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Financial Reform Newsletter: October 21, 2016
Treasury's Antonio Weiss Launches a Preemptive Strike to Protect Appropriations Process; Troubling Implications from the Revolving Door at the CFTC; Better Markets Pursues Appeal in MetLife Case

Alerting Friend and Foe, Treasury's Antonio Weiss Launches a Preemptive Strike on Wall Street's Coming Attempt to again Hijack the year-end Appropriations Process: In what has become a distressingly familiar annual ritual, Wall Street's biggest banks, their lobbyists and political allies view must-past year-end spending bills as vehicles for their special interests that could never pass on the merits in the light of day. In fact, only backroom deals can get their dangerous deregulatory agenda through the Congress and to the President, who is faced with the Hobbesian choice of vetoing the spending bill and shutting down the entire government or signing it and letting a despicable Wall Street special interest provision become law.

This is exactly what happened in the 2014 year-end funding fight (then known as the "Cromnibus") when a key financial reform known as the "swaps push out" was repealed. That provision required Wall Street's biggest banks to put their highest risk, most dangerous derivatives dealings into a separately capitalized subsidiary so that taxpayers would not be on the hook if those bets went bad. In other words, those derivatives were "pushed out" of the government-backed bank and away from the taxpayers' pockets. The 5 biggest Wall Street banks, which control about 95% of the derivatives trading in the U.S., hated the "swaps push out" because they couldn't use taxpayer subsidized deposits to fund their derivatives dealing and they would have to bear any losses as well. So they hired innumerable lawyers and lobbyists and went on a campaign contribution spending spree to get it repealed. In the dead of night, the repeal was sneaked into the year-end 2014 spending bill and the President signed it rather than shut down the government.

That was definitely a setback for financial reform (which, by the way, candidate Hillary Clinton has promised to reinstate), but it caused everyone who is serious about protecting the American people from another financial crash and economic calamity to be on high alert for the 2015-year end fight. While the 2014 "success" might have emboldened Wall Street, it's purchased allies and mouthpieces failed spectacularly in the 2015 fight. Lead by the White House, the Treasury and Labor Departments, the Democratic leaders in the House and the Senate as well as individual members like Sen. Warren and others, the 2015 spending bill did not have any special provisions for Wall Street.

As we approach year-end and another funding fight, everyone is gearing up again and the Treasury Department just sent a preemptive strike to Wall Street: don't even think about it because we're going to fight you again. Treasury Counselor Antonio Weiss, speaking at a Wall Street Journal "Future of Financial Regulation Conference," let everyone know exactly what the administration is going to do:

> MR. WEISS: "And let me make one very clear point, because it does pertain to the transition of power. In a few weeks, Congress will come back to deal with - and for those who are following this, and you all should follow this - the continuing resolution by which the government will stay

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open and maintain operations. And there will be an appropriations funding bill that will come with this. And that appropriations funding bill will take place in December.

"Now, last year, when faced with a similar appropriations bill, it was not just about funding; there were hundreds upon hundreds of unrelated policy riders, dozens and dozens of which were meant to amend, dilute, replace, repeal core elements of financial reform. Now, this year that will be happening in the midst of a transition of presidential power, we know that, and as congressional seats both in the Senate and the House are turning over. But let me say one thing, which is that the Obama administration and the Treasury Department will remain steadfast in making sure that those targeted efforts to upend the progress which I've just described do not meet with success.

Question: "And are there efforts afoot that you know of?

MR. WEISS: "It is always the case that when an effort to peel back financial reform does not succeed through regular legislation - which is to say, in an open, bipartisan fashion, through a committee process - that there is a risk that it will show up, either all or part, as a rider in the context of an omnibus.

Question: "Perhaps from people in this room. So you have a message for them: don't do it. Please don't do it.

MR. WEISS: "Well, the message is that this administration will remain as steadfast in opposing those riders as it has in the past."

As Ben White in Politico's Morning Money called it, this **"WEISS WARNING SHOT"** could not have been more clear to the exact right audience.

Troubling Implications from the Revolving Door at the CFTC: Sarah Lynch at Reuters reported a senior "CFTC Regulator Oversaw Compliance at Firm Accused of Illegal Trades." The firm, Newedge USA LLC, now fully owned by Societe Generale, was ordered to pay $750,000 to settle civil charges for executing wash trades over a 3 ½ year period. As reported by Reuters, "the complaint said that the firm 'lacked an adequate supervisory system and compliance program' to detect and deter the illegal trades and that it failed to train the firm's staff."

