

# WILLIAMS & JENSEN, PLLC

## CONGRESSIONAL MARKUP REPORT

**DATE OF MARKUP:** March 2, 2016

**SUBJECT:** “Markup of Financial Services Legislation”

**COMMITTEE:** House Financial Services

**STAFF MEMBER COVERING MARKUP:** Alex Barcham

### Overview

On March 2, the House Financial Services Committee held a [markup](#) and approved ten bills, including legislation related to: mortgage licensing, reducing regulatory burdens, the National Flood Insurance Program (NFIP), the Volcker Rule, the Sarbanes-Oxley Act, collateralized loan obligations (CLO), general solicitations, commercial real estate loans, and venture exchanges.

- The SAFE Transitional Licensing Act ([H.R. 2121](#)), introduced by Representative Steve Stivers (R-OH), which would amend the SAFE Mortgage Licensing Act of 2008;
- Taking Account of Institutions with Low Operation Risk Act ([H.R. 2896](#)), introduced by Representative Scott Tipton (R-CO), which would require federal banking regulators to tailor their regulations to limit regulatory burdens;
- The Flood Insurance Market Parity and Modernization Act ([H.R. 2901](#)), introduced by Representative Dennis Ross (R-FL), which would clarify that flood insurance offered by a private carrier outside of the National Flood Insurance Program (NFIP) can satisfy the Act’s mandatory purchase requirement;
- The Due Process Restoration Act ([H.R. 3798](#)), introduced by Representative Scott Garrett (R-NJ), which would amend the Securities Exchange Act of 1934 relating to the SEC’s use of administrative law judges;
- The Investor Clarity and Bank Parity Act ([H.R. 4096](#)), introduced by Representative Michael Capuano (D-MA), which would amend the Volcker Rule to permit certain investment advisers to share a similar name with a private equity fund;
- The Fostering Innovation Act ([H.R. 4139](#)), introduced by Representative Kyrsten Sinema (D-AZ), which would amend the Sarbanes-Oxley Act to provide a temporary exemption for low revenue issuers from certain auditor attestation requirements;
- The Expanding Proven Financing for American Employers Act ([H.R. 4166](#)), introduced by Representative Andy Barr (R-KY), which would amend the Securities Exchange Act of 1934 to provide specific credit risk retention requirements to certain qualifying collateralized loan obligations;
- The Helping Angels Lead Our Startups Act ([H.R. 4498](#)), introduced by Representative Steve Chabot (R-OH), which would modify the definition of general solicitation;
- The Preserving Access to CRE Capital Act of 2016 ([H.R. 4620](#)), introduced by Representative French Hill (R-AR), which would exempt certain commercial real estate loans from risk retention requirements; and

- The Main Street Growth Act ([H.R. 4638](#)) by Representative Scott Garrett (R-NJ), which would allow the creation of venture exchanges to promote liquidity of venture securities.

**Chairman Jeb Hensarling (R-TX)** stressed the need to send bipartisan legislation to the President. He said the Fostering Innovation Act will reduce red tape for small businesses. He expressed support for H.R. 4139 and H.R. 4096. He suggested that the Helping Angels Lead Our Startups (HALOS) Act and the Main Street Growth Act will help small businesses attract investments. He said small banks and credit unions need relief from regulations, expressing support for H.R. 2896. He said H.R. 3798 will ensure appropriate due process in SEC enforcement proceedings. He said H.R. 2901 is a bipartisan bill which will remove unreasonable regulatory barriers which are hindering homeowners' options in the flood insurance market. He suggested that the NFIP is impeding a competitive market and is in need of reform.

**Ranking Member Maxine Waters (D-CA)** said while some of the proposals are modest, the majority of bills represent a coordinated attack on the proper functioning of the financial markets. She expressed concern that Republicans will attempt to undermine the Administration's rule to reign in conflicts of interest. She said the Committee has considered multiple bills to undermine financial regulation. She said press reports indicate that the Committee will move on legislation to repeal sections of the Dodd-Frank Act (DFA), including the Volcker Rule and the Financial Stability Oversight Council (FSOC). She noted that the Senate is refusing to consider nominees at the SEC, Federal Reserve, and Financial Crimes Enforcement Network (FinCEN). She suggested that the Committee should consider legislation to address homelessness.

