



*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 26, 2020

### **Financial regulators finalize Volcker rule reforms**

The Federal Reserve Board, Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) published a [joint final rule](#) today modifying the general prohibition on banks investing in or sponsoring hedge funds or private equity funds, otherwise known as the Volcker rule. The final rule changes the original regulation in three areas: it streamlines the provisions that apply to covered funds, it addresses the treatment of certain foreign funds outside the United States, and it allows banks to offer financial services and conduct other activities that the Volcker rule wasn't intended to address. The final rule takes effect on October 1.

### **FDIC finalizes "valid when made" rule**

Following similar action by the OCC last month, the FDIC [issued a final rule](#) yesterday to clarify longstanding guidance that a loan's interest rate does not change when the loan is transferred or sold across state lines. This "valid when made" doctrine had been called into question by the Second Circuit's 2015 decision in *Madden v. Midland Funding*, which challenged the enforceability of interest rate terms for loans sold to non-banks.

### **Administration suspends entry for most temporary visa holders, extends green card moratorium**

The White House issued a proclamation on Monday that ends new issuances of H-1B (temporary workers), H-2B (temporary agricultural workers), J-1 (students), and L-1 (employees of international companies with US offices) visas to workers outside the United States, and bars entry to those workers and their families through December 31. Workers currently in the country on those visas may stay until those visas expire; workers who received visas before Monday and already had valid travel documents may still enter the country. The Administration also extended the moratorium on green card (permanent resident) issuances, originally imposed in April, through December 31.

### **SEC will follow through on regulatory changes, says Clayton**

The House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets had scheduled this week's [testimony from SEC Chairman Jay Clayton](#) before last Friday's announcement that the President plans to appoint Clayton to the position of U.S. Attorney for the Southern District of New York. Clayton and the Subcommittee's Republican

members were determined that [Thursday's hearing](#) not be a confirmation hearing. Clayton told members that the nomination process doesn't require his attention right now, and he will continue to focus on his role as Chairman of the SEC. He praised the agency's staff for its effectiveness during the last three months of telework, and said that he expects the SEC to finish work on everything on its current regulatory agenda by the end of this fiscal year. That agenda includes proposals on rules governing fund-to-fund transactions and investor experience that will incorporate changes to the acquired funds fees and expenses (AFFE) rule, and oversight of proxy advisors. Clayton said that the temporary exemptive relief they've provided during the pandemic is narrow and will expire, and that none of those changes will be permanent without going through a formal rulemaking process.

### **Experts call for NSC-level federal public health coordinator**

A bipartisan panel of public health experts, including former Senate Majority Leader Bill Frist and former Utah Governor Mike Leavitt, [told the Senate Health, Education, Labor & Pensions Committee on Tuesday](#) that Congress needs to create a federal public health coordinating authority similar to the National Security Council, and needs to create a dedicated source of funding for pandemic preparedness and maintenance of the Strategic National Stockpile (SNS). At a hearing on "Lessons Learned to Prepare for the Next Pandemic," HELP Committee Chairman Lamar Alexander (R-TN) said that this is the time to get lawmakers' attention about the need to accelerate research for testing and treatment, provide funding to the CDC for improved data surveillance, reevaluate the stockpiles and strengthen funding for state and local health departments.

### **Federal agencies propose new guidance on flood insurance**

The Federal Reserve Board, Farm Credit Administration, FDIC, National Credit Union Administration (NCUA), and OCC are asking for comment on [a revised set of frequently asked questions \(FAQ\) about flood insurance](#). The interagency guidance hasn't been updated since 2011, and the agencies noted the need for new questions and answers to reflect the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014. Comments on the proposed new FAQ will be due 60 days after the notice appears in the *Federal Register*.

### **Fed tells large banks to suspend share repurchases, cap dividends and reevaluate long-term capital plans for Q3**

Stakeholders Yesterday the Federal Reserve Board [published much-anticipated results of the Supervisory Stress Tests](#) required for large banks under Dodd-Frank, and while Vice Chair Randal Quarles said the results showed how resilient these banks are, they're taking no chances. Given current unemployment rates above any level envisioned by the pre-coronavirus stress test scenarios, the Fed is requiring large banks to conserve capital by cancelling share repurchases, capping dividend payments, and calculating dividends based on recent income only. These banks must also resubmit and update their capital plans to reflect current stresses, and the Fed directed banks to re-evaluate their longer-term capital plans.

