



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.

October 11, 2019

Greetings from the sports capital of the nation, where the Washington Mystics' WNBA championship and the Washington Nationals' movement to the NLCS have been welcome distractions from other things happening in the city. We congratulate the Washington Mystics, and wish the Nationals continued success.



Executive Order declares that regulatory guidance is non-binding

The President signed an Executive Order on Wednesday to require that federal agencies “treat guidance documents as non-binding both in law and in practice.” The EO says that agencies have “sometimes used [guidance] authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the APA.” The order

also requires agencies to maintain online searchable databases of its guidance documents, to review all outstanding guidance over the next four months, and to rescind any guidance that should no longer be in effect.

State regulators unveil draft model payments legislation

Yesterday the Conference of State Bank Supervisors (CSBS) published a [draft of its model legislative language](#) for state oversight of money services businesses. CSBS is asking for public comments with actionable language and redline edits to the documents published online, which include language templates for activities and exemptions, control, and financial condition. Comments are due to CSBS by November 1; the organization “acknowledges this is a short comment period and commits to working with interested parties that may seek additional time or forums to share their input.”

Fed issues rules to tailor regulations for different risk profiles

Yesterday the Federal Reserve Board [approved final rules](#) to reduce compliance requirements for firms with lower risk profiles while maintaining more stringent requirements for larger and more complex institutions. The Fed says the final rules are simpler than the proposals released for comment. They would sort banks with total assets of \$100 billion or more into four categories based on factors that include asset size, cross-jurisdictional activity, reliance on short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The new rules will take effect 60 days after their publication in the Federal Register.

Federal agencies finalize Volcker Rule changes

The Federal Reserve Board, Commodity Futures Trading Commission, Federal Deposit Insurance Commission, Office of the Comptroller of the Currency, and Securities and Exchange Commission announced Tuesday that they have adopted [final revisions to the so-called Volcker Rule](#), which generally prohibits banks from trading on their own behalf or investing in/sponsoring hedge funds or private equity funds. The revised rule provides simplified and streamlined compliance requirements for firms without significant trading activities, while setting more stringent requirements for firms that have significant trading activities. The new rules will take effect on January 1, 2020, with compliance enforced after January 1, 2021.

CFPB finalizes HMDA rule

The Consumer Financial Protection Bureau (CFPB) [published a final rule](#) yesterday that extends the current threshold for collecting and reporting data about open-end lines of credit for two years, until January 1, 2022. Until that date, financial institutions that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years will not need to collect and report data on that activity. The final rule also provides relief for smaller lenders as directed by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). It did not include provisions to raise permanent coverage thresholds for closed-end mortgages and open-end lines of credit; that will be the topic of separate rulemaking, with a comment period that closes next Tuesday, October 15.

Federal agencies issue final rule on management interlocks

Last week the FDIC, Federal Reserve, and OCC [published a final rule](#) that updates restrictions on management interlocks for depository institutions. The new rule raises the asset size thresholds for management interlock prohibitions to \$10 billion, "to account for changes in the United States banking market since the current thresholds were established in 1996." The previous rule had prohibited management officials from banks with total assets of more than \$2.5 billion from serving as management officials at unaffiliated banks with more than \$1.5 billion in assets.

FHFA, Treasury agree to allow GSEs to build capital

Federal Housing Finance Administration Director Mark Calabria and US Secretary of the Treasury Steven T. Mnuchin have agreed to let [Fannie Mae](#) and [Freddie Mac](#) begin to rebuild their capital by retaining earnings of up to \$45 billion combined. Calabria said this was "an important milestone on the path to reform," and would help protect taxpayers in event of another downturn, as the GSEs "are leveraged nearly 1,000 to one."

House action expected on bill to require certification of Hong Kong's autonomy

As protests in Hong Kong continue and controversy builds over US business activity in China, the House of Representatives is likely to vote next week on [H.R. 3289](#), the Hong Kong Human Rights and Democracy Act of 2019. The bill, sponsored by Rep. Christopher Smith (R-NJ), would require the Departments of State and Commerce to report annually to Congress on whether Hong Kong retains sufficient autonomy to justify its unique US trade status, and on whether China is using Hong Kong to evade sanctions. Meanwhile, President Trump announced today that the US and China have reached "a very substantial phase

one deal" in trade negotiations, and Treasury Secretary Steven Mnuchin said that additional Chinese tariffs scheduled to take effect next week will not be implemented.

