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Bankruptcy "Reform" Bill Dies In Final Days

Legislation that would have made it substantially more difficult for financially strapped consumers to make a fresh start in bankruptcy died in the final days of the session.

"The bankruptcy legislation that was reported out of conference committee was one of the most anti-consumer bills considered in this session," said CFA Legislative Director Mary Rouleau.

"Fortunately for consumers, key Senate Democrats and the White House sent a strong message that they would not accept such an unbalanced, one-sided bill," she said. "With the clock on our side, we were able to prevail."

Both the House and Senate gave overwhelming approval to bills (S. 1305, H.R. 3150) designed to place new limits on access to Chapter 7 bankruptcy, in which debtors are able to discharge their debts and make a fresh start.

However, the bills they passed took very different approaches. In particular, the Senate bill was more balanced and provided more consumer protections than its House counterpart.

For example, the Senate bill gave bankruptcy judges more discretion to determine who would be allowed access to Chapter 7 bankruptcy, while the House bill relied on a rigid and harsh means test.

Unlike the House bill, the Senate bill also contained important provisions designed to reign in some of the most abusive credit industry practices, such as intimidating debtors into agreeing to pay bills that could legally have been discharged in bankruptcy. The Senate bill would have required court approval of some such agreements to ensure that they are in the debtor's best interests.

The Senate bill also would have disallowed claims where the truth-in-lending act had been violated, would have prohibited the imposition of special fees on consumers who pay off the balance on their credit cards each month or use their cards infrequently, and would have required that credit card statements disclose how long it would take, and what the total cost would be, to pay off the bill making only the minimum payments.

Consumer Protections Stripped From Conference Report

When the bills went to conference committee, however, House and Senate Republicans left Democrats out of the final negotiations and emerged with a bill that, as one industry lobbyist crowed in the *Palm Beach Post*, looked as if industry had written it.

The conference report means test, for example, although somewhat less harsh than the original House version, did not provide the discretion to judges included in the Senate bill, thus ensuring that consumers in widely different circumstances would be subjected to a single, rigid standard.

Also stripped from the bill was the ban on fees for consumers who pay off their bills on time each month. The provision on debt reaffirmations was watered down through the addition of language preventing debtors from filing class action lawsuits over reaffirmations.

The provision requiring disclosure of debt amortization rates was also gutted, providing only an annual warning to consumers that making minimum payments could result in higher interest penalties and a Federal Reserve Board study of disclosure requirements for lenders.

As Senate bill co-sponsor Richard J. Durbin (D-IL) said, the conference report "stripped out every significant consumer protection" included in the Senate bill.

"Basically what happened is that the industry got really greedy through the conference report process," Rouleau said. In stripping out "the best parts of the Senate bill," the credit industry "sent a clear signal about what its real agenda was, and it had nothing to do with balanced reform or adequate consumer disclosure," she said.

Bill Stopped In Senate

The conference report sailed through the House October 9 on a 300-125 vote, despite the strong opposition mounted by such members as Rep. Jerrold Nadler (D-NY) and Rep. John Conyers (D-MI).

Although the Senate voted 94-2 that same day to take up the issue, they never did, faced both with a clear message from the White House that the president would veto the bill if the Senate cleared it and the strong opposition of key Senate Democrats. These included Sens. Durbin, Patrick Leahy (D-VT), Edward Kennedy (D-MA), Paul Sarbanes (D-MD), Christopher Dodd (D-CT), and Jack Reed (D-RI).

This same alliance also managed to fend off a last-minute attempt to attach the measure to the omnibus spending bill.

"This was a major victory for consumers," Rouleau said. Although the credit industry is certain to return next session to push its agenda, "the Senate and the administration have made it clear that they will not give their stamp of approval to legislation that fails to address abuses by both creditors and debtors."

"Consumers owe a real debt of gratitude to all those in Congress and in the administration, as well as to the bankruptcy judges, scholars, and trustees, and to those from labor, senior, civil rights, and women's groups who stood with us in our battle to defeat this anti-consumer legislation that was pushed so aggressively by the credit industry," Rouleau said.

