

Private Fund Update

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The big news this week was the SEC's announcement of a new examination program focused on never-before-registered Investment Advisers, which is sure to result in more private equity fund managers receiving their first SEC exam in the months ahead.

This update includes:

- Details on the SEC's new examination program;
- Treasury's release of the last substantial package of regulations to implement FATCA; and
- Updated Q&A on Form PF, relevant to private equity fund managers.

Things get busier this week as:

- House Ways & Means Committee Chair Dave Camp is expected to release his tax reform proposal, which may include carried interest and/or deductibility of interest on debt;
- HFSC holds hearings on both Reg NMS and asset-backed securities; and
- Janet Yellen visits the Senate Finance Committee.

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

The 113th Congress

House of Representatives

House Financial Services Committee

[Hearing on Dodd-Frank's Impact on Asset-Backed Securities](#) – On Wednesday, HFSC will hold a hearing on Dodd-Frank's impact on asset-backed securities which will examine, among other things, the impact of the Volcker Rule. Although the statutory text states that it will not restrict or limit the ability of banks to sell or securitize loans, certain asset-backed securities have been deemed to be "covered funds" subject to the Rule. The text of a draft bill to remedy this situation is [here](#). The hearing will also cover credit risk retention, disclosure and reporting requirements for ABS and reps, and warranties in ABS shelf offerings.

Witnesses are:

- Meredith Coffey, EVP, Loan Syndications and Trading Association
- Professor Adam J. Levitin, Professor, Georgetown University Law Center
- Mr. Tom Quaadman, Vice President, Center For Capital Markets Competitiveness, U.S. Chamber of Commerce
- Mr. Paul Vanderslice, Managing Director, Citigroup, on behalf of the CRE Finance Council

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- Mr. Neil Weidner, Partner, Cadwalader, Wickersham & Taft, on behalf of the Structured Finance Industry Group

The Committee Memorandum is [here](#).

On Wednesday, the Oversight and Investigations subcommittee will hold a hearing on alleged [improper lobbying by an official at the Department of Housing and Urban Development](#). The sole witness is David Montoya, Inspector General at the U.S. Department of Housing and Urban Development.

On Friday, the Committee [will hold a hearing](#) on [Reg NMS](#), a set of rules passed by the SEC in 2005 which consists of the Order Protection Rule, aimed at ensuring that investors receive the best price when their order is executed; the Access Rule, aimed at improving access to quotations from trading centers; the Sub-Penny Rule, which sets the lowest quotation increment of all stocks over \$1.00 per share to at least \$0.01; and the Market Data Rules, which allocate revenue to SROs to promote and improve market data access.

House Ways & Means Committee

HWMC Chairman Dave Camp (R-MI) is expected this week to release his proposal for comprehensive tax reform. Camp has previously said that his goal is to cut top corporate and individual rates to 25%. In order to do so, the proposal will likely include reducing or eliminating a number of popular tax expenditures, potentially including carried interest and/or the deductibility of interest on corporate debt.

The Senate

Senate Banking Committee

[Meeting with Janet Yellen](#) – On Thursday, SBC will hold its rescheduled hearing with Janet Yellen, new Chair of the Board of Governors of the Federal Reserve.

The SBC will also hold a hearing on the [terrorism risk insurance market](#).

Senate Permanent Subcommittee on Investigations

[Hearing on Offshore Tax Evasion](#) – On Wednesday, the PSCOI will hold a hearing titled "[Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts](#)." The hearing will continue the Subcommittee's examination of tax haven bank facilitation of U.S. tax evasion, focusing on the status of efforts to hold Swiss banks and their U.S. clients accountable for unpaid taxes on billions of dollars in hidden assets. Witnesses will include representatives from a Swiss bank and the U.S. Department of Justice.

Securities and Exchange Commission

New Initiative Aimed at Never-Before-Examined Registered IAs

The SEC's Office of Compliance Inspections and Examinations (OCIE) [announced the launch of an initiative](#) directed at investment advisers that have never been examined, focusing on those that have been registered with the SEC for three or more years. The announcement includes [an open letter to Registered Investment Advisers and their compliance officers](#). OCIE's Examination Priorities for 2014 are [here](#).

Updated Q&A on Form PF

The SEC's Division of Investment Management released [updated questions and answers regarding Form PF](#). The updated guidance makes clear that a private fund that would be categorized as a private equity

fund except for the fact that fund documents allow it to either employ large amounts of leverage or sell assets short may not categorize itself as a private equity fund (and must instead be deemed a hedge fund) even if the fund doesn't actually incur leverage or sell assets short. The actual Q&A is [here](#).

No Action Letter on M&A Brokers – Webinar Last Thursday

[David Blass, Chief Counsel of the Division of Trading and Markets, and his colleague Darren Vieira participated in a free webinar](#) last week sponsored by the Association for Corporate Growth and Venable, discussing the No Action Letter. Hopefully we'll have audio of the webinar next week.

