



*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.*

January 31, 2020

## **USMCA signed, Phase 1 of China deal published**

President Trump signed the US-Mexico-Canada free trade agreement this week, calling it an end to the "nightmare" of the North American Free Trade Agreement, which it closely resembles. The USMCA includes new provisions on intellectual property and trade in dairy products, streamlines the dispute resolution process, and requires that 75% of automobiles be made in the US in order to avoid tariffs. Separately, the Office of the US Trade Representative published the [text of "Phase 1"](#) of a trade deal with China, which both sides have agreed to. It covers trade secrets, patent disputes including over pharmaceuticals, piracy, counterfeiting and several elements of market access.

## **OCC will not extend CRA comment period**

Comptroller of the Currency Joseph Otting [appeared before the House Financial Services Committee on Wednesday](#) to defend the OCC-FDIC [proposed new rule implementing the Community Reinvestment Act](#). The four-hour hearing was occasionally contentious, as Committee Chairwoman Maxine Waters (D-CA) repeated Committee Democrats' request that the agencies extend the comment period on the proposal to 120 days. Otting refused, saying the agency had spent more than a year compiling feedback to its advance notice of proposed rulemaking, and that reforms had been in the works for 10 years. Otting said he had no concerns about moving forward with a rule that does not include the Federal Reserve, as the OCC-FDIC proposal would cover more than 85 percent of assets subject to CRA requirements. He said the new rule would improve transparency and accountability, and would provide incentives for banks to lend in their depositors' communities. Comments on the proposed rule are due to the OCC and FDIC by March 10.

## **Regulators propose Volcker Rule changes**

This week the federal banking regulators, the Commodity Futures Trading Commission, and the Securities and Exchange Commission announced a [notice of proposed rulemaking](#) that would change the implementation of the Bank Holding Company Act's general prohibition on proprietary trading. The agencies received approximately 3,700 comments on their 2018 proposal; this week's proposal "is intended to improve and streamline" the restrictions on covered fund investments and "provide clarity to banking entities so that they can offer financial services and engage in other permissible activities." The new rule would exempt activities of certain funds organized outside the US. It would

allow loan securitizations excluded from the rule to hold a small amount of non-loan assets, and it would revise the exemption for small business investment companies (SBICs) to account for the life cycle of those companies. Comments are due to the federal agencies by April 1.

## **Fed finalizes new control rule**

The Federal Reserve Board approved a [final rule](#) this week that sets forth explicit standards for determining whether a company “directly or indirectly exercises a controlling influence over the management or policies” of a bank holding company for purposes of the Bank Holding Company Act. The Fed has made these determinations on a case-by-case basis in the past, but the new rule seeks to make this process more transparent and consistent, and “should help to facilitate permissible investments in banking organizations and by banking organizations.” The rule creates “tiered presumptions” based on the percentage of voting securities one company controls; anything over 25% presumes control, while anything under 5% presumes that the owning company does not control the company whose shares it owns. Between 25% and 5%, the Fed will make individual determinations based on the relationship between the two companies. The new rule takes effect on April 1.

## **Not cashless yet**

While consumers have quickly adopted mobile payment technology, the US economy is a long way from being cashless, [witnesses told the House Financial Services Task Force on Financial Technology](#) on Thursday. Members discussed the growing trend of cashless storefronts as they heard testimony to support consideration of [H.R. 2650](#), which would prohibit retail businesses from refusing cash payments. More than 80 percent of American adults have smartphones, and PayPal's Head of Global Public Policy, Usman Ahmed, described exponential growth in the use of smartphones for payments, via both PayPal and Venmo. Research shows, however, that cash is still the medium of choice for transactions less than \$25, and is particularly popular with people under 30 and over 60. Regions of the country without good access to broadband don't benefit from digital payments, and time lags in the payment system remain a challenge, especially for low-income consumers. Witnesses urged Congress to act to speed up the payments system, streamline the legal framework for payments, and enact strong privacy protections for users of mobile payment services.

## **House Ways & Means talks infrastructure**

The House Ways & Means Committee held a [marathon hearing on Wednesday](#) to talk about how to pay for the vast backlog of infrastructure projects nationwide, including highways, bridges, transit systems, water projects and more. The Highway Trust Fund is structurally insolvent, since the federal gas tax has not risen since 1993; 39 states have raised their own gas taxes, but states alone have not been able to fund most major repair projects. Witnesses urged the Committee to reinstate the Build America Bonds, taxable municipal bonds created in response to the economic crisis of 2008; that program sunset last year. Most said, however, that bonds and tax credits would not be enough to fund the work that needs to be done. Republican members generally opposed the idea of raising and indexing the federal gas tax and suggested the government move to a more accurate user fee such as vehicle-miles-traveled, an approach recently adopted by the state of Oregon.

