

# Private Fund Update

December 9, 2013

**NOTE: Webinar December 17:** On December 17, I will be participating in a Thomson Reuters webinar entitled "[SEC Enforcement Activity and Regulatory Update for Private Equity Funds](#)." The webinar will include an overview of the SBIC licensing program, best practices regarding SEC examinations and an update on recent SEC enforcement actions against private funds. Please feel free to register!



**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](mailto:sgluck@Venable.com)  
[www.Venable.com](http://www.Venable.com)

There may be a flurry of activity this week as Congress tries to wrap up its legislative agenda for the year and head home. On Tuesday, five federal agencies will consider the Volcker Rule, which would restrict bank holding companies from investing in private funds and engaging in proprietary trading.

This update contains:

- Guidance recently issued by the SEC on the registration exemption for advisers to venture capital funds;
- A recap of last week's House vote on H.R. 1105;
- A preview of the Volcker Rule vote;
- The Chamber of Commerce's report to reform FSOC; and
- The lawsuit filed against the CFTC's cross-border rule by three financial services organizations.

## The 113<sup>th</sup> Congress

---

### House of Representatives

Last Wednesday, the full House of Representatives passed H.R. 1105, which exempts private equity funds from having to register under the Investment Advisers Act, [by a vote of 254-159](#). [Thirty-six Democrats supported the measure](#), including several members from the New York delegation (Israel, Maffei, SeanMaloney, Meeks, Owens). One Republican (Jones from North Carolina) opposed.

Congresswoman Carolyn Maloney (D-NY) [offered an amendment](#) that would have required the SEC to create a simplified registration and disclosure procedure for funds between \$150 million and \$1 billion in assets under management. The House [defeated the amendment, largely along partisan lines](#).

#### House Financial Services Committee

[Hearing on Federal Reserve Mandates](#) – On Thursday, the HFSC will hold a hearing entitled "[Rethinking the Federal Reserve's Many Mandates on its 100-Year Anniversary](#)." Hearing witnesses have not yet been announced.

---

[Treasury Secretary Lew Testimony](#) – On Wednesday, Secretary of the Treasury Lew will provide his annual testimony to the House Financial Services Committee on the state of the international finance system. The committee memorandum is [here](#).

### **House Small Business Committee**

[Hearing on Federal Agency Acquisitions](#) – On Wednesday, the HSBC holds a three-panel hearing entitled “[Contracting Away Accountability – Reverse Auctions in Federal Agency Acquisitions](#).” The hearing will focus on the uses of reverse auction contracts in light of a forthcoming report by the Comptroller General. Specifically, the hearing will examine the budgetary effect of reverse auctions services, their effect on competition, and whether additional guidance or legislation is necessary. The hearing will be livestreamed [here](#).

## **The Senate**

### **Senate Banking Committee**

The SBC will hold three hearings this week on [housing finance reform](#), [rebuilding American manufacturing](#), and [assessing the interim nuclear agreement with Iran](#).

### **Senate Finance Committee**

Late last month SFC Chairman Max Baucus released discussion drafts of proposals to reform [international business tax](#), [tax administration/combating tax fraud](#), and [reforming cost recovery and tax accounting rules](#). The cost recovery proposal would change the rules for depreciation of tangible and intangible assets, repeal LIFO accounting, and allow companies with gross receipts under \$10 million to use cash accounting and expense inventory costs. Here are links to a [one-pager](#), [summary](#), and [technical explanation](#) of the proposed changes.

## **Securities and Exchange Commission**

---

### **Guidance Issued on Venture Capital Registration Exemption**

The SEC’s Division of Investment Management [issued guidance on the registration exemption for advisers to venture capital funds](#). The guidance covers:

- The use of intermediate holding companies “wholly owned” by a venture capital fund;
- The use of alternative investment vehicles (AIVs) by venture capital funds;
- The use of “warehoused investments;”
- The use of side funds; and
- The use of liquidating trusts.

### **Corporate Political Spending Rule Not on List of 2014 Priorities**

A [list of the SEC’s priorities for 2014](#) does not include a rule to require the disclosure of corporate political spending. The issue had been on the SEC’s list of priorities for 2013. The issue has been the subject of [an intense lobbying campaign by outside groups and academics](#) who have been pushing for the SEC to impose such a requirement.

### **Private Hearing on Volcker Rule**

On Tuesday, five federal agencies (the [Federal Reserve](#), OCC, [FDIC](#), [CFTC](#), and SEC) will meet to consider the Volcker Rule. Of the five, only the SEC will be considering the Volcker Rule in a private vote – all of the other agencies will be holding a public hearing.

