House Passes Investment Advisers Modernization Act of 2016, But Further Progress Uncertain

On September 9, 2016, the U.S. House of Representatives approved the Investment Advisers Modernization Act of 2016 (H.R. 5424) with bipartisan support.[1]

If the bill were to become law, it would, among other things:

- repeal a long-standing prohibition on an adviser's use of testimonials (e.g., investor "endorsements") and specified information requirements for use of prior specific recommendations (e.g., portfolio company investments) when providing marketing materials to accredited investors, qualified purchasers, qualified clients and knowledgeable employees;
- amend the assignment provisions of the Advisers Act to provide that minority sales or transfers of interests in investment advisers do not constitute assignments requiring investor consent;
- amend the custody rule so certificated privately offered securities would not be required to be custodied by a qualified custodian;
- eliminate certain reporting requirements on Form PF that currently apply to large private equity fund advisers;
- eliminate the requirement to adopt a proxy policy with respect to the voting of private securities; and
- prevent the SEC from making or amending any rules that would extend certain mutual fund advertising content limitations to private fund marketing and offering materials.

While the bill has garnered some industry support, its likelihood of passage into law remains uncertain. The Obama administration has signaled that the President would veto the bill if it is passed by Congress,[2] and, given the current political climate, a vote to override a veto is unlikely. Finally, if the bill became law, Securities and Exchange Commission rulemaking could limit its impact.

1 The bill was introduced on June 9, 2016 by House Financial Services Committee members Robert Hurt (R-Va.), and five cosponsors.

2 Statement of Administration Policy H.R. 5424 - Investment Advisers Modernization Act of 2016, Executive Office of the President, Office of Management and Budget (Sept. 6, 2016).

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