

# Private Fund Update

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It's a very busy week here in Washington before Congress heads off for a two-week recess. Key events include:

- A Wednesday House Financial Services Committee hearing on several JOBS Act 2.0 bills, mostly involving easing restrictions on small, publicly traded companies;
- A Wednesday House Small Business Committee hearing on tax problems for small businesses; and
- Thursday's meeting of the SEC's Investor Advisory Committee, which will vote on six proposals regarding crowdfunding.

This week's Update also covers:

- PEGCC's Q3 2013 performance update, which shows that private equity outperforms the S&P 500 for the 5- and 10-year time horizons;
- Last week's Small Business Committee hearing on bitcoin for small businesses;
- SEC Chairwoman White's Testimony before the House Appropriations Subcommittee; and
- The CFTC's public roundtable on End-Users.

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

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### House of Representatives

#### House Financial Services Committee

[Hearing on JOBS Act 2.0 Bills](#) – On Wednesday, the House Financial Services Committee will hold a hearing titled "[Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies](#)." Witnesses are:

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

Legislation that will be discussed includes:

- [H.R. 2629](#), "Forestry Innovation Act of 2013" – Revises the definition of "accelerated filer" under Rule 12b-2 to include issuers that have annual revenues of greater than \$100,000,000

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and an aggregated worldwide market value of \$250,000,000 or more but less than \$700,000,000.

- [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"](#) – Would modernize the SEC disclosure rules by permitting issuers to submit on Form 10-K annual reports a summary page to make annual disclosures easier to understand for current and prospective investors. 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](#) – 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](#) – On Tuesday, the HFSC will hold 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. Among other things, the hearing will examine how federal financial regulatory agencies evaluate the costs and benefits to consumers of their regulatory, enforcement, and supervisory actions. Witnesses are:

- Meredith Fuchs, General Counsel, CFPB
- Richard J. Osterman, 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](#).

[Hearing on Consumer Financial Protection Bureau](#) – Last week, the Committee held a hearing on allegations of discrimination and retaliation at the CFPB. The Committee Memorandum is [here](#) and a video of the hearing is [here](#).

### House Ways & Means Committee

This week, the House Ways & Means Committee will hold a hearing on the [benefits of permanent tax policy for America's jobs creators](#). The hearing will focus on the value in having stable, permanent tax policy for employers, as well as the problems caused by tax policies that frequently expire and

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are extended for short periods of time (and often retroactively).

[Hearing on Trade Policy Agenda](#) – Last week, HWMC held a hearing on [President Obama's Trade Policy](#) with [U.S. Trade Representative Michael Froman](#). Issues covered included: (i) passing the Bipartisan Congressional Trade Priorities Act of 2014; (ii) seeking to conclude a successful Trans-Pacific Partnership agreement this year; and (iii) negotiating with the European Union for a comprehensive and ambitious Transatlantic Trade and Investment Partnership.

#### House Small Business Committee

[Hearing on the Biggest Tax Problems for Small Businesses](#) – On Wednesday at 1:00 p.m., HSBC will hold a hearing on The Biggest Tax Problems for Small Businesses. Witnesses are:

- David Kautter, Kogod Tax Center, American University
- Tim Reynolds, Tribute, Inc., on behalf of the National Small Business Association
- Rick Endres, President, The Washington Network, on behalf of The ASCII Group
- Donald Marron, The Urban Institute

The hearing will be livestreamed [here](#).

[Hearing on Bitcoin](#) – Last week, the SBC held an interesting hearing titled "[Bitcoin: Examining the Benefits and Risks for Small Business](#)." Witnesses were:

- [Jerry Brito](#), Senior Research Fellow, Mercatus Center, George Mason University
- [Adam White](#), Director of Business Development and Sales, Coinbase
- [Mark Williams](#), Boston University School of Management
- [Michael Couvillion](#), Associate Professor, Plymouth State University

The hearing memo (which provides a good overview of the issue) is [here](#) and a video of the hearing is [here](#).

#### House Appropriations Committee

[Financial Services Subcommittee Hearings](#) – The Financial Services Subcommittee has 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](#).

Last week, the Subcommittee held hearings on the FY 2015 budget for the [Securities and Exchange Commission](#) and the [Small Business Administration](#). A meeting that had been scheduled with the [Department of the Treasury](#) was postponed.

