

**Quick note:** This Wednesday, July 24, at 11:00 a.m. EST Venable and the Association for Corporate Growth (ACG) will be hosting a free webinar on current legislative and regulatory issues relevant to private funds. Congressman David Schweikert, a key author of the JOBS Act, will be a special guest. To register for the webinar, click [here](#).

## Private Fund Update

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### Last week in Congress:

- the House Appropriations Committee approved its FY 2014 Financial Services bill, funding the SEC at approximately \$1.4 billion – more than \$300 million below the President’s requested level;
- the Senate Banking Committee approved Mary Jo White (2<sup>nd</sup> term), Kara Stein and Michael Piwowar as Commissioners of the SEC; and
- the Senate Agriculture Committee held a hearing on CFTC reauthorization, potentially a key legislative vehicle for reforming regulations of swaps.

### Also last week:

- the GAO issued a report recommending changes to the definition of an “accredited investor;”
- the SEC released a schedule of regional compliance seminars for investment advisers and investment company senior officers; and
- the Private Equity Growth Capital Council (PEGCC) released its Q2 2013 Private Equity Performance report, showing private equity outperformed the S&P 500 (net of fees) over the 3-year, 5-year and 10-year horizons.

### This week:

- the House Small Business Committee holds a hearing on the SBIC program;
- the House Agriculture Committee holds two hearings on CFTC reauthorization, which is relevant to users of swaps; and
- the Senate Appropriations Committee has a Subcommittee and a full committee markup for the FY 2014 Financial Services appropriations bill.

## The President

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Two weeks after the Department of Treasury announced that it would be [delaying implementation](#) of the Affordable Care Act mandatory employer and insurer requirements for one year, the President [gave a lengthy speech](#) on the issue. He also [congratulated](#) Richard Cordray, who was confirmed to lead the Consumer Financial Protection Bureau (CFPB).

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

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### The Senate

#### Senate Agriculture Committee

[Hearing on CFTC Reauthorization](#) – The Committee held a lengthy two-panel hearing on [Reauthorization of the Commodity Futures Trading Commission \(CFTC\)](#). The CFTC is the federal agency

responsible for regulating commodity markets - markets used by farmers and ranchers, as well as small business and global firms. Commodities traded in these markets include traditional agricultural crops, gold and financial instruments. The hearing will feature testimony from market participants and stakeholders who will address issues related to the Commodity Exchange Act and the CFTC generally. Here is a [list of comment letters](#) received in connection with the reauthorization.

For financial services-related issues, the first panel was most relevant. Here are the witnesses and their written testimony:

- Ken Bentsen, President, SIFMA  
[\[written testimony\]](#)
- Terrence Duffy, President, CME Group  
[\[written testimony\]](#)
- Adam Cooper, Citadel, LLC, on behalf of the Managed Funds Association  
[\[written testimony\]](#)
- Dennis Kelleher, CEO, Better Markets  
[\[written testimony\]](#)
- Daniel Roth, President, National Futures Association  
[\[written testimony\]](#)

### **Senate Banking Committee**

This week the SBC holds three hearings:

[Hearing on Financial Holding Companies](#) – On Tuesday, the Financial Institutions and Consumer Protection subcommittee holds a hearing on “Examining Financial Holding Companies: Should Banks Control Power Plants, Warehouses and Oil Refineries?” Witnesses are:

- Saule Omarova, Associate Professor of Law, University of North Carolina
- Joshua Rosner, Managing Director, Graham Fisher & Company
- Timothy Weiner, Global Risk Manager, Commodities/Metals, MillerCoors LLC
- Randall D. Guynn, Head of Financial Institutions Group, Davis Polk

[Hearing on a Housing Finance System](#) – On Tuesday, the Securities, Insurance and Investment subcommittee holds a hearing entitled “Creating a Housing Finance System Built to Last: Ensuring Access for Community Institutions.”

[Hearing on FHA Solvency](#) – On Wednesday the Committee holds a hearing on “The FHA Solvency Act of 2013.” The sole witness will be Carol Galante, Assistant Secretary of HUD.

Last week the committee also held three hearings.

[Approval of Appointments](#) – The committee approved the following nominations:

- Mary Jo White to be a Member of the SEC;
- Kara M. Stein to be a Member of the SEC;
- Michael S. Piwowar to be a Member of the SEC;
- Jason Furman to be Chairman of the Council of Economic Advisers; and
- Richard T. Metsger to be a Member of the NCUAB.

[Shining a Light on the Consumer Debt Industry](#) – The subcommittee on Financial Institutions and Consumer Protection held a hearing entitled “Shining a Light on the Consumer Debt Industry.” Witnesses were:

- Corey Stone, Assistant Director, CFPB  
[\[written testimony\]](#)
- Reilly Dolan, Acting Associate Director, FTC  
[\[written testimony\]](#)

[Ben Bernanke Hearing](#) – The committee held its semiannual hearing with Fed Chairman Ben Bernanke. His written testimony is [here](#).