### **CFPB proposes rules for QM patch expiration**

The Consumer Financial Protection Bureau (CFPB) issued [two Notices of Proposed Rulemaking](#) on Monday to address the upcoming expiration of the so-called "QM (qualified mortgage) patch," which allows certain loans to qualify for purchase by Fannie Mae or Freddie Mac even if the borrower's debt to income (DTI) ratio exceeds 43 percent. The CFPB estimates that the QM patch applies to approximately 957,000 mortgages, but the QM patch is scheduled to expire in January 2021. Monday's proposed rules would change the definition of "qualified mortgage" under Regulation Z from a debt-to-income standard to a price-based approach, and would postpone the expiration date of the QM patch until the effective date of a new final rule on the definition of QM. The proposal for postponing the QM patch

expiration date is open for comment for only 30 days after it appears in the Federal Register; the proposed change to Reg Z will be open for comment for 60 days.

### **GAO recommends improvements to COVID relief**

The Government Accountability Office published a 403-page report on "[Opportunities to Improve Federal Response and Recovery Efforts](#)" yesterday with recommendations for Congressional and Executive action. Since the agencies are not already doing this, the GAO recommended that Congress require the Secretary of Transportation to work with other agencies and industry stakeholders to develop a national aviation preparedness plan to limit the spread of communicable diseases while minimizing interference with travel and trade. They recommended changes to reduce potential fraud and inefficiencies in the Paycheck Protection Program (PPP), including better coordination among the Secretary of Labor, the Small Business Administration, Treasury and the state unemployment agencies; and they said the Small Business Administration should develop and implement plans to identify and respond to risks to the PPP's integrity, including potential fraud.

### **Financial regulators issue guidance for examiners**

The federal banking agencies, in coordination with state bank and credit union regulators, are telling their examiners to "consider the unique, evolving, and potentially long-term nature of the issues confronting institutions and exercise appropriate flexibility in their supervisory response." The [joint guidance](#), issued on Tuesday, said that "appropriate actions taken by institutions in good faith reliance" on statements issued by the regulators during this time should not be subject to criticism or supervisory action.

### **Atlanta Fed payments study finds jump in mobile payments in 2019**

The share of consumer payments in cash declined two percentage points from 2018 to 2019, the [Federal Reserve Bank of Atlanta reported](#) this week, as consumers moved toward mobile banking, online banking, and online payment methods. Consumers made six out of 10 payments with debit, credit, or prepaid cards, using debit cards most frequently. But 59% of consumers said they used mobile banking services, 75% used online banking, and half of consumers were using at least one electronic payment application, such as Venmo, PayPal, or Zelle. On average, consumers made 30% of their retail payments in cash.

## Confirmations, Nominations, Departures, etc.

- **Rep. Eliot Engel** (D-NY-16), who has served in the House since 1988, lost his primary campaign to middle-school principal Jamaal Bowman. Another veteran, **Rep. Carolyn Maloney** (D-NY-12), holds only a 648-vote lead over attorney and business ethics lecturer Suraj Patel while waiting for absentee ballots to be counted on June 30.

## Next Week in Washington

Once upon a time, next week was supposed to be a Congressional recess, at least on the House side. Instead, Congress has four days of work scheduled, before taking the Federal holiday on July 3. We expect to publish The Golden Apple next Thursday afternoon.

- **June 30 at 10:00 a.m.** Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on "[The Digitization of Money and Payments](#)."