"This victory shows that, faced with a strong and united opposition that has the facts on its side, big money can't always run roughshod over the legislative process," she said.

TransAtlantic Consumer Dialogue Launched

Consumer organizations representing the United States and the 15 European countries met in Washington, D.C. in September to demand a voice in policy discussions between the United States and the European Union.

The culmination of the two-day meeting hosted by CFA and Consumers International was formation of a new consumer organization, the TransAtlantic Consumer Dialogue, to influence key E.U.-U.S. trade decisions.

This new working group "offers the promise of effective consumer representation as U.S. and European governments discuss transatlantic policies," said CFA Chairman Sen. Howard Metzenbaum (Ret.).

Industry already influences these policies through a process called the TransAtlantic Business Dialogue. The new consumer group is designed to provide a counterweight to that influence.

"We are engaged in a risky business," said CFA Executive Director Stephen Brobeck, who planned the dialogue with Consumers Union Executive Director Rhoda Karpatkin and with European-based consumer leaders.

"Risky because consumer groups have different perspectives on issues, strategies, and involvement with government which pose significant challenges to launching a new transatlantic consumer organization," Brobeck added. "But it is even riskier not to try to create such an organization," he said.

Transatlantic Decisions Affect Domestic Policies

"Today, few U.S. consumer advocates seek to influence transatlantic policy issues, and their efforts are often not well coordinated," Brobeck explained. "Yet, increasingly, transatlantic policy-making affects both European and U.S. policies on issues ranging from product safety to financial services to electronic commerce."

The U.S.-E.U. dialogue was launched in December 1995 to facilitate discussion on such diverse subjects as human rights, the welfare of children, public health, education, peace and security matters, and economic liberalization.

Three years later, however, only the issues related to economic liberalization have been selected for more formal negotiations, through a process known as the TransAtlantic Economic Partnership.

Among the agenda items to be negotiated through this process are a number of issues at the core of consumer interests, including the harmonization of food safety, product safety, environmental, and consumer protection standards.

Furthermore, the TransAtlantic Business Dialogue, which was established at the outset of the process three years ago, has produced industry proposals on a number of issues of importance to consumers, including auto safety and pharmaceutical and medical device safety.

Despite being developed outside the normal democratic procedures in the affected countries and without input from the full range of potentially interested parties, including consumer groups, these industry proposals have become the substance of several mutual recognition agreements and harmonization agreements between the United States and European Union.

Consumers Must Be Given Equal Voice

The new organization will attempt to ensure that, in future discussions, the consumer viewpoint will be given equal consideration with that of industry representatives.

Brobeck, who was elected to the steering committee, proposed four principles to guide the new organization:

- it will not take a position on any policy issue on which there is substantial disagreement among members;
- participation in the organization will not restrict the advocacy of its members;
- no outside agency, including any government funding sources, will be allowed to influence the policies or the advocacy of the organization; and
- it will restrict its advocacy to consumer issues, while seeking to work, wherever possible, in partnership with the TransAtlantic Environmental Dialogue and the TransAtlantic Labor Dialogue.

Other members of the steering committee, in addition to Brobeck, are: Koos

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Deregulation Dominates Conference Agenda

Consumers will only gain from deregulation of utilities, whether the utility in question is telephone or electric service, if problems posed by the transition to competition are successfully addressed, according to keynote speakers at CFA's utility conference in October.

"Competition means choice, and choice means better quality, more innovation, and better value for your dollar," said Federal Communications Commissioner Susan Ness in a keynote address in which she focused on the many consumer issues raised by implementation of the Telecommunications Act of 1996.

However, "breaking open an entrenched monopoly is hard," Ness warned. "And bringing competition to local telephone service is even harder than bringing competition to long distance."

Paul Carrier of the Energy Department's Task Force on Electric System Reliability noted in his keynote address that, while the administration believes consumers will benefit once the electric industry is restructured, "they will continue to face reliability-related risks until our policies and institutions to protect reliability are modified to suit the emerging competitive markets."

