

## Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—Ex-Im Bank dominates mark-up of securities, swaps bills, (May 20, 2015)

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By Mark S. Nelson, J.D.

The House Financial Services Committee set out to mark-up a baker's dozen of bills that would tweak the securities laws and swaps data provisions in a renewed effort to further enhance capital formation. That at least was the plan. The morning session often devolved into another proxy hearing on the renewal of the Export-Import Bank's legal authority, but the committee finally got down to its scheduled business in the afternoon session. The committee was scheduled to take the many requested recorded votes late this evening.

**Small companies.** Under the Improving Access to Capital for Emerging Growth Companies Act (H.R. 2064), legislators would extend the time during which an emerging growth company (EGC) retains this status. The bill also would amend the JOBS Act to require the SEC to revise the instructions to Form S-1 to let EGCs omit historical period financial information that must otherwise be disclosed under Regulation S-X. Likewise, the Small Company Simple Registration Act of 2015 (H.R. 1723) would let smaller reporting companies incorporate by reference certain information in a Form S-1.

**Derivatives, brokers, advisers.** The Swap Data Repository and Clearinghouse Indemnification Correction Act of 2015 (H.R. 1847) would amend the Commodity Exchange Act to clarify that the CFTC must get a written confidentiality agreement from certain entities before sharing swaps data with them. The bill also would amend both the Commodity Exchange Act and the Securities Exchange Act to ensure the confidentiality of data shared by swap data repositories and security-based swap data repositories with other entities.

Under the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (H.R. 686), M&A brokers, subject to certain exceptions, would be exempt from registration as broker-dealers under Exchange Act Sec. 15(b). The bill defines "M&A broker" to mean any person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company.

But M&A broker status is limited. Specifically, an M&A broker must reasonably believe any person who acquires securities in a deal will actively manage the company and that any person offered securities will get access to relevant financial statements. An "eligible privately held company" is a company that does not have a class of securities registered under Exchange Act Sec. 12 and that has EBITDA under \$25 million and /or gross revenues under \$250 million.

Still other bills aim to improve regulatory transparency or to make conforming amendments that help to implement related statutory revisions. The Disclosure Modernization and Simplification Act of 2015 (H.R. 1525) would direct the SEC to update Regulation S-K within a fixed period of time. H.R. 1975 would mandate refunds or credits of overpayments to the SEC made under Exchange Act Section 31.

Moreover, the SBIC Advisers Relief Act of 2015 (H.R. 432) clarifies an exclusion for advisers of small business investment companies (SBICs) under Investment Advisers Act Section 203. The Holding Company Registration Threshold Equalization Act of 2015 (H.R. 1334) would make conforming amendments to the Exchange Act for savings and loan holding companies. H.R. 1675, the Encouraging Employee Ownership Act of 2015, would direct the SEC to amend its regulations to increase the thresholds for certain compensatory benefit plans.

**XBRL tagging.** The Small Company Disclosure Simplification Act (H.R. 1965) would exempt EGCs and other smaller companies from using eXtensible Business Reporting Language (XBRL) in financial statements and other periodic reports filed with the SEC. But EGCs can still choose to use XBRL. The exemptions for non-EGCs would last for up to five years, or two years following the SEC's determination (via an order) that the benefits of these companies using XBRL outweigh the costs of compliance.

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