

**MEMO# 25704**

December 9, 2011

## **Draft Letter on FSOC Proposal regarding "SIFI" Designations; Comments Due to ICI by December 15**

[25704]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 53-11  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 65-11  
SEC RULES COMMITTEE No. 105-11 RE: DRAFT LETTER ON FSOC PROPOSAL REGARDING  
"SIFI" DESIGNATIONS; COMMENTS DUE TO ICI BY DECEMBER 15

As we previously informed you, the Financial Stability Oversight Council ("FSOC" or "Council") has requested public comment on a second notice of proposed rulemaking ("Proposed Rule") and proposed interpretive guidance ("Proposed Guidance" and, together with the Proposed Rule, "Release") regarding the designation of certain nonbank financial companies as so-called systemically important financial institutions ("SIFIs"). [\[1\]](#) Our draft letter is attached and briefly summarized below.

Please provide any comments on the draft letter to Rachel Graham by phone at 202/326-5819 or email at [rgraham@ici.org](mailto:rgraham@ici.org) by close of business on Thursday, December 15. We expect to file ICI's letter with the FSOC on Friday, December 16. [\[2\]](#)

The draft letter begins by reiterating the salient arguments set forth in ICI's two prior comment letters on the FSOC's use of its SIFI designation authority:

- The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), by design, provides regulators with an array of new tools to address abuses and excessive risk taking by financial market participants, and to detect new buildups of risk in the financial system. The broad scope of those authorities should allow the FSOC to reserve SIFI designation for those circumstances in which other regulatory actions clearly would be inadequate to address or limit the perceived risks to the financial system.
- The Council's need for flexibility to respond, as circumstances dictate, to new or emerging risks to the financial system must be properly balanced against the needs of financial market participants for clarity regarding the FSOC's use of its SIFI designation authority.
- Registered investment companies ("funds") are at the "less risky" end of the

spectrum when considering the potential for systemic risk. In addition, a fund's assets—which are owned *pro rata* by its shareholders—should not be attributed to the registered investment adviser that manages those assets.

- SIFI designation is an inappropriate regulatory tool for further strengthening the resilience of money market funds to severe market distress.

The draft letter then provides ICI's views regarding to the Proposed Rule and Proposed Guidance and recommends revisions in two areas. First, the letter notes that many details of the proposed designation process are set forth in the Proposed Guidance rather than in the Proposed Rule, giving rise to some concern that the FSOC could change the guidance without prior notice and the opportunity for public comment. The letter recommends that the Council address these concerns by indicating, in any release finalizing the Proposed Rule, that it would seek comment from market participants and the broader public before making any material changes to the Proposed Guidance (once finalized). Second, the letter recommends several ways that the Council should strengthen the confidentiality provisions in the Proposed Rule.

Finally, the draft letter comments on statements in the Release regarding the FSOC's intention to conduct further analysis into what threats to financial stability, if any, arise from asset management companies and how any such threats are best addressed. The letter urges the Council to make clear that it will refrain from evaluating asset managers under the Proposed Rule and Proposed Guidance until (1) the review described above has been completed and (2) the Council provides the public with some indication of its findings and conclusions. It further states ICI's belief that this review will lead the FSOC to conclude, at the very least, that fund advisers do not present the risks that SIFI designation was intended to address.

Rachel H. Graham  
Senior Associate Counsel

## [Attachment](#)

### **endnotes**

[\[1\]](#) See ICI [Memorandum](#) No. 25583, dated Oct. 25, 2011 (summarizing the FSOC's proposal).

[\[2\]](#) Comments are due to the FSOC no later than Monday, December 19.