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Private Fund Update

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Last week, the House Financial Services Committee held a hearing on potential JOBS Act 2.0 legislation, including legislation to modernize business development companies (BDCs). Also of note, the Private Equity Growth Capital Council released a report showing PE returns outperforming all other asset classes over a 10-year time horizon for large public pension funds, and Treasury released a report on its Small Business Lending Fund.

This week, the Senate Banking Committee will hold a hearing on JOBS Act implementation and the CFTC will hold a hearing to consider a proposal to impose position limits on the use of derivatives.

This Update contains:

- A summary of the House Financial Services hearing on legislation to reduce impediments to capital formation;
- The SEC's new proposed rule on crowdfunding;
- The sanctions SEC announced last week against three investment advisory firms for problems with their compliance programs;
- Reports by Treasury on the Small Business Lending Fund, the Private Equity Growth Capital Council (PEGCC), and the Investment Adviser Association (IAA).

The President

The President tried to put the recent debt ceiling/budget debate behind him by [turning his attention to immigration](#) and asking Congress to pass a comprehensive immigration reform bill this year. Much of the press this week, however, focused on glitches with the software people use to shop for health insurance under the Affordable Care Act.

[Small Business Lending Fund](#) – The Treasury Department released [a new report](#) showing that participants receiving capital through the [Small Business Lending Fund](#) (SBLF) nationwide have boosted small business lending by \$10.4 billion over baseline levels since the depths of the recession and \$1.4 billion over the prior quarter. The reported aggregate lending increase represents an estimated 46,800 additional loans to small businesses according to loan data from the June 2013 results of SBLF's [First Annual Lending Survey](#). An infographic regarding the new SBLF data is [here](#).

The 113th Congress

The Senate

Senate Banking Committee

[Hearing on JOBS Act](#) – The SBC will hold a hearing on the JOBS Act, titled “[The JOBS Act at a Year and a Half: Assessing Progress and Unmet Opportunities](#).” Witnesses are:

- Keith Higgins, Director, Division of Corporation Finance, SEC
- Alan Lewis, Director of Special Projects, Natural Grocers by Vitamin Cottage
- Robert Kaplan, Jr., Managing Partner, Kaplan Voekler Cunningham & Frank
- Andrea L. Seidt, President, North American Securities Administrators Association
- Mr. Sherwood Neiss, Principal, Crowdfund Capital Advisors, LLC

House of Representatives

House Financial Services Committee

[Hearing on JOBS Act 2.0](#) – The Capital Markets Subcommittee held a hearing titled “[Legislation to Further Reduce Impediments to Capital Formation](#)” which covered seven different bills and discussion drafts of bills:

- [H.R. 31](#) (Velazquez) – the Next Steps for Credit Availability Act;
- [H.R. 1800](#) (Grimm) – the Small Business Credit Availability Act;
- [H.R. 1973](#) (Mulaney) – the Business Development Company Modernization Act;
- [H.R. 2274](#) (Huizenga) – Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act;
- H.R. ____ (Hurt) – would direct the SEC to relax its requirements that smaller public companies use eXtensible Business Reporting Language for periodic reporting (discussion draft);
- H.R. ____ (Duffy) – would provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks (discussion draft); and
- H.R. ____ (Fincher) – would amend securities laws for emerging growth companies (EGCs) by, among other things, reducing the number of days an EGC must have a registration statement on file with the SEC before conducting a road show; requiring the SEC to revise its Form S-1 and allowing EGCs to submit a confidential draft registration statement to the SEC for any follow-on securities offerings after its IPO (discussion draft).