### **Bills Considered**

**The SAFE Transitional Licensing Act (H.R. 2121)** - introduced by Representative Steve Stivers (R-OH)

The Committee approved H.R. 2121, as amended, by a 56-0 vote.

### **Amendments Adopted:**

#### ***Manager's Amendment***

**Representative Steve Stivers (R-OH)** offered an [amendment](#) in the nature of a substitute. He said H.R. 2121 will ensure that mortgage loan originators working for depository institutions can move to non-depository institutions with minimal disruption. He said H.R. 2121 will foster an efficient marketplace. He noted that the bill creates a transitional authority. **Chairman Jeb Hensarling (R-TX), Ranking Member Maxine Waters (D-CA), Representative Carolyn Maloney (D-NY), Representative Terri Sewell (D-AL), Representative Andy Barr (R-KY) and Representative Joyce Beatty (D-OH)** expressed support for H.R. 2121 and the substitute amendment. **The amendment was adopted by voice vote.**

**Taking Account of Institutions with Low Operation Risk Act (H.R. 2896)** - introduced by Representative Scott Tipton (R-CO)

The Committee adopted H.R. 2896 by a mostly partisan vote of 34-22, with Representatives David Scott (D-GA), Ed Perlmutter (D-CO) and Denny Heck (D-WA) voting yes.

**Representative Scott Tipton (R-CO)** said H.R. 2896 would require federal regulators to tailor regulatory actions applying to banks and credit unions. He said this would ensure that regulations are appropriately tailored to the risks of banks and credit unions. He suggested this would reduce the level of resources regulators spend on unnecessary examinations. He said the DFA has imposed excessive compliance burdens on small banks and credit unions. He noted that the Federal Reserve and FDIC have acknowledged that small banks and credit unions are suffering from regulatory trickle down. **Representative Andy Barr (R-KY)** stressed the need to reduce undue burdens on community banks and credit unions. He expressed support for H.R. 2896. **Ranking Member Maxine Waters (D-CA)** expressed opposition to the bill, suggesting that it would undermine the DFA. She said the bill would allow all financial institutions to challenge their regulations. She stated that the bill would create a set of very vague standards. She contended that the bill could weaken anti-money laundering (AML)/know your customer (KYC) provisions. She suggested that the bill would subject regulations to “endless litigation.” **Representative Roger Williams (R-TX)** **Representative Robert Pittenger (R-NC)**, and **Chairman Jeb Hensarling (R-TX)** expressed support for H.R. 2896.

*The Flood Insurance Market Parity and Modernization Act (H.R. 2901)* - introduced by Representative Dennis Ross (R-FL)

The Committee favorably reported H.R. 2901, as amended, by a 53-0 vote.

#### **Amendments Adopted:**

##### *Manager’s Amendment*

**Representative Dennis Ross (R-FL)** offered an [amendment](#) in the nature of a substitute. He said Floridians and other Americans would benefit from more choices in the flood insurance market. He suggested that regulations have impeded the creation of a competitive market. He said H.R. 2901 will remove unnecessary regulatory burdens by clarifying that private flood insurance can satisfy the NFIP mandatory purchase requirement. He noted that the NFIP is limited in what it can cover, but the private sector is not. He suggested that the bill would encourage the development of a robust private flood insurance market and promote mitigation efforts. **Representative Patrick Murphy (D-FL)** expressed support for H.R. 2901, suggesting that it would provide clarity that private flood insurance is an option available to homeowners. He said the bill would create a simple definition for the private flood insurance products which meet the mandatory purchase requirement. He stated that ensuring access to private flood insurance would reduce taxpayers’ exposure during a disaster. He emphasized that the bill does not create a preference for government or private flood insurance. **Representative Blaine Luetkemeyer (R-MO)** said H.R. 2901 is a common sense and reasonable step towards reforming the NFIP. He noted that the bill includes safeguards to allow homeowners to return to the NFIP if they are unsatisfied with their private coverage. **Chairman Jeb Hensarling (R-TX)** expressed support for H.R. 2901. He noted that NFIP is deeply in debt and will be coming up for reauthorization next year. He said the bill would provide consumers with additional options. **Ranking Member Maxine Waters (D-CA)** emphasized the bipartisan nature of the bill. She noted

that the sponsors made changes to address her concerns with the bill, adding provisions regarding oversight of the financial strength of the private insurers. She said she hopes the Committee can consider NFIP reauthorization in a bipartisan manner, stressing the need to reform the program while keeping rates affordable. She contended that the Committee should “wipe out” the NFIP’s debt. She stressed the need to address the high cost of disaster assistance, contended that Congress should invest in mitigation. She said the Committee will need to examine the issue of mapping. **Representative Robert Pittenger (R-NC), Representative Roger Williams (R-TX) and Representative Keith Rothfus (R-PA)** expressed support for H.R. 2901. **Williams** said H.R. 2901 would resolve the uncertainty lenders face in accepting private flood insurance. **The amendment was adopted by voice vote.**

***The Due Process Restoration Act (H.R. 3798)*** - introduced by Representative Scott Garrett (R-NJ)

The Committee favorably reported H.R. 3798 by a 32-25 vote.

**Representative Scott Garrett (R-NJ)** stressed the importance of ensuring due process. He noted that the SEC is bringing many enforcement cases before its in-house tribunals, suggesting that this forum gives the SEC an advantage. He said defendants are not afforded a jury of their peers. He said these administrative procedures violate the separation of powers. He noted that the SEC has proposed very modest changes to their administrative proceedings, which he described as “window dressing.” He said H.R.3798 would allow defendants to move their case from an SEC forum to a federal district court, if they so choose.

**Ranking Member Maxine Waters (D-CA)** said H.R. 3798 would hamper the ability of the SEC to protect investors from fraud and abuse. She expressed opposition to efforts to undermine and underfund the SEC. She expressed support for the use of administrative proceedings to preserve SEC resources and speed up enforcement proceedings. She described administrative proceedings as a valuable tool for the SEC. She said SEC administrative proceedings are fair to defendants and do not violate due process. She noted that the records for the SEC in administrative proceedings and in the courts are comparable.

**Chairman Jeb Hensarling (R-TX)** said the bill would ensure access to due process. He contended that people should not be treated with a presumption of guilt. **Representative Robert Hurt (R-VA)** spoke in support of H.R. 3798.

**Representative Keith Ellison (D-MN)** said yesterday the SEC announced administrative proceedings in several cases, including one against Qualcomm. He expressed opposition to H.R. 3798, contending that the current process is not unfair. He suggested that federal courts are already under-resourced and overwhelmed. He said the Senate is refusing to move forward on federal court nominees.

#### **Amendments Rejected:**

***Mandatory Arbitration/Class Action Law Suits***

**Representative Keith Ellison (D-MN)** offered an amendment, which as he described it, would prevent defendants from moving their case to federal court if they have mandatory arbitration requirements in their client contracts or prohibit clients from participating in class action law suits. He noted that his amendment is supported by NASAA. He said he has introduced legislation to ban mandatory pre-dispute arbitration. **Representative Scott Garrett (R-NJ)** and **Chairman Jeb Hensarling (R-TX)** spoke in opposition to the amendment. **Ranking Member Maxine Waters (D-CA)** expressed support for the amendment. **The amendment was rejected by a vote of 25-32.**

*The Investor Clarity and Bank Parity Act (H.R. 4096)* - introduced by Representative Michael Capuano (D-MA)

The Committee favorably reported H.R. 4096 by voice vote.

**Representative Michael Capuano (D-MA), Representative Carolyn Maloney (D-NY)** and **Representative Scott Garrett (R-NJ)** expressed support for the bill.

**Representative Steve Stivers (R-OH)** spoke in support of H.R. 4096, stating that it would make modest changes to the Volcker Rule. He said the bill would narrowly amend the provisions on naming restrictions and would not make other changes to the Volcker Rule.

*The Fostering Innovation Act (H.R. 4139)* - introduced by Representative Kyrsten Sinema (D-AZ)

The Committee favorably reported H.R. 4139 by a vote of 42-15. Those voting against the bill include: Ranking Member Maxine Waters (D-CA); Representative Nydia Velazquez (D-NY); Representative Brad Sherman (D-CA); Representative Gregory Meeks (D-NY); Representative Capuano (D-MA); Representative William Clay (D-MO); Representative Stephen Lynch (D-MA); Representative Al Green (D-TX); Representative Emanuel Cleaver (D-MO); Representative Gwen Moore (D-WI); Representative Keith Ellison (D-MN); Representative Ed Perlmutter (D-CO); Representative James Himes (D-CT); Representative Terri Sewell (D-AL); and Representative Joyce Beatty (D-OH).

