JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

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: November 8, 2013

Subject: November 14, 2013, Full Committee Markup

The Committee on Financial Services will meet to mark up the following bills at 10 a.m. on Thursday, November 14, 2013, and subsequent days if necessary, in Room 2128 of the Rayburn House Office Building:

- H.R. 3329, to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes.
- H.R. ___, the Credit Union Share Insurance Fund Parity Act
- H.R. 1800, the Small Business Credit Availability Act
- H.R. 2274, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act
- H.R. ___, to amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks

H.R. 3329, Changes to the Small Bank Holding Company Policy Statement

The Federal Reserve Board (Board) first issued the Small Bank Holding Company Policy Statement (Policy Statement) in 1980 to facilitate the transfer of ownership of small community-based banks in a manner that is consistent with bank safety and soundness. The Board generally has discouraged the use of debt by bank holding companies (BHCs) to finance the acquisition of banks or other companies because high levels of debt at a BHC can impair the ability of the BHC to serve as a source of strength to its subsidiary banks. The Board has recognized, however, that small BHCs have less access to equity financing than larger BHCs and that, therefore, the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the Board adopted the Policy Statement to permit the formation and expansion of small BHCs with debt levels that are higher than what would be permitted for larger BHCs. The Policy Statement contains several conditions and restrictions that are designed to ensure that small BHCs that operate with the higher levels of leverage permitted by the Policy Statement do not present an undue risk to the safety and soundness of their subsidiary banks.

Under current law, in order to qualify for favorable treatment under the Policy Statement, a BHC must have assets of less than $500 million; must meet certain debt-related tests; and must not be engaged in significant nonbanking activities.

Introduced by Rep. Blaine Luetkemeyer, Rep. Tom Cotton, Rep. Ann Kuster, Rep. Patrick Murphy, Rep. Mike Quigley, and Rep. Marc A. Veasey, H.R. 3329 would require the Board, within six months of the date of enactment, to apply the Policy Statement to bank holding companies and savings and loan holding companies with pro forma consolidated assets of less than $1 billion so long as they (1) are not engaged in any nonbanking activities involving significant leverage; and (2) do not have a significant amount of outstanding debt that is held by the general public.

Additionally, this bipartisan bill amends Section 171 of the Dodd-Frank Act (the Collins Amendment) to clarify that exemption granted to small bank holding companies also applies to savings and loan holding companies. The Collins Amendment directs the appropriate federal banking agencies to establish minimum leverage and risk-based capital requirements, on a consolidated basis, for insured depository institutions, depository institution holding companies, and nonbank financial companies that are supervised by the Board. The Collins Amendment does not apply to small bank holding companies subject to the Policy Statement, as in effect on May 19, 2010. In prescribing regulations implementing the Collins Amendment, the Board chose not to expand this exemption to include savings and loan holding companies with assets of less than $500 million. H.R. 3329 would clarify that savings and loan holding companies meeting the necessary criteria are also able to qualify for this exemption.

H.R. _____, the Federal Credit Union Share Insurance Fund Parity Act

Prior to the markup, Rep. Ed Royce intends to introduce a bill called the Federal Credit Union Share Insurance Fund Act.[1] Currently, customer bank accounts insured by the Federal Deposit Insurance Corporation (FDIC) that contain funds owned by one or more individuals qualify for coverage under the Deposit Insurance Fund (DIF). Conversely, similar accounts held by federally-insured credit union members are not insured by the National Credit Union Share Insurance Fund (NCUSIF) unless the funds held by the member are owned by other federally-insured credit union members. This issue is most prevalent with interest on lawyer trust accounts and prepaid debit master accounts.

The bill that will be introduced by Rep. Royce amends the Federal Credit Union Act (12 U.S.C. § 1787) to require that NCUSIF coverage be provided in instances where a credit union member holds funds for the use of a nonmember. The bill also stipulates that coverage for an account established by a member shall be consistent with that available under the DIF regardless of the membership status of the owner of the funds that are deposited in an account established by a credit union member.

[1] Simultaneous with the publication of this memorandum and the related meeting notice, the Committee circulated to members of the Committee the exact language of the bills to be introduced. The Committee will update and republish this memo with the bill number for this (the bill by Rep. Royce) and the other bill that is described later in this memo that has not yet been introduced (the bill by Rep. Duffy) upon their respective introductions.