## **The Senate**

#### Senate Banking Committee

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

#### Senate Finance Committee

[Hearing on the President's FY 2015 Budget](#) – On Thursday, the SFC will hold a hearing on the President's budget for FY 2015 regarding the Department of Health and Human Services. The sole witness is Kathleen Sebelius, Secretary of HHS.

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[Hearing on Trade Policy Agenda](#) – Like the House Ways & Means Committee did last week, the SFC will hold a hearing on April 30 with U.S. Trade Representative Michael Froman to discuss President Obama's 2014 Trade Policy Agenda.

## The Administration

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Last week, the President announced that [over 7 million Americans signed up for affordable health care](#) through the Health Insurance Marketplace during the Affordable Care Act's open enrollment period, which ended on March 31. As the White House gears up for the November midterm elections, the President [continued his attacks](#) on the FY 2015 budget released by Paul Ryan and pushed for an [increase to the minimum wage](#).

### IRS Guidance That Bitcoin Is Property

Recently, the [IRS issued a notice providing answers](#) to frequently asked questions (FAQs) on virtual currency, such as bitcoin. The guidance makes clear that bitcoin and other digital currencies will be treated as property and not as currency by the IRS, thereby imposing significant taxes and recordkeeping requirements upon holders of bitcoin.

### 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

On Thursday, the Securities and Exchange Commission Investor Advisory Committee will [hold a public meeting](#). The agenda includes remarks from Commissioners; remarks from the Investor Advocate; election of Investor Advisory Committee Chair; a recommendation from the Investor as Purchaser Subcommittee regarding crowdfunding regulations; and nonpublic subcommittee meetings.

The Advisory Committee will vote on 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.

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### Chairwoman White Testimony Before House Appropriations Subcommittee

Last week, Chairwoman White testified before the House Appropriations Financial Services Subcommittee to discuss the FY 2015 budget for the SEC. Chairwoman White's [written testimony](#) indicates that the key priorities for the SEC in FY 2015 include (i) bolstering examination coverage for investment advisers, (ii) bolstering enforcement, (iii) JOBS Act implementation, (iv) leveraging technology and (v) enhancing training and development of SEC staff. President Obama has requested approximately \$1.7 billion for the SEC in FY 2015.

### Studies on Data and Academic Literature on Money Market Reform

The SEC's Division of Economic and Risk Analysis released four analyses on various issues relating to money market reform: [Analysis of Liquidity Cost During Crisis Periods](#); [Analysis of Government Money Market Fund Exposure to Non-Government Securities](#); [Analysis of Municipal Money Market Funds Exposure to Parents of Guarantors](#) and [Analysis of Supply of Safe Assets in the Economy](#). These analyses examine (i) the spread between same-day buy and sell transaction prices for certain corporate bonds from Jan. 2, 2008 to Jan. 31, 2009; (ii) the extent of government money market fund exposure to non-government securities; (iii) academic literature reviewing recent evidence on the availability of "safe assets" in the U.S. and global economies; and (iv) the extent various types of money market funds are holding in their portfolios guarantees and demand features from a single institution.

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## Commodity Futures Trading Commission (CFTC)

### Public Roundtable on End-Users Held

The CFTC held a public roundtable last week [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](#).

### Weekly Swaps Report

Here is a link to the CFTC's [Weekly Swaps Report](#) for the week ending March 14, 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.

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## Association for Corporate Growth (ACG)

### InterGrowth 2014

Registration remains open for [InterGrowth 2014](#), which will be held April 28 – April 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 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 Q3 2013 Performance Update: PE Beats S&P 500 Over 5- and 10-Year Horizons

The PEGCC released its [Performance Update](#) for Q3 2013, which shows that as of September 30, 2013, returns from private equity (net of fees) beat the S&P 500 (including dividends) for 5- and 10-year horizons by 1 and 6 percentage points, respectively. While private equity generated more than 15 percent annualized returns for the 1- and 3-year time horizons, private equity funds underperformed the S&P 500 during these periods as a result of the post-crisis public market rebound and last year's rally.

## 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 serves as a basic introduction to how hedge funds calculate their assets. It also explains the new method of calculation used by the Securities and Exchange Commission, called Regulatory Assets Under Management (RAUM).

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