Witnesses were:

- [Heath Abshire](#), Arkansas Securities Commissioner, on behalf of NASAA
- [Michael Arougheti](#), CEO, Ares Capital Corporation

- [Michael Ertel](#), Managing Director, M&A Advisors, LLC
- [Alexander C. Frank](#), CFO, Fifthstreet
- [Gary K. Wunderlich, Jr.](#), CEO, Wunderlich Securities, on behalf of SIFMA
- [Tom Quaadman](#), VP, Center For Capital Markets Competitiveness, U.S. Chamber; and
- [David Weild](#), Chairman and CEO, IssuWorks

Three of the bills relate to potential changes to the regulation of Business Development Companies (BDCs), and most of the discussion was on this issue. Several of the proposed changes seem to have broad bipartisan support, but certain proposed changes, specifically changing the allowable leverage ratio and allowing BDCs to make investments in registered investment advisers, received pushback.

A video of the hearing is [here](#), and the Committee Memorandum, which does a good job of summarizing the various bills, is [here](#).

This week the HFSC has two hearings:

[Hearing on Legislation to Reform the CFPB](#) – On Tuesday, the Financial Institutions Subcommittee will hold a hearing titled “[Examining Legislative Proposals to Reform the CFPB](#).” Witnesses are:

- Jess Sharp, Executive Director, U.S. Chamber Center for Capital Markets Competitiveness
- Robert S. Tissue, CFO, Summit Financial Group, on behalf of the WV Bankers Association
- Lynette Smith, CEO, Washington Gas Light FCU on behalf of the NAFCU
- Damon A. Silvers, Policy Director and Special Counsel, AFLCIO

The Committee Memorandum is [here](#).

The Committee will also [hold a hearing](#) on the Federal Housing Administration with FHA Commissioner and Assistant Secretary for Housing Carol Galante.

House Small Business Committee

[Hearing on Regulatory Burdens on Small Financial Institutions](#) – HSBC’s hearing titled “[Regulatory Landscape: Burdens on Small Financial Institutions](#)” was postponed due to the funeral for Congressman Young. The hearing will examine how the overall regulatory burdens facing small financial institutions, namely banks and credit unions are affecting their businesses. Witnesses are:

- Hester Perice, Senior Research Fellow, George Mason University
- Linda Sweet, on behalf for the National Association of Federal Credit Unions
- Doyle Mitchell, on behalf of the Independent Community Bankers of America
- Adam J. Levitin, Professor of Law, Georgetown University

The hearing has not yet been rescheduled.

Securities and Exchange Commission

Proposed Rule on Crowdfunding Released

The SEC [released its proposed rule on crowdfunding](#) last week, which will allow companies to offer and sell securities via the Internet. The text of the 585-page proposed rule is [here](#). Under the proposed rule, generally:

- A company would be able to raise a maximum aggregate amount of \$1 million through crowdfunding offerings in a 12-month period; and
- Investors, over the course of a 12-month period, would be permitted to invest up to:
 - \$2,000 or 5 percent of their annual income or net worth, whichever is greater, if both their annual income and net worth are less than \$100,000; and
 - 10 percent of their annual income or net worth, whichever is greater, if either their annual income or net worth is equal to or more than \$100,000. During the 12-month period, these investors would not be able to purchase more than \$100,000 of securities through crowdfunding.

The proposed rule has a 90-day public comment period. Comments may be submitted [here](#).

Three Investment Advisory Firms Sanctioned under Compliance Program Initiative

The SEC [sanctioned three investment advisory firms](#) for repeatedly ignoring problems with their compliance programs. The actions by the firms include failing to comply with IAA Rule 206(4)-7, failing to complete annual compliance reviews, making misleading statements on the firm's website and investor brochure, misreporting AUM, and overstating historical performance. The enforcement actions arise from the agency's new Compliance Program Initiative, which targets firms that have been previously warned by SEC examiners.

Proposed Policy Statement on Diversity at Financial Institutions

The SEC and five other federal agencies [released a joint proposal](#) to establish standards for assessing the diversity policies and practices at the entities they regulate. The proposal covers four areas: commitment to diversity and inclusion; workforce profile and employment practices; supplier diversity and procurement practices; and practices to promote transparency. There is a 60-day comment period.

