

House Passes Bill Creating Private Equity Fund Manager Investment Adviser Exemption, But Further Progress Uncertain

PENpoints

The U.S. House of Representatives approved a bill that would permit the de-registration of many private equity fund advisers, but its prospects are uncertain.

On December 4, 2013, the U.S. House of Representatives approved the “Small Business Capital Access and Job Preservation Act.” The bill would exempt from SEC investment adviser registration most private equity fund sponsors managing one or more “private equity funds” (to be defined by SEC rulemaking), each such fund with fund-level debt of no more than twice its funded capital (a cap not expected to be a practical bar to qualifying for the exemption in most cases). If the bill were to become law, it would permit the de-registration of many private equity fund advisers currently registered with the SEC and provide an exemption for newly-formed private equity fund advisers, subject to SEC rulemaking required by the bill.¹

Likelihood of the bill’s passage into law remains highly uncertain. Support for the bill is split along party lines, with Republicans casting nearly all of the votes in favor and Democrats casting nearly all of the votes against.² The Senate, controlled by Democrats, has not yet even proposed a companion bill, a necessary

step for this legislation to progress. Because the Obama administration has signaled that the President would veto the bill if passed by Congress,³ the bill would require the support of two-thirds of the members of both the House and the Senate in order to override a presidential veto. Obtaining that level of Congressional consensus would be challenging, even on a matter enjoying broad bipartisan support.

Finally, if the bill became law, SEC rulemaking might well limit its impact.⁴ Specifically, the bill would require the SEC to adopt rules with respect to the type of funds that would qualify as “private equity funds,” as well as with respect to the types of information that an exempt private equity fund adviser must report to the SEC. Depending on how narrowly or expansively any such rules were drafted, certain funds might not qualify as “private equity funds” (so that their advisers would not qualify for the exemption), and even an exempt private equity fund adviser could be left with substantial SEC reporting requirements.

- 1 See [KirklandPEN](#) commenting on prior version of this bill.
- 2 The bill passed by a vote of 254-159. Of the 254 votes in favor, only 36 were cast by Democrats and, of the 159 votes against, only one was cast by a Republican.
- 3 See [Office of Management and Budget Statement of Administration Policy](#), dated December 3, 2013, regarding H.R. 1105 – Small Business Capital Access and Job Preservation Act.
- 4 Although the SEC as an institution has not formally expressed an opinion on the bill, SEC Chairman White opposes it. See letter, dated June 18, 2013, from SEC Chairman Mary Jo White to Reps. Jeb Hensarling (R. Texas) and Maxine Waters (D., Calif.), 159 Cong. Rec. H7484 (2013) (stating “In my view, our markets wouldn’t be well served by narrowing the scope of the commission’s jurisdiction and oversight of these advisers.”).

If you have any questions about the matters addressed in this *KirklandPEN*, please contact the following Kirkland authors or your regular Kirkland contact.

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Sean Rodgers Joins Kirkland's Corporate Practice Group

Kirkland recently announced that Sean Rodgers has joined its New York office as a partner in the Corporate Practice Group. Sean comes to Kirkland after spending nearly 20 years at Simpson Thacher & Bartlett LLP, where he was a mergers and acquisitions partner in New York. He regularly represents private

equity firms and corporations in a wide range of transactions including leveraged buyouts, stock and asset acquisitions and sales, recapitalizations, mergers, private equity investments, and general corporate and securities law matters. Click [here](#) to see the official announcement.

Mark Cuban Escapes SEC Shark Tank, But Will You?

Despite two recent trial victories by individuals — including NBA Dallas Mavericks owner Mark Cuban — over the SEC, Chair Mary Jo White has made it

clear that the SEC will continue its aggressive pursuit of individuals and perhaps even take more cases to trial. To learn more, see our recent [Alert](#).

PENnotes

ABS Vegas 2014 Las Vegas, Nevada January 21-24, 2014

The Structured Finance Industry Group (SFIG) and Information Management Network (IMN) are hosting ABS Vegas 2014, which attracts the securitization industry's top professionals. Kirkland & Ellis partner Kenneth Morrison is scheduled to participate in a panel discussion. The program, developed by leaders who represent the most active firms in ABS, will feature coverage of the most pressing issues facing the marketplace. Click [here](#) for more information.

20th Annual Harvard Business School Venture Capital & Private Equity Conference Boston, Massachusetts February 9, 2014

Kirkland will sponsor Harvard Business School's 20th Annual Venture Capital & Private Equity Conference. More than 100 panelists and moderators will exchange ideas and present their perspectives throughout the conference's 16 panel discussions. Kirkland partners Sean Rodgers, Stephen Tomlinson and Patrick Nash will participate in the "State of the PE Industry," "Real Estate Investing," and "Turnarounds and Restructuring" panels respectively. Click [here](#) for more information.

20th Annual Columbia Business School Private Equity & Venture Capital Conference New York, New York February 28, 2014

Kirkland is a sponsor of the Columbia Business School's 20th Annual Private Equity & Venture Capital Conference. The goals of the conference are to educate, promote discussion and provide a forum for interaction between academics, professionals and students who are active in the private equity and venture capital communities. Kirkland partners Sean Rodgers and Edward Sassower will participate in the "Creating Value through the LBO" and "Distressed & Restructuring" panels respectively. Click [here](#) to register.

9th Annual Stern Private Equity Conference New York, New York February 28, 2014

Kirkland is a sponsor of New York University's Stern School of Business 9th Annual Stern Private Equity Conference. This season's conference will provide a forum for industry leaders to discuss the opportunities and risks of today's private equity and venture capital environment. Kirkland partners Jennifer Morgan and Christopher Torrente will participate in the "Real Estate" and "Leveraged Buyout" panels respectively. Click [here](#) to register.

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Private Equity Practice at Kirkland & Ellis

Kirkland & Ellis' nearly 400 private equity attorneys have handled leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 400 private equity firms around the world.

Kirkland has been widely recognized for its preeminent private equity practice. The Firm was named "Private Equity Group of the Year" in 2012 and 2013 by *Law360* and was commended as being the most active private equity law firm of the last decade in *The PitchBook Decade Report*. In addition, Kirkland was awarded "Best M&A Firm" and "Best Private Equity Firm" in the United States at *World Finance's* 2012 Legal Awards and was honored as the "Private Equity Team of the Year" at the 2011 *IFLR Americas Awards*.

In 2012 and 2013, Chambers and Partners ranked Kirkland as a Tier 1 law firm for Investment Funds in the United States, U.K., Asia-Pacific and globally. The Firm was ranked as the #1 law firm for both Global and U.S. Buyouts by deal volume in Mergermarket's *League Tables of Legal Advisors to Global M&A for Full Year 2011 and 2012*, and has consistently received top rankings among law firms in Private Equity by The Legal 500, the Practical Law Company and IFLR, among others.

The Lawyer magazine has recognized Kirkland as one of its "Transatlantic Elite" every year since 2008, having noted that the firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

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