Paul Carrier of DOE's Task Force on Electric System Reliability

FCC Commissioner Susan Ness

Local Competition Is Key To Telephone Deregulation

Successful implementation of the Telecommunications Act of 1996 depends on the FCC's ability to open the local market to competition, Ness said.

"Today, few consumers have a choice of local telephone company. But the future can and should be different," she said.

Despite the substantial difficulties involved in bringing about local competition – including the delays resulting from litigation of FCC rules and state commissions' decisions – Ness said the commission is "already seeing signs of healthy progress."

One factor working on the commission's side is the Bell companies' eagerness to enter the long distance market, which they can only do when they have met a detailed "competitive checklist" designed to open the local service markets to competition.

So far, all the Bells' applications to offer long-distance service have been denied on the grounds that they have failed to meet this checklist, Ness said.

In making those decisions, the commission's goal "was not to prevent the Bell companies from offering these services," she said. "To the contrary, I believe that consumers will benefit from having additional strong participants in the long distance market."

"But, as eager as we are to have the benefit of Bell company long distance competition," the commission is not willing to approve an application that fails to demonstrate full compliance with the competitive checklist, she said.

"We want to say yes, but we won't say yes when the right answer is no," Ness said.

Consolidation May Threaten Competition

Another major consumer issue facing the commission in implementing the Telecommunications Act of 1996 is the wave of mergers that has followed in its wake, Ness noted.

"Clearly the public interest is implicated by these transactions," she said. Not only do they involve "some of the largest companies in our entire economy," but they also involve "companies that might have been viewed as potential competitors to one another," she said.

"A merged entity may be better able to serve consumers than either of the premerger entities. So consolidation can sometimes advance the goal of competition," she said. "But it may also be a way of avoiding competition."

"Why is it that we have seen so few instances of an incumbent telco attacking an adjoining telco's market?" Ness asked. "Is it really likely that this absence of rivalrous behavior will be cured by reducing still further the number of potential rivals? I'm not so sure."

In evaluating proposed mergers, the commission will "center our public interest analysis on the likely effects on competition and on consumers," she said.

Maintaining Reliable Electric Service In A Competitive Market

One of the issues policy-makers must deal with in determining whether and how to bring competition to the electric industry is how to guarantee reliable service in a competitive market.

After completing 21 weeks of electric reliability investigations, the Energy Task on Electric System Reliability has concluded that "transmission grid reliability and open competitive markets can be compatible," but only if appropriate steps are taken to ensure that reliability, Carrier said.

"The primary challenges to bulk-power system reliability are presented by the transition" to competition, rather than by "the end state of competition," he said.

The task force developed 28 recommendations to ensure that reliable electric service is maintained during and after the transition to competition, he said.

These include passage of federal legislation to expand the Federal Energy Regulatory Commission's jurisdiction over the entire bulk-power system and to create an industry self-regulatory organization to promote reliability under FERC's authority.

The task force also recommended that FERC and system operators create competitive markets for ancillary services where feasible and ensure that providers receive compensation for services not provided through markets, he said.

System operators must have authority to compel bulk-power market participants to provide for their fair share of ancillary services, he said.

The task force also developed recommendations regarding technical issues, transmission incentives, and state oversight, he said.

Comparing the transition to competition to a journey, Carrier concluded, "Our trip is not over yet ... We need to put in place the policies and institutions that will allow us to safely arrive at our destination."

The conference also included sessions on the consumer impacts of mergers in the telecommunications industry, the consumer impacts of electricity and gas restructuring, how universal service and other public benefits can be preserved after utility restructuring, and the environmental implications of utility restructuring.

Microsoft Monopoly *(Continued from Page 4)*

when, on the eve of a congressional hearing, Microsoft declared it would abandon certain practices that it had previously said either did not exist or were strictly legal," the groups noted in their letter to Congress.

Since then, Microsoft has said that it will not renew about two dozen objectionable clauses in its contracts with computer manufacturers, Internet service providers, and Internet content producers, the letter notes.

The report, however, demonstrates that "Microsoft's promise to abandon these practices in the browser market will be too little, too late," the letter states.