### **Senate Appropriations Committee**

[Subcommittee and Full Committee Financial Services Markups](#) – The SAC holds both subcommittee and full committee markups this week on the FY 2014 Financial Services bill, which will fund the SEC – among other things.

## House of Representatives

### **Small Business Committee**

HSBC holds two hearings this week, one of which focuses on the SBIC program:

[Hearing on the SBIC Program](#) – On Thursday, the Oversight and Regulations subcommittee holds a hearing entitled “Examining the Small Business Investment Company Program.” Witnesses are:

- Pravina Raghavan, Acting Associate Administrator for Investment, SBA
- Steven Brown, President, Trinity Capital Investment, testifying on behalf of the SBIA
- John Sherman, Founder, Inergy, LP
- Philip Alexander, CEO, Brandmuscle, testifying on behalf of the U.S. Chamber of Commerce
- David T. Robinson, Professor, Duke University

[Hearing on Reducing Regulatory Burdens](#) – On Wednesday, the committee holds a hearing entitled “Reducing Red Tape: The New OIRA Administrator’s Perspective.” The sole witness is Howard Shelanski, Administrator, Office of Information and Regulatory Affairs for OMB. The purpose of the hearing is to examine the results of agencies’ efforts to review the existing regulations as required by Executive Orders 13,563 and 13,610.

Last week HSBC held two hearings:

[Hearing on IRS and Small Businesses](#) – On Wednesday the full committee holds a hearing entitled “The IRS and Small Businesses: Ensuring Fair Treatment.” The sole witness is Daniel Werfel, Principal Deputy Commissioner of the IRS.

[Hearing on the President’s Climate Action Plan](#) – On Thursday the subcommittee on Agriculture, Energy and Trade will hold a hearing entitled “The President’s Climate Action Plan: What is the Impact on Small Business.” Witnesses are:

- Michael Kezar, General Manager, San Miguel Cooperative, Inc.
- James L. Brown, President, Bremen Castings
- Bernard Weinstein, Maguire Energy Institute, Southern Methodist University

### **Financial Services Committee**

[Markup of GSE Reform Bill](#) – On Tuesday the full Committee marks up the Protecting American Taxpayers and Homeowners (PATH) Act which, among other things, winds down Fannie Mae and Freddie Mac. A summary of the bill is [here](#) and the full text of the bill is [here](#).

Last week HFS held two hearings:

[Hearing on GSE Reform](#) – The committee held a hearing entitled “A Legislative Proposal to Protect American Taxpayers and Homeowners by Creating a Sustainable Housing Financial System.” A link to the draft text of Chairman Hensarling’s draft GSE reform bill, the “[Protecting American Taxpayers and Homeowners Act of 2013](#)” is [here](#). The Committee Memorandum for the hearing is [here](#), and a webcast of the hearing is [here](#).

[Ben Bernanke Hearing](#) – On Wednesday the Committee held its semiannual hearing with Federal Reserve Chairman Ben Bernanke. The Committee Memorandum is [here](#) and Chairman Bernanke’s written testimony is [here](#).

### **Appropriations Committee**

[Markup re: Financial Services Bill](#) – The House Appropriations Committee held a markup on their FY 2014 financial services bill, which includes FY 2014 funding for the SEC. The bill appropriated approximately \$1.4 billion for the SEC – an increase of approximately \$50 million from last year. This is over \$303 million less than the amount requested by the President.

### **House Agriculture Committee**

Hearings on CFTC – The committee holds two hearings this week on the CFTC: [The Future of the CFTC: Commission Perspectives](#) and [The Future of the CFTC: End-User Perspectives](#). Commissioners Scott O’Malia and Mark Wetjen testify at the first hearing and a bevy of end-users testify at the second hearing.

## **Securities and Exchange Commission**

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### **SEC Announces Compliance Outreach Seminars**

The SEC [announced it will be holding a series of seminars](#) in cities around the country as part of its Compliance Outreach Program for investment adviser and investment company senior officers, including chief compliance officers (CCOs). The seminars highlight areas of focus for compliance professionals and allow SEC staff to identify common issues found in examinations or investigations and discuss industry practices, including how compliance professionals have addressed such matters. The upcoming seminars are:

- Chicago – August 28
- New York – September 13
- Atlanta – September 25
- San Francisco – November 6

For more information and to register for the seminars, click [here](#).

### **Lifting of Ban on General Solicitation**

The SEC [issued a final rule](#) lifting the “general solicitation” restriction under Reg D. This change was required as part of the JOBS Act, which Congress passed last year and was signed into law in April of 2012. The new rules take effect 60 days after they are published in the Federal Register. A fact sheet on the new rule is [here](#). The vote approving the rule was 4-1, with Commissioner Aguilar

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dissenting. His statement in opposition to the final rule is [here](#). A video of Chairman White discussing the rulemaking is [here](#) and the text of Chairman White's written statement is [here](#). The SEC also approved [a final rule](#) that disqualifies certain "bad actors" from participating in certain securities offerings.

