finding employment in their field of study and the income they can earn," FTC Chairwoman Edith Ramirez said in a statement announcing the suit, filed Wednesday in federal court in Los Angeles.

For-profit colleges have come under fire in recent years. Corinthian Colleges Inc. closed and filed for bankruptcy last year amid allegations it falsified job-placement data in its marketing materials and altered grades and attendance figures. Education Management Corp. agreed to pay \$95.5 million to end whistle-blower suits accusing it of illegal recruiting practices.

### [DeVry brags when its graduates become waiters at Cheesecake Factory, Feds say](#)

MarketWatch, 1/28

### [Don't Be Fooled: You Never Have to Pay for Student Loan Help](#)

Ted Mitchell, Home Room, 1/28

I've seen online ads claiming that "Obama Wants to Forgive Your Student Loans!" or "Erase Default Statuses in 4-6 Weeks!" The link takes you to companies that want to help you manage your loans — for a fee. You *never* need to pay for help with your student loans. For the great price of *free*, the U.S. Department of Education can help you:

- [Lower Monthly Payments](#);
- [Consolidate Federal Student Loans](#);
- [Check on Loan Forgiveness](#); and
- [Get Out of Default](#)

Your loan servicer — the company that collects your payments on behalf of the Department of Education can also help you with these goals for free. If you need help with your debt, you should contact your servicer. Click [here](#) for a list of servicers' contact information. And you should — because you never need to pay for these services. Some debt relief companies charge a lot. Our research shows that some companies charge upfront consolidation fees as high as \$999 or 1 percent of the loan balance (whichever is higher); "enrollment" or "subscription" fees up to \$600; or monthly account "maintenance" fees as high as \$50 per month. That's money out of your pocket for services that are available to you for free.

### [ED Takes Action Against Third-Party Debt Relief Scams](#)

**Allie Bidwell, NASFAA, 1/29**

The Department of Education (ED) on Thursday sent cease and desist letters to two third-party debt relief companies that were using ED's official seal without authorization. The letters claim the two companies — Perfect Privacy, LLC, based in Atlanta, and The Student Loan Project, based in San Diego, CA — misrepresented their relationship with the federal agency, implying that ED was affiliated with their services.

Such debt relief companies have come under increasing scrutiny recently for charging student loan borrowers high fees for services they can receive for free through the federal government, such as loan consolidation. Some companies contact borrowers through television ads, social media, and even directly through the mail, creating a sense of urgency for borrowers to contact them. As early as 2013, the National Consumer Law Center began identifying problems with debt relief companies' marketing methods.

### [Thousands of former students apply for debt relief](#)

**Amy Scott, Marketplace, 1/28**

### [Mixed Ruling on For-Profit Rules](#)

**Michael Stratford, Inside Higher Ed, 1/28**

A federal judge in Massachusetts this week issued a mixed ruling in a case challenging tougher regulations on for-profit colleges enacted by that state's attorney general.

The Massachusetts attorney general's office, which has been among the more aggressive in cracking down on for-profit colleges, largely prevailed in the case as the judge upheld seven of the nine state regulations the for-profit college association in the state had challenged.

But United States District Judge Dennis Saylor sided with the for-profit colleges in ruling that two of the regulations were unconstitutional. Those rules related to how for-profit colleges informed students about the transferability of credits and how they described or advertised the time it could take to finish their programs.

## **SYSTEMIC RISK**

### [Study Says Sarao May Not Have Been Responsible for Flash Crash](#)

**John Detrixhe and Suzi Ring, Bloomberg, 1/27**

Sarao may not have had a material, or even any, impact on the bout of equity market volatility in May 2010 that later became known as the flash crash, according to a draft research report by University of California, Santa Cruz and Stanford University professors dated Jan. 25. The study, which has yet to be formally released because the authors are still soliciting feedback, claims to be the first to analyze the entire order book on a millisecond level.

Sarao could still go to jail for a long time even if he is fully absolved of causing the manic trading episode -- he is alleged to have manipulated markets over several years. He faces a 380-year jail sentence if he is convicted on all counts. Still, industry experts have questioned how a single trader could have had such an impact on U.S. markets. That the causes of the Dow Jones Industrial Average's nearly 1,000-point plunge in May 2010 are still being debated reflects dissatisfaction with regulators' ability to analyze electronic, computer-traded markets that have been described as too complex and as unfair to ordinary investors. "It's very important for society to get the diagnosis correct here; if we misunderstand what caused the crash, we can't do a good job preventing the next one," said Joseph Grundfest, an author of the report and a former commissioner at the Securities and Exchange Commission.

See AFR comment [letter](#) concerning insurance and systemic risk.

## OTHER TOPICS

### [Overnight Regulation: White House warns against 'midnight' regs](#)

**Lydia Wheeler and Tim Devaney, The Hill, 1/26**

The Obama administration has advised federal agencies to finish their highest priority rulemakings this summer to avoid a burst of "midnight regulations" before President Obama leaves office. In a memo dated Jan. 17 that was obtained by The Hill, Howard Shelanski, the administrator of the White House Office of Information and Regulatory Affairs (OIRA), asks agencies to adhere closely to the dates established in the fall 2015 regulatory agenda and to notify OIRA if deadlines need to be changed.

OIRA said it understands that agencies will need to issue regulations through 2016, since they are part of the government's normal operations, but said big regulatory initiatives should be finished well before the end of Obama's term.

### [Wall Street's battle of the bankers](#)

**Sujeet Indap and James Fontanella-Khan, Financial Times, 1/24**

Mr Perella, 74, is a legend on Wall Street for his role in transforming mergers and acquisitions from a banking backwater into a glamorous, big- money business. He is also known for making dramatic exits from two big banks — First Boston and Morgan Stanley — to set up boutique firms bearing his name. Yet in February last year Mr Perella apparently learnt that Mr Kramer, 47, was planning to leave his firm — and did not appreciate it.

Mr Perella's firm, Perella Weinberg Partners, claims in court documents that it discovered a plot by Mr Kramer to quit and launch a rival investment bank with several colleagues. In an echo of Mr Perella's career, it would have been the second time Mr Kramer had set out his own stall. The Perella-Kramer fight is being watched closely by dealmakers on Wall Street. While disputes often arise among financiers seeking greener pastures, this is a rare instance of a disagreement spilling into public litigation.

A trial would put a spotlight not only on the internal workings of an esteemed investment bank but some bankers fear it could also open an unwelcome discussion on "restrictive covenants" — the industry's bedrock employment contract provisions.

### [Justices Take On a Muddled Issue: Insider Trading](#)

**James Stewart, NY Times, 1/28**