

M E M O R A N D U M

To: Members of the Committee on Financial Services  
From: Financial Services Committee Majority Staff  
Date: May 23, 2014  
Subject: May 29, 2014, Full Committee Markup

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The Committee on Financial Services will meet to mark up the following measures or matters at 10:00 a.m. on Thursday, May 29, 2014, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

***H.R.4697, the Small-Cap Access to Capital Act***

Rep. Kevin McCarthy introduced H.R. 4697, the Small-Cap Access to Capital Act. H.R. 4697 would require the Securities and Exchange Commission (SEC) to revise the definition of a Well-Known Seasoned Issuer (WKSI) to reduce the dollar amount relating to the worldwide market value of outstanding common equity from \$700 million to \$250 million. H.R. 4697 also prohibits an emerging growth company from qualifying as a WKSI.

***H.R. 2629, the Fostering Innovation Act of 2013***

Rep. Michael Fitzpatrick introduced H.R. 2629, the Fostering Innovation Act of 2013. H.R. 2629 requires the SEC to amend Rule 12b-2 so that companies with a public float of either (i) less than \$250 million with no annual revenue restriction or (ii) between \$250 million and \$700 million and less than \$100 million in annual revenue are deemed “non-accelerated filers” and can therefore take advantage of certain exemptions from the securities laws and the Sarbanes-Oxley Act of 2002.

***H.R. 4564, the Equity Crowdfunding Improvement Act of 2014***

Rep. Patrick McHenry introduced H.R. 4564, the Equity Crowdfunding Improvement Act. H.R. 4564 preempts state regulation of crowdfunding offerings while preserving the states’ ability to bring enforcement proceedings for alleged violations of state law. H.R. 4564 increases the annual cap to \$5,000 for all investors (unless accredited investors). H.R. 4564 also exempts crowdfunding securities from the shareholder registration thresholds in Section 12(g) of the Securities Exchange Act of 1934. Additionally, H.R. 4564 facilitates the use of special purpose vehicles (SPVs) for equity crowdfunding . Separately, the Act would authorize the SEC to issue regulations related to testing-the-waters communication under equity crowdfunding, extending the use of solicitation of interest document prior to a formal offering. Under H.R. 4564, intermediaries would be required to warn investors of investment risks and inform them of resale restrictions, and ensure that investors demonstrate they are knowledgeable about

the potential risks associated with investing in securities offered through crowdfunding. Intermediaries, each registered with the SEC and applicable self-regulatory organization (SRO), would also be required to take steps to reduce fraudulent transactions, conduct background checks on issuers, and provide the SEC with information about issuers, and withhold the sale of securities until 100 percent of the business's target offering is met.

***H.R. \_\_\_\_, to reauthorize the Defense Production Act, to improve the Defense Production Act Committee, and for other purposes***

This bill, to be introduced by Monetary and Policy Trade Subcommittee Chairman Campbell, reauthorizes the Defense Production Act and makes certain reforms to its authorities. The bill extends the DPA's authorization for five years—until September 30, 2019. It also would reform the use of Title III authorities by requiring the President to sign the “determination” that there is a domestic security need but a domestic production shortfall, instead of delegating that decision. It further requires a separate Congressional authorization for any Title III program if its cost exceeded \$50 million. Finally, the bill reforms the inter-agency Defense Production Act Committee (DPAC) to focus its readiness planning solely on Title I emergency needs.

***H.R. 3770, the CFPB-IG Act of 2013***

Introduced by Representative Stivers, the CFPB-IG Act would create a separate, independent inspector general for the CFPB. The CFPB currently shares an inspector general with the Federal Reserve System.

***H.R. 4262, the Bureau Advisory Commission Transparency Act***

Introduced by Representative Duffy, the CFPB Advisory Commission Transparency Act clarifies that the Federal Advisory Committee Act (Pub. L. No. 92-463) applies to the CFPB.

***H.R. 4383, the Bureau of Consumer Financial Protection Small Business Advisory Board Act***

Introduced by Representative Pittenger, the Bureau of Consumer Financial Protection Small Business Advisory Board Act creates a small business advisory board at the CFPB.

***H.R. 4539, the Bureau Research Transparency Act***

Introduced by Representative Fitzpatrick, the Bureau Research Transparency Act requires that CFPB research papers made available to the public be accompanied by all studies, data, and analyses on which the paper was based.

