

LXR Group

Biweekly Bulletin

Bringing clients and subscribers exclusive policy updates and analysis from the world of capital markets, fintech, investor protection and more.

In This Volume:

Congressional Report Criticizes *Robinhood* for "Troubling Business Practices, Inadequate Risk Management, and a Culture that Prioritized Rapid Growth"

FINRA Publishes Independent Counsel's Report on Arbitrator Selection Process

Plus, the latest Top Policy Developments, Congressional Updates and Regulatory News



Bipartisan Retirement Legislation Increasingly Likely as Key Senate Committees Approve "Secure 2.0" Package

On Wednesday, June 22nd, two Senate subcommittees approved proposals that make passage and enactment of a retirement-improvement package more likely this year. First, the Senate Finance Committee unanimously approved the [Enhancing American Retirement Now Act](#), or "EARN Act," which includes "more than 70 proposals aimed at helping more Americans save - the culmination of months of collaborations between just about every member of the Committee, Democrat and Republican.

At the same time, the Senate Health, Education and Labor (HELP) Committee [advanced](#) a complimentary bill entitled the [RISE & Shine Act](#). Together, the two bills represent the Senate’s version of “[Securing a Strong Retirement Act of 2021](#)” – a companion to the House retirement package ([H.R. 2954](#)) , approved in late March in a bipartisan 414-5 vote.

The House and Senate bills [have much in common](#) including “making it easier for employers to make contributions to 401(k) and similar workplace plans on behalf of employees who are making student loan payments instead of contributing to their retirement plan.” Additionally, both proposals allow “older workers to save more through so-called catchup contributions to their 401(k) and raising the age when savers must begin taking required minimum distributions in their retirement accounts.”

There are differences, however, that will need to be reconciled before any final bill can be sent to the President. For example: (1) the House package includes a provision requiring employers to automatically enroll workers in their 401(k) plans, the Senate bill does not. (2) The Senate bill would make savers tax credit fully refundable, whereas the House would not. (3) The House bill would allow “catch-up” contributions for workers ages 62-64, while the Senate bill would apply the provision to workers ages 60-63.

Nonetheless, Congress is on track to send a retirement bill to the President’s desk by December 31.

Top Policy Developments

Congressional Report Criticizes Robinhood for "Troubling Business Practices, Inadequate Risk Management, and a Culture that Prioritized Rapid Growth." On Friday, June 24th, the HFSC Subcommittee on Oversight and Investigations released a [report](#) entitled “Game Stopped: How the Meme Stock Market Event Exposed Troubling Business Practices, Inadequate Risk Management, and the Need for Regulatory and Legislative Reform.” The Report examines how GameStop Corporation (GameStop) and other “meme stocks” became extraordinarily popular on social media leading into January 2021. It documents how institutional investors bet against these stocks, predicting they would fall in price, while retail traders took the other side of that bet, purchasing the stocks en masse. This trading frenzy drove historic market volatility, which reached a peak on January 28, 2021. The Report’s core findings are, essentially, that *Robinhood* acting irresponsibly, failed to properly anticipate risk posed by volatility despite historic outages, and prioritized growth even as it risked becoming illiquid. According to the Subcommittee, the Report is based on interviews with more than 50 individual, 19 institutions, and 95,000 pages of documents. It also builds on information uncovered during the course of three full committee hearings, held on [May 6, March 17, and February 18, 2021](#) – entitled “Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide.”

The Committee Report identified four key findings from its investigation:

- *Robinhood exhibited troubling business practices, inadequate risk management, and a culture that prioritized rapid growth above stability during the Meme Stock Market Event.*
- *Broker-dealers facing the most severe operational and liquidity concern executed the most expansive trading restrictions during the Meme Stock Market Event.*
- *Most of the firms the Committee spoke to do not have explicit plans to change their policies for how they will meet their collateral requirements during extreme market volatility or adopt trading restrictions when market volatility may warrant.*
- *The Depository Trust & Clearing Corporation (DTCC) waived \$9.7 billion of collateral deposit requirements on January 28, 2021. The DTCC lacks detailed, written policies and procedures for waiver or modification of a "disincentive" charge it calculates for brokers that are deemed to be undercapitalized and has regularly waived such charges during periods of acute volatility in the two years before the Meme Stock Market Event.*

