

**Quick note:** I want to thank private markets network [Axial](#) for including my Private Fund Update in its list of “[16 Websites Deal Professionals Should Visit Daily](#).” Although I currently only send out a weekly email, I expect to move more online in the next few weeks and hopefully add new features as well. In any event, thanks for the kind words!

## Private Fund Update

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This week Congress tries to avert a government shutdown, as the government’s current funding expires on September 30<sup>th</sup>. At this point the most likely outcome seems to be a short-term Continuing Resolution (CR) that, ultimately, does not defund Obamacare and isn’t linked to the debt ceiling. Any resolution is almost certain to be short term, meaning this issue won’t be going away any time soon.

This Update contains:

- Two noteworthy SEC enforcement actions against hedge funds;
- The SEC’s new final rule on municipal advisors and proposed rule on pay ratio disclosures;
- CBO’s long-term budget outlook for the U.S. (which is bleak);
- The Financial Stability Oversight Council’s (FSOC) justification for designating Prudential Financial, Inc. as systemically important;
- Summaries of relevant Congressional markups and hearings; and
- Reports issued by Chamber of Commerce and SIFMA.

### The President

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The President spent much of the week focused on the impending government shutdown and the debt ceiling. The President gave a [lengthy speech](#) on both subjects at the Business Roundtable and also used his [weekly address](#) to urge Congress to [raise the debt ceiling](#).

The White House released a report titled “[The Financial Crisis: Five Years Later](#),” which describes actions taken by the Administration since the 2008 financial crisis involving TARP, the automotive industry, housing, bank capital and derivatives. As noted below, the Department of Treasury also has a [nifty presentation](#) on steps that have been taken in the five years since the crisis.

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

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#### The Senate

##### Joint Economic Committee

The Senate/House Joint Economic Committee held a hearing last week on “[The Economic Costs of Debt-Ceiling Brinkmanship](#).” Witnesses were:

- Mark Zandi, Chief Economist, Moody’s Analytics  
[\[written testimony\]](#)
- David Malpass, President, Encima Global  
[\[written testimony\]](#)

- Daniel J. Mitchell, Senior Fellow, Cato Institute  
[\[written testimony\]](#)
- Don Marron, Director, Economic Initiatives, Urban-Brookings Tax Policy Center  
[\[written testimony\]](#)

A video of the hearing is [here](#). Also, a link to the JEC's Weekly Economic Update page is [here](#).

### **Senate Banking Committee**

Last week, the SBC held hearings on [Implementation of The Biggert-Waters Flood Insurance Act of 2012](#) and [Recovering from Superstorm Sandy](#). This week, the SBC holds hearings on [Reauthorizing the Terrorism Risk Insurance Act \(TRIA\)](#) and on [Improving Market Access in Financial Services in India](#).

Not much is happening here that is directly relevant to the regulation of private funds, and it is unlikely that anything major will happen for at least the next several weeks.

### **Senate Small Business Committee**

The SSB&E Committee held a roundtable on "[Closing the Wealth Gap: Empowering Minority Owned Businesses to Reach Their Full Potential for Growth and Job Creation](#)." In connection with the hearing, the Committee [released a report](#) that describes the current wealth gap and what may be contributing to it.

## **House of Representatives**

### **House Financial Services Committee**

Last week Chairman Jeb Hensarling (R-TX) and Capital Market Subcommittee Chairman Scott Garrett (R-NJ) [wrote to SEC Chairwoman Mary Jo White](#) asking her a series of questions regarding registration requirements for advisers to private equity funds. The letter requested that Chairman White respond in writing by September 20. To date no response has been provided, but as soon as there is a response I will post it.

Last week HFSC held a hearing on the [SEC's Money Market Fund Rule Proposal](#). Witnesses were:

- Steve McCoy, Treasurer, State of Georgia, for the National Association of State Treasurers  
[\[written testimony\]](#)
- Sheila Bair, Chair, Pew Charitable Trusts, Systemic Risk Council  
[\[written testimony\]](#)
- Marie Chandoha, CEO, Charles Schwab  
[\[written testimony\]](#)
- James Gilligan, Great Plains Energy, on behalf of the U.S. Chamber of Commerce  
[\[written testimony\]](#)
- Paul Schott Stevens, CEO, Investment Company Institute  
[\[written testimony\]](#)

An archived webcast of the hearing is [here](#). Also, here is the [Committee Memorandum](#) for the hearing.

The Committee also held a hearing on [The Terrorism Risk Insurance Act of 2002](#).

## **House Small Business Committee**

**Markup of H.R. 2542** – Last week the Committee approved by voice vote an amended version of H.R. 2542, the “**Regulatory Flexibility Improvements Act**.” The bill would amend several statutes to ease regulatory burdens on small entities. A link to all of the amendments is [here](#), and a video of the hearing is [here](#).

Last week the Committee also held a hearing on **Private Sector Initiatives to Educate Small Business Owners**.