HFSC Republicans ask CFPB to extend disclosure exceptions for money transfers

Rep. Barry Loudermilk (R-GA) and 15 other Republican members of the House Financial Services Committee have [written to CFPB Director Kathleen Kraninger](#) to ask her to continue to allow banks to provide estimated disclosures of remittance transfer fees, despite the upcoming expiration of the statutory exemption for these transfers. Because of the open network payment system used for remittance transfers, the legislators pointed out, no single institution has end-to-end control over these transactions, and often have no way to predict the exact fees that may be assessed. "Allowing insured depository institutions to continue to have the option to estimate the third party fees and exchange rates in remittance transfers is consistent with the Bureau's mission of protecting the consumers," the congressmen wrote. They asked the Bureau to use its statutory authority to provide "any further relief that may be necessary to ensure that consumers do not lose access to remittance services."

Foster, Hill ask Powell about plans for digital currency

Reps. Bill Foster (D-IL) and French Hill (R-AR), Chairman and ranking member of the House Financial Services Task Force on Artificial Intelligence, [wrote to Federal Reserve Board Chairman Jerome Powell late last month](#), to ask whether and how the Fed plans to develop a US dollar digital currency. "We are concerned that the primacy of the U.S. Dollar could be in long-term jeopardy from adoption of digital fiat currencies," the congressmen wrote. They noted that central banks in Sweden, Uruguay and China, among other countries, are working on digital forms of their own currency. Foster and Brown said that Facebook's Libra proposal "could remove important aspects of financial governance outside of U.S. jurisdiction," and mentioned J.P. Morgan and Wells Fargo's efforts to develop dollar-denominated digital currency.

Zuckerberg will appear before HFSC

As Facebook pursues its Libra initiative, House Financial Services Committee Chairwoman Maxine Waters [announced Wednesday](#) that its Chairman and CEO, Mark Zuckerberg, will appear before the committee in person on October 23. Zuckerberg will be the only witness at a hearing on "An Examination of Facebook and its Impact on the Financial Services and Housing Sectors." Waters and other Democratic members of the Committee have [asked for a moratorium](#) on Libra and its digital wallet, Calibra. Also this week, Senators Sherrod

Brown (D-OH) and Brian Schatz (D-HI) sent [letters to the CEOs of Visa, MasterCard, and Stripe](#) warning that Facebook had not yet answered essential questions about the project's risks to consumers, regulated financial institutions, and the global financial system.

SEC announces formation of Asset Management Advisory Committee

Securities and Exchange Commission Chairman Jay Clayton has appointed [23 inaugural members of the Asset Management Advisory Committee](#), which formally begins on November 1 for a two-year term. The committee's purpose is to advise the SEC on topics related to asset management, such as market trends and developments, the effects of globalization, and the changes in the role of technology and service providers. Edward Bernard, Senior Advisor to T. Rowe Price, will serve as the committee's first Chairman.

Confirmations, Nominations, Departures

- Rep. Nita Lowey (D-NY) announced that she will not seek a 17th term in Congress. She currently chairs the House Appropriations Committee.
- The President nominated Brian Montgomery to be Deputy Secretary of the Department of Housing and Urban Development; Montgomery is currently Assistant Secretary of HUD for Housing.
- The President nominated John "Jack" Bobbitt to be an Assistant Secretary of HUD; he is currently Deputy Assistant Secretary for Housing Operations.
- The President nominated Kipp Kranbuhl to be an Assistant Secretary of the Treasury (Financial Markets); he is currently the Principal Deputy Assistant Secretary for Financial Markets.
- John F. Vogel, who had been Regional Director of the FDIC's New York Region, has been named Deputy Director, Operations, and Chief of Staff in the Division of Risk Management Supervision (RMS). Frank R. Hughes, who had been Deputy Regional Director in New York, will move up to the Director's position.