FINRA Publishes Independent Counsel's Report on Arbitrator Selection Process. On Wednesday, June 29th, FINRA published a [report](#) entitled “The Report of the Independent Review of FINRA’s Dispute Resolution Services - Arbitrator Selection Process.” The forty page document provides an independent review and analysis of allegations raised against the SRO’s Dispute Resolution Services (DRS) - a division of FINRA that administers the largest securities arbitration forum created to assist investors, brokerage firms and individual brokers in resolving securities and business disputes. The report responded specifically to allegations from an arbitration filed on April 27th, 2017, by Brian Leaggett and Bryson Holding LLC against Wells Fargo Advisors, alleging the brokerage “caused them to lose more than \$1 million. In turn, both parties arbitrated their claims, where the arbitration panel then issued an award denying Claimants’ causes of action and instead rewarding Wells Fargo \$51,000 in costs and fees. Two and a half years later, Georgia Superior Court Belinda Edwards [vacated](#) the claim, finding Wells Fargo had [manipulated](#) FINRA’s arbitration selection process, with help from DRS, when Attorney Terry Weiss “[insisted](#) on three potential arbitrators be removed from the neutral list itself, prior to arbitration selection, without notification to any parties.” More specifically, the court asserted that the manipulation stemmed from an agreement between Wells Fargo and FINRA, under which “arbitrators from a prior case involving the counsel would be automatically removed from the list of potential arbitrators in any case in which the counsel appeared.

The review, led by Christopher W. Gerold a former President of the NASAA and Chief of the New Jersey Bureau of Securities, and now partner at law firm Lowenstein, Sandler, found that “After careful consideration of the evidence obtained during that review, Lowenstein does not believe that there was any agreement between Weiss and FINRA regarding the panels for Weiss’s cases. The evidence further demonstrated that FINRA personnel generally adhered to the policies and procedures and that their actions during the Leggett Arbitration were intended to be fair and reasonable at each step.” Further, in considering the “primary question,” of whether there was a “secret agreement” between Wells Fargo’s attorney in the case and FINRA to “remove certain arbitrators from arbitrator selection lists,” the review found that “After careful consideration of the evidence obtained during the investigation, Lowenstein does not believe that there was any agreement.” The conclusions of the review were based on 29 interviews, examination of more than 150,000 documents and emails, reviews of telephone records, arbitrator selection systems, algorithms, and relevant audio recordings. The report, however, recommended a [series of potential improvements](#) to further enhance DRS, including but not limited to implementing ongoing, mandatory training for staff, requiring written explanations of approval or denial of a casual challenge to the selection of an arbitrator, conducting external procedural review of the arbitrator selection algorithm, and updating the DRS Manual and rules to clarify staff roles and procedures.

On The Hill

House Appropriations Committee Completes Work on Fiscal Year 2023 Appropriations Bills. On June 30, the House Appropriations Committee completed its work on the last of the twelve FY 2023 appropriations bills. Among the bills to advance to the Full House is the [FY 2023 Financial Services and General Government Appropriations Act](#), which the Committee [approved](#) on June 24th. As reported, the House FSGG legislation would appropriate \$2.15 billion to the SEC. In addition, the Committee Report that accompanied the bill included specific recommendations. For example, the [Committee Report](#) notes the Committee’s “concern that too many small-dollar investors lack access to high-quality legal advice and representation” and urges the SEC to explore “potential grant program that could assist in the creation, development, expansion, or continuation of investor advocacy clinics.” The Report also notes “the Committee is concerned about proliferation of mandatory pre-dispute arbitration contracts by SEC-registered investment advisers,” and “directs” the SEC to “gather detailed information about how such contracts are used by SEC-registered investment advisers and the effect such contracts have on investors who are harmed by the conduct of advisers.” Other priorities addressed in the Report include: [Data Security](#), [Prosecuting White Collar Criminals](#), [Registered Index Linked Annuities](#), [Climate Related Disclosures](#), [Climate Change Risks to Municipal Bond Markets](#), [Digital Assets](#), [Workplace Diversity and Equity](#), [Workplace Harassment Claims](#), [E-Delivery](#), [Rental Income Securitizations](#), [Economic Analysis and Comment Periods](#) and [FINRA’s Consolidated Audit Trail](#). The Full House is expected to consider many or all of its appropriation bills after the July 4 recess; the Senate Appropriations Committee has not announced a formal schedule for the Senate markups is unlikely to do so until after the recess.

House Financial Services Committee Advances Bills to "Prevent Housing Fires, Support Small Businesses, Stand up for Consumers, and Protect Whistleblowers." On Wednesday, June 22nd, the House Financial Services Committee (HFSC) convened for a [markup](#) of [ten legislative proposals](#). Among the bills approved was [H.R. 7977](#), "Promoting Opportunities for Non-Traditional Capital Formation Act," sponsored by Committee Chairwoman Maxine Waters (D-CA), which would "amend the Securities Exchange Act to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital raising options for traditionally underserved small businesses. A second notable bill, [H.R. 5912](#), "the Closure the Loophole Act," sponsored by Rep. Jesus "Chuy" Garcia (D-IL), would "eliminate a regulatory exemption allowing commercial firms to operate FDIC-insured banks as industrial loan companies (ILCs) without being subject to the same consolidated supervision other requirements that traditional banks are subject to pursuant to the [Bank Holding Company Act](#). While the overwhelming majority of bills approved were authored by Democrats, the Committee also advanced [legislation](#) authored by Rep. Anne Wagner (R-MO), that would provide the SEC with additional discretion to prioritize its examination process of credit rating agencies as it deems appropriate. A complete list of roll-call votes on each of the bills advanced by the Committee is accessible [here](#).

