

Private Fund Update

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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

Happy Thanksgiving Week! This Update reviews:

- H.R. 1105, which exempts private equity funds from registering, is going to the House floor for consideration in early December;
- Friday's SEC Dodd-Frank Investment Advisory Committee decision to recommend imposing user fees on registered investment advisors in order to fund additional SEC examinations;
- Senate Finance Committee Chairman Max Baucus's proposal to reform the tax code for cost recovery and change tax accounting rules;
- The Riverside Company COO Pam Hendrickson's [op-ed in Forbes](#) defending Timothy Geithner's move to a private equity fund; and
- The recent House Financial Services Committee JOBS Act 2.0 markup, which affects BDCs and small M&A advisers.

The 113th Congress

House of Representatives

House Rule Committee

[H.R. 1105 Hearing](#) – The Rules Committee announced [that it will be meeting](#) on Tuesday, December 3 at 3:00 p.m. to consider [H.R. 1105](#), the Small Business Capital Access and Job Preservation Act, which would exempt private equity funds from registration. Potential amendments to the bill are due on Tuesday, December 3 at 10:00 a.m. The Rules Committee's markup is a precursor to House floor consideration, which is expected to occur later in the week.

House Financial Services Committee

[JOBS Act 2.0 Markup](#) – Earlier in the month, the Committee passed several bills which are likely to be part of a JOBS Act 2.0 package, including:

- [H.R. 1800](#) (Grimm) – the Small Business Credit Availability Act; reduces regulatory requirements for business development companies (BDCs); as amended, [passed on a partisan 31-26 vote](#);
- [H.R. 2274](#) (Huizenga) – Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act; creates a simplified regulatory regime for small M&A brokers; [passed by a 57-0 vote](#);
- [H.R. 3329](#) (Luetkemeyer) – requires the Federal reserve to modify the Small Bank Holding

Company Policy Statement to ease regulatory burdens on small bank holding companies and small savings and loan companies; passed by voice vote;

- [H.R. 3468](#) (Royce and Perlmutter) – Credit Union Share Insurance Fund Parity Act; would amend the Federal Credit Union Act to extend insurance coverage to amounts held in a member account on behalf of another person; passed by voice vote; and
- [H.R. 3448](#) (Duffy) – Would provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks; as amended, [passed on a 57-0 vote](#).

Although the Committee agreed on most issues regarding BDC reform, the issue of increasing the leverage ratio for BDCs proved too divisive, so H.R. 1800 ultimately passed on a strictly partisan basis. This all but dooms the legislation as written in the Democrat-controlled Senate, although it is possible that a modified version of the bill could move this Congress.

[CFPB Markup](#) – Last week the Committee passed six bills related to the Consumer Financial Protection Bureau along largely partisan lines:

- [H.R. 2385](#), the CFPB Pay Fairness Act of 2013, passed by a [vote of 31-23](#);
- [H.R. 2446](#), the Responsible Consumer Financial Protection Regulations Act of 2013, as amended, passed [by a vote of 31-21](#);
- [H.R. 2571](#), the Consumer Right to Financial Privacy Act of 2013, passed by a [vote of 32-26](#);
- [H.R. 3183](#), a bill to provide consumers with a free annual disclosure of information the Bureau of Consumer Financial Protection maintains on them;
- [H.R. 3193](#), the Consumer Financial Protection Safety and Soundness Improvement Act of 2013; passed by a [vote of 32-25](#); and
- [H.R. 3519](#), the Bureau of Consumer Financial Protection Accountability and Transparency Act of 2013, passed [by a vote of 32-24](#).

The Committee Memorandum for the markup is [here](#) and video of the markups is [here](#) (day one) and [here](#) (day two).

Given the strongly partisan votes, none of these bills have much of a chance of passing the Senate as they are currently written.

The Senate

Senate Banking Committee

The SBC held four meetings last week. The Committee approved the nomination of Janet Yellen to be Chairman of the Board of Governors of the Federal Reserve System by a 14-8 vote. Two hearings were also held on housing finance reform and one on [virtual currencies](#). A scheduled hearing on [regulating financial holding companies and physical commodities](#) was postponed.

Senate Finance Committee

SFC Chairman Max Baucus [released his tax reform package](#), including his proposed reforms to the cost recovery and tax accounting rules. Among other things, the 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

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.

Annual Government-Business Forum on Small Business Capital Formation

The SEC held its annual [Small Business Forum](#) last week in Washington. The [agenda and panelists](#) are [here](#). Discussion topics included implementation of the JOBS Act and other issues.

SEC Roundtable on Proxy Advisory Services on December 5

The SEC [will hold a public roundtable](#) on December 5 to discuss the use of proxy advisory services by institutional investors and investment advisers. In 2010, the SEC issued [a concept release on the U.S. proxy system](#), and the December 5 roundtable will discuss the issues raised in the concept release.

Commodity Futures Trading Commission (CFTC)

Weekly Swaps Report

CFTC Chairman Gary Gensler [announced the initiation of the CFTC Weekly Swaps Report](#). The weekly report will provide 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.

[This week's report](#) shows that over the last month, approximately 70% of new transactions in the interest rate swaps market were cleared. As of November 8, the outstanding notional amount of market facing interest rate swaps totaled \$320 trillion, and 61% of those swaps were cleared. Just 21% of the interest rate swaps market was cleared in 2008.

Controversial Guidance on Cross-Border Swaps

The CFTC [released guidance earlier this month](#) confirming 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. This broad interpretation of who is subject to Title VII of Dodd-Frank has received some criticism from certain members of Congress and non-U.S. banks.

Volcker Rule

CFTC commissioners received a draft of the final Volcker Rule last week and certain Commissioners began issuing comments on the draft (Commissioner Chilton said he does not support it). Chairman Gensler has stated that he would like to have a public vote on the rule before the end of the year.

The Administration

The big news of the week [was the agreement by the United States](#) and its allies to moderate sanctions on Iran in exchange for Iran halting enriching uranium for six months.

Last week the Office of Management and Budget [issued a veto threat](#) for H.R. 1900 (Natural Gas Pipeline Permitting and Reform Act) [and also for](#) H.R. 1965 (the Federal Land Jobs and Energy Security Act). Both measures passed the full House of Representatives last week. OMB also issued a [lengthy Statement of Administration Policy](#) regarding S. 1197, the National Defense Authorization Act for FY 2014.

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 percent 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 percent gain.

Miscellaneous

Pam Hendrickson Op-Ed Defending Tim Geithner’s Move to Warburg Pincus

Pam Hendrickson, Chairman of the Board for the Association for Corporate Growth and COO of The Riverside Company, [wrote an op-ed piece in Forbes](#) defending former Treasury Secretary Timothy Geithner’s move to Warburg Pincus, a leading private equity firm.

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