

Private Fund Update

May 5, 2014



Scott E. Gluck, Esq.
Venable LLP

Washington, DC Office:
t 202.344.4426
c 540.454.4820

Los Angeles Office:
t 310.229.9900
c 540.454.4820

sgluck@Venable.com
www.Venable.com

Note: This Wednesday at 2:00 p.m. ET, the Association for Corporate Growth [is hosting a free webinar](#) with members of the SEC's Office of Compliance Inspections and Examinations (OCIE) to discuss exam-related issues for middle-market private equity funds. You can register for the webinar [here](#), and you can [submit questions](#) to me in advance of the webinar.

Also on Wednesday, the House Financial Services Committee will mark up (vote on) sixteen bills, including a bill (H.R. 4200) that would ease regulatory requirements for SBICs. Many of the bills would also make it easier for smaller companies to access the public markets. This update reviews:

- Wednesday's House Financial Services Committee markup on sixteen bills;
- Last week's HFSC oversight hearing with SEC Chairwoman Mary Jo White; and
- The SEC's recent Risk Alert on cybersecurity issues for investment advisers.

Have a great week, and again please [email me](#) any questions you have in advance of the SEC webinar on Wednesday.

Venable LLP [tracks a wide range of regulatory issues](#), so please contact me for more information regarding anything contained in this update.

The 113th Congress

House of Representatives

House Financial Services Committee

[Markup on JOBS Act 2.0 Legislation](#) – On Wednesday, the HFSC holds a marathon markup of sixteen different bills, several of which are relevant to private funds. Many of these bills were the subject of committee hearings in [May](#) and [April](#). Bills to be marked up include:

- **H.R. 4200, "SBIC Advisers Relief Act of 2014"** – Reduces regulatory costs and eliminates duplicative regulations for advisers to SBICs. The bill (i) preempts state regulation of SBICs, (ii) allows advisers of VC funds to continue to be exempt reporting advisers if they also advise an SBIC, and (iii) excludes SBIC capital from the SEC registration threshold calculation of \$150 million in assets under management.
- **H.R. _____, the "Private Placement Improvement Act"** – After the 2011 JOBS Act eliminated the ban on general solicitations by issuers, including private funds, the SEC [proposed new rules](#) on issuers (including private funds) that undertake 506(c) general solicitations. This bill would amend Reg D consistent with the goals of Title II of the JOBS Act, while at the same time preserving important investor protections
- **H.R. 4554, "Restricted Securities Relief Act"** – The bill would reduce from 6 months to 3 months

the mandatory holding period for restricted securities in SEC Rule 144 offerings.

- H.R. ____, [Discussion Draft, "Small Company Freedom to Grow Act"](#) – The bill would amend the Form S-1 to allow smaller reporting companies to incorporate by reference documents filed with the SEC after the effective date of the S-1. It would also amend the form S-3 to benefit smaller reporting companies.
- H.R. 2629, ["Forestry Innovation Act of 2013"](#) – Revises the definition of "accelerated filer" under Rule 12b-2 to include issuers that have annual revenues of more than \$100,000,000 and an aggregated worldwide market value of \$250,000,000 or more but less than \$700,000,000.
- H.R. ____, Discussion Draft, [Bill to Increase Threshold Amount for Disclosure of Compensatory Benefit Plans](#) – Requires the SEC to increase the threshold for disclosures of certain risk factors relating to compensatory benefit plans from \$5 million to \$20 million.
- H.R. ____, Discussion Draft, ["Disclosure Modernization and Simplification Act"](#) – Would modernize the SEC disclosure rules by permitting issuers to submit on Form 10-K annual reports a summary page to make annual disclosures easier to understand for current and prospective investors. Would also reduce Reg S-K disclosures for emerging growth companies and smaller issuers.
- H.R. ____, Discussion Draft, [Bill to Revise the Definition of a Well-Known Seasoned Issuer](#) – Would reduce the threshold for issuers becoming a Well-Known Seasoned Issuer (WKSI) from \$700 million to \$250 million; would allow more companies to file Form S-3s.

The Committee Memorandum is [here](#). While these bills are generally expected to pass out of committee, it is not clear that any of them will be taken up by the Senate this year.

[Hearing with Treasury Secretary Lew](#) – On Thursday, the full committee will hear from Treasury Secretary Lew on the State of the International Financial System.

[SEC Oversight Hearing](#) – Last week, the full committee held an oversight hearing with SEC Chairwoman Mary Jo White titled "[Oversight of the SEC's Agenda, Operations, and FY 2015 Budget Request](#)." The hearing covered a broad range of issues which are spelled out in Chairwoman White's [written testimony](#). The committee memorandum is [here](#), and a video of the hearing is located [here](#) (Parts 1 and 2).

