**Quick note**: Thanks again to private markets network <u>Axial</u> for including my Private Fund Update in its list of "<u>16</u> Websites Deal Professionals Should Visit Daily."

# **Private Fund Update**

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Congress finally reached an agreement to raise the federal debt ceiling through February 7<sup>th</sup> and fund government activities through January 15<sup>th</sup>. The House is back in session this week and holds an important hearing on Thursday on legislation to facilitate capital formation — a precursor to a potential JOBS Act 2.0.

# This Update contains:

- A summary of the House Financial Services hearing on legislation to reduce impediments to capital formation;
- A summary of the House Small Business Committee hearing on easing regulatory burdens on small financial institutions;
- SBIA's 2013-2014 new officers and key Board members; and
- A FINRA report on conflicts of interests among broker-dealers.

#### The President

Congress passed and the President signed legislation to reopen the federal government and increase the debt ceiling. The deal funds the government through January 15<sup>th</sup> and suspends the debt ceiling through February 7<sup>th</sup>. It also calls for the creation of a bipartisan, bicameral group of Senators and Congressmen to try and craft a long-term deal and report back by December 13<sup>th</sup>. Formal meetings of the group should begin soon.

The President also nominated Jeh Johnson to be Secretary of Homeland Security.

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

#### The Senate

### Senate Banking Committee

<u>Hearing on Government Guarantee on Mortgage-Backed Securities</u> – The SBC had scheduled a hearing called "<u>Housing Finance Reform: Essential Elements of a Government Guarantee for Mortgage-Backed Securities</u>" to take place on Tuesday, October 22<sup>nd</sup>. However, because the Senate is not in session, this hearing has been postponed. Witnesses were to be:

- David Stevens, CEO, Mortgage Bankers Association
- Phillip Swagel, Professor, University of Maryland

#### **House of Representatives**

The first formal steps in a JOBS Act 2.0 take place this week as the House Financial Services Committee holds an important hearing on reducing impediments to capital formation. Also this week, the full House is expected to consider <a href="H.R. 3080">H.R. 3080</a>, the Water Resources Reform and Development Act (WRDA), which unanimously passed the Transportation and Infrastructure Committee in September.

#### **House Financial Services Committee**

<u>Hearing on JOBS Act 2.0</u> – On Thursday, the Capital Markets Subcommittee will hold a hearing titled "<u>Legislation to Further Reduce Impediments to Capital Formation</u>." Detailed information has not yet been posted on the HFS website, but in the past, Subcommittee Chairman Scott Garrett (R-NJ) has said the following issues could be included in a JOBS Act 2.0:

- <u>Tick Size Legislation</u> would authorize the Board of Directors of an issuer with a public float
  of \$500 million or less to have the securities traded in \$0.05 or \$0.10 increments or ticks;
- <u>BDC Modernization</u> various bills have been introduced which would modernize the regulations that govern business development companies (BDCs);
- <u>Private Equity Registration Exemption</u> legislation has already passed the HFSC that would exempt private equity funds from having to register with the SEC under the Investment Advisers Act; and
- M&A Advisor Legislation would ease registration requirements for merger and acquisition brokers who perform services for the sale of smaller companies.

The hearing is also expected to review recommendations made by the SEC's Small and Emerging Companies Advisory Committee, which in the past has made recommendations regarding trading spreads for smaller listed companies, exempting smaller companies from specialized (i.e. conflicts minerals) disclosure requirements, disclosure requirements for smaller public companies and a separate equity market for small and emerging companies.

<u>Hearing on Reforming the CFPB</u> – On Thursday, the Financial Institutions Subcommittee will hold a hearing titled "<u>Examining Legislative Proposals to Reform the CFPB</u>." Witnesses have not yet been announced.

# **House Small Business Committee**

<u>Hearing on Regulatory Burdens on Small Financial Institutions</u> — On Thursday, the Investigations Oversight and Regulations Subcommittee will hold a hearing titled "<u>Regulatory Landscape</u>: <u>Burdens on Small Financial Institutions</u>." 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 will be livestreamed here.

# **Joint Committee on Taxation**

Report on Modeling Distribution of Taxes on Business Income — The JCT released a report on Modeling the Distribution of Taxes on Business Income. Historically, the JCT has provided an analysis only of changes to individual income, employment, and excise taxes. This document outlines the approach that the JCT staff employs for distributing the taxes on the income of corporations and passthrough entities.

