

Private Fund Update

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Congress wrapped up a busy two week period and has likely adjourned through the November elections. Thus, this might be the last update for some time. This update includes:

- Information on ACG's [October 2nd webinar](#) regarding survey results from its SEC Task Force, including a [link to complete the survey](#) of private equity professionals on compliance and regulatory matters;
- A proposal by the SEC's Investor Advisory Committee to change the definition of an "accredited investor;" and
- Two bills passed by the House of Representatives that include provisions relevant to M&A brokers and the private equity industry.

As always, please let me know if you have any suggestions or comments.

Venable LLP [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

The House passed two bills, [H.R. 5405](#), the [Promoting Job Creation and Reducing Small Business Burdens Act](#) and [H.R. 4](#), the [Jobs for America Act](#) last week, both of which include legislation that had previously passed the House of Representatives on a bipartisan basis. Both bills contain [H.R. 2274](#), which streamlines regulations for small business brokers, and H.R. 4 contains [H.R. 1105](#), which would exempt private equity fund advisers from having to register under the Investment Advisers Act. It is very unlikely the Senate will act on the package before the November elections.

House Financial Services Committee

[Oversight Hearing on FSOC](#) – HFSC held a hearing last week titled "[Oversight of the Financial Stability Oversight Council](#)," Witnesses were:

- [Patrick Pinschmidt](#), Deputy Assistant Secretary, FSOC
- [Nicole Clowers](#), GOA

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

[Hearing on the Credit Reporting System](#) – HFSC held a hearing the week before last titled "[An Overview of the Credit Reporting System](#)." Witnesses were:

- [Stuart Pratt](#), President and CEO, Consumer Data Industry Association
- [J. Howard Beales](#), Professor, George Washington University
- [John A. Ikard](#), CEO, FirstBank, on behalf of the American Bankers Association
- [Chi Chi Wu](#), Staff Attorney, National Consumer Law Center

House Small Business Committee

Before going on recess, the House Small Business Committee held two relevant hearings:

[Hearing on Small Business Administration](#) – The HSBC held a hearing with SBA Administrator Maria Contreras-Sweet to examine the management and future plans for the SBA. The SBA administers, among other things, the popular SBIC program for private funds. A copy of Administrator Contreras-Sweet's written testimony is [here](#), and the detailed hearing memorandum is [here](#).

[Hearing on Decline in Business Formation](#) – The HSBC also held a hearing titled "[The Decline in Business Formation: Implications for Entrepreneurship and the Economy](#)," to examine the failure of the United States to rebound economically and how the declining rate of small business creation affects the economy. Witnesses were:

- [Jonathan Ortman](#), Senior Fellow, Kauffman Foundation
- [John Dearie](#), Executive Vice President, Financial Services Forum
- [Chad Moutray](#), National Association of Manufacturers
- [John Deskins](#), Professor, West Virginia University

The Senate

Senate Banking Committee

The SBC held hearings last week on [the state of small depository institutions](#), the [impact of rising inequality on the American economy](#) and [enhancing protections in consumer financial services](#).

[Hearing on Wall Street Reform](#) –The SFC held a hearing earlier in the month titled "[Wall Street Reform: Assessing and Enhancing the Financial Regulatory System](#)" with top regulators. Witnesses were:

- [Daniel K. Tarullo](#), Governor, Board of Governors of the Federal Reserve System
- [Martin J. Gruenberg](#), Chairman, FDIC
- [Thomas J. Curry](#), Comptroller of the Currency
- [Richard Cordray](#), Director, CFPB
- [Mary Jo White](#), Chair, SEC
- [Timothy G. Massad](#), Chairman, CFTC

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

Senate Finance Committee

The SFC held hearings last week on [reforming America's energy tax code](#); [children's health insurance](#) and [retirement savings policy](#).

