

MEMO# 25186

May 13, 2011

Draft Comment Letter on FDIC Proposal Regarding Orderly Liquidation Authority Provisions of Dodd-Frank Act; Your Comments Requested by May 19

[25186]

May 13, 2011

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 26-11
FIXED-INCOME ADVISORY COMMITTEE No. 38-11
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 31-11
SEC RULES COMMITTEE No. 47-11 RE: DRAFT COMMENT LETTER ON FDIC PROPOSAL REGARDING ORDERLY LIQUIDATION AUTHORITY PROVISIONS OF DODD-FRANK ACT; YOUR COMMENTS REQUESTED BY MAY 19

As previously indicated, the FDIC has proposed a rule to implement additional provisions of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to orderly liquidation authority. [*](#) ICI has prepared a draft comment letter on the proposal. The draft letter is briefly summarized below.

Comments on the proposed rule are due to the FDIC not later than May 23, 2011. If you have comments on the attached draft letter, please send them to Mara Shreck (mshreck@ici.org) by Thursday, May 19th.

The draft letter reiterates ICI's view that clarity and certainty are critical elements of the orderly liquidation process. It applauds the FDIC for offering multiple opportunities to comment on orderly liquidation rulemaking and for incorporating comments into each new rulemaking. It notes that ICI continues to request further clarification of the process by which qualified financial contracts ("QFCs"), particularly those that involve collateral, would be resolved under the multiple scenarios that could arise in an orderly liquidation. It also states that ICI continues to urge the FDIC to adopt a provision specifying that, in the absence of a rule specific to Title II of the Dodd-Frank Act, the relevant provisions of the Bankruptcy Code and related judicial interpretations will serve as binding precedent.

With respect to the most recent proposal, the draft letter focuses on the proposed

administrative claims process for secured claims. The letter requests clarification that certain aspects of the new proposed rule do not apply to QFCs. It points out that the Notice and proposed rule text do not distinguish between QFCs and other secured transactions or claims and that, as a result, certain sections – in particular, those relating to the treatment of secured claims – would appear to apply to QFCs. The draft letter explains that the Dodd-Frank Act clearly excludes QFCs from the mandates that these sections of the proposed rule are intended to address, and would appear to exclude them from others. It also comments on a question posed in the Notice relating to the valuation of collateral.

Mara Shreck
Associate Counsel

[Attachment](#)

endnotes

* See FDIC Notice of Proposed Rulemaking, Orderly Liquidation Authority, 76 Fed. Reg. 16324 (March 23, 2011)(“Notice”), available at <http://edocket.access.gpo.gov/2011/pdf/2011-6705.pdf>. For a summary of the Notice, see ICI [Memorandum No. 25042](#), dated March 23, 2011.

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