The firm was sanctioned "for supervisory breakdowns over illegal wash trades that primarily occurred on [the] watch" of the now senior CFTC official, Eileen Flaherty, who is a director of the CFTC Division of Swap Dealer and Intermediary Oversight (DSIO). She was Newedge's global head of Compliance and Financial Crime Prevention for 2 ½ years of the 3 ½ years during which the illegal conduct occurred. DSIO is the "office that overseas rules governing chief compliance officers at brokerage firms, among other things." Her role was not disclosed in the action or otherwise by the CFTC.

Remarkably, "the CFTC's Sept. 28 order marks at least the fourth time since 2011 that Newedge faced a fine for various regulatory violations," including two prior times by the CFTC. While they were before Ms. Flaherty's tenure, Newedge is nonetheless a repeat offender. None of this was mentioned in the Sept. 28 order either. If the point of enforcement actions is to punish and deter, the CFTC is clearly failing with Newedge. When a company is a repeat offender and the latest illegal conduct went on for 3 ½ years, it is incredibly difficult to understand how the CFTC could justify not sanctioning individual executives, officers or staff at Newedge in addition to fining the firm.

That raises troubling questions about the possible influence of Newedge's former global head of Compliance and Financial Crime Prevention on the outcome of the case. She was, after all, a director at the CFTC at the same time that her contract was being renewed by the CFTC Chairman and while the

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CFTC Enforcement Division was negotiating a settlement with her prior firm for conduct that occurred during her watch and for which she appears to have been responsible for preventing or detecting. While we have no doubt that she was recused from all matters relating to Newedge and that the CFTC Enforcement Division was not directly influenced in any way, it is difficult to believe that no one was thinking about what it would look like if it were known that a current CFTC DSIO director was the head of compliance at the sanctioned firm and the questions it would raise about the appropriateness of that hire and/or her current responsibilities. One also has to wonder if the Commissioners, in addition to the Chairman, were fully informed of the details of her role at Newedge, it's recidivist history and the adequacy and justification of the punishment or lack of punishment this time.

Unsurprisingly, Reuters reported that "The case has raised eyebrows among some commission staffers, who questioned whether Flaherty did her job properly at Newedge, and whether she was fit for her current role, several people told Reuters, asking not to be named because they were not authorized to speak with the media."

Fighting for the Public's Right to Know and Transparency, Better Markets Pursues its Appeal to Open the Record in the critically important MetLife designation case. Longtime readers of this newsletter know the high stakes in the *MetLife vs. Financial Stability Oversight Council (FSOC)* case. FSOC was specifically set up to make sure that no nonbank like MetLife ever grows so large, so risky, and so dangerous that it threatens the economy and the financial system. If it does, then FSOC is required under law to designate it as "systemically important" and the Federal Reserve is mandated to regulate it accordingly, i.e., sufficiently to remove the threat to America's families.

While Better Markets has already filed an amicus brief on the merits of this case, the brief we just filed seeks to reverse the district court's refusal to unseal the vast amount of information the parties have kept secret and nonpublic. Better Markets was previously allowed to intervene in the district court specifically to press this transparency issue, but its request for the nonpublic filings to be justified or disclosed was denied. As a result, fully 2/3rds of the record in this case remains under seal. Better Markets appealed that ruling and filed its brief in the D.C. Circuit, invoking the public's presumptive right to access judicial documents.

The stakes in the case couldn't be much higher. Under attack is the FSOC's ability to protect our financial system from a repeat of the devastating 2008 financial crisis. The court below invalidated FSOC's decision that MetLife should be subject to additional regulatory supervision because of the potential risks it posed to our financial system. This decision is enormously important to all Americans who will again suffer the consequences if too-big-to-fail banks and nonbanks are not properly regulated. Yet the public has little ability to understand the decision or the dispute because over two-thirds of the record on which the district court relied remains under seal, cut off from the public's view. And the parties have never been required to justify their confidentiality claims or demonstrate that their privacy interests outweigh the public's right to know. That is simply unacceptable, which is why Better Markets is fighting to for the public's right to know the basis for such a historic and consequential decision.

Better Markets' brief can be found here.

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