

Private Fund Update

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Congratulations to the Alliance of Merger & Acquisition Advisors on a successful [Winter Conference](#) in Scottsdale, Arizona. [Congressman David Schweikert](#) (R-AZ) was featured as a keynote speaker. Videos (hopefully) to follow.

Congress returns from recess to a relatively light schedule, at least as it relates to private funds. President Obama gives his State of the Union address Tuesday night, and is expected to unveil a host of policy objectives he plans on accomplishing through executive actions. Don't be surprised if there is also reference or two to carried interest in connection with the President's comments on income inequality.

This update reviews:

- Senate Banking Committee's Wednesday hearing on the Office of Financial Research (OFR). Last year, OFR issued a report which some fear could result in certain asset managers – including potentially some private funds – being designated as systemically important by the Financial Stability Oversight Council (FSOC), and thereby becoming subject to enhanced regulation;
- The SEC's recent enforcement action against a PE fund-of-funds portfolio manager; and
- The Joint Committee on Taxation's list of expiring federal tax provisions (*i.e.* loopholes).

The 113th Congress

The Senate

Senate Banking Committee

[Oversight Hearing on OFR](#) – On Wednesday the SBC has its annual oversight hearing on the Office of Financial Research. The sole witness is Dr. Richard Berner, Director of the OFR. Last year the OFR issued a controversial report on the asset management industry titled, "[Asset Management and Financial Stability](#)," which many felt could be a precursor for seeking to designate large asset management companies as systemically important. In advance of the hearing, five U.S. Senators (Carper Kirk, McCaskill Moran and Toomey) wrote a letter last week to Treasury Secretary Lew expressing concern about the study.

The committee also [holds an oversight hearing](#) on the Export-Import Bank with bank Chairman Fred Hochberg on Tuesday.

House of Representatives

House Financial Services Committee

This week the HFSC holds a [hearing on the Consumer Financial Protection Bureau](#), with CFPB Director Richard Cordray giving his semi-annual report. The Committee Memorandum is [here](#).

A follow-up hearing on the Volcker Rule with regulators is scheduled for February 5.

House Small Business Committee

[Hearing on International Trade](#) – On Tuesday the committee holds a hearing titled, “[Small Business Trade Agenda: Status and Impact of International Agreements](#).” The sole witness will be James Sanford, Assistant U.S. Trade Representative for Small Business, Market Access and Industrial Competitiveness. The hearing memo is [here](#).

Joint Committee on Taxation

[List of Expiring Federal Tax Provisions](#) – Earlier in the month, the Joint Committee on Taxation released its [List of Expiring Federal Tax Provisions](#). The document lists many of the tax expenditures (some call them loopholes) in the federal tax code, and illustrates both the complexity of the tax code and the challenge in comprehensive tax reform.

Securities and Exchange Commission

PE Fund of Funds Advisor Barred From Securities Industry

The SEC [announced](#) that a former Oppenheimer & Co. private equity fund-of-funds portfolio manager agreed to be barred from the securities industry and pay a \$100,000 fine in connection with intentionally overstating the valuation and performance of the fund. The manager [fraudulently marked up](#) the value the fund’s largest investment and also reported an IRR that failed to deduct fees and expenses.

2014 Examination Priorities

The SEC announced its [Examination Priorities for 2014](#), which include several items relevant to investment advisers. The priorities include the safety of assets and custody under Rule 206(4)-2 (the SEC published a [Risk Alert](#) on the issue); undisclosed conflicts of interest, particularly with respect to compensation arrangements, allocation of investment opportunities, risk controls and disclosure and higher risk products or strategies targeted to retail or elderly investors; and inaccurate/misleading performance claims by investment advisers. Not surprisingly, issues involving general solicitations are also high on the SEC’s list of priorities.

Investment Adviser Compliance Seminar on Thursday

On Thursday, the SEC holds its national compliance seminar for investment advisers and investment companies. The event is intended to help these firms’ Chief Compliance Officers (CCOs) and other senior personnel to enhance their compliance programs for the protection of investors. The seminar agenda is [here](#).

Commodity Futures Trading Commission (CFTC)

Meeting of Technology Advisory Committee on February 10

The CFTC’s Technology Advisory Committee will be holding a public meeting on Monday, February 10. Topics will include the Commission’s [concept release on automated trading environments](#), swap execution facilities and swap data reporting.

Weekly Swaps Report

Here is a link to the CFTC's [Weekly Swaps Report](#) for the week ending January 10, 2013. The weekly report provides a detailed view of the swaps marketplace, covering the interest rate and credit asset classes that comprise about 90% of the approximately \$400 trillion swaps market. The report includes: the gross notional outstanding value, the weekly transactions measured by dollar volume, and the weekly transactions measured by ticket volume.

The Administration

President Obama gives his [State of the Union](#) speech on Tuesday night, and is expected to unveil a list of policy initiatives he hopes to accomplish through executive action. Issues the President is likely to address via executive action include [climate change](#), incentives for domestic manufacturing, changes to the Affordable Care Act, and job training.

Association for Corporate Growth (ACG)

Middle Market Public Policy Summit Next Week

On Wednesday, February 5 the Association for Corporate Growth (ACG) will hold its [2014 Middle-Market Public Policy Summit](#) at the Grand Hyatt Washington Hotel in Washington, D.C. This event is open to all ACG members. To register for the Summit click [here](#).

InterGrowth 2014

Registration has opened for [InterGrowth 2014](#), which will be held April 28 – May 1, 2014 at the Aria Hotel in Las Vegas. To register online for InterGrowth click [here](#).

Private Equity Growth Capital Council (PEGCC)

PEGCC Releases Performance Data

The PEGCC [released its performance update](#) through June 2013. Private equity returns significantly outperformed the S&P 500. Returns from private equity (net of fees) beat the S&P 500 (including dividends) for 5-year and 10-year horizons as of June 30, 2013 by 1.2 and 6.8 percentage points, respectively. Despite generating over 15% annualized returns, private equity funds underperformed the S&P 500 in 1-year and 3-year horizons due to the public market rally.

Miscellaneous

PrivCap Briefing on Top Private Equity Tax Trends

[PrivCap](#) released a briefing on the [top private equity tax trends of 2014](#). The briefing covers transfer pricing, qualified stock purchases, the *Sun Capital* ruling and comprehensive tax reform, among other issues. PrivCap also released a video entitled "[How to Subtract Value Via Bad Tax Moves](#)."

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