

# Private Fund Update

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This Update covers:

- Last week's House Financial Services Committee JOBS Act 2.0 markup, which included votes on legislation to ease regulations on business development companies and simplify the regulatory regime for small M&A advisers;
- Wednesday's HFSC markup of six bills related to the Consumer Financial Protection Bureau;
- Friday's SEC Dodd-Frank Investment Advisory Committee meeting, which includes a proposal to impose user fees on registered investment advisors in order to fund additional SEC examinations; and
- The SEC's first deferred prosecution of an individual, a new tool in the SEC's increased enforcement efforts.

## The President

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Computer glitches [relating to the Affordable Care Act](#) continued to dominate the week. The President [met with insurance company executives](#) to try and find a way for people to keep their current plan, as promised when the ACA was signed.

Last week the Office of Management and Budget [issued a veto threat](#) for H.R. 3350, the Keep Your Health Plan Act, and issued a Statement of Administration Policy in opposition to [H.R. 2655](#), the Lawsuit Abuse Reduction Act, and [H.R. 982](#), the Furthering Asbestos Claim Transparency Act. All three measures passed the full House of Representatives last week.

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

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### House of Representatives

#### House Financial Services Committee

[JOBS Act 2.0 Markup](#) – The Committee passed several bills which are likely to be part of a JOBS Act 2.0 package, including:

- [H.R. 1800](#) (Grimm) – the Small Business Credit Availability Act; reduces regulatory requirements for business development companies (BDCs); as amended, [passed on a partisan](#)

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[31-26 vote](#);

- [H.R. 2274](#) (Huizenga) – Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act; creates a simplified regulatory regime for small M&A brokers; [passed by a 57-0 vote](#);
- [H.R. 3329](#) (Luetkemeyer) – requires the Federal reserve to modify the Small Bank Holding Company Policy Statement to ease regulatory burdens on small bank holding companies and small savings and loan companies; passed by voice vote;
- [H.R. 3468](#) (Royce and Perlmutter) – Credit Union Share Insurance Fund Parity Act, would amend the Federal Credit Union Act to extend insurance coverage to amounts held in a member account on behalf of another person; passed by voice vote; and
- [H.R. 3448](#) (Duffy) – Would provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks; as amended [passed on a 57-0 vote](#).

Although the Committee agreed on most issues regarding BDC reform, the issue of increasing the leverage ratio for BDCs proved too divisive so H.R. 1800 ultimately passed on a strictly partisan basis. This all but dooms the legislation as written in the Democrat-controlled Senate, although it is possible that a modified version of the bill could move this Congress.

The Committee also held hearings [studying international models of central banking](#) and [examining a private market for terrorism insurance](#).

[CFPB Markup](#) – On Wednesday the Committee marks up six separate bills related to the Consumer Financial Protection Bureau:

- [H.R. 2385](#), the CFPB Pay Fairness Act of 2013;
- [H.R. 2446](#), the Responsible Consumer Financial Protection Regulations Act of 2013;
- [H.R. 2571](#), the Consumer Right to Financial Privacy Act of 2013;
- [H.R. 3183](#), a bill to provide consumers with a free annual disclosure of information the Bureau of Consumer Financial Protection maintains on them;
- [H.R. 3193](#), the Consumer Financial Protection Safety and Soundness Improvement Act of 2013; and
- [H.R. \\_\\_\\_\\_\\_](#), the Bureau of Consumer Financial Protection Accountability and Transparency Act of 2013.

The Committee Memorandum for the markup is [here](#).

## The Senate

### Senate Banking Committee

The Committee holds a total of five hearings this week, three of which are on various aspects of federal housing finance reform.

