



The Golden Apple

Reporting on the latest discord from Capitol Hill

In classic Greek mythology, a golden apple of discord inscribed "For the fairest" was awarded to Aphrodite, beginning a chain of events that led to the Trojan War. GrayRobinson's newsletter reports on the most recent issues, individuals, and discourse deemed fairest in Washington.

June 21, 2019

SEC seeks comment on sweeping changes to exemption rules

The Securities and Exchange Commission (SEC) published a [211-page "concept release"](#) on Tuesday that asked for comment on the overall framework for exempt offerings, and specifically on ways to expand investment opportunities while maintaining appropriate safeguards. The SEC called for "a comprehensive review of the design and scope of our framework for offerings that are exempt from registration," noting recent changes through the JOBS Act and elsewhere that make it easier for non-accredited investors to participate in capital formation. Existing rules generally prohibit anyone who earns less than \$200,000 a year or has a net worth of less than \$1 million from investing in hedge funds or private equity offerings. Among other questions, the SEC asked whether it should change its definition of "accredited investor," revise its rules for crowdfunding, or change the restrictions that currently apply to business development companies (BDCs). Comments are due to the SEC 90 days after the release appears in the *Federal Register*.

An early start on reauthorizing Terrorism Risk Insurance

The Senate Banking Committee held its first [hearing on updating and reauthorizing the Terrorism Risk Insurance \(TRIA\) program](#) this week, well ahead of the program's December 2020 expiration date. While the Terrorism Risk Insurance Act was originally passed in 2002 for only a three-year period, it has been reauthorized three times since then, and witnesses discussed the program's benefits to market stability. TRIA has become an essential underpinning of workers' compensation policies as well as property and casualty insurance, and while updates and improvements are possible, no one

suggested that the program be allowed to expire. Senate Banking Committee Chairman Mike Crapo (R-ID) called for “additional balanced reforms” that would reduce taxpayer exposure without having a material negative effect on costs or take-up rates.

Senate Judiciary Committee discusses beneficial ownership legislation

At a [hearing on Wednesday](#), Senate Judiciary Committee Chairman Lindsey Graham (R-SC) said that he'd become convinced of the need to enact legislation requiring corporations to honestly report and update their beneficial ownership information. At Wednesday's hearing, experts on international corruption and money laundering discussed the [True Incorporation Transparency for Law Enforcement \(TITLE\) Act](#) introduced by Senators Sheldon Whitehouse (D-RI) and Charles Grassley (R-IA), which would require states to collect this information and make it available to law enforcement organizations.

Senate Banking Committee discusses beneficial ownership legislation

[Thursday's Senate Banking Committee hearing on beneficial ownership](#) featured testimony from representatives of the private sector and focused on a discussion draft of the [ILLICIT CASH Act](#) developed by Senators Mark Warner (D-VA), Tom Cotton (R-AR), Doug Jones (D-AL), and Mike Rounds (R-SD). The ILLICIT CASH Act would make updates to existing Bank Secrecy Act/anti-money laundering requirements and would require FinCEN to collect and maintain a confidential database of corporate beneficial ownership information that would be available to law enforcement for specific purposes. Both the TITLE Act and the ILLICIT CASH Act differ in substantive ways from the [HR 2513](#), the Corporate Transparency Act of 2019, which the House Financial Services Committee approved last week.

Effective diversity requires a culture change, witnesses tell House panel

Experts on diversity [appeared before the House Financial Services Committee yesterday](#) to talk about how to maximize the benefits of diversity in corporate boardrooms. While some of the nation's largest banks (Wells Fargo, TD Bank, KeyBank, HSBC, USBank) rank among the country's most diverse, the industry and the business world have a long way to go toward creating leadership teams that look more like their

workforce or their customer base. Wharton professor Stephanie Creary reported on the [results of a study published earlier this year](#) that found diversity is most effective when combined with an egalitarian board structure, while other witnesses emphasized the need to expand candidate pools beyond the traditional CEO/CFO candidates. The panel is considering several bills that would require more disclosure of corporate leadership's demographic makeup.

House Financial Services looks for fixes to Kokesh, Gabelli

The House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets [met on Wednesday](#) to hear testimony about proposed legislation that would give the SEC more time to require violators of securities laws to disgorge ill-gotten gains. The Supreme Court's rulings in *Kokesh v. SEC* and *Gabelli v. SEC* have limited the SEC's ability to require disgorgement to five years after the violation occurred, which the SEC has said may not be enough time to complete an investigation. Legislation drafted by Reps. Ben McAdams (D-UT) and Katie Porter (D-CA) would expand and update the SEC's enforcement authority. While these bills and others discussed on Wednesday have broad Democratic support, Rep. Bill Huizenga (R-MI), the Subcommittee's ranking member, said that none of these proposals would support or promote capital formation, one of the SEC's three missions. The House Financial Services Committee has scheduled a markup next week that will likely include some of the proposals discussed this week.