***H.R. 4604, the CFPB Data Collection Security Act***

Introduced by Representative Westmoreland, the CFPB Data Collection Security Act requires the CFPB to create an opt-out list for consumers who do not want the CFPB to collect personally identifiable information about them and to delete or destroy information about a particular consumer within a specified period of time following collection. It further requires CFPB employees accessing personally identifiable information about consumers to hold a ‘confidential’ security clearance.

***H.R. 4684, the “Bureau Guidance Transparency Act”***

Introduced by Representative Stutzman, the Bureau Guidance Transparency Act would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and must make public any studies, data, and other analysis it relied on in preparing and issuing its guidance.

***H.R. \_\_\_\_, to place a 6-month moratorium on the authority of the Financial Stability Oversight Council to make financial stability determinations***

This bill, to be introduced by Housing and Insurance Subcommittee Chairman Randy Neugebauer, suspends for six months the ability of the Financial Stability Oversight Council (FSOC) to make a determination under section 113 of the Dodd-Frank Act that a nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System and subject to prudential standards.

***H.R. 4387, the FSOC Transparency and Accountability Act***

Rep. Scott Garrett introduced H.R. 4387, the FSOC Transparency and Accountability Act. H.R. 4387 amends Section 111 of the Dodd-Frank Act to make the FSOC subject to both the Government in the Sunshine Act and the Federal Advisory Committee Act. The bill allows all members of the commissions and boards represented on the FSOC—such as the Securities and Exchange Commission, the Federal Reserve, the Commodity Futures Trading Commission, and the National Credit Union Administration—to attend and participate in the FSOC’s meetings. The bill also requires that before the principal of a Commission or Board represented on the FSOC votes as an FSOC member on an issue before the FSOC, the Commission or Board must vote on the issue, and the principal must follow that vote at the FSOC meeting. Finally, the bill permits Members of the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs to attend all FSOC meetings, whether or not the meeting is open to the public.

***Resolution to authorize the issuance of subpoenas to the Department of Justice and the Department of the Treasury for certain documents***

Beginning in March 2013, the Committee sought records and other information relating to the Department of Justice’s (DOJ) prosecutorial decision-making in cases involving large financial institutions. That month, in testimony before the Senate Judiciary Committee, Attorney General Holder indicated that DOJ had not prosecuted

certain financial institutions because it feared disrupting the financial system. The Attorney General's testimony followed several high-profile instances in which DOJ had entered into criminal settlements with certain multinational banks that were accused of violating anti-money laundering and other laws. The settlements meant that the banks avoided the possibility of criminal convictions, which might otherwise have triggered administrative proceedings to revoke United States banking charters that were necessary to the institutions' ability to continue as going concerns.

The Committee has sent numerous letters to DOJ and/or the Department of the Treasury ("Treasury") seeking documents to help it understand how DOJ analyzes systemic risk in making prosecution decisions, including:

- 1) Letter from Chairmen Hensarling and McHenry to the Attorney General and Secretary of the Treasury dated March 8, 2013;
- 2) Letter from Chairman McHenry to the Attorney General dated April 3, 2013;
- 3) Letter from Chairman McHenry to the Attorney General dated June 7, 2013;
- 4) Letter from Chairman McHenry to the Secretary of the Treasury dated June 7, 2013;
- 5) Letter from Chairman McHenry to the Attorney General dated August 21, 2013.

Specifically, the Committee's requests sought to determine (1) whether the Department entered into the settlements primarily because it sought to avoid catastrophic harm to the economy (as suggested by the Attorney General) or whether other reasons prompted the settlements, and (2) how Department officials measured the potential economic consequences of a contemplated prosecution.<sup>1</sup>

To date, the Committee has not received all documents requested by these letters.<sup>2</sup> The Committee has exhausted all reasonable efforts to obtain the requested materials. The Department has not cited a legal interest that might conceivably limit the Committee's right to review the requested materials. The Committee's authority to require the production of information in circumstances like those presented here — an investigation relating to the adequacy and effectiveness of existing financial services laws as well as conditions that may suggest the need for new legislation — is well settled.

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<sup>1</sup> In particular, the Committee considered whether the Department based its assessments on "internal" data or the advice of "outside experts" such as the Financial Stability Oversight Council ("FSOC") and the Office of Financial Research ("OFR").

<sup>2</sup> The Committee is satisfied with the documents Treasury produced in response to the March 8, 2013, letter.