[Financial Holding Companies and Physical Commodities](#) – On Wednesday the Financial Institutions Subcommittee will hold a hearing on [regulating financial holding companies and physical commodities](#). Witnesses are:

- Michael Gibson, Director, Federal Reserve System
- Norman Bay, Director, Federal Energy Regulatory Commission

[Virtual Currencies](#) – On Tuesday the Committee holds a hearing on [the present and future impact of virtual currencies](#). Witnesses are:

- Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network
- David Cotney, Commissioner of Banks, Massachusetts Division of Banks
- Anthony Gallippi, Co-founder and CEO, BitPay
- Chris Larsen, Founder and CEO, Ripple Labs
- Sarah Jane Hughes, University of Indiana
- Paul Smocer, BITS President, Financial Services Roundtable

The Committee also holds three hearings related to housing finance reform; hearings on [fundamentals of transferring credit risk](#); the [powers and structure of a strong regulator](#); and [developing a smooth transition](#).

## Securities and Exchange Commission

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### Meeting of Dodd-Frank Investor Advisory Committee – User Fees on Registered IAs

The SEC [announced](#) a meeting of the [Dodd-Frank Investor Advisory Committee](#) to take place this Friday, November 22. The Committee will consider whether to recommend two proposals: the first would [impose user fees on SEC registered investment advisers](#) to fund an enhanced investment adviser examination program by the SEC and the second would encourage the SEC to [conduct a rulemaking to impose a fiduciary duty on broker-dealers](#) when they provide personalized investment advice to retail investors.

### First Deferred Prosecution Agreement with Individual

The SEC [announced its first deferred prosecution agreement with an individual](#), the former administrator of Connecticut-based Heppelwhite Fund LP. In exchange for not prosecuting the individual, the administrator cooperated with the agency which resulted in an enforcement action against the founder of the fund for misappropriating fund money and overstating fund performance. The use of deferred prosecution agreements (DPAs) is another example of the SEC stepping up its enforcement activity in the context of fund managers.

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

The SEC recently announced the [agenda and panelists](#) for its annual [Small Business Forum](#) later this week in Washington. Discussion topics will include implementation of the JOBS Act and other issues. The forum is open to the public, and you can register for it [here](#).

### SEC Roundtable on Proxy Advisory Services on December 5

The SEC [will hold a public roundtable](#) on December 5 to discuss the use of proxy advisory services by institutional investors and investment advisers. In 2010, the SEC issued [a concept release on the U.S. proxy system](#), and the December 5 roundtable will discuss the issues raised in the concept release.

## Commodity Futures Trading Commission (CFTC)

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### Timothy Massad Nominated to Head Agency

The President [nominated](#) current Treasury Department Assistant Secretary for Financial Stability Timothy Massad to serve as Chairman of the CFTC, replacing Gary Gensler. Massad is a former partner at the law firm of Cravath, Swaine & Moore.

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### Commission Approves Position Limit Proposals

The CFTC Commission voted 3-1 to [propose regulations on position limits for derivatives](#) and unanimously approved [proposed regulations for aggregation of accounts under Part 150](#). A fact sheet on the position limit rule is [here](#) and Questions and Answers are [here](#). Commissioner O'Malia's dissent from the position limits rule, where he is critical of several aspects of the proposed rule, is [here](#). The comment period for both proposed rules is 60 days from publication in the *Federal Register*.

## Private Equity Growth Capital Council (PEGCC)

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### Private Equity Performance Update

The Private Equity Growth Capital Council [released its quarterly private equity performance update](#), which shows that private equity returns (net of fees) outperformed the S&P 500 (including dividends) for 3-year, 5-year, and 10-year horizons by 2.6, 2.2, and 6.1 percentage points, respectively. The data includes returns through March 2013.

## Miscellaneous

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### Chamber of Commerce Letter on Volcker Rule

The Chamber's Center for Capital Markets Competitiveness [wrote a letter](#) to the heads of the agencies responsible for implementing the Volcker Rule calling for the regulators to re-propose the rule. The comment letter comes as regulators have indicated they hope to issue a final rule before the end of the year.

### Roosevelt Institute Report on Financial Reform

The left-leaning Roosevelt Report issued a report entitled [An Unfinished Mission: Making Wall Street Work for Us](#), which examines the U.S. economy five years after the financial crisis and three years after Dodd-Frank. The report covers a broad range of topics, including OTC derivatives, capital requirements, the fiduciary standard, executive compensation, and shadow banking.

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