## **CFPB issues statement on “abusiveness” standard**

Last Friday the Consumer Financial Protection Bureau published what it called “[a common-sense framework](#)” for how the agency will identify practices as abusive under the Dodd-Frank Act. The agency noted that Dodd-Frank was the first federal law to prohibit “abusive” acts or practices, and that the standards for abusive behavior have been unclear. The

CFPB said it will cite or challenge abusive conduct only when the harm to consumers outweighs the benefit; that it will not allow “dual pleading” of abusiveness, unfairness, or deception violations that all arise from the same set of facts; and it will seek monetary damages only when they see a lack of good faith effort to comply with the law, although the Bureau will seek restitution for injured customers. CFPB Director Kathy Kraninger said this policy was part of her effort to foster a culture of compliance. She will appear before the House Financial Services Committee next week for the Bureau’s semi-annual oversight hearing.

## Industry asks regulators to follow CFPB’s lead on QM definition

Monday is the deadline for comment on [the federal financial regulators’ review of several elements of the Credit Risk Retention Regulations](#), including the definition of “qualified residential mortgage (QRM),” the exemption for community-focused residential mortgages, and the exemption for qualifying three-to-four unit residential mortgages. Thirty-three industry trade groups and nonprofit community groups joined today in a letter to the OCC, Federal Reserve Board, FDIC, SEC, Federal Housing Finance Agency, and Department of Housing and Urban Development that urges the agencies to postpone its review of the QRM definition until the Consumer Financial Protection Bureau finalizes its own rule defining “qualified mortgage.” The CFPB issued an advance notice of proposed rulemaking on this question last year, and has been considering comments since September. Since the definition of QRM can be “no broader than” the definition of qualified mortgage, the groups said, the agencies cannot make a thoughtful determination until the CFPB acts and the industry has time to adjust to the new definition.

## Confirmations, Nominations, Departures

- Federal Reserve Board Governor [Michelle W. Bowman](#) was sworn into a full term on the Board; her new term expires on January 31, 2034.
- The Senate received the President’s nominations of **Judy Shelton** and **Christopher Waller** to the Federal Reserve Board.
- **Rep. Doug Collins (R-GA)** announced that he will run for the Senate instead of seeking reelection to the House of Representatives, challenging Senator Kelly Loeffler for the unexpired term created by the retirement of Senator John Isakson. Collins was elected to the House in 2006.
- Securities and Exchange Commissioner **Robert J. Jackson, Jr.** will step down from that position on February 14. His term expired last year. His successor has not yet been named.

## Next Week in Washington

**February 4 at 9:00 p.m.** President Donald Trump delivers the State of the Union address to a joint session of Congress.

**February 5 at 10:00 a.m.** House Financial Services Committee holds a hearing on “[Rent-a-Bank Schemes and New Debt Traps: Assessing Efforts to Evade State Consumer Protections and Interest Rate Caps.](#)”

**February 5 at 2:00 p.m.** House Financial Services Subcommittee on Housing, Community Development, and Insurance holds a hearing on "[A Future Without Public Housing? Examining the Trump Administration's Efforts to Eliminate Public Housing.](#)"

**February 6 at 10:00 a.m.** House Financial Services Committee holds a hearing on "[Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Protection Bureau.](#)"

**February 6 at 10:00 a.m.** House Ways & Means Subcommittee holds a hearing on "[Trade Infrastructure for Global Competitiveness.](#)"

**February 6 at 2:00 p.m.** House Financial Services Subcommittee on Oversight and Investigations holds a hearing on "[Fake It Till They Make It: How Bad Actors Use Astroturfing to Manipulate Regulators, Disenfranchise Consumers and Subvert the Rulemaking Process.](#)"

## The Ellis Insight

Jim Ellis reports on political news

### President

**California Polls:** The University of California at Berkeley released their new Golden State Democratic study (1/15-21; 2,895 likely CA Democratic primary voters; online), which projects Sen. Bernie Sanders (I-VT) now taking the lead in a place where the polling results have bounced around during the past several months.

UCB finds Sanders topping the Democratic candidate pack with 28% while Sen. Elizabeth Warren (D-MA) places second at 20% and former Vice President Joe Biden drops to 15 percent. Former South Bend Mayor Pete Buttigieg, ex-NYC Mayor Michael Bloomberg, Sen. Amy Klobuchar (D-MN), and businessman Andrew Yang follow in order with 7-6-5-4%.

Change Research's large sample online poll (1/25-27; 1,190 CA likely Democratic primary voters), sees a larger 30-18-15% margin over Warren and Biden with Buttigieg at 8% and Yang pulling 5% of the vote. At stake are California's 415 first ballot votes, the largest of any state.

