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To: Biden Transition Team
From: Public Citizen
Re: Actions the Next Administration Can Take to Address Financialization, including Runaway CEO Pay, and establish Climate Sensitive Supervision
Date: October 2020

While Wall Street's financialization of the economy and income inequality have festered prominently among America's problems for many years, the pandemic tore the scar off the wounds caused by these companion problems.[1] The 2008 financial crash demonstrated that the entire economy could be cratered by the actions of one sector, namely the banking sector. Through the toxic mix of commercial and investment banking (following repeal of Glass Steagall in 1999), bankers began writing mortgages at a pace and at prices well beyond what average Americans could afford to service. Bankers did this to feed an insatiable bonus-generating securitization and proprietary trading machine. When government enforcers failed to combat frauds, frauds proliferated. When mega-banks faltered due to the rot of these fraud-ridden mortgage pools, Washington asked taxpayers to bail out the bank's creditors. The Obama-Biden administration responded with major stimulus through the Economic Recovery and Reinvestment Act of 2009 to aid the Wall Street-crushed economy, and the Wall Street Reform and Consumer Protection Act of 2010 to bring reform to Wall Street.

Financialization, or subordinating the real economy of rural America and Main Street to the money machine of Wall Street didn't begin and end with mortgage fraud. As the economy and the stock market recovered after the crash, corporations chose not to reinvest their profits in expansion or fairer wages, but in buybacks to inflate the stock prices further because it benefited C-suite stock-based compensation plans. Trump and a Republican Congress supercharged the buyback binge with a corporate tax cut, and the pandemic led us back into a recession[2]

[1] 2020 Democratic Platform, DEMOCRATIC NATIONAL CONVENTION (August 18, 2020) file:///C:/Users/bnaylor/Downloads/2020-Democratic-Party-Platform.pdf

[2] The 2017 Trump tax giveaway law generated a windfall for all American corporations by cutting the corporate rate by 40 percent. Trump officials claimed corporations would trickle down profits by investing these new proceeds into more company assets, including higher worker pay. Trump claimed the bill would generate an annual average pay raise of $4,000. Treasury Secretary Steven Mnuchin also claimed the increased economic vitality would generate enough new tax revenue that the tax cuts would pay for themselves. Unsurprisingly, none of this proved true. In the first quarter of 2018 alone, with the new tax law fully in force, American corporations bought back a record $178 billion in stock.

This year, the CARES Act intended to serve as a safety net for the pandemic-silenced sectors of the economy. Congress approved more than $500 billion in funds for corporate America in the hopes that firms would retain employees through the shutdown. These funds were necessary, proponents explained, because these companies lacked the reserves to keep workers on the payroll. Had these same firms not engaged in a spree of buybacks just in the last three years, they might need taxpayer help. In the last three years, companies in the S&P 500 repurchased $2 trillion worth of their own stock.[3]

In fact, in many ways, the necessity of the CARES Act, with it's direct $1,200 individual payments, stem from the corruption of pay taken from workers and concentrated in the C-suite. Going into the pandemic, almost half of Americans lack even $400 in savings to buy groceries beyond a few weeks during the lockdown.[4]

While Americans have been suffering, Wall Street has been pulling in huge profits. Speculative traders are making millions off market volatility and high-speed trading has intensified market swings. Moreover, the lopsided "K shaped" nature of the recovery has further exacerbated economic inequality.

Finally, the pandemic has shown that lack of preparation for known threats can be devastating. Climate change is one such known threat, and it is time that the sector responsible for funding fossil fuels be enlisted to promote remediation.