2014 PCAOB Budget and Accounting Support Fee

The SEC approved the 2014 budget of the Public Company Accounting Oversight Board (PCAOB) and related annual accounting support fee, as required under Sarbanes-Oxley. The PCAOB budget totals \$258.4 million and will be funded primarily by the collection of an accounting support fee totaling \$252 million. Of the \$252 million support fee, \$225.4 million comes from public companies and \$26.6 million from broker-dealers. The formal order approving the budget is [here](#).

Commodity Futures Trading Commission (CFTC)

Global Markets Advisory Committee Meeting Held

The CFTC's Global Markets Advisory Committee met earlier this month to discuss a [number of pressing issues](#), including the CFTC [staff advisory](#) issued on November 14, 2013, related to the CFTC's cross-border guidance. Topics for discussion included whether a non-U.S. swap dealer (SD) must comply with Dodd-Frank's Transaction-Level Requirements when entering into a swap with a non-U.S. person if the swap is arranged, negotiated, or executed by agents of the non-U.S. SD located in the United States. An audio recording of the hearing is not yet available.

Weekly Swaps Report

Here is a link to the CFTC's [Weekly Swaps Report](#) for the week ending February 7, 2014. The weekly report provides 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.

The Administration

Last week, the U.S. Treasury [released its final substantial package of regulations](#) necessary to implement the Foreign Account Tax Compliance Act (FATCA), designed to combat offshore tax evasion. The package contains over 50 discrete amendments and clarifications to the FATCA regulations, including treatment of certain special-purpose debt securitization vehicles; treatment of disregarded entities as branches of foreign financial institutions; and the definition of an expanded affiliated group. Treasury's fact sheet on the amendments is [here](#), and the 229-page document with the amendments themselves is [here](#). Treasury aims to have the rules implemented by July 1.

Congressional Budget Office (CBO)

Raising Minimum Wage Would Result in Job Loss

It is worth noting that the CBO [released a report last week](#) stating that raising the federal minimum wage to \$10.10 would result in a reduction of approximately 500,000 workers by the middle of 2016. According to the report, job loss would be most significant with respect to low-wage workers.

Association for Corporate Growth (ACG)

InterGrowth 2014

Registration has opened for [InterGrowth 2014](#), which will be held April 28 – May 1, 2014 at the Aria Hotel in Las Vegas. To register online for InterGrowth click [here](#). The participants in the CEO panel at InterGrowth were just announced – to find out who they are, click [here](#).

Private Equity Growth Capital Council (PEGCC)

2013 Annual Report

The PEGCC released its [2013 Annual Report](#). [In the detailed report](#) PEGCC notes its accomplishments and priorities for the year, which include its award winning *Private Equity at Work* public education campaign; producing and promoting unique research and analysis; defending attacks on the tax treatment of carried interest, House passage of H.R. 1105, a bill exempting advisers to private equity funds from SEC registration requirements; and maintaining the deductibility of interest on corporate debt. Along with the report, the group also [released a short video](#) by PEGCC President and CEO Steve Judge.

Quarterly Trends Report Shows Increased PE Activity

The PEGCC also released its [Q4 2013 Trends Report](#), which shows a marked increase in private equity activity in Q4 2013. During the quarter, private equity investment and exit volumes increased by 14% and 44%, respectively. The report also found that dry powder grew 2%, from \$384 billion in September 2013 to \$391 in December, while equity financing increased to 44% during the quarter, the highest rate since 2010.

Managed Funds Association (MFA)

February Policy Brief

The Managed Funds Association released its [February Policy Brief newsletter](#) describing its activities for the month, including its efforts on the recent SEC No Action Letter on “knowledgeable employees” (Rule 3c-5), submitting comments on the CFTC’s position limits rule, and submitting comments on the CFTC’s proposed aggregation limits rule.

Miscellaneous

Academic Study on Direct Investing in Private Equity

Three professors [did the first large-sample study of direct private equity investments by institutional investors](#). The study examines seven large institutional investors over 20 years, and finds that even with the substantial fee discounts, there is little evidence of attractive relative performance by direct investments. In particular, co-investments underperform traditional fund investments, perhaps because of fund managers’ selective offering of deals at market peaks as co-investments. The performance of both co-investments and solo investments deteriorated sharply in the 2000s, suggesting that any information advantage may have disappeared as the private equity industry became more competitive. Overall, our evidence suggests that institutional investors may find it difficult to capture the rents earned by private equity managers by investing directly.

Pitchbook Report on Private Equity Branding

Pitchbook and BackBay Communications [released a white paper on private equity branding](#). The companies surveyed 290 private equity general partners, limited partners, funds-of-funds, advisors, and consultants serving the private equity industry in the United States and Europe concerning their attitude and approach to branding. It found that there was near unanimity (98%) about the importance for private equity firms to have a strong brand. 92% said a strong brand helps private equity firms source deals, with

a similar proportion saying it helps them raise new funds. Four in five (81%) also said a strong private equity brand helps attract and retain talent.

Third Way Paper on Bank Capital Requirements

Nonprofit Third Way released a report titled "[Capital Requirements and Bank Balance Sheets: Reviewing the Basics](#)." The report provides a very basic overview of a bank's balance sheet, including the fact that bank capital requirements are referring to the amount of equity a bank must hold in relation to its assets.

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