- **June 30 at 10:00 a.m.** Senate Committee on Health, Education, Labor, & Pensions holds a hearing on "[COVID-19: Update on Progress Toward Safely Getting Back to Work and Back to School.](#)"
- **June 30 at 12:30 p.m.** House Financial Services Committee holds an [oversight hearing on the Treasury and Federal Reserve's pandemic response.](#) Treasury Secretary Steven Mnuchin and Federal Reserve Board Chairman Jerome Powell will testify.
- **June 30 at 4:00 p.m.** Securities and Exchange Commission Chairman Jay Clayton moderates a virtual roundtable on "[Q2 Reporting: A Discussion of COVID-19 Related Disclosure Considerations.](#)" The event will stream live online at SEC.gov.
- **July 1 at 10:00 a.m.** House Small Business committee holds a hearing on "[The Economic Injury Disaster Loan Program: Status Update from the Administration.](#)"
- **July 2 at 9:00 a.m.** House Small Business Subcommittee on Economic Growth, Tax, and Capital Access holds a hearing on "[Supply Chain Resiliency.](#)"

## The Ellis Insight

Jim Ellis reports on political news

### President

**Michigan:** After being quiet most of the presidential election cycle, the Trafalgar Group, the only pollster to correctly project the Great Lakes states in the 2016 election, released new data for Michigan, and again they are cutting against the polling grain. According to their latest political research study (6/16-18; 1,101 MI likely voters), Trafalgar projects former Vice President Joe Biden to hold only a one-point 46-45% lead over President Trump, which is almost identical to Change Research's (6/12-14; 353 MI likely voters) 47-45% published polling margin.

Trafalgar and Change portend the most recent data and reflect a much different trend. The Siena College/New York Times survey series, which included Michigan (6/8-17; 610 MI registered voters, of which a portion are culled from the inactive voter category) finds Mr. Biden holding an 11 point lead, 47-36%.

### Senate

**Alabama:** Retired Auburn University head football coach Tommy Tuberville (R) would unseat Sen. Doug Jones (D) according to a recently released Cygnal political poll of the Alabama electorate. The survey (6/13-16; 530 AL likely voters) gives Mr. Tuberville a 50-36% wide advantage over Sen. Jones, a major improvement from the May FM3 Research survey (5/14-18; 601 AL likely voters) that saw only a 47-44% split. If former US Attorney General and Senator Jeff Sessions were the Republican nominee, he would lead Sen. Jones, 45-35%. The Republican US Senate run-off is July 14th.

**Colorado:** Former state House Speaker Andrew Romanoff released an internal poll late last week that, while still showing him trailing former Gov. John Hickenlooper for the June 30th Democratic US Senate primary, proves he is gaining momentum. The Myers Research and Strategic Services firm (6/16-17; 500 CO likely Democratic primary voters), finds Mr. Hickenlooper leading Mr. Romanoff 51-39%, which is much closer than their previous 68-19% finding when polling first began of this primary in late October.

Mr. Hickenlooper is coming under fire after being found in violation of two state Ethics Commission findings and has received not only negative media coverage for the decision

but has come under further significant attack from Romanoff and of late the National Republican Senatorial Committee over integrity issues. Though the underdog is gaining in the primary battle, it is still likely that Mr. Romanoff won't be able to overcome what is still a substantial Hickenlooper advantage.

**Kentucky:** The Kentucky primary votes continue to be counted and though the Secretary of State has told counties not to release numbers until June 30th, some results are dribbling into the public domain. Only 10,377 votes have been released in Jefferson County, Kentucky, but they are enough to vault state Rep. Charles Booker (D-Louisville) into the statewide lead over retired Marine Corps helicopter pilot Amy McGrath in their battle for the Democratic US Senate nomination. The new count shows Mr. Booker with a 43.5 – 40.0% edge, or a 2,587 vote spread.

Still, over half-million votes wait to be counted so the race clearly remains undecided. It does appear from all indications, however, that the end result will be very close between the two candidates. On the Republican side, Senate Majority Leader Mitch McConnell (R-KY) has clearly been re-nominated with 87% of the counted vote.

**North Carolina:** Gravis Marketing surveyed the North Carolina electorate (6/17; 631 NC registered voters), and once again we see a very tight contest between Sen. Thom Tillis (R) and former state Sen. Cal Cunningham (D). The Gravis numbers give Sen. Tillis a one point, 46-45%, edge. Siena College/New York Times, in their polling series that includes North Carolina (6/8-18; 653 NC registered voters) sees a 42-39% Cunningham advantage. It is almost a certainty that this race will remain in toss-up mode all the way through November 3rd, which is typical for a North Carolina statewide campaign.