Senate, House voice frustration with tariffs as trade policy

Ambassador Robert Lighthizer, the US Trade Representative appeared this week before the [Senate Finance Committee](#) and the [House Ways and Means Committee](#) to urge quick Congressional action on the US-Mexico-Canada (USMCA) free trade agreement and report on trade negotiations with China and other countries. Senators and Representatives on both sides of the aisle seemed willing to work on changes that would win Congressional approval of the USMCA, but both Senate Finance Committee Chairman Charles Grassley (R-IA) and House Ways and Means Committee Chairman Richard Neal (D-MA) warned against the overuse of tariffs as negotiating tools, particularly on issues not directly related to trade. Lighthizer expressed optimism about bilateral trade negotiations with Japan, the EU, and the UK, and called the USMCA "the strongest, most momentous trade agreement in US history," representing "the gold standard" for rules on the digital economy, financial services, and intellectual property.

Facebook's cryptocurrency plans draw Capitol Hill criticism, investigation

Facebook announced plans on Tuesday to create [Libra](#), a new digital currency for Facebook users, backed by established government-issued currencies and securities. House Financial Services Committee Chairwoman Maxine Waters (D-CA) immediately asked Facebook to “agree to a moratorium on any movement forward on developing a cryptocurrency until Congress and regulators have the opportunity to examine these issues.” On Wednesday, the [Senate Banking Committee announced](#) that it will hold a hearing on July 16 to examine the proposed digital currency and related data privacy concerns, and Rep. Patrick McHenry, ranking member of the House Financial Services Committee, [wrote to Chairwoman Waters](#) to request a hearing.

Confirmations, Nominations, Departures

The Senate confirmed several nominations by unanimous consent yesterday, including:

- Allison Herren Lee to be a Member of the Securities and Exchange Commission
- Dino Falaschetti to be Director of the Office of Financial Research, Department of the Treasury
- Seth Daniel Appleton to be an Assistant Secretary of Housing and Urban Development
- Robert Hunter Kurtz to be an Assistant Secretary of Housing and Urban Development
- Bimal Patel to be an Assistant Secretary of the Treasury

Next Week in Washington

- June 25 at 9:00 a.m. Consumer Financial Protection Bureau conducts a [Symposium on Abusive Acts or Practices](#). In-person registration for this program is full, but registration for the livestream is available [here](#).
- June 25 at 9:45 a.m. Senate Committee on Agriculture, Nutrition, and Forestry holds a hearing on “[The State of the Derivatives Market and Perspectives for CFTC Reauthorization](#).”
- June 25 at 10:00 a.m. House Financial Services Subcommittee on Diversity and Inclusion holds a hearing on “[Diverse Asset Managers: Challenges, Solutions, and Opportunities for Inclusion](#).”
- June 25 at 10:00 a.m. Senate Banking Committee holds a hearing on “[Should Fannie Mae and Freddie Mac Be Designated as Systemically Important Financial Institutions?](#)”

- June 25 at 10:00 a.m. Senate Commerce Subcommittee on Communications, Technology, Innovation, and the Internet holds a hearing on "[Optimizing for Engagement: Understanding the Use of Persuasive Technology on Internet Platforms.](#)"
- June 25 at 2:00 p.m. House Financial Services Task Force on Financial Technology holds a hearing on "[Overseeing the Fintech Revolution: Domestic and International Perspectives on Fintech Regulation.](#)"
- June 25 at 2:00 p.m. House Ways and Means Committee holds a hearing on "[Mexico's Labor Reform: Opportunities and Challenges for an improved NAFTA.](#)"
- June 25 at 2:00 p.m. House Committee on Homeland Security holds a hearing on "[Cybersecurity Challenges for State and Local Governments: Assessing How the Federal Government Can Help.](#)"
- June 26 at 10:00 a.m. House Financial Services Task Force on Artificial Intelligence holds a hearing on "[Perspectives on Artificial Intelligence: Where We Are and the Next Frontier in Financial Services.](#)"
- June 26 at 10:00 a.m. House Committee on Science, Space, and Technology, holds a hearing on "[Artificial Intelligence: Societal and Ethical Implications.](#)"
- June 26 at 12:30 p.m. House Financial Services [marks up pending legislation](#); agenda to be announced.
- June 26 at 2:00 p.m. House Foreign Affairs Subcommittee on Europe, Eurasia, Energy, and the Environment holds a hearing on "Transatlantic Policy Impacts of the US-EU Trade Conflict."
- June 26 at 2:30 p.m. Senate Committee on Small Business and Entrepreneurship holds a hearing on "[Reauthorization of SBA's Small Business Investment Company Program.](#)"
- June 27 at 10:00 a.m. Senate Banking Committee holds a hearing on "[Oversight and Reauthorization of the Export-Import Bank.](#)"

