SEC Relies On Questionable Legislative History In Proposed VC Definition

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I'm still cogitating on the Securities and Exchange Commission's definition of "venture capital fund" that it proposed last Friday in Release No. IA-3111. Here are some first impressions.

The SEC considered California's definition of "venture capital companies" in 10 CCR § 260.204.9 but felt that California's rule was inconsistent with Congressional intent because the California rule doesn't limit investments to companies that are not publicly traded.

This sounds plausible, but the SEC's evidence of Congressional intent is surprisingly weak. Essentially, it consists of the testimony of two individuals before the Senate Banking Subcommittee on Securities, Insurance and Investment Hearing a year before the enactment of the Dodd-Frank Act and several months before the Dodd-Frank Bill was even introduced into Congress. The SEC cites no evidence that any member of Congress actually accepted or relied upon this testimony in drafting and voting on the Dodd-Frank Act. Moreover, neither of these individuals testified that venture capital companies never hold securities in publicly traded companies. Rather, they noted that most venture capital companies restrict or prohibit *investments in* publicly traded companies.

The SEC also refers to the non-existent "California Corporations Commission". In California, the Corporate Securities Law of 1968 is administered and enforced by the Commissioner of Corporations who heads the Department of Corporations. Cal. Corp. Code § 25600. There is no commission, just a commissioner.

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