"Having apparently captured the market with threats, tying and foreclosure, there is no chance that Microsoft could be dislodged by normal competitive processes," Sen. Metzenbaum explained. "It has passed the tipping point of market share, built incompatibilities into its browser, and created a base of preinstalled Microsoft browsers that may function as an insurmountable obstacle to competition."

Furthermore, in "voluntarily" abandoning these specific contracts, Microsoft has continued to insist that these are acceptable business practices, the letter notes, making it likely that the company will resort to them again if it is not forcefully prevented from doing so.

Abusive Practices Extended To Internet

In fact, it has already begun applying its business model to retail services on the Internet, the groups wrote.

"Control of this important gateway by any company raises fundamental problems, not only about economic activity, but also about the free flow of information," the letter continues. "The concern is particularly acute in the face of the longstanding complaints about Microsoft's abuse of market power."

The course of the antitrust case against Microsoft, and any remedy it imposes, should determine the scope of the action that Congress takes, the groups wrote.

"Congress enacted the antitrust laws to keep our economy open just as the flowering of the industrial age was about to produce what has been called the American century," Sen. Metzenbaum said.

"Keeping the American economy competitive and its marketplace of ideas open is just as crucial to ensuring national strength in the information age as it was in the industrial age," he added.

"How the courts rule and how Congress responds to the Microsoft monopoly will define whether the information age is economically open, is consumer friendly, and promotes the free flow of ideas," he said.

The 115-page report is available for $15 prepaid by writing to Microsoft Report, CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

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Treasury Issues Improved EFT'99 Rules

In September, the Treasury Department issued final rules to implement Electronic Funds Transfer '99 that contain numerous consumer protections absent from earlier Treasury proposals.

In joint comments and letters, CFA and the National Consumer Law Center had criticized Treasury's initial rule proposals implementing EFT'99 for shifting the costs of issuing federal checks to the recipients of those checks and for exposing recipients to unacceptable risks.

"Treasury's final rule is a vast improvement over the original proposal because officials listened to consumer and public interest groups," said CFA Director of Consumer Protection Jean Ann Fox.

The law is designed to encourage recipients of all federal payments except tax refunds to receive their payments by electronic direct deposit instead of by paper checks beginning in January of next year. The key issue in implementing the program has been coming up with a plan for dealing with the nearly 10 million recipients of Social Security, SSI, and other federal payments who do not have a bank account in which an electronic payment can be deposited.

In a major victory for consumers and a significant improvement over preliminary rule proposals, Treasury decided not to force virtually all of these unbanked benefits recipients to open accounts in order to receive their payments.

Liberal Waiver Policy Adopted

Instead, the Treasury has chosen to use a liberal waiver policy, providing self-certified waivers to individuals who claim that receiving the payments by direct deposit would pose a hardship because of a mental or physical disability, a literacy problem or lack of English fluency, geographic barriers, or cost considerations.

Furthermore, an earlier proposal was dropped that would have prevented consumers who had bank accounts at the time the law went into effect from later claiming a financial hardship in order to continue receiving paper checks in the mail. Under the final rules, consumers can claim financial hardship at any time.

Also dropped from the final rule was a proposal that would have stopped paper check payments to recipients who did not take steps to set up a direct deposit account and who did not qualify for one of the waivers. Under the final rule, consumers who do nothing to establish a direct deposit account will continue to receive their payments by mail.

"The 'paper check' default takes the wind out of the sails of deceptive ads designed to frighten consumers into opening accounts at check cashers or money transmitters to keep their benefits uninterrupted," Fox said.

CFA and NCLC had also criticized earlier Treasury proposals for limiting access to the default accounts that will be offered to benefits recipients who do not have a bank account.

In its final rule, Treasury withdrew its earlier proposal, which would have made the accounts available only to those benefits recipients who did not have a bank account when the new law took effect or when they became eligible for federal benefits. The final rule makes the accounts available to anyone who chooses to use them, whenever they choose to do so.

The terms of these accounts are not laid out in the final rule, however, and are instead to be the subject of a separate rule proposal to be issued in the near future.