House Small Business Committee

[SBA Oversight Hearing](#) – Last week, the HSBC held an oversight hearing on the Small Business Administration. The hearing focused on several entrepreneurial development initiatives created by the SBA, and examined whether these programs are duplicative of other existing entrepreneurial development programs. The programs in question included Entrepreneurial Education, Growth Accelerators, Boots to Business, and Regional Innovation Clusters. Witnesses were:

- [Rhett Jeppson](#), Associate Administrator, SBA
- [Tameka Montgomery](#), Associate Administrator, SBA
- [Javier Saade](#), Associate Administrator, SBA

The Senate

Senate Banking Committee

[Hearing on Job Creation](#) – On Wednesday, the SBC will hold a hearing titled "Drivers of Job Creation." Witnesses are:

- Jennifer Erickson, Director, Center for American Progress

-
- Derek Smith, CEO, Clean Energy Works Oregon
 - Emil Frankel, Visiting Scholar, Bipartisan Policy Center
 - Robert Dietz, Vice President, National Association of Home Builders

Senate Finance Committee

[Hearing on Transportation Funding](#) – On Tuesday, the SFC will hold a hearing titled "New Routes for Funding and Financing Highways and Transit," which will focus on the near-bankruptcy of the Highway Trust Fund. Witnesses are:

- Joseph Kile, Assistant Director, Congressional Budget Office
- Aubrey L. Layne, Jr., Secretary of Transportation, State of Virginia
- Jayan Dhru, Managing Director, Standard & Poor's Ratings Services
- Samara Barend, Senior Vice President, AECOM Capital
- Chris Edwards, Director, Tax Policy Studies, Cato Institute

The Administration

Last week, the White House issued a [Statement of Administrative Policy](#) in strong support of S.2223, which would raise the Federal minimum wage from \$7.25 to \$10.10 per hour.

FSOC Hearing on Asset Management Industry on May 19

The Financial Stability Oversight Council will be [holding a public conference](#) on the asset management industry and its activities on May 19, 2014 in the Cash Room at the Department of the Treasury. Panels will focus on an in-depth examination and discussion of targeted issues associated with asset management in order to further inform the work of the Council.

Securities and Exchange Commission

OCIE Cybersecurity Initiative

Recently the SEC's Office of Compliance Inspections and Examinations announced that it will be conducting examinations of more than 50 registered broker-dealers and registered investment advisers, focusing on areas related to cybersecurity. OCIE [issued a Risk Alert](#) to provide additional information concerning its initiative to assess cybersecurity preparedness in the securities industry. The Risk Alert includes a sample cybersecurity document request for financial companies, including investment advisers.

Meeting of Dodd-Frank Investor Advisory Committee: Recommendations on Crowdfunding

Last month, the SEC's Investor Advisory Committee [held a public meeting](#) where it approved six recommendations made by the Investor as Purchaser Subcommittee regarding crowdfunding:

- The Commission should, as an initial matter, adopt tighter restrictions on the amounts that investors can invest in crowdfunding;
- The Commission should strengthen the mechanisms for the enforcement of the investment limits in order to better prevent errors and evasion;
- The Commission should clarify and strengthen the obligations of crowdfunding intermediaries to ensure compliance by issuers with the crowdfunding title and relevant regulations;
- The Commission should take further steps to ensure that educational materials clearly convey the required information and are reviewed and, to the degree possible, understood by investors;

-
- The Commission should withdraw its proposed definition of electronic delivery, which fails to ensure that investors actually receive the required disclosures and educational materials, and continue to rely instead on the strong and effective policy for electronic delivery adopted by the Commission in the mid-1990s; and
 - The Commission should require crowdfunding offerings to be integrated with offerings in reliance on a separate exemption where needed and appropriate to prevent evasion of regulatory requirements.

Association for Corporate Growth (ACG)

InterGrowth 2014

[InterGrowth 2014](#) took place last week at the Aria Hotel in Las Vegas. The full list of capital providers that attended is [here](#). Next year's conference is scheduled to take place in Orlando, Florida.

2014 Policy Agenda

ACG released its [2014 policy agenda](#), which includes the organization's legislative and regulatory priorities. Top legislative priorities include H.R. 1105 (private equity fund registration under IAA), H.R. 2274 (M&A broker legislation), and protecting deductibility of interest on corporate debt in case of comprehensive tax reform. Top regulatory issues include broker-dealer issues for private equity funds, JOBS Act implementation, and improving the efficiency of SEC examinations.

If you would like to opt out of receiving this communication, just let me know.

© 2014 Venable LLP. This email is published by the law firm Venable LLP and is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.