



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.

September 27, 2019

"... Other than that, Mrs. Lincoln, how was the play?" It was a busy week in Washington even without impeachment investigations. The federal fiscal year ends on September 30, and fortunately, the Senate did pass — and the President signed — legislation to keep the government running through November 21. Which was good for many reasons, but also because Congress left town today for a two-week recess.

House approves cannabis banking bill

The House of Representatives [voted 321-103](#) to approve [H.R. 1595](#), the Secure and Fair Enforcement (SAFE) Banking Act, on Wednesday. The bill, introduced by Rep. Ed Perlmutter (D-CO), would prohibit federal banking regulators from penalizing depository institutions for providing services to marijuana-related businesses that are legal under state law. Senator Jeff Merkley (D-OR) has introduced a companion bill, S. 1200, and Senate Banking Committee Chairman Mike Crapo (R-ID) has said the Committee will take up the issue in this Congress.

Senators introduce bipartisan bill on AML-CFT reform, beneficial ownership disclosure

Eight members from both sides of the Senate Banking Committee introduced legislation yesterday to update federal anti-money laundering and counterterrorism laws (AML-CFT). The [Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings \(ILLICIT CASH\) Act](#), introduced by Senators Mark Warner

(D-VA), Tom Cotton (R-AR), Doug Jones (D-AL), Mike Rounds (R-SD), Bob Menendez (D-NJ), John Kennedy (R-LA), Catherine Cortez-Masto (D-NV) and Jerry Moran (R-KS), bill would create a comprehensive federal database of ownership information, subject to strict privacy controls, to be administered by the Financial Crimes Enforcement Network (FinCEN). It would also set up a hub of investigators at FinCEN to help other government agencies identify and investigate potential AML-CFT violations, and it would require the Justice Department to report to Treasury on the usefulness to law enforcement of AML-CFT data gathered from financial institutions.

Moving ahead on real-time payments

This week the [Senate Banking Committee](#) and the [House Financial Services Task Force on Financial Technology](#) held hearings on efforts to speed up the US payments system. Federal Reserve Bank of Kansas City President Esther George testified at both hearings, describing the recently-announced FedNow initiative, which seeks to make real-time payments available systemwide by late 2023 or 2024. The Fed is seeking comment on the FedNow initiative, and George said those comments will guide the planning process. Witnesses and lawmakers on both sides of Capitol Hill emphasized the need for FedNow to be interoperable with private-sector systems such as The Clearing House's RTP network. Robert Hunter, TCH's Executive Managing Director and Deputy General Counsel, told the Senate Banking Committee that this would not be possible, while consultant Carol Benson told the House FinTech Task Force that interoperability was achievable, in the same way public and private ACH systems coexist. Policymakers called for an expansion of FedWire hours, and George said that considering how to make that expansion would be part of the Fed's process.

House panel asks SEC about Libra, consolidated audit trail, and more

All five members of the Securities and Exchange Commission (SEC) appeared before the House Financial Services Committee on Tuesday for a [wide-ranging oversight hearing](#). Although the Commissioners would not address pending legislation, litigation or matters before the Commission, SEC Chairman Jay Clayton said that the attention generated by Facebook's proposed Libra project is good because it draws attention to the broad opportunities and risks presented by crypto assets. He said he had "a real problem" with the idea of crypto assets being used to evade regulation, and the SEC has created an internal group to focus on digital assets. Separately, Clayton reported that progress on a consolidated audit trail is "way behind" targets, but they've worked with the self-regulatory

organizations (SROs) to agree on a new schedule, and recently proposed a rule that would align financial incentives with keeping to the milestones they've set.

Lawmakers call for OFR study on CECL

At a [hearing on Wednesday](#), members of the House Financial Services Subcommittee on Consumer Protection and Financial Institutions asked Federal Reserve Board Governor Lael Brainard and Office of Financial Research Director Dino Falaschetti for an OFR study of the potential effects of adopting the current expected credit loss (CECL) accounting standard. Rep. Blaine Luetkemeyer (R-MO), ranking member of the Subcommittee, said that CECL's procyclical effects could exacerbate a downturn. Falaschetti said that the OFR could conduct this research only at the request of the Financial Stability Oversight Council, and no member has made that request. Brainard noted that she is not a member of FSOC, and that regulators generally don't express opinions about accounting standards.