Americans understand these issues and support reform. A yearly poll since 2010 shows strong, steadfast, bipartisan support for strong Wall Street reform and regulation.[5] Polls also show similar support for executive pay reform.[6][7] The policies of the Vice President and the Democratic Party importantly reflect these views. As summarized in the platform: "We will strengthen and enforce the Obama-Biden Administration's Dodd-Frank financial reform law, including the Volcker Rule, to protect American workers from the impacts of future financial crises, and will support an updated and modernized version of Glass-Steagall. And when justified by the law, we will back criminal penalties for reckless executives who illegally gamble with the savings and economic security of their clients and American communities."[8] Polls[9] also affirm support for responsible climate change responses, and the Democratic platform recognizes, "We have no time to waste in taking action to protect Americans' lives and futures."[10]

Vice President Biden has organized an astute, experienced team of veteran advisors expert on these issues. He has spoken with passion on the need for policies that help average working Americans in almost every speech.

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[3] Matt Phillips, "The Stock Buyback Binge May Be Over. For Now," NEW YORK TIMES (March 23, 2020) https://www.nytimes.com/2020/03/24/business/coronavirus-stock-buybacks.html

[4] *Report on the Economic Well-Being of U.S. Households in 2018*, FEDERAL RESERVE (May 2019) https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf

[5] Lake Research Partners, *Polling Memo,* Americans for Financial Reform (Sept. 29, 2020) https://ourfinancialsecurity.org/2020/09/voters-support-strong-2020/

[6] Bartlett Naylor, *White Collar Crime Still Pays,* PUBLIC CITIZEN (July 21, 2020) https://www.citizen.org/article/white-collar-crime-pays/

[7] When America thinks of Wall Street, they understand . . .
a. the mega-banks will inevitably stumble and will precipitate another taxpayer bailout, and
b. they break the law with impunity.
c. bankers are grossly overpaid
d. pandemic relief goes through banks

[8] Party Platform, Democratic National Party (August, 2020) https://democrats.org/where-we-stand/party-platform/

[9] Pew Research Center, *How Americans See Climate Change,* PEW CHARITABLE TRUSTS (April 21, 2020)

[10] Party Platform, Democratic National Party (August, 2020) https://democrats.org/where-we-stand/party-platform/

To ensure that the next administration can hit the ground running, this memo outlines the specific reforms that it can act on both immediately and in the short-term to realize the Vice President's commitment to average Americans.

First Day/First 100 days/Legislation

Action 1: Complete Wall Street Systemic Risk Reform

- Recommendation for Day One:
    - The Democratic National Platform calls for reinstatement of the Glass-Steagall Act separation of commercial and investment banking. To realize this, the Vice President can name a panel to draft model legislation to address systemic risk to answer the "too big to fail" problem. Public Citizen's *TOO Big, a Blueprint for Wall Street Reform,* details both the problem and the solution.[11]
- Recommendation for Short-Term Action (First 100 days)
    - These solutions will take Congressional action and many solutions already exist in legislative drafts, notably Sen. Elizabeth Warren's 21st Century Glass Steagall Act. Immediately, Vice President Biden can demonstrate that he is serious, ambitious, and inclusive announcing support for major Wall Street reform, such as formally embracing the Warren bill.
- Recommendation for Day One:
    - Issue a memorandum that asks the Treasury Secretary, as chair of the Financial Stability Oversight Council (FSOC), or a committee of experts to report to FSOC, to consider major firms for designation as systemically important financial institutions (SIFI). The memorandum should specifically name Blackrock, Blackstone, Vanguard, Fidelity, Prudential, and MetLife as corporations deserving special attention.
    - Direct Treasury to report on progress of Volcker Rule implementation, as specifically highlighted in the DNC platform. The Treasury Secretary, as FSOC chair, can direct the FSOC to use powers already provided in Dodd Frank 619(b) (The Financial Stability Oversight Council shall. . . make recommendations on implementing the provisions of [Section 619, a.k.a., the Volcker rule]" This should include a recommendation that agencies publish anonymized trading results by Volcker covered institutions.
    - Direct Treasury Secretary to webcast FSOC meetings and provide after each a one-hour Q&A session with the public.