Next Week in Washington

- Federal government offices will be closed on Monday, October 14, in observance of Columbus Day — or Indigenous People's Day, if you're in Florida, Alaska, Vermont, New Mexico, or Maine; Discoverers' Day, in Hawaii; or Native American Day, in South Dakota. (And for the record, October 9 was Leif Erikson Day.) Congress returns to Washington on October 15.
- **October 16 at 10:00 a.m.** House Financial Services Committee holds a hearing on ["Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau."](#)
- **October 16 at 2:00 p.m.** House Financial Services Subcommittee on Housing, Community Development, and Insurance and the House Financial Services

Subcommittee on National Security, International Development, and Monetary Policy hold a hearing on "[Protecting America: the Reauthorization of the Terrorism Risk Insurance Program.](#)"

- **October 16 at 2:15 p.m.** Joint Economic Committee holds a hearing on "[Measuring Economic Inequality in the United States.](#)"
- **October 16 at 2:30 p.m.** Senate Committee on Indian Affairs holds a hearing on "[Lending Opportunities: Opening the Door to Homeownership in Indian Country.](#)"
- **October 17 at 10:00 a.m.** House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets holds a hearing on "[Examining Corporate Priorities: The Impact of Stock Buybacks on Workers, Communities, and Investors.](#)"
- **October 17 at 10:00 a.m.** Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on the [Consumer Financial Protection Bureau's semi-annual report to Congress.](#)
- **October 17 at 2:00 p.m.** House Financial Services Subcommittee on Diversity and Inclusion holds a hearing on "[Promoting Inclusion: Examining the Need for Diversity Practices for America's Changing Workforce.](#)"
- **October 18 at 9:30 a.m.** House Financial Services Task Force on Artificial Intelligence holds a hearing on "[AI and the Evolution of Cloud Computing: Evaluating How Financial Data is Stored, Protected, and Maintained by Cloud Providers.](#)"

The Ellis Insight

Jim Ellis reports on political news

President

Presidential Money: Last week, as we reported, Sen. Bernie Sanders (I-VT) and Mayor Pete Buttigieg released strong 3rd Quarter fundraising figures, \$25.3 and \$19.1 million, respectively, and now Sen. Elizabeth Warren (D-MA) and former Vice President Joe Biden have also publicized their totals. Ms. Warren came close to Sanders' number at \$24.6 million, but Mr. Biden was considerably behind even Mayor Buttigieg at \$15.2 million raised.

North Carolina: Raleigh-based Public Policy Polling (10/4-6; 410 NC likely Democratic primary voters) just released their new North Carolina Democratic survey, and it finds former Vice President Joe Biden enjoying a substantial advantage. According to the PPP results, Mr. Biden records 39% support as compared to Sen. Elizabeth Warren (D-MA) posting 22% preference. Mayor Pete Buttigieg places third with 9% and Sen. Bernie Sanders (I-VT) gets only 6% of the respondents. North Carolina is joining the Super Tuesday primary on March 3rd.

Wisconsin: Fox News just completed a Wisconsin political poll (9/29-10/2; 1,512 WI registered voters; 663 WI likely Democratic primary voters) and finds former Vice President Joe Biden continuing to lead in what could become a very important post-March presidential primary on April 7th. The data shows Mr. Biden capturing 28% preference compared to Sen. Elizabeth Warren's (D-MA) 22 percent. Sen. Bernie Sanders (I-VT) posted 17%, and all of the others were in single digits. In late August, Marquette Law School found the former VP also holding 28% with Sanders second at 20%, and Warren recording 17 percent.

IBD/TIPP Poll: The new Investors Business Daily/TIPP poll finds Sen. Elizabeth Warren (D-MA) eclipsing former Vice President Joe Biden 27-26% with Sen. Bernie Sanders (I-VT) posting 10%. The small sample size of just 341 registered voters throughout the US is woefully small, however, particularly when taken over a long period (9/26-10/3). Though the TIPP polls have a good past prediction record, the results of this particular poll should be disregarded because the sample size makes the reliability factor too low.

Politico/Morning Consult: The monthly Politico/Morning Consult Democratic presidential primary survey is out and the results show very little change from the previous pattern. The poll (9/30-10/6; 16,529 Democratic likely primary voters; online) finds former Vice President Joe Biden maintaining a healthy lead over Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT), 33-21-19%. Consistent with the current prevalent polling pattern, Sen. Kamala Harris (D-CA) and South Bend Mayor Pete Buttigieg remain in single digits with 6 and 5%, respectively.

Quinnipiac University: Quinnipiac University released their latest Q-Poll (10/4-7; 646 US registered voters), which portends a much different result than what Politico/Morning Consult (see above) reached. The Q-Poll sees Sen. Elizabeth Warren (D-MA) eclipsing former Vice President Joe Biden and Sen. Bernie Sanders (I-VT), 29-26-16%. All of the other candidates recorded percentages no greater than four. Methodology and sample selection appear as the key reasons for the rather large discrepancy between the two polls taken during similar time periods.

