

**Quick note:** Thanks again to private markets network [Axial](#) for including my Private Fund Update in its list of "[16 Websites Deal Professionals Should Visit daily.](#)"

# Private Fund Update

October 14, 2013

Scott E. Gluck, Esq.  
Venable LLP

Washington, DC Office:  
t 202.344.4426  
c 540.454.4820

Los Angeles Office:  
t 310.229.9900  
c 540.454.4820

[sgluck@venable.com](mailto:sgluck@venable.com)  
[www.venable.com](http://www.venable.com)

The U.S. is expected to hit the debt ceiling this Thursday, and while discussions are ongoing, no resolution is in sight as proposals by Susan Collins were rejected. The debt ceiling and budget shutdown are the only games in town now, and will continue to be the primary focus of Congress until the issues are resolved.

This Update contains:

- SBIA's efforts to modernize regulations involving Business Development Companies (BDCs);
- The new SEC website on market analytics ([www.sec.gov/marketstructure](http://www.sec.gov/marketstructure)), which is worth checking out;
- An interesting report by ISDA on credit default swap (CDS) activity from 2011-2013A;
- Senate hearings on the debt ceiling and the impact on a default by the U.S. government; and
- A Third Way report on the Treasury bill market.

## The President

---

While focusing his efforts ending the government shutdown and increasing the debt ceiling, the President found the time to [nominate Janet Yellen](#) as Chair of the Board of Governors of the Federal Reserve System. Yellen is very likely to be confirmed by the Senate, although Senator Rand Paul (R-KY) has indicated that he may try to filibuster the nomination.

The Treasury Department's Office of Financial Research released its report on [Asset Management and Financial Stability](#), describing potential systemic risk arising from the asset management industry. As noted below, the Securities and Exchange Commission [has invited the public to comment on the report](#). A summary of the OFR's report is [here](#).

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

---

### The Senate

#### Senate Banking Committee

[Impact of a Default on Financial Stability and Economic Growth](#) – Last week the Committee held a hearing titled "[Impact of a Default on Financial Stability and Economic Growth.](#)" Witnesses were:

- Frank Keating, CEO, American Bankers Association  
[\[written testimony\]](#)
- Kenneth E. Bentsen, Jr., President, SIFMA  
[\[written testimony\]](#)
- Gary Thomas, President, National Association of Realtors  
[\[written testimony\]](#)

- Paul Schott Stevens, CEO, Investment Company Institute  
[\[written testimony\]](#)

A video of the hearing is [here](#).

The SBC also held a hearing on [Housing Finance Reform: Essential Elements of the Multifamily Housing Finance System](#).

### **Senate Finance Committee**

[Hearing on the Debt Limit](#) – The SFC held a hearing on the debt ceiling with the Secretary of the Treasury, Jacob Lew. Secretary Lew’s written testimony is [here](#). The written statement of Chairman Baucus is [here](#) and Ranking Member Orrin Hatch is [here](#). A video of the hearing is [here](#).

### **Joint Economic Committee**

[Hearing on The Way Forward](#) - The JEC held a hearing entitled “[The Way Forward Toward Fiscal Sustainability and Economic Growth](#).” The two witnesses were:

- Kevin Hassett, Senior Fellow, American Enterprise Institute  
[\[written testimony\]](#)
- Mark Zandi  
[\[written testimony\]](#)

A video of the hearing is [here](#).

## **House of Representatives**

Slow week for House committees, as most previously scheduled hearings and markups were canceled.

### **House Small Business Committee**

Last week the HSBC held two hearings, one on [the health law’s definition of “full time employee”](#) and another on [contract bundling for small businesses](#).

## **Securities and Exchange Commission**

---

### **Mary Jo White Speech on Enforcement Issues – “Broken Window” Theory**

SEC Chairwoman Mary Jo White [gave a speech at the Securities Enforcement Forum](#) where she said that she hoped inside and outside counsel consider that the SEC is “everywhere.” She also said that the agency will adopt a “broken window” approach to enforcement because “minor violations that are overlooked or ignored can feed bigger ones, and, perhaps more importantly, can foster a culture where laws are increasingly treated as toothless guidelines. And so, I believe it is important to pursue even the smallest infractions.” This is another example of the SEC’s increased aggressiveness of enforcement matters.

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

The SEC unveiled a new website, [www.sec.gov/marketstructure](http://www.sec.gov/marketstructure), 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 [Alternative Trading Systems](#), [Market Fragmentation](#) and [The Speed of the](#)

---

## [Equity Markets](#)

### [Request for Feedback on OFR Study on Asset Management Industry](#)

The SEC has [opened a website for the public to provide feedback](#) on the Office of Financial Research's [report on the asset management industry](#). Members of the public may submit comments [here](#). Comments are due on November 1.

### [Investor Advisory Committee Meeting](#)

The SEC announced the [Investor Advisory Committee meeting](#) scheduled for Thursday, October 10<sup>th</sup> has been postponed. The IAC did [release its draft recommendations regarding fiduciary duties for broker-dealers](#), 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 [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](#).

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

---

### [Modernization of Regulations Governing Business Development Companies \(BDCs\)](#)

The Small Business Investor Alliance [announced it had secured 24 signatories](#) to the letter it submitted to the SEC requesting that current regulations imposed on Business Development Companies (BDCs) be modernized. The letter requested that federal regulations be revised to allow BDCs to take numerous actions available to other public companies, including:

- incorporating already-filed information by reference into current registration statements;
- filing automatic shelf registration statements as a "Well-Known Seasoned Issuer;"
- communicating with investors more freely during the preparation and filing periods for registration statements;
- Providing broker-dealers more flexibility in disseminating research on BDCs;
- Providing a safe harbor for BDCs to disseminate additional information during an offering;
- Filing a shelf registration statement for continuous or delayed offerings; and
- Allowing preferred stock to be treated as equity, not debt.

## **Managed Fund Association (MFA)**

---

### [Comment Letter to U.S. Trustee on Chapter 11 Periodic Reports](#)

The MFA submitted a letter to the US Trustee Program (USTP) on rules for Chapter 11 periodic reports. In the letter, MFA urged the USTP to promulgate rules as directed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to require debtors in possession and trustees to file periodic reports in Chapter 11 cases. MFA believes this will enhance the effectiveness of the bankruptcy process.

## **Miscellaneous**

---

### [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.

#### **Third Way Report on Impacts of Default**

Third Way released a report [describing the domino effects](#) if the U.S. were to default on its debt. The report notes that the effects would include (i) an increase in Treasury bond rates; (ii) the stock market would take a hit, (iii) mortgage rates would rise, (iv) small business and consumer credit would tighten and (v) the U.S. Dollar could lose its status as the world's reserve currency.

#### **Redwood Capital Report on Human Capital Management (HCM) Software and Services**

Redwood Capital [released a report on M&A, private financing activity as well as valuation trends in the Human Capital Management \(HCM\) software and services space](#). Important industry trends of note include: (i) acquisition activity by large ERP players; (ii) moves by HCM companies to position themselves to address opportunities presented by the Affordable Care Act; and (iii) the emergence of rapidly growing SaaS HCM companies completing successful IPOs.

#### **2013 Long Term Budget Outlook**

The Congressional Budget Office (CBO) released its [2013 Long Term Budget Outlook](#). 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](#).

---

If you would like to opt out of receiving this communication, just let me know.

© 2013 Venable LLP. This email is published by the law firm Venable LLP and is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.