"Just because a consumer had a bank account when federal benefits began is no guarantee that account will be affordable in the future," Fox said. "Given the trend in bank fees and mergers, consumers should be eligible for a low-cost, federally provided electronic transfer account at any time."

Inadequate Protections Provided for Voluntary Accounts

The major remaining short-coming in the final rule is that it does not provide adequate consumer protections for those accounts that consumers open voluntarily to comply with EFT'99, Fox said.

While the rule provides that Treasury will only deposit funds into an account in an insured depository institution and in the name of the recipient, the rules do not require direct access to the funds at the bank, do not limit the fees that can be charged, and do not guarantee that these accounts will provide the same protections currently available under federal law against loss or theft or from garnishment.

Treasury did add a requirement that banks that partner with non-banks to market accounts must provide full disclosure about the costs of using these accounts, legal relationships, and deposit insurance applicability.

"Treasury argues that broadening the eligibility for bare-bones default accounts meets their obligation to provide an account with consumer protections," Fox said. "However, Congress required that all accounts be covered by consumer protections, not just the bare-bones default accounts proposed by Treasury."

Fox noted that Treasury has already been forced to take action in several incidents of deceptive advertising of accounts by banks partnering with check cashers and money transmitters. One company was ordered to refund money to victims who were told their checks would stop if they didn't open an account.

The final rule states that Treasury will monitor this situation and may initiate a separate rule-making to deal with accounts offered through partnerships between banks and non-banks.

"It would be tragic to squander this great opportunity to bring millions of federal recipients into the mainstream financial marketplace by instead allowing creation of second class bank customers who can only access their funds at the corner check casher, pawn shop, or rent-to-own store," Fox said.

While praising Treasury for being responsive to issues raised by consumer and public interest groups, Fox said, "the job will not be complete until consumers all over the country have access to a very low cost electronic transfer account, and stringent consumer protections have been adopted for accounts opened voluntarily to accept electronic federal deposits."

Anti-Consumer Auto Salvage Bill Stopped

Despite the personal championship of Senate Majority Leader Trent Lott (R-MS) and aggressive lobbying by the car dealers and auto insurers, Congress failed to clear auto salvage legislation that was strongly opposed by consumer advocates and state attorneys general.

"The good guys won one when we defeated the auto salvage legislation," said CFA Chairman Sen. Howard Metzenbaum (Ret.). "This will help to keep thousands of dangerous, rebuilt wrecks off our nation's highways and give us a chance to go back to Congress next term with a bill that will truly help consumers combat this serious problem.

"Defeat of this misguided legislation would not have been possible without the courageous support of key senators and the Clinton administration," he added.

Each year, more than 2.2 million vehicles are wrecked and declared a total loss. More than a million of them are then resold to unsuspecting consumers, explained CFA Public Affairs Director Jack Gillis.

Commonly, these vehicles are bought at auction, refurbished to conceal the prior damage, and sold without safety inspections or disclosure of their prior history, he noted.

The National Association of Attorneys General estimates salvage fraud costs consumers $4 billion annually and exposes the public to unsafe rebuilt wrecks.

Unfortunately, the bills that were introduced purportedly to address these problems (H.R. 1839, S. 852) would actually have made it more difficult for consumers who unknowingly purchased such vehicles to seek recourse against the unscrupulous sellers, Gillis said.

Bills Create Loopholes, Provide No Remedies For Victims

Among other things, the bills would have made safety inspections of rebuilt salvage vehicles optional, exempted sellers of most cars over six model years old from salvage title labeling requirements, created loopholes for flooded cars and cars that are so badly damaged they should never be rebuilt, and set a damage threshold for when a vehicle is declared salvage that is more lax than the standard many states now use.

Furthermore, the bills contained no remedies for victims. Criminal penalties against salvage fraud were removed, and civil fines were limited to a mere $2,000 per vehicle.

"The fines are so low they could easily be dismissed as the cost of doing business," Gillis said.

Exacerbating all these problems is the fact that the original bills would have preempted stronger state laws. States would have been free to opt out of the federal program, but those states that did so would have lost important funding for participation in the National Motor Vehicle Titling Information System, which is used to combat auto theft as well as salvage fraud.

