

# Private Fund Update

April 14, 2014



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**Note:** The Association for Corporate Growth [will host a free webinar](#) with members of the SEC's Office of Compliance Inspections and Examinations (OCIE) to discuss exam-related issues for middle-market private equity funds on Wednesday, May 7, at 2:00 p.m. ET. ACG members can register for the webinar [here](#).

Congress had a busy week before adjourning for a two-week recess. This update reviews:

- Last week's House Financial Services Committee hearing on several JOBS Act 2.0 bills;
- Last week's House Small Business Committee hearing on tax problems for small businesses; and
- The SEC's Investor Advisory Committee meeting, which approved six proposals to impose additional regulations on crowdfunding.

I'll be taking a break from the Private Fund Update for the next two weeks while Congress is in recess. Have a great recess, and if you have any comments or suggestions as to how to make this update more helpful, please let me know!

Venable LLP [tracks a wide range of regulatory issues](#), so please contact me for more information regarding anything contained in this update.

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

### House of Representatives

#### House Financial Services Committee

[Hearing on JOBS Act 2.0 Bills](#) – The House Financial Services Committee held a hearing titled "[Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies](#)." Witnesses were:

- [David R. Burton](#), Senior Fellow in Economic Policy, The Heritage Foundation
- [John C. Coffee, Jr.](#), Professor, Columbia Law School
- [Brian Hahn](#), on behalf of the Biotechnology Industry Organization
- [Tom Quaadman](#), U.S. Chamber of Commerce

Proposed legislation that was discussed included:

- [H.R. 2629](#), "Fostering Innovation Act of 2013" – Revises the definition of "accelerated filer" under Rule 12b-2 to include issuers that have annual revenues of greater than \$100 million and an aggregated worldwide market value of \$250 million or more but less than \$700 million.

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- [H.R. 4200](#), "SBIC Advisers Relief Act of 2014" – This bill clarifies SEC registration exemptions under the Investment Advisers Act for advisers of Small Business Investment Companies (SBICs), Venture Capital (VC) funds, and smaller private equity funds. Specifically, the bill (i) preempts state regulation of SBICs, (ii) allows advisers of VC funds to continue to be exempt reporting advisers if they also advise an SBIC, and (iii) excludes SBIC capital from the SEC registration threshold calculation of \$150 million in assets under management.
  - [Discussion Draft, "Disclosure Modernization and Simplification Act"](#) – The bill would modernize the SEC disclosure rules by permitting issuers to submit a summary page on Form 10-K annual reports to make annual disclosures easier to understand for current and prospective investors. It would also reduce Reg S-K disclosures for emerging growth companies and smaller issuers.
  - [Discussion Draft, Bill to Increase Threshold Amount for Disclosure of Compensatory Benefit Plans](#) – Requires the SEC to increase the threshold for disclosures of certain risk factors relating to compensatory benefit plans from \$5 million to \$20 million.
  - [Discussion Draft, Bill to Revise the Definition of a Well-Known Seasoned Issuer](#) – The bill would reduce the threshold for issuers becoming a Well-Known Seasoned Issuer (Wksi) from \$700 million to \$250 million; will allow more companies to file Form S-3s.
  - [Discussion Draft, Bill to Reduce Holding Period for Restricted Securities](#) – The bill would reduce from 6 months to 3 months the mandatory holding period for restricted securities in SEC Rule 144 offerings.
  - [Discussion Draft, "Small Company Freedom to Grow Act"](#) – The bill would amend the Form S-1 to allow smaller reporting companies to incorporate by reference documents filed with the SEC after the effective date of the S-1. It would also amend the form S-3 to benefit smaller reporting companies.

The Committee Memorandum is [here](#).