Securities and Exchange Commission

SEC Investor Advisory Committee (IAC) to Review Definition of Accredited Investor

On October 9, the SEC's Investor Advisory Committee will meet vote on, among other things, [five potential changes to the definition of an accredited investor](#). The five potential changes are:

- The Commission should evaluate whether the accredited investor definition, as it pertains to natural persons, is effective in identifying a class of individuals who do not need the protections afforded by the '33 Act. If closer analysis reveals a significant percentage of accredited investors are not capable of protecting their own interests, the Commission should initiate rulemaking to revise the definition.
- The Commission should revise the definition to enable individuals to qualify as accredited investors based on their financial sophistication.
- If the Commission chooses to continue with an approach that relies on financial thresholds, the Commission should consider alternative approaches to setting such thresholds – in particular limiting investments in private offerings to a percentage of assets or income.
- The Commission should take concrete steps encourage development of an alternative means of verifying accredited investor status that shifts the burden away from issuers.
- In addition to any changes to the accredited investor standard, the Commission should strengthen the protections that apply when non-accredited individuals qualify to invest solely by virtue of relying on advice from a purchaser representative. The Committee recommends that in such circumstances the Commission prohibit individuals acting as purchaser representatives from having any personal financial stake in the investment being recommended.

An Agenda for the IAC meeting is [here](#).

SEC Investor Advocate Calls for User Fees for Registered Investment Advisers

SEC Investor Advocate Rick Fleming called for the [imposition of user fees](#) on registered investment advisers (RIAs) to cover the cost of additional examiners. In an August speech at the annual Southwest Securities Conference, Fleming noted that the issue “primarily boils down to the fact that the SEC has not received sufficient resources to keep up with the burgeoning workload.” Fleming noted that “the amount of assets managed by investment advisers is on a steep ascent, climbing from \$20 trillion a decade ago to an estimated \$55 trillion by the end of Fiscal Year 2015. In comparison, staff in the SEC's Office of Compliance Inspections and Examinations (OCIE) has grown only about 10% in the past decade. He hopes that the fees would be limited to “the use of those funds to expenses associated with investment adviser examinations.”

Association for Corporate Growth (ACG)

Webinar on October 2 Regarding SEC Task Force

ACG will be [holding a webinar on Thursday, October 2](#) announcing [survey results](#) from its recent survey of private equity compliance, financial, and legal officers. ACG's SEC Task Force was designed to interact with the SEC on a variety of issues, including:

- SEC examinations;
- Investment Adviser Act compliance;
- JOBS Act/general solicitations;
- Broker-dealer registration; and
- Emerging issues, such as cybersecurity.

EuroGrowth – October 15-16, 2014

ACG will be hosting [EuroGrowth 2014](#) on October 15-16 at the Grange St. Paul's Hotel in London, England. EuroGrowth is the leading source of middle-market Europe/U.S. networking and deal flow. An

agenda for the conference is [here](#) and a link to register is [here](#).

Small Business Investor Alliance (SBIA)

SBIA Summit for Middle-Market Funds – October 19-21

The SBIA is sponsoring the [Summit for Middle-Market Funds](#) on October 19-21 at The Breakers in Palm Beach, Florida. An agenda for the Summit is [here](#). The keynote address, “America's Fiscal Challenges and the Role Private Equity Plays in the Solution” will be given by Erskine Bowles, Campaign to Fix the Debt.

SBIC Regulations Class – November 13, 2014

The SBIA and the SBA will be holding an [SBIC Regulations Class](#) on [November 13, 2014](#). The class is mandatory for any fund seeking an SBIC license. Classes are currently sold out, but interested persons can contact the SBIA at events@SBIA.org to be added to the waiting list.

Private Equity Growth Capital Council (PEGCC)

PEGCC Releases Q2 2014 Private Equity Fundraising Data

The PEGCC released a [Private Equity Trends report](#) showing that private equity activity experienced declines from Q1 of 2014, but overall remained strong. Fundraising nearly doubled to \$50 billion, indicating investors’ continued appetite for the asset class. Investment and exit volumes fell from last quarter but exceeded second quarter levels over the past five and ten years, respectively. Total invested capital reached \$108 billion, while exit volume was \$46 billion. In addition, dry powder grew 7%, from \$412 billion in March to \$440 billion as of July 2014.

Miscellaneous

Lawsuit Filed Challenging SEC’s Pay-to-Play Rules

Two state Republican committees have [filed a lawsuit](#) challenging the SEC’s pay-to-play rule (IAA Rule 206(4)-5), which restricts political contributions by investment advisers. They are arguing that the SEC does not have the authority to regulate political contributions and also that the rule violates RIAs’ First Amendment right to free speech.

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