Susquehanna Polling & Research: Frequent Pennsylvania pollster Susquehanna Polling & Research also released their latest work (9/30-10/6; 307 PA registered voters), which is again a small-sample survey. As expected, former Vice President Joe Biden leads the

pack of candidates, but with only a 17% preference factor. No other candidate even reaches double digits. Sen. Elizabeth Warren (D-MA) is second with 9%, Mayor Pete Buttigieg has 8% support, just ahead of Sen. Bernie Sanders (I-VT) who records 6% support. The small sample size and abnormally high undecided figure leaves much to question about this study.

Senate

Alabama: This week, Sen. Doug Jones (D), the most vulnerable Democrat on the US Senate ballot next year, reported his 3rd Quarter receipts and the total is impressive. Sen. Jones raised \$2 million during the previous twelve weeks and has more than \$5 million cash-on-hand. Reports have yet to surface from his key Republican opponents, Rep. Bradley Byrne (R-Mobile), Secretary of State John Merrill, former Auburn University head football coach Tommy Tuberville, and ex-state Supreme Court Chief Justice and 2017 GOP Senate nominee Roy Moore.

Arizona: Both Sen. Martha McSally (R) and retired astronaut Mark Kelly (D) released their 3rd Quarter financial numbers earlier in the week. The two went 1-2 last quarter in terms of money raised, and it appears they may do so again for the current financial disclosure period. Mr. Kelly reports campaign receipts of over \$5.5 million, with a cash-on-hand figure of \$9.5 million. Sen. McSally pulled in just over \$3 million and has \$5.6 million in the bank.

These are astonishing large numbers this early in a smaller domain. Texas Sen. John Cornyn (R) is reporting similar results, but his state is four times the size of Arizona, thus putting both Kelly's and McSally's fundraising prowess into perspective.

Kentucky: Retired Marine Corps helicopter pilot Amy McGrath (D), who raised over \$8.6 million for a congressional race in 2018, logged an enormous 3rd Quarter in fundraising for her new Senate race. Ms. McGrath, challenging Majority Leader Mitch McConnell (R), attracted a whopping \$10.7 million for her campaign just in the last twelve weeks. Mega millions will be spent in this race, but Sen. McConnell, first elected in 1984, will continue to be the favorite to win again regardless of the amounts raised and spent against him.

House

AL-2: Former state Attorney General Troy King (R) just released the results of his open seat 2nd District poll in the battle to succeed retiring Rep. Martha Roby (R-Montgomery). Mr. King's internal Tarrance Group survey (released 10/7; 303 AL-2 likely Republican primary voters) gives Mr. King a large lead, 34-18-17%, over former state Representative and 2018

congressional candidate Barry Moore and state Rep. Will Dismukes (R-Prattville). No other candidate even reaches double digits. Considering that Mr. King is a prominent former statewide office holder, the results are not particularly surprising.

NY-14: New York City Councilman Fernando Cabrera (D), an ordained minister, is launching a Democratic primary challenge to Rep. Alexandria Ocasio-Cortez (D-Bronx). Three other Democrats are already in the primary race, but Mr. Cabrera is clearly the incumbent's most credible opponent. The Republicans have eight announced candidates against the flamboyant freshman Congresswoman, but none have any chance. The 14th District is solidly Democratic (Trump '16: 20%).

NY-17: House Appropriations Committee chair Nita Lowey (D-NY) announced yesterday that she will retire from her Westchester County anchored congressional seat at the end of this Congress. Rep. Lowey was originally elected in 1988 and will serve 32 years in the House when her current term concludes. The Congresswoman, 82 years of age, thanked her constituents in the retirement statement, but did not cite any particular reason for her decision not to seek re-election. The open 17th District will remain under Democratic control (Trump '16: 38.4%). Ms. Lowey is the sixth House Democrat voluntarily leaving Congress. The total number of House open seats now grows to 25.

PA-7: The National Republican Congressional Committee leadership scored a recruitment victory in the Allentown/Bethlehem seat to oppose freshman Pennsylvania Rep. Susan Wild (D-Allentown). Former Lehigh County Commissioner and corporate CEO Lisa Scheller (R) announced that she will challenge the freshman lawmaker next year. Ms. Scheller was the Committee's top recruitment prospect. First, however, she will have to get past former Lehigh County Commissioner Dean Browning in the GOP primary.