---

### SEC Holds Roundtable on Proxy Advisory Services

The SEC [held a roundtable discussion on the use of proxy advisors](#) by institutional investors and investment advisers, including the [SEC's 2010 concept release on the U.S. proxy system](#). Here are links to the [agenda](#), [list of participants](#), and [a webcast of the roundtable](#).

### Dodd-Frank Investor Advisory Committee Recommends User Fees on Registered IAs

The SEC's [Dodd-Frank Investor Advisory Committee](#) approved a [proposal to impose user fees on SEC registered investment advisers](#) to fund an enhanced investment adviser examination program by the SEC. The proposal recommends that Congress pass [H.R. 1627](#), the Investment Adviser Examination Improvement Act of 2013, authored by Congresswoman Maxine Waters (D-CA). This proposal [was supported](#) by the Investment Adviser Association and other groups. The Committee also approved a second proposal that would encourage the SEC to [conduct a rulemaking to impose a fiduciary duty on broker-dealers](#) when they provide personalized investment advice to retail investors. A link to the full video of the meeting is [here](#).

## Commodity Futures Trading Commission (CFTC)

---

### Lawsuit Filed Against CGTC's Cross-Border Interpretive Guidance

Last week the Securities Industry and Financial Markets Association (SIFMA), the International Swaps and Derivatives Association, Inc. (ISDA), and the Institute of International Bankers (IIB) [filed a legal challenge](#) to the CFTC's [Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations](#). [The full complaint](#) alleges that the CFTC unlawfully circumvented the Administrative Procedure Act by characterizing its regulations as "guidance;" failed to conduct cost-benefit analysis as required by law; conducted a flawed rulemaking process; and imposed a series of rules that are contrary to the spirit and the letter of international cooperation. Background information on the lawsuit is [here](#).

### Public Hearing on Tuesday Regarding Volcker Rule

On Tuesday, the CFTC will [hold a public meeting](#) to consider the Volcker Rule.

### No Action Relief on Cross-Border Swaps

Two weeks after [releasing controversial guidance](#) that a non-U.S. swap dealer registered with the Commission must comply with the transaction-level requirements of Dodd-Frank when entering into a swap with a non-U.S. person if the swap is arranged, negotiated, or executed by personnel or agents located in the United States, the CFTC [extended the requirement date](#) until January 14, 2014 via a No Action Letter.

### Weekly Swaps Report

Here is a link to the CFTC's [Weekly Swaps Report](#) for the week ending November 22, 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

---

The Office of Management and Budget [issued a Statement of Administrative Policy](#) regarding H.R. 1105, which included a veto threat. As noted above, the legislation ended up passing the House by a broad margin.

Also, Treasury Secretary Lew [gave a speech last week](#) at the Pew Charitable Trusts where he indicated that the Volcker Rule being voted on this week will be a "tough" rule that will significantly limit proprietary trading and investments in private funds by banks.

## Private Equity Growth Capital Council (PEGCC)

---

### Quarterly Report on Private Equity Investment

The Private Equity Growth Capital Council released a report showing [private equity investment volume increased for the second consecutive quarter during Q3 2013](#). U.S. private equity investment increased 7% to \$87 billion during the third quarter, from \$82 billion in Q2. [The full report](#) also found that equity contributions for U.S. leveraged buyouts remained steady, and that callable capital reserves, or “dry powder,” of global buyout funds increased from \$361 billion at the end of the second quarter to \$384 billion as of September 2013, a 6% gain.

## Miscellaneous

---

### Chamber’s FSOC Reform Agenda

The Chamber’s Center for Capital Markets Competitiveness [released a report highlighting the need for reform of the Financial Stability Oversight Council \(FSOC\)](#). The report lists fourteen specific proposals to strengthen evidence-based analysis by FSOC, modify FSOC’s structure, and improve operational effectiveness. FSOC has come under fire by critics for lack of transparency in how it designates entities as systemically important.

### Federal Reserve Bank of New York Study: Fed’s Press Conference

The Federal Reserve Bank of New York [released a brief study](#) showing how asset prices move in reaction to the Chairman of the Federal Reserve’s press conference following the release of the Federal Open Market Committee (FOMC) statement. It is a short read, and confirms what most people have known all along – that the FOMC statement and the Chairman’s comments have a material impact on the stock market, exchange rates and government bonds.

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

© 2013 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.