House Financial Services Committee debates proposed rules on debt collection

While the Consumer Financial Protection Bureau considers comments on its [proposed rule implementing the Fair Debt Collection Practices Act \(FDCPA\)](#), the House Financial Services Committee [heard testimony yesterday](#) on ten different bills that seek to curb abusive debt collection practices. Witnesses pointed out that the FDCPA, originally enacted in 1977, has never had implementing regulations, and policymakers argued about whether the CFPB's proposed rules were an improvement over the agency's "regulation by enforcement" methods. Communication between borrowers and creditors is essential, all agreed, and technology offers opportunities for consumer empowerment.

Racial, gender wealth gaps require systemic solutions, witnesses tell House panel

The House Financial Institutions Subcommittee on Diversity and Inclusion held a [hearing on Tuesday to examine the persistent wealth gaps](#) across race and gender lines, and how Congress can address them. The most powerful wealth-building tools are homeownership and retirement savings, Subcommittee Chairwoman Joyce Beatty (D-OH) noted, but discriminatory practices continue to make it too difficult for women and communities of color to build that wealth. Rep. Ann Wagner (R-MO), the Subcommittee's ranking member, said that more inclusion of women and minorities in well-paying STEM careers will help; she

wrote the GAO this week to ask for a study of best practices used by firms to recruit and retain women employees in STEM positions.

SEC expands “test-the-waters” to all issuers

Yesterday the Securities and Exchange Commission [approved a rule](#) to make it easier for all companies to evaluate market interest in potential initial public offerings or other regulated securities offerings. The JOBS Act explicitly authorized emerging growth companies (EGCs) to have “test-the-waters” communications with certain institutional investors; SEC Chairman Jay Clayton said yesterday that “investors and companies alike will benefit” from making that power available to all issuers. The new rule is part of a broader effort to encourage companies to go public. It will take effect 60 days after its publication in the Federal Register.

SEC votes to modernize ETF rule, speed approvals

The SEC also voted yesterday to [modernize the regulatory framework for exchange-traded funds \(ETFs\)](#). The new Rule 6c-11 will allow ETFs that meet certain conditions of the Investment Company Act of 1940 to come directly to market without obtaining an exemptive order first. “The actions announced today will replace hundreds of individualized exemptive orders with a single rule,” the SEC announced. The rule and revised forms will take effect 60 days after they are published in the Federal Register. The rule is the culmination of more than 10 years of debate about the process for issuing new ETFs.

Regulators set new \$400,000 threshold for real estate appraisal requirements

The Federal Deposit Insurance Corporation, Federal Reserve Board, and Office of the Comptroller of the Currency have [jointly approved a final rule](#) to exempt residential real estate transactions worth \$400,000 or less from appraisal requirements. The threshold had been \$250,000, originally set in 1994. For residential real estate transactions up to \$400,000, banks must still “obtain an evaluation . . . that is consistent with safe and sound banking practices.” The new limit is effective as soon as the rule is published in the *Federal Register*.

Treasury's priorities: housing finance, CFIUS, digital taxes, cryptocurrency

In a [speech at the US Treasury Market Structure Conference on Monday](#), Deputy Secretary of the Treasury Justin Muzinich said that Treasury had taken important steps on two of its top priorities this month: housing finance reform, with nearly 50 legislative and administrative recommendations submitted to Congress, and regulatory updates for the Committee on Foreign Investment in the United States (CFIUS). "The United States remains very much open to foreign investments," Muzinich said, and twice as many cases are clearing the first stage of CFIUS review as were doing so a year ago. Treasury is also working with the OECD to address the disproportionate impact of international "digital taxes" on US firms. Muzinich noted "significant skepticism" about cryptocurrencies among G7 finance ministers, and said that a working group within FSOC is taking a close look at questions about cryptocurrencies' potential "effects on financial stability, the monetary base, consumer protections and privacy."

Fannie, Freddie will not give volume discounts, says Calabria

Speaking at the annual conference of the American Credit Union Mortgage Association (ACUMA) this week, Federal Housing Financial Agency (FHFA) Director Mark Calabria [said the agency would not allow Fannie and Freddie to offer volume discounts to lenders](#). Calabria said he thought that practice drove consolidation in the marketplace, and he is committed to ensuring a level playing field for all sizes of lenders.