**Iowa Polls:** Two pollsters' final Iowa Caucus studies were released late this week, and both Monmouth University and Civiqs, polling for Iowa State University, reveal basically the same finding. That is, Sen. Bernie Sanders (I-VT) appears to be in the strongest position while former Vice President Joe Biden and ex-South Bend Mayor Pete Buttigieg are also in range to perhaps snatch a first place finish. In any event, it appears that the top four finalists, in whatever order the race ends, will likely qualify for delegate apportionment. With only 41 delegates at stake, each candidate's committed delegate share will be small.

**Florida Poll:** The new St. Pete Polls survey (1/27-28; 2,590 likely FL Democratic primary voters; online) again finds former Vice President Joe Biden dominating the field. The results project him holding a support figure of 41%, with former New York City Mayor Michael Bloomberg in second position with 17%. Here, and for the first time since polling began in earnest, both Sen. Bernie Sanders (I-VT) and Elizabeth Warren (D-MA) drop into single digits.

The YouGov Florida poll (1/26-28; 591 likely FL Democratic primary voters), however,

produces a radically different conclusion, however. YouGov projects Mr. Biden to only a two-point lead, 26-24% over Sen. Sanders, with Sen. Warren trailing with 20%. This poll is consistent with other nationally released data, while St. Pete's latest offering is not.

**New York Poll:** New York, with its 274 first ballot delegates, the second largest contingent at the Democratic National Convention, has not been frequently polled during this cycle. This is due to the state having a late April 28th Democratic presidential primary.

Civis Analytics, however, just completed a survey of the state's electorate and finds former Vice President Joe Biden holding a healthy lead, but with ex-New York City Mayor Michael Bloomberg also breaking into double digits to the point where he would qualify for committed delegate votes. The results project Mr. Biden posting a 30-17-17-14% spread over Sen. Bernie Sanders (I-VT) and Mr. Bloomberg, while Sen. Elizabeth Warren (D-MA) drops to fourth place. Ex-South Bend Mayor Pete Buttigieg, businessman Andrew Yang, and billionaire Tom Steyer all trail with 7-4-4%, respectively.

**Pennsylvania Poll:** Former Vice President Joe Biden needs to score big in his native Mid-Atlantic region, but the latest small sample Franklin & Marshall College Pennsylvania survey (1/20-26; 292 PA likely Democratic primary voters) posts Mr. Biden to only a 22-15-14% lead over Sens. Bernie Sanders (I-VT) and Elizabeth Warren (D-MA). If this poll were to project an accurate finish, the three would split the state's large 186 first ballot delegate contingent.

**Texas Poll:** Former Vice President Joe Biden has been polling well in Texas ever since former Rep. Beto O'Rourke (D-El Paso) exited the presidential campaign. Now, however, the Texas Lyceum survey (1/10-19; 401 TX likely Democratic primary voters) finds a much closer standing. The data still yields a first place finish for Mr. Biden at 28%, but Sen. Bernie Sanders (I-VT) is close behind with 26. Sen. Elizabeth Warren (D-MA) follows with 13%, while ex-NYC Mayor Michael Bloomberg, former South Bend Mayor Pete Buttigieg, and Sen. Amy Klobuchar (D-MN) all fall into single digits.

**National Polls:** The new national Echelon Insight poll (1/20-23; 474 US likely Democratic nomination event voters) finds a tight race at the top of the Democratic presidential contest, which is not surprising, but also detects former New York City Mayor Michael Bloomberg moving into double digits for the first time.

The Echelon results find former Vice President Joe Biden leading the candidate pack with 26%, as Sen. Bernie Sanders (I-VT) follows closely at 23. In third place is Mr. Bloomberg with 13%, slightly ahead of Sen. Elizabeth Warren's 10%, while former South Bend Mayor Pete Buttigieg is well back with 7%, but ahead of Sen. Amy Klobuchar (D-MN) and businessman Andrew Yang who trail with 3% apiece.

Quinnipiac University just released their latest national survey (1/22-27; 827 registered and self-identified Democratic voters) and finds former Vice President Joe Biden and Sen. Bernie Sanders (I-VT) at the top of the heap, 28-21%, with Sen. Elizabeth Warren (D-MA) taking 15% in third position. With more than \$200 million in spending behind his national effort, former New York City Mayor Michael Bloomberg moves into fourth position with 8%, while Sen. Amy Klobuchar bumps to 7 percent.

**Democratic Debates:** The next Democratic presidential forum, scheduled for February 7th from Manchester, NH, will feature a returning candidate. The Democratic National Committee yesterday announced that businessman Andrew Yang has again earned a debate podium, expanding the number of participants to at least seven. Also on stage will be former Vice President Joe Biden, Sens. Bernie Sanders (I-VT) and Elizabeth Warren (D-MA), former South Bend Mayor Pete Buttigieg, Sen. Amy Klobuchar (D-MN), and

billionaire Tom Steyer.