The Ellis Insight

Jim Ellis reports on political news

President

National Polls: Both Suffolk and Monmouth Universities conducted national Democratic presidential primary polls and largely came to the same conclusions, though with some differences. Suffolk (6/11-15; 1,000 US registered voters) finds former Vice President Joe Biden posting 30% support, with Sen. Bernie Sanders (I-VT) following with half that number, 15%. Sen. Elizabeth Warren (D-MA) is next with 10%, followed by South Bend Mayor Pete Buttigieg at 9%, and Sen. Kamala Harris (D-CA) registering 6% preference.

But Monmouth U (6/12-17; 301 US self-identified Democratic voters) sees a slightly different order. They too project Mr. Biden first with a similar 32%, but Sen. Warren slips into second place with 15%, just ahead of Sen. Sanders' 14%. Sen. Harris picks up 8%, and Mayor Buttigieg pulls 5% support. The Monmouth poll is likely less reliable since their national sample (301 respondents) is so small.

The new Quinnipiac University national poll (6/6-10; 1,214 US registered voters; 503 likely Democratic primary voters) returns a poll that delivers particularly negative numbers for President Trump. The survey shows all major Democratic candidates leading the President in isolated ballot test questions, with anywhere from 13 (Joe Biden) to five (Mayor Pete Buttigieg and Sen. Cory Booker) point margins. It also projects Independents breaking away from Mr. Trump in the Biden pairing by a whopping 58-28% margin. These results are more extreme than any other poll recently seen, however.

Minnesota Poll: Detecting a surge for Sen. Elizabeth Warren (D-MA) in several states and national presidential polling, she now has captured an outright lead in at least one state. Change Research polled the Minnesota Democratic electorate (6/8-12; 772 MN likely Democratic primary voters) in anticipation of the state's presidential primary scheduled for Super Tuesday, March 3rd, and finds her atop the large field.

According to the Change data, Sen. Warren is projected to hold a slight 21-20-19-16-11% edge over former Vice President Joe Biden, Sen. Bernie Sanders (I-VT), home state Sen. Amy Klobuchar (D-MN), and South Bend Mayor Pete Buttigieg, respectively. Minnesota carries 75 first ballot delegates to the Democratic National Convention, ranking it as the 17th largest voting entity.

Senate

Alabama: Former state Supreme Court Chief Judge Roy Moore returned to elective politics yesterday in announcing his second bid for the US Senate. We will remember that Judge Moore lost the special Senate election to current incumbent Doug Jones (D) in late 2017. For the 2020 election cycle, Judge Moore's chances are poor. While he may have enough support to slip into a run-off, in a one-on-one contest he will likely not have enough political strength to upend either Rep. Bradley Byrne (R-Mobile), former Auburn University head football coach Tommy Tuberville, or Secretary of State John Merrill.

Georgia: Sarah Briggs Amico, who was the Democratic nominee for Lt. Governor last November and lost 48-52%, is indicating that she will soon enter the 2020 Senate primary. In that contest, she will face former Columbus Mayor Teresa Tomlinson, and likely several others. The eventual party nominee faces an uphill campaign against first-term Sen. David Perdue (R). In late April 2018, gubernatorial nominee Stacey Abrams said that she would not run for Senate.

North Carolina: After declaring for Lt. Governor at the end of last year, former state Sen. Cal Cunningham (D) yesterday announced that he is switching into the US Senate race and hopes to challenge Sen. Thom Tillis (R). Mr. Cunningham served one

two-year term in the state Senate, lost the 2010 US Senate Democratic primary, and completed Army JAG Corps tours of duty in Iraq and Afghanistan. Already in the Democratic primary are state Sen. Erica Smith (D-Gaston), former state Sen. Eric Mansfield, and Mecklenburg County Commissioner Trevor Fuller. Sen. Tillis draws opposition from wealthy retired venture capitalist Garland Tucker in the Republican primary. North Carolina Senate campaigns are always highly competitive, and this one will be no exception.

Tennessee: Earlier this week, Chattanooga Mayor Andy Berke (D) said he will not pursue the Democratic nomination in next year's August Senate primary election. Meanwhile, Republicans are still awaiting former Gov. Bill Haslam's decision about whether he will again become a statewide candidate. After postponing publicizing his decision for now a third time, Mr. Haslam promises a candidate decision "within two or three weeks."

Wyoming: Regardless of what at-large Rep. Liz Cheney (R-Wilson/Jackson) might do regarding retiring Sen. Mike Enzi's (R) Senate seat, it appears that former US Rep. Cynthia Lummis (R) is moving forward. This week, the ex-Congresswoman took the step of changing the name of the federal campaign committee she still has from her days in the House. Instead of "Lummis for Congress," her campaign committee is now called, "Lummis for Wyoming."

