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PROTECTING CONSUMERS FROM MARKET MANIPULATION ACT

Strengthening the Separation Between Banking and Commerce

For decades, federal banking regulation has established a separation between banking and commerce. This longstanding doctrine—a fundamental underpinning of the Bank Holding Company Act of 1956 (BHCA) —is spurred by the belief that banks should not use their leverage as financial actors to game economic outcomes. Under the doctrine, banks may facilitate business through the extension and underwriting of loans, etc., but not through direct production or sale of goods. Commercial entities were purposefully walled off from the definition of banking in order to avoid conflicts of interests.

Whenever the line between banking and commerce has been blurred, it has threatened the competitiveness, safety, and soundness of our economy. During the Gilded Age, JP Morgan monopolized railroads and manipulated rates. In the 1980s, real estate developers took control of savings and loans institutions and opened up “see-through offices,” helping spark the Savings and Loan Crisis of 1986.

Now is a crucial moment to strengthen the separation between banking and commerce. A recent CNBC report about the launch of “Uber Money” summarized the threat of big tech moving into the financial system: “Uber’s move is the latest sign that tech giants are looking to make inroads into finance. Apple recently launched a credit card with Goldman Sachs, and Amazon has been offering small business loans to its merchants for years. Facebook unveiled an ambitious plan this year to help remake global finance with its Libra cryptocurrency, although that effort lost momentum after some corporate partners abandoned the project.” Following the announcement of Facebook’s “Libra” project, banking expert Graham Steele warned in the *Washington Post*, “Commingling a digital marketplace with all of a customer’s financial information, including purchases and deposits, is bad for consumers and taxpayers.”

Open Markets Institute fellow Matt Stoller wrote in the *New York Times* about the threat Libra poses to the separation of banking and commerce: “since the Civil War, the United States has had a general prohibition on the intersection between banking and commerce. Such a barrier has been reinforced many times, such as in 1956 with the Bank Holding Company Act and in 1970 with an amendment to that law during the conglomerate craze. Both times, Congress blocked banks from going into nonbanking businesses through holding companies, because Americans historically didn’t want banks competing with their own customers…Imagine Facebook’s subsidiary Calibra knowing your account balance and your spending, and offering to sell a retailer an algorithm that will maximize the price for what you can afford to pay for a product. Imagine this cartel having this kind of financial visibility into not only many consumers, but into businesses across the economy. Such conflicts of interest are why payments and banking are separated from the rest of the economy in the United States.”

Summary of Protecting Consumers from Market Manipulation Act:

- Section II of the Protecting Consumers from Market Manipulation Act prohibits financial activities from comprising more than 5% of the revenue of a large non-financial firm. This will restrict the scope of initiatives like Libra and prevent the possibility that the prudential banking regulators will grant a fin tech charter or otherwise sanction bank-like activity by tech giants. When the OCC announced its special-purpose charter process last year, it was widely seen as opening the door for Big Tech to enter banking, with one lawyer for the tech industry calling the announcement a “game changer.”

  Big Tech firms have been moving into the financial services space, and the risks inherent in blending our financial decisions with data collection giants have already become apparent. After Apple rolled out a credit card partnership with Goldman Sachs, the New York Department of Financial Services launched an investigation into claims of gender discrimination by the card’s algorithm. Google has announced a checking account project, even as the federal government is probing whether its health care partnership has violated privacy laws. And lingering regulatory questions have forced Facebook to slow down the launch of both its controversial Libra project and WhatsApp Pay in India.

- Section III of the Protecting Consumers from Market Manipulation Act closes loopholes created by the Gramm Leach Bliley Act (GLBA) that have enabled commercial banks to own commodities. Banks have used loopholes in the GLBA to expand their investments in fossil fuels and other commodities. The most notorious example of this was Goldman Sachs’ manipulation of aluminum prices exposed by the *New York Times* in 2013. There are many other examples, including JP Morgan Chase’s manipulation of the electricity markets and Morgan Stanley’s manipulation of oil prices. In 2016, the Federal Reserve proposed a rule to strengthen limitations on banks’ ownership of commodities, but it was never finalized. Section III of the Banking/Commerce Act reinstates a prohibition on banks acquiring more than a 25% stake in businesses, as recommended by the Federal Reserve in 2016.

- Section IV of the Protecting Consumers from Market Manipulation Act requires the following studies around digital currency:
  - The Financial Stability Oversight Council (FSOC) shall review the financial stability implications of digital currency, and examine whether large digital currencies should be designated a systemically important financial market utilities.
  - The Federal Reserve shall review the implications the currency poses for monetary policy and questions of monetary sovereignty.

Case Studies

- October 2019: *The American Prospect* reports: "Mega-bank JPMorgan Chase, years after being fined over $400 million for manipulating energy markets, is effectively purchasing an electric utility in El Paso, Texas, laundered through an allegedly independent investment fund."
- July 2019: A cargo ship containing over $1 billion worth of cocaine was seized in Philadelphia. The ship turns out to be owned by JP Morgan Chase.
- July 2013: The *New York Times* reveals that Goldman Sachs bought up more than a quarter of the aluminum market, and had used its ownership of aluminum warehouses to inflate the price of aluminum, costing consumers $5 billion.
- May 2013: The Federal Energy Regulatory Commission fines JPMorgan Chase for manipulating electricity markets in California and Michigan.
- May 2012: Aubrey McClendon is forced to step down as chair of Chesapeake after *Reuters* reports that he'd taken up to $1.1 billion in stakes against Chesapeake's' oil and gas wells. *Reuters* reports that McClendon was also operating a $200 million hedge fund within the company.
- February 2011: British regulators label JP Morgan Chase's control of the metals business "restrictive" and manipulative."
- January 2009: Morgan Stanley is found to have hired a supertanker to store oil at sea presumably as a means to remove supply and profit from higher prices later. According to reporting by *Bloomberg*, "Investment banks like Morgan Stanley . . . were the leaders in keeping 80 million barrels of oil in storage in takers at sea—nearly enough oil to supply the world for a day."