[Hearing on How Washington Red Tape Impairs Economic Freedom](#) – The HFSC also held a hearing on the economic consequences of recent rulemaking, supervisory, and enforcement actions of the CFPB, the FDIC, the Federal Reserve Board, the NCUA, and the OCC on consumers, the U.S. economy, and job-creating businesses. The hearing examined how federal financial regulatory agencies evaluate the costs and benefits to consumers of their regulatory, enforcement, and supervisory actions. Witnesses were:

- [Meredith Fuchs](#), General Counsel, CFPB
- [Richard J. Osterman, Jr.](#), Acting General Counsel, FDIC
- [Scott G. Alvarez](#), General Counsel, Federal Reserve Board
- [Michael McKenna](#), General Counsel, National Credit Union Administration
- [Amy Friend](#), Chief Counsel, Office of the Comptroller of the Currency

The Committee memorandum is [here](#).

#### House Ways & Means Committee

[Hearing on Benefits of Permanent Tax Policy](#) – The HW&MC held a hearing on the benefits of permanent tax policy for America's jobs creators. The hearing focused on the value in having a stable, permanent tax policy for employers, as well as the problems caused by tax policies that frequently expire and are extended for short periods of time (often retroactively). Witnesses were:

- [Judith Zelisko](#), Vice President of Tax, Brunswick Corporation
- [Bob Stallman](#), President, American Farm Bureau Federation

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- [James Redpath](#), Managing and Tax Partner, HLB Tautges Redpath, Ltd.
  - [Joshua Odintz](#), Partner, Baker & McKenzie LLP
  - [Thomas L. Hungerford, Ph.D.](#), Director of Tax and Budget Policy, Economic Policy Institute

### House Small Business Committee

[Hearing on the Biggest Tax Problems for Small Businesses](#) – HSBC held a hearing on The Biggest Tax Problems for Small Businesses. Witnesses were:

- [David J. Kautter](#), Kogod Tax Center, American University
- [Tim Reynolds](#), Tribute, Inc., on behalf of the National Small Business Association
- [Rick Endres](#), The Washington Network, on behalf of The ASCII Group
- [Donald Marron](#), The Urban Institute and Urban-Brookings Tax Policy Center

The hearing memorandum is [here](#), and a video of the hearing is [here](#).

### House Appropriations Committee

Financial Services Subcommittee Hearings – The Financial Services Subcommittee had another busy week, with hearings on the FY 2015 budget for the [Internal Revenue Service](#), [General Services Administration](#), and the [Office of Management and Budget](#).

### House Oversight and Government Reform Committee

[Letter from Chairman Issa re: FSOC and Asset Managers](#) – Darrell Issa, Chairman of the House Committee on Oversight and Government Reform, wrote a letter last week to Treasury Secretary Lew expressing concern with the Financial Stability Oversight Counsel (FSOC), particularly regarding the potential designation of certain asset management firms as systemically important financial institutions (SIFIs). Such a designation would subject such firms to enhanced capital requirements and prudential regulation.

## **The Senate**

### Senate Agriculture Committee

[Business Meeting on CFTC Nominees](#) – The Senate Ag Committee voted on the President's three nominees to serve on the CFTC Commission: Timothy G. Massad (to also be Chairman), Sharon Y. Bowen, and J. Christopher Giancarlo. All three were approved by voice vote.

### Senate Banking Committee

[Nomination Hearing](#) – The SBC [held a nomination hearing](#) on Nani A. Coloretti, of California, to be Deputy Secretary of the U.S. Department of Housing and Urban Development.

## **The Administration**

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Kathleen Sebelius resigned last week as Secretary of Health and Human Services. The President [nominated Sylvia Mathews Burwell](#), who previously served as COO and President for Global Development of the Gates Foundation, head of the Walmart Foundation, and a member of the board at MetLife, to replace her. Ms. Burwell most recently served as the President's Budget Director.

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The President also [signed an executive order](#) prohibiting federal contractors from retaliating against employees who choose to discuss their compensation as well as [a Presidential Memorandum](#) instructing the Secretary of Labor to establish new regulations requiring federal contractors to submit to the Department of Labor summary data on compensation paid to their employees, including data by sex and race. To read Venable's analysis, please click [here](#).