House

CA-21: The Daily Kos Elections site is reporting that sources close to former Congressman David Valadao say the defeated Representative is seriously considering mounting a comeback campaign in 2020. Freshman Rep. T.J. Cox (D-Fresno) unseated Mr. Valadao by 862 votes in California's closest congressional race. A turnout of only 113,616 voters made the 21st the lowest turnout district in the entire state. It is abundantly clear that the Republicans' only serious chance of making this race competitive in 2020 is to again field Mr. Valadao.

IN-5: Four-term GOP Rep. Susan Brooks (R-Carmel) announced on Friday that she will not seek re-election in 2020, saying she wants to devote the next part of her life to interests outside of elective politics. Her decision means the open seat count grows to ten, including the two North Carolina seats that will be decided in special elections on September 10th. The 5th District is reliably Republican but could become competitive in an open seat situation in a strong Democratic year.

MI-3: It's unclear whether Rep. Justin Amash (R-Cascade Township/ Grand Rapids) will run for re-election after calling for President Trump's impeachment, but several individuals in both parties have already declared their candidacies against him. We already know that state Rep. James Lower (R-Greenville) and local official and Iraq War veteran Tom Norton are challenging Mr. Amash in the Republican primary. Late this week, attorney Nick Colvin declared for the Democratic nomination joining two other Democrats in a district that is quickly becoming a hotbed of political activity. Speculation continues to grow that Rep. Amash may jettison the House to run for the Libertarian presidential nomination.

MT-AL: With at-large Rep. Greg Gianforte (R-Bozeman) now officially running for Governor, it didn't take long for the Montana political musical chairs to start moving. Early in the week, Secretary of State Corey Stapleton confirmed that he will exit the open Governor's race and enter the newly open Republican primary for the at-large US House seat. Additionally, state Auditor Matt Rosendale, who lost the US Senate race to incumbent Jon Tester (D) in November, says he will also again become a congressional candidate.

The seat hadn't even been open for a week and the Club for Growth hit the airwaves running attack ads against Mr. Stapleton who was met with the paid opposition media just two days after he decided to swing into the at-large House seat from the Governor's campaign. The CfG is supporting Mr. Rosendale for the open House seat, as they did in his Senate race last year against incumbent Jon Tester (D).

Democrats already have two congressional candidates, each announcing against Mr. Gianforte. Former state Representative and 2018 congressional nominee Kathleen Williams and state Rep. Tom Winter (D-Missoula) launched their respective campaigns weeks ago.

TX-32: Former Florida Congressman Allen West (R) is about to re-enter politics, but in Texas and not the Sunshine State. Yesterday, the former House member said he will decide in the next couple of weeks whether he will seek the Republican nomination in the 32nd Congressional District and possibly oppose former Rep. Pete Sessions, the incumbent that freshman Rep. Colin Allred (D-Dallas) unseated in November. Or, Mr. West claims he might challenge Sen. John Cornyn (R). And, weighing still another political option, the former Congressman and retired military officer says he may instead decide to run for Texas Republican Party chairman.

Governor

North Carolina: Two Republican-based polls find very different results from their data testing GOP Lt. Gov. Dan Forest versus first-term Gov. Roy Cooper (D). The conservative Civitas Institute contracted with Harper Polling to gauge Gov. Cooper's strength. Their poll (6/8-10; 500 NC likely voters) found the incumbent holding a ten-point lead over Mr. Forest, 47-37%. But, Spry Strategies, polling for the North Carolina Republican Party (conducted in May but released 6/18; 730 NC registered voters) actually draws the opposite conclusion. They find Lt. Gov. Forest capturing a 44-40% lead even though the Governor's job approval rating is a whopping 60:38% positive to negative.

At the end of the week, Public Policy Polling entered the picture with their data (6/17-18; 610 NC registered voters) posting Gov. Cooper to a 45-41% advantage. But, this PPP survey could be skewed a bit in Cooper's favor. The poll overstates the Democratic sample by 6.1% as compared to the actual state count. They boost the Republican total by three percentage points but downgrade the Unaffiliateds by more than eight points. Considering this skew, the ballot test numbers could actually be much closer.

The GrayRobinson Lobbying Team

[Doyle Bartlett](#) | [Dean Cannon](#) | [Chris Carmody](#) | [Larry Cretul*](#) | [Chris Dawson](#) | [Katie Flury*](#)
[Charlie Gray](#) | [Rheb Harbison*](#) | [John Harris*](#) | [Mike Huey](#) | [Ty Jackson](#) | [Travis Johnson](#)
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