**Representative Kyrsten Sinema (D-AZ)** said H.R. 4139 is a bipartisan bill, which will help startups obtain access to capital without facing additional burdens. **Representative Michael Fitzpatrick (R-PA)** said the bill would provide temporary relief to startups while still ensuring that investors are protected. **Chairman Jeb Hensarling (R-TX), Representative Scott Garrett (R-NJ), Representative French Hill (R-AR)** and **Representative Carolyn Maloney (D-NY)** spoke in support of H.R. 4139. **Maloney** described the bill as an appropriate compromise, noting that she opposed a prior version for being too broad. She noted that the bill does not exempt companies from the requirement to issue audited financial statements.

**Ranking Member Maxine Waters (D-CA)** said she has concerns with H.R. 4139. She said the bill would exempt emerging growth companies from Sarbanes-Oxley Section 404(b) audit requirements for up to a decade. She noted that the DFA already provides a number of exemptions from Sarbanes-Oxley. She said investors rely on Section 404 audits when making investment decisions.

She said Section 404(b) promotes good corporate governance and investor confidence. **Chairman Jeb Hensarling (R-TX)** responded that companies would still be allowed to comply with Section 404(b) if they desired, but should be allowed to choose not to do so.

***The Expanding Proven Financing for American Employers Act (H.R. 4166)*** - introduced by Representative Andy Barr (R-KY)

The Committee favorably report H.R. 4166, as amended, by a vote of 42-15. Those voting against the bill include: Ranking Member Maxine Waters (D-CA); Representative Carolyn Maloney (D-NY); Representative Nydia Velazquez (D-NY); Representative Michael Capuano (D-MA); Representative William Clay (D-MO); Representative Stephen Lynch (D-MA); Representative Al Green (D-TX); Representative Emanuel Cleaver (D-MO); Representative Gwen Moore (D-WI); Representative Keith Ellison (D-MN); Representative Ed Perlmutter (D-CO); Representative Dan Kildee (D-MI); Representative Patrick Murphy (D-FL); Representative Joyce Beatty (D-OH); and Representative Denny Heck (D-WA).

**Representative Andy Barr (R-KY)** said H.R. 4166 would enhance consumer protections while providing additional access to capital. He said H.R. 4166 would preserve access to CLOs. He stated that job producing companies, like Dunkin Donuts, use CLOs to fund expansion and job creation. He said CLOs were inadvertently impacted by the risk retention rule. He stated that the rule does not consider the unique structure of CLOs and requires excessive risk retention. He suggested that the rule has already substantially impacted CLO issuances, with smaller players being pushed out of the market. He said H.R. 4166 would define a qualified CLO, similar to the qualified mortgage (QM), which meets the requirements of the risk retention rule. He stated that CLOs performed much better than mortgage-backed securities (MBS), which were at the heart of the crisis.

**Representative David Scott (D-GA)** spoke in support of H.R. 4166, stressing the need to ensure that American businesses have access to a wide variety of financing options. He said that companies like Delta Airlines use CLOs as an important source of financing. He noted that Federal Reserve Chair Janet Yellen has suggested that the creation of a qualified CLO could be a positive development for the market. **Representative Bruce Poliquin (R-ME), Representative Bill Huizenga (R-MI), Representative Steve Stivers (R-OH), Representative Scott Tipton (R-CO)** and **Chairman Jeb Hensarling (R-TX)** expressed support for the bill.

**Ranking Member Maxine Waters (D-CA)** spoke in opposition to the bill. She emphasized the importance of the risk retention requirements, suggesting that H.R. 4166 goes in the wrong direction. She noted that regulators declined to include an exemption to the risk retention rule similar to what is proposed H.R. 4166, because they believed it would be too risky. She said the bill is “overbroad” and “ill-conceived.” **Representative Andy Barr (R-KY)** responded that CLOs do not use an originate-to-distribute model, suggesting that CLO managers’ incentives are aligned with those of investors.