Mary Jo White Remarks at NSCP Meeting

SEC Chairwoman Mary Jo White [gave a speech](#) at the National Society of Compliance Professionals national membership meeting that provides a good overview of the SEC's thoughts and activities across a broad range of compliance-related issues, including the role of compliance officers, examinations, and enforcement.

Annual Government-Business Forum on Small Business Capital Formation

The SEC will hold its annual [Government-Business Forum on Small Business Capital Formation](#) on November 21 in DC. The forum will include implementation of the JOBS Act and other issues. The forum is open to the public, and you can register for it [here](#).

Commodity Futures Trading Commission (CFTC)

Open Meeting on Wednesday

This Wednesday, the CFTC will hold an open meeting to consider proposals [to impose position limits for derivatives](#) and also to [enhance customer protections](#) for funds held by FCMs and DCOs.

Enforcement Division's Annual Results

The CFTC announced that it had obtained [a record \\$1.7 billion in monetary sanctions](#) during its 2013 fiscal year (ended September 30) and had filed a total of 82 enforcement actions. This year's civil monetary penalties total more than seven times the Commission's operating budget for the fiscal year. The [press release](#) has a good summary of all of the various enforcement actions taken by the CFTC this year.

Private Equity Growth Capital Council (PEGCC)

Report Ranking Top 10 Pension Funds by PE Returns and Allocations

The Private Equity Growth Capital Council [released a new study](#) revealing which public pension funds invested the most in private equity, as well as those that produced the highest rate of return on their private equity portfolios. The report examines 146 U.S. public pension funds with assets greater than \$1 billion, analyzes the asset allocation of these funds, and compares the performance of their private equity investments to other asset classes. According to the analysis, private equity returns to large public pension funds continue to outperform all other asset classes over 10-year time horizons.

The study contains a [detailed report](#), an [info-graphic](#) and an [interactive map](#). The PEGCC's analysis is broken down into four main categories: top 10 Pensions by PE Returns; top 10 Pensions by PE Allocation; Pension Asset Allocation; and Pension Returns by Asset Class.

Investment Adviser Association (IAA)

Analysis of the Investment Adviser Market

The Investment Adviser Association released its [2013 Evolution Revolution report](#), which analyzes data contained on all Form ADVs filed by registered investment advisers. The report shows that over the last year the total number of registered IAs remains virtually unchanged – rising from 10,511 to 10,533. Registered IAs reported \$54.8 trillion in aggregate regulatory assets under management (RAUM), a substantial increase of 10.9% from \$49.4 trillion in 2012. This increase in RAUM managed by advisers may be attributable to both rising markets and organic growth in the industry, evidenced by the increase in the number of clients served.

Managed Fund Association (MFA)

Report Shows Pension Investors' Confidence Is Up, Fees Down

The MFA highlighted a report from the National Conference on Public Employee Retirement Systems showing that investment returns and confidence levels are up among public pension administrators. According to the report, overall confidence among administrators rose to 7.8 on a 10-point scale, up from 7.7 in 2012. Annualized returns on three-year investments rose to 10% from 4% in 2012, while 10-year annualized investment returns rose to 7% from 5%; 20-year annualized returns remained at 8%.

Miscellaneous

FINRA Regulatory Notice re: Crowdfunding

FINRA [released its proposed Funding Portal Rules](#) for crowdfunding portals, and has requested public comment on these rules. The comment period expires on February 3, 2014.

ISDA Report on Credit Default Swap (CDS) Market

The International Swaps and Derivatives Association (ISDA) released [research notes on the credit default swap \(CDS\) market](#) noting that while the aggregate level of CDS notional outstanding has decreased over the past several years, much of this decrease in notional outstanding is due to portfolio compression. As noted in the report, portfolio compression has eliminated \$85.7 trillion of CDS notional through year-end 2012. Market risk transaction activity was \$15.2 trillion in 2011, \$15.0 trillion in 2012 and \$17.3 trillion in 2013, a 15% increase.

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