Action 2: Reform Corporate Misconduct Prosecution

- Recommendation for Day One:
    - Declare that the Attorney General, upon assuming office, will fully honor the Yates Memo, which calls on prosecutions to seek "accountability from the individuals who perpetrated the wrongdoing.[12]

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[11] Bartlett Naylor, *TOO Big*, PUBLIC CITIZEN (2016) https://www.citizen.org/wp-content/uploads/toobig.pdf
[12] *Individual Accountability,* DEPARTMENT OF JUSTICE (website accessed Oct. 22, 2020) https://www.justice.gov/archives/dag/individual-accountability

- Announce support of legislation that says no bank Deferred Prosecution Agreement will fail to include an economic assessment of why a criminal prosecution would lead to greater collateral costs than the benefits of deterrence.[13]
- Declare that financial regulators of both political parties will be chosen from a pool who espouse strong policing zeal
- Announce there will be a quarterly presidential commendation for strong financial regulator.
- Send a memorandum to the Department of Labor asking it to enforce criminal and civil penalties without exception against financial actors convicted of felonious mishandling of pension funds. In addition to holding responsible individuals personally accountable, DOL should enforce existing regulations that disqualify affiliates and related parties of a company convicted of certain felonies (e.g. tax evasion, fraud, embezzlement) from enjoying the privileged exemption status of Qualified Professional Asset Managers (QPAMs). A 2015 DOL decision to allow Credit Suisse's affiliates to continue doing business after being convicted of tax crimes highlights DOL's failure to enforce the QPAM disqualification. The public interest demands greater enforcement of protections around pension funds.[14]Support the Bad Actors Disqualification Act authored by Chair Maxine Waters (D-Calif) that requires a supermajority of SEC commissioners to approve waivers from otherwise automatic disqualifications following criminal settlements.[15]

Action 3: Reversal of Trump Investor Protection Deregulation

- Recommendation for Day One:
  - Announce support for regulators revisiting and overturning recent Trump rules, including:
    - The DOL's dismissal of the Avon letter, which effectively mandates that institutional investors not support critical shareholder resolutions calling for environmental, social and governance reforms at publicly held corporations.
    - The DOL's rule that allows investment advisors to escape their fiduciary duty for funds governed by the Employee Retirement Income Security Act (ERISA).
    - The Securities and Exchange Commission's (SEC) rule that loosens fiduciary obligations of investment advisors. (Reg BI)
    - The SEC's rule that that limits the ability of shareholders to bring resolutions.
    - The SEC's rule that censures proxy advisory firms.
    - The Office of the Comptroller of the Currency's (OCC) rule that reduces bank anti-discrimination standards under the Community Reinvestment Act.
    - The Consumer Financial Protection Bureau's (CFPB) payday rule, which should require that lenders determine whether borrowers can repay, instead

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[13] See *Ending Too Big to Jail Act,* OFFICE OF SEN. ELIZABETH WARREN (website viewed Oct. 29, 2020) https://www.warren.senate.gov/imo/media/doc/2019.4.2%20Ending%20Too%20Big%20to%20Jail%20Text.pdf

[14] *Transcript re Credit Suisse,* DEPARTMENT OF LABOR (Jan. 15, 2015) https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/exemptions/credit-suisse-public-hearing-transcript.pdf

[15] *Waters Introduces Legislation to Improve SEC Process for Holding Bad Actors Accountable,* HOUSE FINANCIAL SERVICES COMMITTEE, (July 27, 2017) https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400728

of being trapped in a cycle of debt. Public Citizen sued the CFPB over this Oct. 29, 2020.[16]

- Recommendation for Short-Term Action (First 100 days)
    - Use the authority given to the SEC in the Dodd-Frank Act to ban forced arbitration clauses and class action waivers used by broker-dealers and investment advisers.
    - Strengthen Civil Rights Protections
        - Announce support for the Equality Act to protect LGBTQ people against discrimination in credit, co-sponsored by Sen. Harris.
        - Restore powers to the CFPB's Office of Fair Lending, which have been stripped under Trump.