FHFA tells Home Loan Banks to start transitioning away from LIBOR

The FHFA [sent the 11 Federal Home Loan Banks a letter](#) today instructing them to stop entering into any new transactions that reference the London Inter-Bank Offered Rate (LIBOR) and mature after December 31, 2021. The Supervisory Letter instructs the Banks to report any new LIBOR-based transactions maturing after December 31, 2021, to update their collateral certification reporting requirements by March 31, 2020. FHFA's Division of Bank Regulation asked the Banks to submit a joint single list of LIBOR-indexed products maturing after 2021 that they would like to continue to use after March 31, 2020.

FDIC offers supplemental guidance for deposit insurance applications

On Monday, the Federal Deposit Insurance Corporation issued [supplemental questions and answers about applying for deposit insurance](#). The Supplemental Q&As address questions

about whether applicants have to provide a specific address for the main office of their planned bank (they don't) and which senior executives need to be identified in the application (only the proposed CEO, but it would be good to provide names of other key executives as well). The Q&As supplement the FDIC's [stated policy on deposit insurance applications](#), which was issued in 1998.

Confirmations, Nominations, Departures

- The Senate confirmed the nomination of Eugene Scalia to serve as Secretary of Labor yesterday by a vote of [53-44](#).
- Congratulations to our former colleague Catherine Kuerbitz, who was promoted to the position of Legislative Director in the office of Rep. David Scott (D-GA).

Next Week in Washington

- Congress is in recess until October 15. Barring unforeseen events, The Golden Apple will take next week off but will return on **October 11**.
- October 3 at 9:30 a.m. The Securities and Exchange Commission holds a [roundtable on combating elder investor fraud](#). The roundtable is open to the public, and public comments are welcome.

The Ellis Insight

Jim Ellis reports on political news

President

Bill de Blasio: Joining fellow New York politician Sen. Kirsten Gillibrand (D), New York City Mayor Bill de Blasio has officially ended his presidential quest for the Democratic nomination, though he never became a significant factor. Ironically, the only New Yorker left in the race on the Dem side is start-up entrepreneur and candidate Andrew Yang, who is now beginning to post small single-digit numbers in national polls.

New Debate Requirements: The Democratic National Committee leadership has again made qualifying for the national debate forums more difficult. Though the requirements are in place for the October debate from the Columbus, Ohio area on October 15-16, the new conditions may cull the number of future participants even further.

To qualify for the November and December forums, candidates will need to prove they have 165,000 donors, up from 130,000, and hit 3% polling support in at least four designated surveys. The Committee also added a 5% requirement from at least two polls from electorate studies in the first four voting states: Iowa, New Hampshire, Nevada, and South Carolina. The September debate featured ten participants, but at least eleven have qualified for October with the possibility of another being added.

Iowa Poll: A new Iowa poll was released over the weekend, from Selzer & Company and the Des Moines Register newspaper (9/14-18; 602 IA likely Democratic Caucus attendees), and both segments find Sen. Elizabeth Warren (D-MA) moving past former Vice President Joe Biden. This survey employs a different methodology in that they are combining the numbers for those who mentioned each candidate as their first or second choice.

Under the first choice response, Sen. Warren posts a 22-20-11-9-6% advantage over Mr. Biden, Sen. Bernie Sanders (I-VT), Mayor Pete Buttigieg, and Sen. Kamala Harris (D-CA), respectively. Combining first and second choice responses, the division expands to 42-30-21-18-16% with the candidates finishing in the same order.

Monmouth University Poll: Monmouth University again tested the first-in-the-nation primary state of New Hampshire (9/17-21; 401 NH likely Democratic primary voters) and once more sees a close battle brewing for first place between Sen. Elizabeth Warren (27%) and former Vice President Joe Biden (25%). The surprise finding is Sen. Bernie Sanders' poor standing (12%), which is uncharacteristic of where he normally polls in the Granite State. On the other hand, Mayor Pete Buttigieg out-performs his normal positioning, breaking into double digits with 10%.

Quinnipiac University Poll: Quinnipiac University is out with a new poll (9/19-23; 1,337 US registered voters; 561 self-identified Democrats and Independents who lean Democratic), and for the first time their numbers put Sen. Elizabeth Warren (D-MA) ahead of former Vice President Joe Biden. The results show Warren with 27% and Biden trailing slightly with 25%. Sen. Bernie Sanders (I-VT) is the only other candidate in double-digits, scoring 16%. South Bend Mayor Pete Buttigieg posted 7% support while Sen. Kamala Harris (D-CA) drops all the way to 3 percent. In the August Q-Poll, Mr. Biden led Sen. Warren 32-19%.