### **New Proposed Rule Imposing Restrictions on Use of Private Offerings**

At the same time that the SEC lifted the ban on general solicitations, it also issued a [proposed rule](#) that would place restrictions on the ability of issuers who choose to do a general solicitation. Under the proposed rule, the new restrictions include:

- Requiring issuers to file a Form D at least 15 calendar days before engaging in general solicitation for the offering;
- Notifying the SEC within 30 days of completing the offering;
- Increasing the information issuers must disclose in their Form D filing;
- Adding legends and disclosures in written general solicitation materials; and
- Submitting general solicitation materials to the SEC

A fact sheet regarding the proposed rule is [here](#). The proposed rule passed the Commission by a 3-2 vote. Commissioner Gallagher's written statement against the proposed rule is [here](#).

## **Commodity Futures Trading Commission**

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### **Approval of Final Cross-Border Guidance**

The Commission [held a public meeting](#) where it approved its Final Interpretive Guidance on Cross-Border Swaps and the Phase-In of the Exemptive Order on Cross-Border Swaps by a 3-1 vote. After a lengthy, public discussion (which involved dueling letters by Congressional Democrats), the Commission reached a compromise that extends prior exemptive relief and requires the CFTC to take additional comments from the public. A fact sheet on the final interpretive guidance is [here](#); a fact sheet on the exemptive order is [here](#) and a video of the meeting is [here](#).

## **Private Equity Growth Capital Council (PEGCC)**

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### **PEGCC's Q2 2013 Private Equity Performance Report**

PEGCC released its Q2 2013 [Private Equity Performance Update](#), which shows that as of December 31, 2012 private equity's returns (net of fees) outperformed the S&P 500 (including dividends) for 3-year, 5-year and 10-year horizons as of December 31, 2012 by 4.3, 5.1 and 7.0 percentage points, respectively. Private equity performance is based on the Cambridge Associates U.S. Private Equity Index, which indicated private equity IRR returns of 15.2, 6.7 and 14.1 percent during the respective periods.

## **Association for Corporate Growth (ACG)**

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### **Middle Market Growth Daily**

To check out ACG's Middle Market Growth Daily, a daily roundup of news and other items of interest to the middle-market private equity community, check out [www.mmqdaily.com](http://www.mmqdaily.com).

### **ACG Dealmaking on the Beach – "It's a 'Shore' Thing" – August 11-13**

The New Jersey, New York, Philadelphia and Connecticut ACG chapters will hold [ACG Dealmaking on the Beach – It's a "Shore" Thing](#) on August 11-13 at the Ocean Place Resort & Spa in Long Branch, NJ.

### **Los Angeles Business Conference September 17-18**

The [Los Angeles Business Conference](#) is scheduled to take place on September 17-18 in Beverly Hills. Former President Bill Clinton is the keynote speaker.

## Managed Funds Association

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### Statement on Passage of JOBS Act Rules

The Managed Funds Association issued a [statement](#) on the SEC's passage of rule mandated by the JOBS Act to lift the ban on general solicitations as well as the SEC's new proposed rule amending Reg D, Form D and Rule 156. The MFA also released a "[Hedge Fund Performance Sheet](#)" that outlines the benefits of hedge funds as an asset class.

## Miscellaneous

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### Chamber of Commerce's Q2 Small Business Survey

The U.S. Chamber of Commerce released its latest [quarterly small business survey](#), which shows that the health care law has emerged as the top concern for small businesses. Small business owners overwhelmingly voiced support for policies that would remove regulatory barriers and encourage growth, with 88% supporting action to address entitlement spending, and 81% responding that the immigration system is broken and needs to be reformed

### BUILD Coalition Report on Deductibility of Interest on Debt

The Businesses United for Interest and Loan Deductibility (BUILD) Coalition [released a report from Ernst & Young](#), prepared for the BUILD Coalition, which finds that limiting the deductibility of interest on corporate debt would have a negative impact on the U.S. economy. Specifically, the report finds:

- GDP falls by an estimated 0.2% in the long-run or \$33.6 billion in today's economy;
- Investment falls by an estimated 0.3%, or \$6 billion in today's economy; and,
- Economic welfare, measured by the value of household's consumption and leisure, falls by an estimated 0.4%.

A link to Ernst & Young's presentation is [here](#). A state-by-state breakdown of the impact a revenue-neutral reduction in the corporate income tax rate financed by an across-the-board limitation on corporate interest expense is [here](#) and an industry analysis is [here](#).

### Pitchbook Q3 2013 Private Equity Breakdown

Pitchbook released its Q3 Private Equity Breakdown. The report finds PE deal-making was at a lackluster pace in 2Q 2013, reaching a new quarterly low since the depths of the financial crisis. PE firms invested \$71 billion across 318 deals in the second quarter, down from 420 investments in 1Q 2013 and far off last year's stellar fourth quarter, in which 671 companies received \$141 billion in PE money. One deal—Berkshire Hathaway and 3G Capital's \$23.2 billion buyout of condiment maker H.J. Heinz—made up nearly one-third of all capital invested in the second quarter. A copy of the report can be obtained [here](#).

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