### FSOC Hearing on Asset Management Industry on May 19

The Financial Stability Oversight Council announced that they will be [holding a public conference](#) on the asset management industry and its activities on May 19, 2014, in the Cash Room at the Department of the Treasury. Panels will focus on an in-depth examination and discussion of targeted issues associated with asset management in order to further inform the work of the Council.

## Securities and Exchange Commission

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### Meeting of Dodd-Frank Investor Advisory Committee: Recommendations on Crowdfunding

The SEC's Investor Advisory Committee [held a public meeting](#) last week where it approved six recommendations made by the Investor as Purchaser Subcommittee regarding crowdfunding:

- The Commission should, as an initial matter, adopt tighter restrictions on the amounts that investors can invest in crowdfunding;
- The Commission should strengthen the mechanisms for the enforcement of the investment limits in order to better prevent errors and evasion;
- The Commission should clarify and strengthen the obligations of crowdfunding intermediaries to ensure compliance by issuers with the crowdfunding title and relevant regulations;
- The Commission should take further steps to ensure that educational materials clearly convey the required information and are reviewed and, to the degree possible, understood by investors;
- The Commission should withdraw its proposed definition of electronic delivery, which fails to ensure that investors actually receive the required disclosures and educational materials, and continue to rely instead on the strong and effective policy for electronic delivery adopted by the Commission in the mid-1990s; and
- The Commission should require crowdfunding offerings to be integrated with offerings in reliance on a separate exemption where needed and appropriate to prevent evasion of regulatory requirements.

## Commodity Futures Trading Commission (CFTC)

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### Public Roundtable on End-Users Held

The CFTC held a public roundtable recently [to discuss issues concerning end-users and the Dodd-Frank Act](#). The roundtable consisted of three panels, discussing (i) the obligations of end-users under Reg 1.35 concerning recordkeeping for commodity interest and related cash or forward transactions; (ii) the appropriate regulatory treatment of forward contracts with embedded volumetric optionality; and (iii) the appropriate regulatory treatment for purposes of the \$25 million (special entity) *de minimis* threshold for swap dealing to government-owned electric utilities. An agenda is [here](#). The list of panelists is [here](#), and here are links to the opening statements of [Chairman Mark Wetjen](#) and Commissioner [Scott O'Malia](#).

## Association for Corporate Growth (ACG)

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### InterGrowth 2014

[InterGrowth 2014](#) will be held April 28 –30, 2014, at the Aria Hotel in Las Vegas. To register online for InterGrowth click [here](#). Participants in the CEO panel at InterGrowth are listed [here](#) and a list of capital

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providers that are attending is [here](#). ACG has recently announced the [list of breakout sessions](#) and the [full schedule for the conference](#).

#### **2014 Policy Agenda**

ACG released its [2014 policy agenda](#), which includes the organization's legislative and regulatory priorities. Top legislative priorities include H.R. 1105 (private equity fund registration under IAA), H.R. 2274 (M&A broker legislation), and protecting deductibility of interest on corporate debt in case of comprehensive tax reform. Top regulatory issues include broker-dealer issues for private equity funds, JOBS Act implementation, and improving the efficiency of SEC examinations.

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

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#### **PEGCC President and CEO on Bloomberg TV**

PEGCC President and CEO Steve Judge discussed tax reform and other private equity issues [on Bloomberg TV's Market Makers](#) with Erik Shatzker and Stephanie Ruhle.

## **Managed Funds Association (MFA)**

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#### **Presentation on How Hedge Funds Count Their Assets**

The Managed Funds Association's Hedge Fund Fundamentals released its latest educational resource, [How Hedge Funds Count Their Assets](#). The presentation also explains the new method of calculation used by the Securities and Exchange Commission, called Regulatory Assets Under Management (RAUM).

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