Suffolk University Poll: Suffolk University in Boston released the results of their new Nevada

survey (9/19-23; 500 NV likely Democratic caucus attenders) and found former Vice President Joe Biden returning to first place. Suffolk sees a tight contest between Biden and Sen. Elizabeth Warren (D-MA), 23-19%, with Sen. Bernie Sanders (I-VT) recording 14% support. Sen. Kamala Harris (D-CA) scores a disappointing 4% in her neighboring state, just ahead of South Bend Mayor Pete Buttigieg and New York City businessman Andrew Yang who both register 3% preference. Sen. Cory Booker (D-NJ) has 2%, and all others post 1% or less.

Senate

Colorado: Last week, national construction company CEO Denise Burgess announced her candidacy for the Democratic nomination, showing no fear to line up opposite former Gov. John Hickenlooper and eleven others. Already, however, she has ended her campaign. A news story revealing that she has liens against her for unpaid taxes is the factor that has prematurely driven her from the campaign. Mr. Hickenlooper is the clear favorite for the party nomination and we can expect him to be Sen. Cory Gardner's (R) general election opponent.

Massachusetts: Saying that, "...the outdated structures and old rules, the everyday oppressions and injustices that hold our people back," Rep. Joseph P. Kennedy III (D-Newton) officially announced his Senatorial candidacy for Democratic nomination, meaning a direct challenge to Sen. Ed Markey. The move sets up a year-long campaign, as the Massachusetts state primary won't be held until September 15, 2020. Sen. Markey responded quickly, announcing an endorsement from Rep. Alexandria Ocasio-Cortez (D-NY) and challenging Kennedy and his two other opponents to a climate change debate in the "near future."

Maine: Sen. Susan Collins (R) drew another Democratic opponent yesterday. Retired Air Force Major General Jon Treacy announced his US Senate candidacy, joining state House Speaker Sara Gideon (D-Freeport) and former gubernatorial candidate Betsy Sweet in the primary campaign.

The Maine primary will be decided June 9th, after a March 16th candidate filing deadline. Gen. Treacy will certainly start out substantially behind Ms. Gideon in the money race. She

attracted \$1.059 million in just her first few days of campaigning post her late June announcement.

Texas: Mark Yancey, an investor and former co-owner of the Dallas Wings basketball franchise of the Women's National Basketball Association, announced his Republican primary challenge to Sen. John Cornyn yesterday. Since Mr. Yancey is challenging Cornyn from the left, the primary battle may actually help the Senator with the Republican base. If Mr. Cornyn has any weakness in running for a fourth term, it would come from the party's hard right faction. In 2014, Sen. Cornyn was challenged from the right and was re-nominated with 59% of the vote against seven opponents.

House

Impeachment Pledge: A total of 219 House Democrats and one Independent have signed the petition pledge indicating they will vote for at least some version of an impeachment resolution. Doing so would impeach, or indict, the President, and send the charge to the Senate for a potential trial and motion to remove from office. Among the signers are several members who have competitive re-elections, are in Trump districts, or have primary competition. The lone Independent, Rep. Justin Amash (I-MI), will likely face attacks from both sides as he presumably seeks re-election as an Independent or minor party nominee.

The Democrats supporting impeachment who already face credible general election opposition are (listed alphabetically by name) Reps: Cindy Axne (IA), Gil Cisneros (CA), Sharice Davids (KS), Antonio Delgado (NY), Abby Finkenauer (IA), Lizzie Fletcher (TX), Andy Kim (NJ), Susie Lee (NV), Elaine Luria (VA), Tom Malinowski (NJ), Debbie Mucarsel-Powell (FL), Chris Pappas (NH), Katie Porter (CA), Harley Rouda (CA), Elissa Slotkin (MI), Abigail Spanberger (VA), and Lauren Underwood (IL).

CA-50: Former Congressman Darrell Issa (R), who represented California's 49th District for nine terms before retiring prior to the beginning of the current Congress, formally announced yesterday that he will enter the crowded 50th District primary contest against indicted Rep. Duncan Hunter (R-Alpine). Appearing with him at the announcement event were two other GOP candidates, former Escondido Mayor Sam Abed and current El

Cajon Mayor Bill Wells, who both said they will not file for the office and instead endorsed Mr. Issa.