Subcommittee on Commodity Exchanges, Energy and Credit Holds Hearing on Digital Asset Regulation.

On Thursday, June 23rd the House Committee on Agriculture's Subcommittee on Commodity Exchanges, Energy and Credit convened for a [hearing](#) entitled "The future of Digital Asset Regulation," where disclosure emerged as the central theme throughout the meeting. In his opening statement, Chairman Sean Patrick Maloney (D-NY) highlighted the need to

protect retail investors in the digital assets market, namely through regulatory certainty and investor education, and this begins with designating a regulatory authority to oversee the industry and strictly defining what their responsibilities are. While many of the witnesses were in agreement about the urgent need for crypto regulatory clarity, Dr. Christopher Brummer of Georgetown Law [noted](#) "the future of digital asset regulation will require more than just defining agency jurisdiction... but it will also involve revisiting long standing assumptions about market infrastructures embedded in securities and derivatives law and adapting the regulatory system in creative ways that reflect our experience and values." Brummer offered the view that the SEC should be the primary agency to regulate many aspects of the crypto marketplace, but posed the question of whether the CFTC also should assume responsibility over the spot market for those digital assets that are *commodities* and not *securities* - a solution Dr. Brummer believes may make the most sense, given the "CFTC is up to the job," "has comparative advantage in this area," and "has the intellectual expertise to oversee these markets." Brunner also made the point, repeatedly, the "disclosures should be read, not just filed," while also noting that too much complexity of disclosures may create obstacles and vulnerabilities for consumers.

Witnesses in the hearing included [Vincent McGonagle](#) (Director of the Division of Market Oversight, CFTC), [Dr. Christopher Brummer](#) (Professor at Georgetown Law), [Jonathan Levin](#) (Co-Founder and Chief Strategy Officer at Chainalysis), and [Charles Hoskinson](#) (CEO at Input Output Global).

FINTECH Taskforce Holds Hearing to Discuss Obstacles Arising in Diverse-Owned Fintechs. On Thursday, June 30th, the HFSC Task Force on Financial Technology convened for a hearing entitled "[Combatting Tech Bro Culture: Understanding Obstacles to Investments in Diverse-Owned Fintechs.](#)" The hearing focused primarily on analyzing diversity trends within the industry, with witnesses honing in on suggestions to combat the lack thereof. In his opening statement, Chair Stephen Lynch (D-MA) [highlighted](#) the lack of diversity in venture capital firm leadership, observing "there's an obvious trend toward white

“We’re close to significant movement and in a big bipartisan way on stablecoins in the House. This summer, you’ll see a bipartisan bill out of HFSC on asset-backed stablecoins. If... we have a broad agreement on this and the chair prioritizes it, you can see that reported out of committee and voted on the House floor before the election.”
-HFSC Ranking Member Patrick McHenry (R-NC) speaking on June 10th at Consensus22

males” when reviewing the founders of companies who receive this funding. Further, he acknowledged that “lack of diversity is a trend in almost every industry that VC firms invest in, but it is particularly troubling in the fintech space.” Chairwoman Maxine Waters (D-CA) joined Lynch in acknowledging the performance and success of many women and minority owned firms, despite only 2% of VC funding going to women owned companies and just 1% going to black founders. Several witnesses, including but not limited to Jenny Abramson and Marceau Michael, agreed strongly that lack of diversity in fintech companies is a major

To continue reading you must be subscribe to LXR’s [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year

To continue reading you must be subscribe to LXR's [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year

To continue reading you must be subscribe to LXR's [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year

To continue reading you must be subscribe to LXR's [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year

To continue reading you must be subscribe to LXR's [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year

To continue reading you must be subscribe to LXR's [Biweekly Bulletin on Capital Markets & Financial Services Policy](#).

The Bulletin is published every other Friday, when one or both chambers of Congress are in session. It provides a comprehensive snapshot of the key developments in financial services legislative and regulatory policy; detailed analysis of certain legislative and regulatory proposals; a calendar showing key events, on and off Capitol Hill during the next work period; podcast and reading recommendations; curated job postings; and more. Subscribers to the Bulletin are also entitled to receive certain other LXR Group publications, including Legislative Analysis and Election Analysis.

- To subscribe to the Bulletin, please [click here](#).
- To sign up for a **free** 1-month trial, please [click here](#)
- Subscriptions are available for as little as \$149/year