# **Securities and Exchange Commission**

Conference on <u>Hedge Fund Transparency and Openness</u>. In the speech, the Chairwoman requests input from the private fund community on how to ensure the regulations applicable to registered investment advisers make sense for private funds.

# **Launch of Market Structure Data and Analysis Website**

The SEC unveiled a new website, <a href="www.sec.gov/marketstructure">www.sec.gov/marketstructure</a>, which allows the public to access new market metrics and empirical research and analyses. The website will serve as a central location for the SEC to publicly share evolving data, research, and analysis. Reports released this week include ones on <a href="Alternative Trading Systems">Alternative Trading Systems</a>, <a href="Market Fragmentation">Market Fragmentation</a>, and <a href="The Speed of the Equity Markets">The Speed of the Equity Markets</a>.

# **Investor Advisory Committee Meeting**

The SEC announced the <u>Investor Advisory Committee meeting</u> scheduled for Thursday, October 10<sup>th</sup> has been postponed. The IAC did <u>release its draft recommendations regarding fiduciary duties for broker-dealers</u>, which states that "personalized investment advice to retail customers should be governed by a fiduciary duty, regardless of whether that advice is provided by an investment adviser or a broker-dealer."

# **Annual Government-Business Forum on Small Business Capital Formation**

The SEC will hold its annual <u>Government-Business Forum on Small Business Capital Formation</u> on November 21<sup>st</sup> in Washington, 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 <u>here</u>.

# **Commodity Futures Trading Commission (CFTC)**

# Settlement with JP Morgan in "London Whale" Trades

The CFTC <u>filed and settled charges against JP Morgan</u> for violating the prohibition on manipulative conduct in connection with the "London Whale" swaps trade. As part of the settlement, JPMorgan admits that its traders acted recklessly and is required to pay a \$100 million civil penalty. Commissioner Scott O'Malia <u>dissented from the settlement</u>, saying that the Commission should have taken more time to investigate whether the company is liable for a more serious violation, such as price manipulation.

# **Small Business Investor Alliance (SBIA)**

# SBIA Names New Officers and Board for 2013-2014

The Small Business Investor Alliance announced its new Board of Governors for 2013-2014. Charles McCusker, managing partner of Patriot Capital, was named Chairman of the Board. Carolyn Galiette, senior managing director of Ironwood Capital, joined the officers as Treasurer. Faraz Abbasi, a partner at Centerfield Capital Partners, was named Middle Market Committee Chair. Tom Aronson, principal of Monroe Capital Partners, was named BDC Committee Chair. Arjun Gupta, Founder of TeleSoft Partners, is the new Venture Capital Committee Chair. Steve Hobman, partner of NewSpring Mezzanine Capital, will be the SBIC Committee Chair. And Tim Rafalovich, vice president of Wells Fargo Bank, will be Limited Partner Chair.

# Managed Fund Association (MFA)

# Hedge Fund Assets Surpass \$2.5 Trillion

The MFA cited a report from Hedge Fund Research showing that total capital invested in hedge funds

<u>rose by \$94 billion in the third quarter, reaching a total of over \$2.5 trillion worldwide</u>. The industry also experienced the highest inflows since the second quarter of 2011, with investors allocating over \$23 billion of net new capital to hedge funds during the quarter.

#### Miscellaneous

#### **FINRA Report on Conflicts of Interest**

FINRA released a <u>report on conflicts of interest by broker-dealers</u>. The report focuses on three specific areas:

- Broker-dealers' use of enterprise-level frameworks to identify and manage conflicts of interest;
- Approaches to handling conflicts of interest in manufacturing and distributing new financial products; and
- Approaches to compensating their associated persons, particularly those acting as brokers for private clients.

## Prudential Financial, Inc. Accepts SIFI Designation

Prudential Financial <u>released a statement</u> saying that it will not seek to rescind the designation of the company as a non-bank systemically important financial institution (SIFI) by the Financial Stability Oversight Council (FSOC).

#### 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

# 2013 Long Term Budget Outlook

The Congressional Budget Office (CBO) released its <u>2013 Long-Term Budget Outlook</u>. The report finds that under current law, the federal debt would grow to 100 percent of GDP by 2038, and would be on an upward path relative to the size of the economy that is not sustainable. A summary of the report is here. Doug Elmendorf's slide deck is here.

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