Remaining in the race are seven other challenger candidates, four Republicans, two Independents, and 2018 Democratic candidate Ammar Campa-Najjar who lost to Rep. Hunter, 52-48%. All contenders will appear on the March 3, 2020 primary ballot, with the top two advancing into the November general election irrespective of party affiliation.

MI-6: A veteran House member who is on reporters' retirement-potential list is signaling that he will return to run for an 18th term. Michigan Rep. Fred Upton (R-St. Joseph), the former chairman of the House Energy & Commerce Committee who was first elected in 1986, is stopping short of announcing for re-election but giving every indication that he will run. He had raised almost \$700,000 at the end of June and has already printed 2020 campaign materials.

In 2018, Mr. Upton faced his toughest re-election, winning 50-46% against physician Matt Longjohn (D). Dr. Longjohn is a potential 2020 candidate, but state Rep. Jon Hoadley (D-Kalamazoo) has already announced his congressional candidacy.

MI-8: There has been little in the way of fanfare surrounding a Republican opponent for freshman Rep. Elissa Slotkin (D-Holly/ Lansing) after she defeated two-term Rep. Mike Bishop (R) last November. Now, State Board of Education member Nikki Snyder (R) says she is close to making the decision to challenge the new Congresswoman.

Ms. Slotkin was one of the top fundraisers on the congressional circuit last year, spending more than \$7.3 million on her campaign. One reason activity has been slow in this district and in the 11th CD featuring freshman Rep. Haley Stevens (D-Rochester Hills/Livonia) is that Michigan is losing a seat in reapportionment, meaning that any new member could quickly see their seat collapsed into another district. There is a better chance more activity will be present in the next cycle when the new district lines become known.

MI-13: Detroit City Council President Brenda Jones (D) both won and lost congressional races to Rep. Rashida Tlaib (D-Detroit) on the same day in 2018. Running to fill the unexpired term of resigned Rep. John Conyers (D), Ms. Jones scored a 38-36% victory over Tlaib and two others and served the final two months of the previous Congress. But, in a

primary for the regular term, one that included two additional candidates, then-state Sen. Coleman Young II, the son of former long-time Mayor Coleman Young, and former state Rep. Shanelle Jackson, it was Ms. Tlaib who scored a 31-30% win over Jones and the rest of the six-candidate field.

Speculation continues to mount that Ms. Jones, still the City Council President, will seek a re-match. Ms. Jones has not confirmed her intentions, but reports quote those close to her as saying she is considering running and is moving toward doing so. The Michigan candidate filing deadline isn't until April 21st for the August 4, 2020 state Democratic primary. So, this potential race has plenty of time to develop.

WI-7: After Wisconsin Gov. Tony Evers (D) called the special election to replace resigned Rep. Sean Duffy (R-Wausau), political moves were quickly made. Iraq War veteran Jason Church, a congressional aide to Sen. Ron Johnson (R-WI), announced his candidacy and may well become state Sen. Tom Tiffany's (R-Minocqua) lone major Republican opponent. Two other expected GOP candidates, Mosinee Mayor Brent Jacobson and surgeon Fernando Riveron both said earlier this week that they would not enter the special election campaign. Same for Democratic former state Sen. Pat Kreitlow. The special general is scheduled for January 27, 2020, with a special primary on December 30, 2019.

Governor

Louisiana: Baton Rouge-based JMC Enterprises went back into the field to test the Louisiana electorate in anticipation of the state's October 12th gubernatorial election. The survey (9/19-21; 550 LA likely voters) finds Gov. John Bel Edwards (D) hitting the 48% mark against his two major opponents, US Rep. Ralph Abraham (R-Alto/Monroe) and developer Eddie Rispone (R). The two Republicans record 22 and 20%, but this time it's Rispone who jumps into second position. Previously, Rep. Abraham had consistently been second. Mr. Rispone is spending millions of his own dollars to advertise.

West Virginia: Now that Sen. Joe Manchin (D) has said he will not enter the 2020 Governor's race, incumbent Jim Justice (R) is drawing new Democratic opponents. The latest, and perhaps most significant, is state Sen. Ron Stollings (D-Madison) who carried a

district that President Trump won with a 59 percentage point margin. At this point, Sen. Stollings is the only Democrat in the field of four candidates with electoral experience. Gov. Justice has two Republican primary opponents, former state Commerce Secretary Woody Thrasher and ex-state Delegate Mike Folk.

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