## Senate

**Alabama:** The OnMessage polling firm just released their latest poll finding former US Attorney General and ex-Alabama Senator Jeff Sessions (R) expanding his lead for the upcoming Alabama Senate primary on March 3rd. According to OnMessage (1/13-15; 700 AL likely Republican primary voters), Mr. Sessions now holds a 43-22-21-8% lead over US Rep. Bradley Byrne (R-Mobile), retired former Auburn University head football coach Tommy Tuberville, and former Alabama state Supreme Court Chief Judge and 2017 US Senate nominee Roy Moore.

The results, even though placing Mr. Sessions in much better position than previous polling, still suggest that he and one other opponent, either Messrs. Byrne or Tuberville, will advance to a run-off election.

**Georgia:** As expected, four-term Rep. Doug Collins (R-Gainesville) announced that he will oppose newly appointed Georgia Senator Kelly Loeffler in what could be a partisan Republican primary. Rev. Raphael Warnock, pastor of the historic Ebenezer Baptist Church in Atlanta where Dr. Martin Luther King, Jr. once served as co-pastor, also entered the race.

When Gov. Brian Kemp (R) appointed Ms. Loeffler, he also set the primary on November 3rd, a date concurrent with the general election. The format will be that of a jungle primary, meaning members of the same party could advance to a run-off if no one receives majority support. The legislature, however, is moving a bill that would change the format and move the special primary to May 19th, the partisan primary date for all other Georgia campaigns. Late in the week, however, the state House Speaker ruled the legislation would only apply to future elections.

## House

**AZ-2:** Former Organization of American States official and ex-congressional aide Peter Quilter yesterday announced that he will challenge Rep. Ann Kirkpatrick in the August 4th Democratic primary. Rep. Kirkpatrick was admitted to a rehab center to battle alcoholism her office staff announced, meaning she could be vulnerable to accusations that she can no longer adequately perform the job. The Quilter challenge might upgrade the Republican field lining up against her. A tough late Democratic primary could put this seat into play for the GOP, likely advancing the district on the Republican target list.

**MA-3:** Daniel Koh, the former chief of staff to Boston Mayor Marty Walsh (D) who lost to now-Rep. Lori Trahan (D-Lowell) by just 145 votes in the 2018 crowded Democratic primary, has filed a 2020 committee with the Federal Election Commission in order to begin raising money. Candidate filing doesn't close until May 5th for the September 1st primary, so Mr. Koh still has time to make a final decision about whether to become an official candidate.

Since the election, Rep. Trahan has come under a House Ethics Committee investigation for possible campaign finance irregularities and Mr. Koh has been elected a town Selectman in the northern Massachusetts domain of Andover. Such a primary contest would likely begin with a toss-up rating.

**NJ-2&3:** Last week, the New Jersey Republican Party leaders were successful in coaxing candidates away from forcing competitive primaries in challenge races and instead finding other places to run. Former congressional committee staff member Rosemary Becchi, instead of battling state Senate Minority Leader Tom Kean Jr. for the Republican

nomination, jumped from the 7th District to the 11th, and will now battle freshman Democratic Rep. Mikie Sherrill (Montclair/ Morristown).

Later, the party leaders have convinced venture capitalist David Richter to refrain from challenging party-switching Rep. Jeff Van Drew (R-Dennis Township/Atlantic City) and instead move into the neighboring 3rd District to oppose freshman Democrat Andy Kim (D-Bordentown). Some of the Republican leaders have already endorsed former Burlington County Freeholder Kate Gibbs, but her fundraising has so far been disappointing thus the opportunity lies for a stronger candidate to come forward. Upon exiting his 2nd District foray Mr. Richter publicly endorsed Rep. Van Drew and indicated his desire in running is to “flip a congressional seat.”

**NY-27:** The eight Republican county chairmen who together represent the 27th Congressional District GOP voters chose state Sen. Chris Jacobs (R-Orchard Park) in their meeting over the weekend. Sen. Jacobs nipped fellow state Sen. Rob Ortt (R-Tonawanda), Erie County Comptroller Stefan Mychajliw, and attorney and Fox News contributor Beth Parlato. The special election will soon be scheduled for April 28th. Democrats are expected to nominate former Grand Island Town Supervisor Nate McMurray who came within one point of upending now-resigned incumbent Chris Collins (R) in the 2018 election.

While Sen. Ortt, Comptroller Mychajliw, and Ms. Parlato were not the county chairmen's choice, they all could still enter the regular Republican primary because the candidate filing period does not close until April 2nd, and Mr. Mychajliw and Ms. Parlato are already saying they will become candidates. Democrats have a chance to take the special election because conservative voters could stay at home since Sen. Jacobs has a relatively liberal voting record and he made disparaging remarks about then-candidate Donald Trump, while Democrats will be turning out in big numbers to vote for their presidential candidate.

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