

Client Alert

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House Passes Bill to Ease Volcker Rule and other Regulatory Requirements

By Jay G. Baris and Oliver I. Ireland

The U.S. House of Representatives on January 14, 2015, voted (271-154) to pass H.R. 37, the "Promoting Job Creation and Reducing Small Business Burdens Act." If enacted, the bill, among other things, would extend the Volcker Rule conformance date for collateralized loan obligations (CLOs) and ease requirements for investment advisers of small business investment companies (SBICs) and venture capital firms. The bill also includes a number of measures that correct issues arising in the JOBS Act, or that otherwise are intended to promote capital formation.

Volcker Rule conformance for CLOs. H.R. 37 would extend to July 21, 2019, the conformance period for CLOs that issued debt securities prior to January 31, 2014. Significantly, the bill defines a CLO as "any issuing entity of an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934 . . . that is comprised primarily of commercial loans."

Investment advisers to certain SBICs. The bill would extend the exemption from registration under the Investment Advisers Act of 1940 ("Advisers Act") that is available to advisers of venture capital funds, by expanding the definition of "venture capital fund" to include SBICs that have not elected treatment as business development companies (BDCs).

Investment advisers of SBICs and private funds. The bill also generally would exclude advisers of private funds that are SBICs (and have not elected treatment as BDCs) from the reporting requirements of "exempt reporting advisers" as defined in section 203(b) of the Advisers Act.

Cost benefit analysis. The bill would require the Securities and Exchange Commission (SEC) to analyze the costs and benefits to certain small issuers (that is, issuers with total annual gross revenues of less than \$250 million that are exempt from certain technical "XBRL" requirements to report financial information).

XBRL reporting. The bill calls for the SEC to file a report with Congress on its progress in implementing XBRL reporting, and how the SEC uses XBRL data.

Other measures. The bill also:

- Addresses the Exchange Act 12(g) threshold for savings and loan holding companies to align the provisions with those available to bank holding companies;
- Clarifies the termination of "Emerging Growth Company" status under the JOBS Act;

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- Permits issuers to submit a summary page on Form 10-K; and
- Mandates a time period during which the SEC must complete a Regulation S-K study and report both intended to simplify disclosure requirements.

Rep. Jeb Hensarling of Texas championed this bill as beginning to “get America back to work” and start growing the economy. He said that the bill corrects some “unintended consequences” of the 2,000 page Dodd-Frank Act.

Democrats, as expected, were critical of the bill. Rep. Maxine Waters said that the bill was intended to delay the effect of the Volcker Rule, which was designed to stop “government-supported banks from gambling with bank depositors’ money.”

Our take. It is encouraging to see action to reduce regulatory burden. H.R. 37 is only a small step, and there are other aspects of the Dodd-Frank Act that Congress or the regulators should reconsider.

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