OH-1: On the GOP retirement potential list was former House Small Business Committee chairman Steve Chabot (R-Cincinnati), who was first elected in 1994. The Congressman lost his seat in a 2008 Obama-wave upset but rebounded to win again two years later. Late this week, Rep. Chabot formally announced that he will seek re-election next year. He faced a difficult campaign last year but came away with a 51-47% victory. At this point for the 2020 cycle, healthcare company executive Kate Schroder and Iraq War veteran Nikki Foster are the two announced Democratic candidates. The Ohio primary is scheduled for March 10th.

TX-28: Attorney Jessica Cisneros, a one-time intern to Texas Rep. Henry Cuellar (D-Laredo) who is now challenging him in the 2020 Democratic primary, released her 3rd Quarter fundraising total. She pulled in just over \$310,000 and claims to have \$300,000 cash-on-hand. Rep. Cuellar has not yet countered with his own financial report, but he held just over \$3 million in his campaign account at the end of June. Obviously, the challenger begins her campaign at a distinct disadvantage.

TX-30: On the Democratic potential retirement list was 83-year old Congresswoman Eddie Bernice Johnson (D-Dallas), chair of the Science, Space, and Technology Committee. Yesterday, the 14-term Representative announced that she will seek re-election to "one last term." Ms. Johnson is expected to again win easily.

WI-5: State Senate Majority Leader Scott Fitzgerald (R-Juneau) continues to demonstrate political strength in running for retiring Rep. Jim Sensenbrenner's (R-Menominee Falls) open congressional seat. Yesterday, another potentially viable contender yesterday announced that he would not run for the seat. State Rep. Adam Neylon (D-Pewaukee) made public his decision not to become a congressional candidate. With a safe Republican seat and little in the way of early opposition, Sen. Fitzgerald is quickly becoming a consensus candidate and clearly has the inside track for replacing Mr. Sensenbrenner.

Governor

Indiana: The Democrats have a new official 2020 gubernatorial candidate. During the week, state Sen. Eric Melton (D-Gary) formally announced his candidacy at a campaign event. Introducing the Senator to his supporters was State Education Superintendent Jennifer McCormick, a Republican who has been at odds with her own party leadership. Many believe that Sen. Melton will attempt to form a unity ticket with Ms. McCormick since Indiana is a ticket state, and he did not rule out such a possibility.

The Gary area state legislator joins former state Health Commissioner Woody Myers and online retail company owner Josh Owens in the Democratic field. The winner of next May's partisan primary will undoubtedly face first term Gov. Eric Holcomb (R) who is seeking a second term.

Louisiana: The Louisiana jungle primary election day is this Saturday, and the candidates are making a final dash to the finish line. Two new polls find the race hasn't changed much. The data suggests that Gov. John Bel Edwards (D) is hovering around the 50% mark, but only one poll shows him winning majority support. Doing so would elect him outright to a second term. If no one reaches 50% a run-off election will be held November 16th.

Both JMC Enterprises and Mason-Dixon Research & Strategy are returning new numbers from the polling field. JMC (10/2-5; 600 LA likely primary voters) sees Gov. Edwards at 47% support followed by developer Eddie Rispone with 22% and US Rep. Ralph Abraham (R-Alto/Monroe) obtaining 19% preference. Mason-Dixon sees similar results. Their poll (10/1-4; 625 LA likely primary voters) projects Gov. Edwards with 45%, Rispone recording an identical 22% as found in the JMC data, and Rep. Abraham dropping to 17% support.

According to yesterday's released Market Research Insights poll (10/1-7; 600 LA likely gubernatorial voters), Gov. Edwards would record 51% preference. Rep. Ralph Abraham (R-Alto/Monroe) and real estate developer Eddie Rispone are in a dogfight for second position, but that may be irrelevant if the Governor wins outright. Should Edwards fall short, the top two finishers would advance to a November 16th run-off election. After holding second place for most of the campaign cycle, Rep. Abraham had recently fallen behind Mr. Rispone. According to this MRI poll, however, the two are tied at 19%, apiece.

Utah: US Ambassador to Russia Jon Huntsman (R), a former Utah Governor and ex-presidential candidate, officially resigned his federal position at the end of last week. It is expected that he will soon enter the open race to re-claim his state's gubernatorial [position](#). Gov. Gary Herbert (R), who succeeded Gov. Huntsman when President Obama appointed the latter man as US Ambassador to China, is not seeking re-election to a fourth term. Already in the GOP race is Lt. Gov. Spencer Cox and real estate investor Jeff Burningham.

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