Opponents put together a strong coalition that included the attorneys general and the Automotive Dismantlers Association, as well as CFA, Center for Auto Safety, Consumers for Auto Reliability and Safety, Public Citizen, U.S. Public Interest Research Group, Consumers Union, and the National Association of Consumer Attorneys.

Opponents Force Improvements In Senate Bill

Although the legislation sailed through the House last year on a 336-72 vote, opponents worked with the White House, Sen. Slade Gorton (R-WA), and key Senate Democrats – including Sens. Paul Wellstone (D-MN), Carl Levin (D-MI), Dianne Feinstein (D-CA), and Richard Bryan (D-NV)– to force improvements in the Senate bill.

Among the most important changes they won was removal of the provision preempting tougher state laws.

"Preserving the right of states to keep tougher laws was absolutely essential," said Gillis, "particularly in light of the very limited enforcement provisions and other weaknesses in the legislation."

Once that change was made, the legislation passed the Senate on a voice vote during the final weeks of the session.

When it was taken up in the House, however, much of the preemption language had been restored. Under the new language, states would have been free to enact tougher legislation only with respect to the narrow issue of the salvage definition.

Once the bill passed the House in that much weakened form, Sen. Lott attached it to the omnibus budget bill.

"Sen. Lott couldn't win this bill on the merits, so he had to try to sneak it through the back door," said U.S. PIRG Consumer Program Director Edmund Mierzwinski.

The White House, however, insisted on its removal from the omnibus bill.

"We are very appreciative of the support we received from the Clinton administration and from key members of the Senate," Gillis said. "We will be working with our allies next year to try to gain passage of a more pro-consumer bill."

TransAtlantic Dialogue

(Continued from Page 1)

Anderson of the Consumers Association (the Netherlands), Rhoda Karpatkin of Consumers Union, Edmund Mierzwinski of U.S. Public Interest Research Group, Jim Murray of the European Consumers Organisation, Caroline Naett of Euro Coop, Sotirios Paschalidis of the Consumers' Protection Centre (Greece), and Lori Wallach of Public Citizen.

"This new organization offers a very important opportunity for strengthening links between U.S. and E.U. consumer groups and for developing an effective consumer voice in E.U.-U.S. relations," Brobeck said.

Microsoft Monopoly Costs Consumers Millions

Microsoft's anti-competitive business practices and abusive pricing of computer software have already cost the public hundreds of millions of dollars and are threatening to inhibit development of the Internet, according to a report released in October by CFA and the Media Access Project.

"These business practices must be driven out of the software industry and prevented from spreading to the Internet," said CFA Chairman Sen. Howard Metzenbaum (Ret.).

"A competitive market in software would meet consumer needs at lower cost directly, by forcing prices down, and indirectly, by giving consumers a wider range of choices," he added.

As a result of the report, CFA and Media Access Project joined with Consumers Union and Consumer Project on Technology to write to members of Congress in October urging them to "engage in vigorous oversight and, if necessary, consider legislation that would promote greater competition in the computer software industry."

Anti-competitive Practices Described

"At the center of Microsoft's business model is a monopoly bundle of software that is tied to its operating system product," explained CFA Research Director Mark Cooper, author of the report, "The Consumer Case Against Microsoft."

With more than 90 percent of all PCs shipped with Microsoft's operating system, Microsoft is able to use this monopoly position to bundle its applications software and gain a competitive advantage, he said.

"This bundling allows prices to be hidden from the public, since the software is packaged with the computer, and multiple applications are bundled together," he said. This, in turn, forces consumers to buy too much software that requires too much computer capacity, he said.

To create and defend this monopoly, Microsoft has imposed contract conditions on suppliers that foreclose and deter competition, the report finds.

Using the operating system as the core of market power, Microsoft freezes out competitors with incompatibilities, builds in features to impede or disable competing programs, withdraws support for competitor programs, and locks in customers with constant imitation of competing products or promises to imitate them. These practices are reinforced by tactics of predation, intimidation, abrogation of contracts, and patent infringement, the report charges.

