

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: June 14, 2013
Subject: **June 19, 2013, Full Committee Markup**

The Committee on Financial Services will meet to mark up the following four bills at 10 a.m. on Wednesday, June 19, 2013, and subsequent days if necessary, in Room 2128 of the Rayburn House Office Building:

- H.R. 1564, the Audit Integrity and Job Protection Act
- H.R. 1105, the Small Business Capital Access and Job Preservation Act
- H.R. 1135, the Burdensome Data Collection Relief Act
- H.R. 2374, the Retail Investor Protection Act

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a legislative hearing on Thursday, May 23, 2013, entitled “Legislative Proposals to Relieve the Red Tape Burden on Investors and Job Creators” to examine H.R. 1135, H.R. 1105, and H.R. 1564, and a discussion draft of H.R. 2374.

H.R. 1564, the Audit Integrity and Job Protection Act

On April 15, 2014, Messrs. Hurt and Meeks introduced the bipartisan Audit Integrity and Job Protection Act, which prohibits the Public Company Accounting and Oversight Board (PCAOB) from requiring that: (i) the audits of a particular issuer be conducted by a specific auditor; or (ii) an issuer’s audits be conducted by different auditors on a rotating basis. This legislation was drafted in response to the PCAOB’s August 16, 2011, *Concept Release on Auditor Independence and Audit Firm Rotation*, which sought public comment on “whether mandatory auditor rotation would significantly enhance auditors’ objectivity and ability and willingness to resist management pressure.”¹

H.R. 1105, the Small Business Capital Access and Job Preservation Act

On March 13, 2013, Messrs. Hurt, Cooper, Himes, and Garrett introduced the bipartisan Small Business Capital Access and Job Preservation Act, which exempts advisers to certain private equity funds from the new registration requirements imposed by Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No.

¹ PCAOB Release No. 2011-006, *Concept Release on Auditor Independence and Audit Firm Rotation*, Aug. 16, 2011, available at http://pcaobus.org/Rules/Rulemaking/Docket037/Release_2011-006.pdf.

111-203) (the “Dodd-Frank Act”). Specifically, H.R. 1105 exempts from SEC registration private equity fund advisers that have not borrowed and do not have outstanding a principal amount in excess of twice their funded capital commitments. In the 112th Congress, Mr. Hurt and Mr. Cooper introduced a similar bill (H.R. 1082), which the Committee passed by a voice vote on June 22, 2011.

H.R. 1135, the Burdensome Data Collection Relief Act

On March 13, 2013, Messrs. Huizenga and Garrett introduced the Burdensome Data Collection Relief Act, which repeals section 953(b) of the Dodd-Frank Act. Section 953(b) requires public companies to calculate and disclose, in every filing with the SEC, (i) the median annual total compensation of all of its employees other than its chief executive officer, (ii) its chief executive officer’s annual total compensation, and (iii) the ratio of those two numbers. In the 112th Congress, Ms. Hayworth introduced a similar bill (H.R. 1062), which passed the Committee by a vote of 33 yeas to 21 nays on June 22, 2011.

H.R. 2374, the Retail Investor Protection Act

On June 14, 2013, Ms. Wagner introduced the Retail Investor Protection Act, which is similar to the discussion draft that was examined at the May 23, 2013, legislative subcommittee hearing.

The legislation prevents the Secretary of Labor from prescribing any regulation under the Employee Retirement Income Security Act of 1974 defining the circumstances under which an individual is considered a fiduciary until the date that is 60 days after the SEC issues a final rule relating to standards of conduct for brokers and dealers pursuant section 913 of the Dodd-Frank Act. Section 913(g)(1) of the Dodd-Frank Act authorizes, but does not require, the SEC to promulgate rules to extend the fiduciary standard of conduct applicable to investment advisors to broker-dealers when providing advice about securities to retail customers.

H.R. 2374 requires the SEC, before promulgating such a rule, to: (i) determine whether retail customers are being systematically harmed or disadvantaged because broker-dealers are held to a standard different from that which applies to investment advisers; (ii) identify whether the adoption of a uniform fiduciary standard of care for brokers or dealers and investment advisors would adversely impact retail investor access to personalized investment advice, recommendations about securities, or the availability of such advice and recommendations; (iii) require the SEC’s chief economist to assess the qualitative and quantitative costs and benefits of the rule; (iv) determine that the benefits of the rule justify its costs; identify and assess alternatives, including the modification of existing disclosures; and ensure that the rule is accessible, consistent, written in plain language, and easy to understand, and that it measures and seeks to improve the actual results of regulatory requirements; and (v) consider the differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors.