MINORITY VIEWS ON H.R. 1105

The Dodd-Frank Wall Street Reform and Consumer Protection Act brought many firms and pools of capital out of the ''shadow'' financial system and into the daylight by requiring hedge fund and private equity fund advisors with more than $150 million of assets under management to register with the Securities and Exchange Commission (SEC) as investment advisers and provide information about their trades and portfolios. Under the Act, the SEC shares this data with the Financial Stability Oversight Board (FSOC) and reports to Congress annually on how it uses this data for the protection of investors and the preservation of market integrity.

Today, private equity fund advisers have registered with the SEC, and have been making systemic risk reports for more than a year. As registered investment advisers, private equity firms must provide advice that is the best interest of the investor, basic disclosures about an employee who violated securities laws, the adviser's business practices, its fees, and any conflicts of interest. In addition, registered advisers must have a compliance program, a code of ethics and a chief compliance officer for each fund manager. While we recognize that complying with such requirements does have a cost and that some disclosures and registration requirements could be streamlined, we believe the benefits of reduced systemic risk and increased investor protection outweighs these costs.

H.R. 1105 exempts private equity fund advisors levered by less than a 2-to-1 ratio from both making these systemic risk reports, as well as from the investor protections of adviser registration. In practice, because private equity firms leverage the purchased companies, and not the fund, all private equity funds would likely be exempted. As we have heard before, this year, one witness testified that the leverage at the purchased companies is itself an element of risk. Information about these companies is precisely the type of data that should be available to the FSOC to analyze.

Additionally, H.R. 1105 would exempt private equity fund advisers just as the SEC seeks to finalize a provision of the Jumpstart Our Business Startups Act of 2012 (JOBS Act) that permits general solicitation and advertising of private equity funds and other private securities. Investor advocates have raised strong concerns that the pensions of hard working Americans, as well as individual retirees, would now be targeted to invest in these funds. Removing investor protections related to private equity funds just as this provision of the JOBS Act goes into effect is short-sighted.

During consideration of H.R. 1105, Democrats offered two improvements to the bill, but both were rejected by Republicans. Ms. Velazquez offered an amendment to limit the exemption to firms that did not use public solicitation. Ms. Maloney's amendment would have eliminated the exemption, and instead required the SEC to adopt simplified disclosure and registration requirements for smaller private equity firms, striking a balance between industry cost concerns on the one hand, and systemic risk mitigation and investor protection on the other. Both were rejected on a party-line vote.

As a result, because H.R. 1105 limits the ability of the FSOC to monitor systemic risk in the financial system, and prevents the SEC from protecting investors in private equity funds, we oppose the bill.

Minority Views – H.R. 1105

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