**Texas:** Fox News surveyed the Texas Senate race (6/20-24; 1,001 TX registered voters) and paired incumbent Sen. John Cornyn (R) with both of the Democratic runoff candidates, retired Army helicopter pilot M.J. Hegar and state Sen. Royce West (D-Dallas). Sen. Cornyn's standing against both potential opponents is virtually the same. He tops Ms. Hegar, 46-36%, and Sen. West, 47-37%. The postponed Texas Democratic runoff is scheduled for July 14th.

## House

**GA-7:** In 2018, Georgia's 7th District was decided by just 419 votes. Now, in an open seat campaign, we see a poll suggesting that another close finish is likely to occur. According to a post-primary Public Policy Polling survey (6/19-20; 589 GA-7 registered voters), 2018 Democratic nominee Carolyn Bourdeaux (D) leads retired Navy officer and physician Rich McCormick (R), 42-39%, well within the polling margin of error.

**Kentucky:** Despite the low returns, all six Kentucky House members were clearly re-nominated even though returns are scant. On the Republican side, the five incumbents scored between 88 and 94% of the early tabulated and released votes while Rep. John Yarmuth (D-Louisville) was unopposed in the Democratic primary. All six incumbents now become heavy favorites in what will likely be non-competitive general election contests.

**MN-1:** In 2018, Republican Jim Hagedorn scored a close 50.1 – 49.7% win over former Defense Department official Dan Feehan (D). Now, we head into a re-match general election this year, and a new Garin-Hart-Yang Research Group internal campaign survey (6/9-13; 601 MN-1 likely general election voters) finds the new race beginning just as close as the former contest ended.

According to a GHY, Mr. Feehan holds a slight 43-42% edge, meaning we will likely see another race in toss-up mode all the way to Election Day. Minnesota's 1st District covers all of the state's southern border and has been moving more toward the Republicans in recent elections. It was one of only three seats that flipped from Democrat to Republican in 2018.



**NJ-5:** There has been some talk that the Democratic primary challenge to Rep. Josh Gottheimer (D-Wyckoff/Bergen County) could get close but a new TargetSmart poll (released 6/25; 400 NJ-5 likely Democratic primary voters) dispels such a notion. According to the Target data, Rep. Gottheimer would destroy Glen Rock town Councilwoman Arati Kreibich by a 66-23% count. Such a margin suggests that Mr. Gottheimer will easily win re-nomination to a third term. The postponed New Jersey primary is scheduled for July 7th.

**New York:** Despite counting being far from complete in Tuesday's New York primary as absentee ballots continue to be counted. It is clear, however, that state Sen. Chris Jacobs (R-Buffalo) won the 27th District special election and will be sworn into the current House of Representatives. He defeated former Grand Island Town Supervisor Nate McMurray, 69-29%, to take the seat and replace resigned Rep. Chris Collins (R). Mr. Jacobs then easily won the Republican primary for the regular term, defeating two GOP opponents. Though many votes remain to be counted, 16-term Rep. Eliot Engel (D-Bronx) has lost his seat as former middle school principal Jamaal Bowman records a 61-34% lead among the counted vote, which gives him an insurmountable margin. Mr. Engel will join Reps. Dan Lipniski (D-IL), Steve King (R-IA), and Denver Riggleman (R-VA), who have already been denied re-nomination in the 2020 election cycle. In Manhattan, Rep. Carolyn Maloney has only a 648 vote lead in her primary contest against hotel executive Suraj Patel, meaning absentee ballots will decide the outcome here.

In the two Bronx area open seats, New York City Councilman Ritchie Torres has a wide lead in the multi-candidate battle to replace retiring Rep. Jose Serrano (D-Bronx), while attorney Mondaire Jones posts a 2:1 margin over his closest Democratic opponent in the Bronx/Westchester County district to replace retiring Rep. Nita Lowey (D-Harrison). Freshman Representative and national political figure Alexandria Ocasio-Cortez (D-Bronx) easily won her re-nomination battle with 70% of the vote.