H.R. 1800, the Small Business Credit Availability Act

Business development companies (BDCs) are closed-end investment companies that invest in and lend to small- and medium-sized private companies rather than large public companies, filling a market niche that some commercial banks have abandoned. As a result, many small and medium-sized American businesses have been able to obtain financing, which has supported their growth and which might not otherwise have been available to them. In 1980, Congress authorized the creation of BDCs by amending the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq*.). Congress has not updated the statute since 1980. The existing regulatory framework has created challenges for BDCs seeking to raise and deploy capital and, in turn, to satisfy their Congressional mandate to lend to small and medium-sized companies.

Introduced by Rep. Michael Grimm on April 26, 2013, H.R. 1800 amends section 60 of the Investment Company Act to allow BDCs to purchase, acquire, or hold securities or other interests in investment advisers or advisors to investment companies, and allow BDCs to issue more than one class of senior security which is a stock. H.R. 1800 also amends section 61(a) of the Investment Company Act to reduce the ratio of assets to debt that BDCs are required to maintain from 200% to 150%. Finally, H.R. 1800 directs the Securities and Exchange Commission (SEC) to revise its rules and forms to allow BDCs to use the streamlined securities offering provisions available to other registrants under the Securities Act of 1933 (15 U.S.C. 77a *et seq*.).

H.R. 2274, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act

Mergers and acquisitions (M&A) brokers perform services in connection with the transfer of ownership of smaller, privately held companies. M&A brokers are subject to costly and burdensome regulatory requirements, which adversely impact and unnecessarily increase the costs that business owners incur when they buy or sell their businesses. The SEC's Forum on Small Business Capital Formation has repeatedly recommended that the SEC modernize and streamline the regulation of M&A brokers but the SEC has never acted on these recommendations.

Introduced by Rep. Bill Huizenga, H.R. 2274, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, amends section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq*.) to create a simplified SEC registration system for M&A brokers. Specifically, H.R. 2274 allows M&A brokers to register with the SEC by filing an electronic notice which would be made publicly available on the SEC's website. A properly completed electronic notice of registration would become effective immediately upon receipt by the SEC, except that SEC approval of such notice would be required if the M&A broker, or a person associated with the M&A broker, is subject to suspension or revocation of registration, a statutory disqualification, or a disqualification under SEC rules pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. No. 111-203). H.R. 2274 also requires M&A brokers to make certain disclosures to clients as may be required by the SEC including, but not limited to, a description of the M&A broker and its affiliates, associated persons, fees, and any conflicts of interest.

In addition, H.R. 2274 directs the SEC to tailor its rules governing M&A brokers by taking into account the nature of the transactions in which M&A brokers are involved, the involvement of the parties to such transactions, and the limited scope of the activities of M&A brokers. Under H.R. 2274, an M&A broker would be prohibited from receiving, holding, transferring, or having custody of client funds or securities in connection with the transfer of an eligible privately held company and would not to be able to engage on behalf of an issuer in a public securities offering. H.R. 2274 requires the SEC to work with the states to establish uniform and consistent standards of training, experience, competence, and other qualifications for M&A brokers, as well as to develop the form and content of the electronic notice of registration.

H.R. _____, the Small Cap Liquidity Reform Act

Prior to the markup, Rep. Sean Duffy intends to introduce a bill that is similar to a discussion draft circulated in connection with the October 24, 2013, hearing in the Subcommittee on Capital Markets and Government Sponsored Enterprises.[2] The bill amends Section 11A(c)(6) of the Exchange Act to provide for an optional pilot program administered by the SEC allowing certain "Emerging Growth Companies" (EGCs), a category of issuers recently established in Title I of the Jumpstart Our Business Startups (JOBS) Act (P.L. 112-106), with a stock price above $1.00 to increase the "tick size" at which their stocks are quoted and traded from $.01 to $.05, or, if the EGC's board of directors so elects, $.10. The bill allows covered EGCs to change the tick size of their stock from $.05 to $.10 or from $.10 to $.05 one time during the pilot program; it also allows EGCs to opt out of the program. By providing flexibility in tick size for smaller issuers, the bill aims to improve market quality and increase liquidity in their shares, thereby promoting capital formation.

[2] Simultaneous with the publication of this memorandum and the related meeting notice, the Committee circulated to members of the Committee the exact language of the bills to be introduced. The Committee will update and republish this memo with the bill number for this and the two other bills that are described in this memo that have not yet been introduced (those by Reps. Duffy, Hurt and Fincher) upon their respective introductions.