**Field Hearing on Access to Capital** – On Monday, September 23, the Subcommittee on Investigations, Oversight, and Regulations holds a field hearing on **Small Business Access to Capital in Scottsdale, Arizona**. Witnesses are:

- Jim Goulka, Managing Director, Arizona Technology Investors Forum
- Nima Jacob Nojoui, Co-Founder & CEO, itsWorth, LLC
- Thomas H. Curzon, Senior Partner, Osborn Maledon

## **Securities and Exchange Commission**

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### **Open Meeting – Final Rule Re: Municipal Advisors/Proposed Rules Re: Executive Compensation**

Last week, the SEC held an open meeting where it voted unanimously to adopt a permanent registration regime for municipal advisors. A link to the 777-page Final Rule is [here](#) and here is a [fact sheet](#) regarding the new rule.

The Commission also, by a 3-2 vote, [issued a proposed rule](#) regarding mandatory disclosures of compensation by a company’s CEO, all employees and the ratio of the two figures, as mandated by Section 953(b) of Dodd-Frank. A fact sheet regarding the pay ratio disclosure rule is [here](#).

### **Enforcement Actions re: Short Selling and Conflicts of Interest**

The SEC [charged 23 firms](#), including several prominent hedge funds, with violating short selling regulations by participating in public stock offerings after shorting the same stocks. The SEC also [issued a Risk Alert on Rule 105 of Regulation M](#), which generally prohibits a person or firm from purchasing securities in follow-on and secondary offerings when the purchaser has effected short sales in the securities within a specified amount of time prior to the pricing of an offering.

Separately, the SEC [charged an adviser to a New York-based hedge fund](#) with breaching his fiduciary duty by engineering an undisclosed principal transaction in which he had a financial conflict of interest. The SEC has recently indicated that failing to disclose financial conflicts of interest is one of the key areas they are focusing on for enforcement activity.

### **Current SEC Priorities Regarding Hedge Fund Managers**

Norm Champ, Director of the SEC’s Division of Investment Management gave a speech titled “**Current SEC Priorities Regarding Hedge Fund Managers**.” The speech covered a variety of issues the SEC is focused on, including:

- General Solicitation and Bad Actors;
  - Lifting the Ban on General Solicitation;
  - Insider Trading; and
  - General Compliance.
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### **Meeting of Advisory Committee on Small and Emerging Companies**

The SEC's Advisory Committee on Small and Emerging Companies held a meeting to discuss the recent final rules lifting the ban on general solicitations and disqualifying bad actors as well as the proposed rule that amends Reg D and Form D. There will be a presentation by the Angel Capital Association and a discussion on the JOBS Act and new ideas for capital formation. The agenda for the meeting is [here](#). An archived video of the meeting is not yet available.

### **Comments on Proposed Rule re: General Solicitation Due September 23**

Comments on the SEC's [proposed rule](#) imposing new restrictions on general solicitations by issuers, including private funds are due on September 23. Thus far, [over 300 comments](#) have been submitted, most of which relate to the impact on startups and venture capital. The SEC's [final rule](#) eliminating the prohibition against general solicitations and the [final "bad actor" rule](#) also go into effect on that date.

## **Commodity Futures Trading Commission**

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### **Concept Release Re: Risk Controls on Automated Trading**

The CFTC released its long-awaited [Concept Release](#) on risk controls and system safeguards for automated trading. There is now a 90-day period for public comments from the date the release is published in the federal register. Comments may be submitted [here](#).

## **Financial Stability Oversight Council (FSOC)**

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### **Designation of Prudential Financial, Inc.**

Last week [by a vote of 7-2](#) the Financial Stability Oversight Council (FSOC) [designated Prudential Financial as systemically important](#). Prudential contested the designation and, apparently, is considering legal action to further challenge the designation.

## **Congressional Budget Office**

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### **Long-Term Budget Outlook**

It doesn't directly relate to private funds, but 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](#).

## **Miscellaneous**

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### **Dallas Federal Reserve Paper on Cost of 2008 Financial Crisis**

The Dallas Federal Reserve published an [economic letter](#) this week, finding that the bottom-line estimate of the cost of the financial crisis, assuming output eventually returns to its precrisis trend path, is an output loss of \$6 trillion to \$14 trillion. This is a follow-up to a staff paper the authors released in July titled "[How Bad Was It? The Costs and Consequences of the 2007-09 Financial Crisis](#)."

### **Department of Treasury Report on Financial Crisis**

The Treasury Department issued a pretty cool presentation titled "[The Financial Crisis Five Years Later: Response, Reform, and Progress](#)." The presentation includes a number of interesting

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graphs and charts and is worth reading. Also, Treasury Secretary Lew gave a statement on the [five-year anniversary of the financial crisis](#).

#### **SIFMA Pennsylvania + Wall Blog**

SIFMA posted an article on its [Pennsylvania + Wall blog](#) regarding [establishing a uniform fiduciary standard for broker-dealers and investment advisers](#).

#### **Chamber of Commerce Reports**

The Chamber of Commerce noted the five-year anniversary of the financial crisis by sending a letter to Congress highlighting its [Fix Add Replace \(FAR\) Agenda](#) and also an [SEC Reform Study](#).

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