**NC-11:** Western North Carolina voters spoke loudly on Tuesday as real estate investment company owner Madison Cawthorn recorded a 66-34% landslide win over former local county Republican chair Lynda Bennett in the postponed Republican runoff election. This, despite Ms. Bennett having former Rep. Mark Meadows' and President Trump's endorsement.

Mr. Cawthorn, who barely makes the qualifying age requirement to be a candidate, won 16 of the district's 17 counties. He now becomes a strong favorite to defeat Democratic nominee Moe Davis, a retired US Air Force colonel, in the general election.

**PA-1:** More attention is being paid to Pennsylvania's 1st Congressional District, which occupies much of the Bucks County area in suburban Philadelphia, since two-term Rep. Brian Fitzpatrick (R-Levittown) recorded only 63% of the vote against weak opposition in his Republican primary.

Now, an internal House Majority PAC poll (6/7-14; 403 registered voters of which 60% were conducted via cell phone and said to be at least "50/50" about voting in November) finds the Congressman leading new Democratic nominee Christina Finello, by a scant 45-44% margin. When leaners are added, the two contenders are tied.

**PA-10:** Another survey was just released from a district that does not draw much national attention. Democratic pollster GBAO Strategies conducted their survey in late May but is just releasing the numbers now (5/28-31; 600 PA-10 likely general election voters). The results find Rep. Scott Perry (R-Dillsburg/Harrisburg) opening with a slight 50-47% lead over State Auditor Eugene DePasquale (D) in what is again expected to be a close race. In 2018, Rep. Perry was re-elected with a 51-49% margin after the state Supreme Court ordered a re-draw of the Pennsylvania congressional districts.

**TX-13:** A WPA Intelligence survey for the Club for Growth (6/17-18; 408 TX-13 likely Republican runoff voters) finds retired Admiral Ronny Jackson, who carries President Trump's endorsement, now taking the lead over former congressional aide and current lobbyist Josh Winegarner in the upcoming July 14th GOP runoff election. The WPA results find Mr. Jackson holding a 49-41% advantage. The poll appears accurate especially when seeing Winegarner immediately launch an attack ad against Jackson, suggesting that the former man's internal polling also shows him falling behind.

**Virginia:** Two key Virginia races now have nominees. In Virginia's 5th District, Democrats selected local physician Cameron Webb scored a landslide 66% victory to oppose former Campbell County Supervisor Bob Good (R), the man who denied freshman Rep. Denver Riggleman (R-Manassas) re-nomination in the June 13th Republican district convention. Mr. Good, however, still must obtain a ballot placement waiver from the Virginia Board of Elections for missing the candidate filing deadline.

In the Tidewater area, a re-match of the 2018 campaign will occur. Former Rep. Scott Taylor, who lost his seat in that election, will return for a re-match with his Republican primary victory on Tuesday. He will battle freshman Rep. Elaine Luria (D-Norfolk) in the general election.

## Governor

**Utah:** Last week, Dan Jones & Associates released a survey of the Utah Republican electorate (6/1-10; 555 UT likely Republican primary voters) that projected former Gov. Jon Huntsman taking a slight 35-33% lead over Lt. Gov. Spencer Cox. The two are the top contenders to succeed retiring Gov. Gary Herbert (R) in November.

According to an internal Y2 Analytics survey (released 6/18; respondent data not available), however, Mr. Cox maintains a 34-28% lead over Gov. Huntsman with former state House Speaker Greg Hughes reaching 20%, and ex-Utah Republican Party chairman Thomas Wright lagging behind with 9% preference.

The Utah Policy Council/KUTV Channel 2 poll (6/9-17; 640 UT registered Republican voters) results closer to Y2 in that Lt. Gov. Cox tops ex-Gov. Huntsman, 34-30%, but shows former Mr. Hughes climbing into serious contention with 26%, while Mr. Wright increases his support to 10% preference. The Utah primary is this coming Tuesday, June 30th.

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