Action 4: Address Runaway Executive Compensation

- Recommendation for Day One
    - By Executive Order, direct the General Services Administration (GSA)and other government contracting officials to make CEO/worker pay ratio an element in bidding criteria. (Those with lower ratios given preference over those with higher ratios, similar to firms with veterans, etc.) High CEO pay comes at the expense of underpaying line workers. The Wells Fargo example dramatizes this: pressure cooked sales representatives earned $25,000/year could only keep this job if they met quota or cheated to make quota. The cross-selling mania, both real and fabricated, underpinned ever rising numbers reported to Wall Street, which boosted the stock price. Since the scam was revealed, investors devalued Wells Fargo by $20 billion. With government contracts, taxpayers shouldn't be funding these extraordinary CEO paychecks, but rather rewarding firms with more egalitarian pay schemes.
    - Send memorandum to regulators responsible for implementing Section 956 of Dodd-Frank asking for monthly updates on the progress for finalizing this rule. This rule, mandated as part of the 2010 Wall Street Reform Act, set a deadline of May 2011 to finalize a rule that requires banks to forbid pay structures that may incentivize inappropriate risk. Any final rule must include guidelines proposed by Public Citizen and other member organizations in the AFR Task Force on Executive Compensation.[17] This includes a collective fund composed of the deferred pay from senior executives that would be used to pay for penalties from misconduct. Current, misconduct fines are paid by shareholders.
    - Announce request to Congress to reform 162(m). President William Clinton made efforts to reform escalating CEO pay a hallmark of his 1992 campaign. As a result, Congress approved Section 162(m) that eliminates the ability to deduct as an expense pay of more than $1 million. The 115th Congress eliminated the deduction for the five most senior executives, but it may still be deducted for others if the pay is connected to a performance test approved by shareholders. This loophole should be eliminated; the tests are easily surmounted, and shareholders have little incentive to forfeit a tax break.

Action 5: Improve Conditions on CARES Act

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[16] *Public Citizen et al v CFPB.* US DISTRICT COURT FOR DISTRICT OF COLUMBIA (Oct. 29, 2020) https://mkus3lurbh3lbztg254fzode-wpengine.netdna-ssl.com/wp-content/uploads/1.NALCAB-v-CFPB-complaint.pdf

[17] Bartlett Naylor, Public Citizen, *Comment to Regulators on Sec. 956,* SECURITIES AND EXCHANGE COMMISSION (July 22, 2016) https://www.sec.gov/comments/s7-07-16/s70716-42.pdf

- Recommendation for Day One
    - Support legislation that establishes conditions to prevent C-Suite from siphoning off CARES Act and any subsequent stimulus and recovery funding intended for workers. This should include for aided firms:
        - No CEO pay beyond 50x that of the median paid worker
        - No buybacks
        - No stock options that can be exercised within two years after the official end of the pandemic
        - No dividends
        - 50% of pay >$1 sequestered for future misconduct penalties
        - No forced arbitration clauses
        - Accelerated filers that receive federal aid and whose securities are traded on a national security exchange must permanently disclose:
            a. Political spending and lobbying including expenditures a firm cannot deduct as an "ordinary and necessary" business expense under IRS Section 162(e)
            b. Human capital management
            c. Environmental disclosures that fit the recommendations of the Task Force on Climate Related Financial Disclosures.[18]
            d. How the COVID- 19 aid is being used to support employees
            e. Country- by- country tax payments

- Recommendation for Short-Term Action (First 100 days)
    - Announce commitment to a National Investment Authority. Congress approved the CARES Act 11 days after conception, and the inevitable mistakes, oversights and unintended policies have been conspicuous. Congress should approve a standing emergency authority, similar to the Depression era Reconstruction Finance Corporation. [19]