**Representative Brad Sherman (D-CA)** said the DFA contained risk retention requirements, but did not reform the credit rating agencies (CRAs). He suggested that CRAs caused the last crisis and will cause the next crisis. He raised concerns with the issuer pays model of credit ratings. He stressed the need to ensure that all major debt issuances are subject to a rating by an independent CRA.

## Amendments Adopted:

### *Qualified CLO Definition*

**Representative Bill Foster (D-IL)** offered an amendment, which he described would: (1) require that 100 percent of the assets in a qualified CLO be loans and cash equivalents; (2) require that fund managers put money in to each tranche of the qualified CLO; and (3) ensure that covenants requiring the disclosure of financials be a part of every loan included in a qualified CLO. He said CLOs had low losses during the financial crisis. He suggested that qualified CLOs should be subject to reduced risk retention requirements. **Chairman Jeb Hensarling (R-TX)** said he would accept the amendment. **Ranking Member Maxine Waters (D-CA)** said while she appreciates the efforts to improve the bill, even if the amendment were adopted the underlying bill would still be harmful. **The amendment was adopted by voice vote.**

## Amendments Withdrawn:

### *Concentration Limits*

**Representative Bill Foster (D-IL)** offered an amendment, which he described as limiting the concentration in the CLO industry. He said there are concerns that the issuance of CLOs is becoming dominated by a handful of large players. He said the amendment would limit the number of CLOs issued by any one issuer to ten percent of the market for CLOs. **Chairman Jeb Hensarling (R-TX)** spoke in opposition to the amendment, expressing concern that the bill would limit the CLO market. **Representative Andy Barr (R-KY)** also expressed opposition to the amendment. He suggested that the amendment would undermine the intent of the bill. **The amendment was withdrawn.**

***The Helping Angels Lead Our Startups Act (H.R. 4498)*** - introduced by Representative Steve Chabot (R-OH)

The Committee favorably reported H.R. 4498 by a vote of 44-13, with Ranking Member Maxine Waters (D-CA), Representative Carolyn Maloney (D-NY), Representative Nydia Velazquez (D-NY), Representative Brad Sherman (D-CA), Representative Michael Capuano (D-MA), Representative William Clay (D-MO), Representative Stephen Lynch (D-MA), Representative David Scott (D-GA), Representative Al Green (D-TX), Representative Gwen Moore (D-GA), Representative Keith Ellison (D-MN), Representative Dan Kildee (D-MI), and Representative Denny Heck (D-WA) voting in opposition.

**Representative Robert Hurt (R-VA)** said Congress must take action to help small businesses achieve success. He noted that last month, Charlottesville, Virginia was recognized as one of the top areas for venture capital investment. He expressed support for H.R. 4498, which would define angel investor groups and amend the definition of general solicitation. He said the HALOS Act would make it easier for startups to market their companies. He said angel investor events would not be considered a general solicitation.

**Ranking Member Maxine Waters (D-CA)** opposed the bill, suggesting that it would be harmful to investors. She said the JOBS Act opened up the private offerings market. She said H.R. 4498 would eliminate the accredited investor verification requirements for demo days, which she suggested would create a loophole.

**Representative Ann Wagner (R-MO)** spoke in support of H.R. 4498. She said small businesses are having difficulty obtaining access to capital. She suggested that the HALOS Act would exempt demo days from general solicitation requirements and make it easier for startups to attract capital. **Representative Kyrsten Sinema (D-AZ)** expressed support for the HALOS Act, which she suggested will help startups to connect with angel investors through demo days. **Representative David Schweikert (R-AZ)** supported the bill, suggesting that it would reduce the burdens on small businesses.

*The Preserving Access to CRE Capital Act of 2016 (H.R. 4620)* - introduced by Representative French Hill (R-AR)

The Committee favorably reported H.R. 4620 by a vote of 39-18, with Representative David Scott (D-GA), Representative John Carney (D-DE), Representative Bill Foster (D-IL), Representative Patrick Murphy (D-FL), Representative John Delaney (D-MD), Representative Kyrsten Sinema (D-AZ), and Representative Juan Vargas (D-CA) voting in support of the bill.