"Once Microsoft achieved a dominant position in operating systems, defending its monopoly in this market as well as using this monopoly power to capture other markets became the central theme of management," Cooper said. "The current effort to monopolize the web browser is an extremely important example of this approach, because it threatens to extend the business model into broad new areas."

Prices, Profits Kept Artificially High

Microsoft has used its monopoly to keep consumer prices, and company profits, artificially high, the report finds.

"Declining prices are a fact of life everywhere in the computer industry, except at Microsoft," which doubled its prices after it secured its operating system monopoly and has kept those prices up in the face of dramatically declining prices for the other parts of a PC, Cooper said.

As a result, the cost of the operating system incurred by typical consumers has already risen from about three percent of the total package in 1991 to as much as 13 percent in 1998 and is likely to increase further as the cost of other components continues to decline.

"These excess prices show up clearly in Microsoft's bottom line," Cooper said.

The company's return on equity has consistently been in excess of 30 percent, approximately twice the national average and at least 50 percent more than other firms in its sector. Its profit margin – net income per dollar of sales – runs at about 25 percent, five times the national average and four times the rate for other firms in its industry.

"These margins have been rising as Microsoft has monopolized more and more software markets," Cooper said.

Costs Of Monopoly Outweigh Benefits

The report also examines and rejects the claim that only a monopoly like Microsoft's can provide consumer convenience and economic efficiency in the software industry.

"The question is, does the consumer get something of unique value by paying the very large price premiums commanded by Microsoft? The evidence suggests the answer is a resounding no," Cooper said.

"Microsoft was not the leader in any of these software markets before it captured them. When its products were brought out, they were not held in very high regard," he said. "It has consistently bought the innovations of others and marketed products that are, at best, imitations of the industry leaders."

Furthermore, there is no theoretical or empirical reason to believe that a monopoly is necessary for the efficient operation of this market, the report finds.

"The installed base of computers is so large that it should support multiple and competing operating systems, software packages, and browsers," Cooper said.

Congressional Action Needed

Based on these findings, CFA, MAP, CU, and CPT concluded that congressional oversight would be needed, regardless of the outcome of the current antitrust case against Microsoft.

"The importance of congressional scrutiny was demonstrated just this year,

(Continued on Page 2)

Congress Clears Securities Bill

Just before adjourning for the year, Congress cleared legislation to further limit the ability of defrauded investors to recover their losses.

The bill (S. 1260) requires virtually all securities fraud class action lawsuits involving securities traded on a national exchange to be brought in federal court under the federal law. Investors filing individual lawsuits can be forced into federal court if more than 50 individuals file state court complaints in the same court, involving common questions of law or fact, and their lawsuits are joined for any reason.

The president is expected to sign the legislation, despite the fact that it extends the provisions of the Private Securities Litigation Reform Act, which passed over his veto in 1995.

"Without first determining whether defrauded investors are able to recover their losses under the new federal law, Congress has voted to slam shut the state courthouse door," said CFA Director of Investor Protection. "At a time when more and more average Americans are entrusting their hard-earned retirement savings to the financial markets, this is an ill-advised policy for which we are likely to pay a heavy price."

The provision which won the administration's support – legislative history clarifying that the PSLRA was not intended to remove recklessness as the basis for securities fraud claims – nearly brought the conference committee to an impasse. House Republicans were adamantly opposed to including the language in the manager's report, while Senate conferees refused to consider legislation without the recklessness language.

At the last minute, House Republicans relented and allowed the legislation to move with legislative history stating the PSLRA was not intended to alter the standard on recklessness. Once the Senate had adopted the conference report, however, House Commerce Committee Chairman Thomas Bliley (R-VA) and Rep. Christopher Cox (R-CA) took to the House floor in a colloquy clearly intended to provide support for eliminating recklessness as a basis for securities fraud lawsuits.

"As SEC Chairman Arthur Levitt has stated, eliminating reckless misconduct as a basis for securities fraud claims 'would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendant gets off scot free,'" Roper noted. "It is unconscionable that these members would attempt to undermine the agreement they reached in good faith in conference committee and eliminate the only pro-investor portion of the uniform standards legislation."

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