Action 6: Establish Sensible Climate-Responsive Financial Regulation

- Recommendation for Day One
    - Public Citizen joined with Friends of the Earth and Bailout Watch documenting how the federal government, principally the Federal Reserve, instead of adopting green policies that recognize climate change, has provided a safety net for the flagging fossil fuel industry. [20] Send a memorandum to the Federal Reserve (Fed) asking it to respond in writing that will be made public to the following policy requests:

        - The Fed's Secondary Market Corporate Credit Facility must exclude bonds from oil and gas companies and fossil-heavy utilities. The Fed must begin selling off the fossil fuel bonds already accumulated on its balance sheet, as opposed to holding them to maturity as currently planned. The Fed must modify the other existing stimulus programs, including the Main Street

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[18] *Task Force on Climate Related Financial Disclosures*, (website visited Oct. 6, 2020) https://www.fsb-tcfd.org/
[19] Saule Omarova, *The Climate Case for a National Investment Authority,* DATA FOR PROGRESS (August 5, 2020) ahttps://www.dataforprogress.org/memos/the-climate-case-for-a-national-investment-authority
[20] Alan Zibel et al, *Big Oil's $100 Billion Bender,* PUBLIC CITIZEN ET AL (September, 2020) https://prismic-io.s3.amazonaws.com/bailout/1b1e1458-bbff-49bc-a636-f6cbd47a88af_Big+Oils+Billion+Dollar+Bender.pdf

Lending Program and the Primary Market Corporate Credit Facility, to eliminate or heavily condition aid to fossil fuel companies.
        - The Fed must immediately join the Network for Greening the Financial System, measure banks' vulnerability to climate risks, including stress tests, and work with all federal financial regulators to incorporate climate risk into the supervision of banks and other financial companies. [21]
    - Send memorandum to Congress asking it to exclude further aid to the fossil fuel industry from any future coronavirus relief packages.
    - Send request to Securities and Exchange Commission (SEC) asking it to engage in a rulemaking to establish robust environmental disclosure.

- Recommendation for Short-Term Action (First 100 days)
    - Recommend that the Federal Reserve Board, FDIC, OCC, NCUA, and OFR should each establish a new office or other unit dedicated to climate-related systemic risk and prudential regulation
    - The new offices would be tasked with:
        - gathering data;
        - coordinating efforts on climate change risk with other federal financial regulators and environmental regulators;
        - explore a climate risk premium for FDIC-insured banks as provided under the FDIC Improvement Act;
        - liaising with prudential regulators in other countries and intergovernmental bodies involved in financial regulation and climate change;
        - outreach to the climate science community; and
        - Support legislation that mandates the maintenance of these new offices and appropriate funding.

Action 7: Limit Speculative Trading by Taxing Financial Transactions

- Recommendation for Day One
    - The Democratic Party Platform calls for curbing Wall Street speculation and ensuring investors pay their fair share. A new administration could immediately indicate its backing of these concepts by announcing support for legislation that would enact a financial transaction tax (FTT) such as the Wall Street Tax Act that would put in place a 0.1% tax on stock, bond, and derivative trades.
- Recommendation for Short-Term Action (First 100 days)
    - Request that the SEC examine robustly increasing the existing Sec. 31 fee to address speculative trading and grow government revenues. While not ideal, since more trading would be conducted in "dark pools" and secondary markets to avoid the tax, this policy would nonetheless provide additional evidence for lawmakers regarding the soundness of financial transaction taxes as they seek to enact a more comprehensive version of the tax.
    - Support moves by the Commodities Futures Trading Commission to enact a user fee that would discourage speculation in derivatives markets, create revenue and act in harmony with a robust SEC fee to ensure trading is not pushed from equities to derivatives markets as a tax avoidance mechanism. .

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[21] *Case Studies of Environmental Risk Analysis Methodologies*, CENTRAL BANKS AND SUPERVISORS NETWORK FOR GREENING THE FINANCIAL SYSTEM (September, 2020) https://www.ngfs.net/sites/default/files/medias/documents/case_studies_of_environmental_risk_analysis_methodologies.pdf