**Representative French Hill (R-AR)** said H.R. 4620 would provide relief from certain risk retention requirements. He said the risk retention rule does not treat commercial mortgage-backed securities (CMBS) appropriately. He noted that CMBS are underwritten based on asset quality, suggesting that CMBS performed well during the financial crisis. He said the bill would exempt Single Asset-Single Borrower (SASB) transactions from the risk retention rule. He argued that if the rule is not modified there will be a significant reduction in access to credit.

**Ranking Member Maxine Waters (D-CA)** spoke in opposition to H.R. 4620. She said concerns about the quality of Lehman Brothers' CMBS warehouse directly contributed to their collapse. She said all asset-based securities (ABS), including CMBS, can fall into the originate-to-distribute model. She stressed the need to require skin in the game. She suggested that the bill would put CMBS investors at risk.

**Representative David Schweikert (R-AZ)** said CMBS is underwritten based on income generation, not based on an individual's credit-worthiness. He noted that CMBS also have unique representations and warranties. He said CMBS functioned very well during the crisis. **Representative Randy Neugebauer (R-TX)** said Congress did not adequately examine the causes of the financial crisis in crafting the DFA. He suggested that the risk retention requirements are pushing out small banks and making the big banks bigger. **Representative Ed Royce (R-CA)** commended the sponsor of the legislation. He stated that a contraction in CMBS will result in a loss of job creation. He said H.R. 4620 strikes an appropriate balance on risk retention.

*The Main Street Growth Act (H.R. 4638)* – introduced by Representative Scott Garrett (R-NJ)

The Committee favorably reported H.R. 4638, as amended, by a 32-25 vote along party lines.

### **Amendments Adopted:**

#### *Manager's Amendment*

**Representative Scott Garrett (R-NJ)** offered an [amendment](#) in the nature of a substitute. He emphasized the success of the JOBS Act, but suggested that it did little to address the problems in the secondary market. He said current equity market structure can disadvantage smaller companies and discourage them from going public. He said 92 percent of job creation occurs after a company goes public. He stated that the number of public companies in the U.S. has been cut in half from twenty years ago. **Garrett** said H.R. 4638 would authorize the creation of a venture exchange, which would be registered as a national security exchange with the SEC. He said the exchange would be structured to meet the needs of emerging growth companies. He stated that this exchange would help to “democratize” the market. He noted that the amendment in the nature of a substitute makes a number of technical changes to the underlying bill. **Ranking Member Maxine Waters (D-CA)** spoke in opposition to the bill. She said the bill fails to balance the needs of small companies and investors in the secondary markets. She raised concerns that the bill would create monopolistic trading rights. She noted that the bill would remove state oversight of these small companies, suggesting that they are prone to fraud. She expressed concern that the bill would threaten market integrity and increase costs for investors. She contended that sweeping changes should not be made without a thorough study, noting that she would offer an amendment to require such a study. She noted that the U.S. Chamber of Commerce, the Security Traders Association, and state regulators have called for a study on venture exchanges. She emphasized that she is not rejecting the concept of venture exchanges, but that more study is needed. She said Elio Motors recently engaged in the first equity crowdfunding IPO, in which it raised \$17 million from 6,600 investors on a crowdfunding platform using Regulation A+. She said Elio Motors listed its shares at \$12/share on OTCQX in early February and the price rose to \$50/share by the end of the month. **Chairman Jeb Hensarling (R-TX)** noted that the number of IPOs in the U.S. rose following the JOBS Act, but said more needs to be done to encourage small IPOs. He expressed support for H.R. 4638, suggesting that venture exchanges could provide additional liquidity to small companies. **Garrett** offered to work with Waters to address her concerns with the bill. **The amendment was adopted by voice vote.**

### **Amendments Rejected:**

#### *Study on Venture Exchanges*

**Ranking Member Maxine Waters (D-CA)** offered an amendment, which as she described it, would require the SEC to conduct a study on venture exchanges and report to Congress on past efforts and the effectiveness of current markets. She stressed the need for sufficient and reliable data on venture exchanges. She said the study would help Congress to make a smart and bipartisan decision on whether to create a venture exchange. She entered letters from NASAA and OTC Markets into the record. **Representative Scott Garrett (R-NJ)** spoke in opposition to the amendment, suggesting that another study is not needed. **The amendment was rejected by a roll call vote 25-32.**