

MEMO# 24696

November 10, 2010

ICI Letter On FSOC Designations Of Nonbank Financial Companies For Heightened Supervision And Regulation

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TO: BOARD OF GOVERNORS No. 10-10

CLOSED-END INVESTMENT COMPANY MEMBERS No. 58-10

MONEY MARKET FUNDS ADVISORY COMMITTEE No. 59-10

SEC RULES MEMBERS No. 118-10 RE: ICI LETTER ON FSOC DESIGNATIONS OF NONBANK FINANCIAL COMPANIES FOR HEIGHTENED SUPERVISION AND REGULATION

As we previously informed you, the Financial Stability Oversight Council (“FSOC”) is responsible for identifying nonbank financial companies (both U.S. and foreign) for heightened supervision and regulation by determining whether material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company’s activities, could pose a threat to U.S. financial stability. The FSOC recently issued an advance notice of proposed rulemaking, in which it requested information to assist in its development of “the specific criteria and analytical framework” by which it will designate nonbank financial companies for heightened supervision and regulation. [*](#) ICI has filed a comment letter outlining its views, which is attached and briefly summarized below.

ICI’s letter begins by observing that regulators and the FSOC have available many new tools under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) for addressing risks to the financial system. It discusses several possible implications associated with the designation of an individual company for heightened supervision, not only for the company itself but for financial markets and market participants generally. The letter states ICI’s view that the FSOC accordingly should reserve this authority for those limited circumstances in which it determines that a specific company poses significant risks to the financial system and such risks clearly cannot be adequately addressed through enhancements to existing financial regulation and/or other regulatory authorities provided by the Dodd-Frank Act.

The letter then outlines ICI’s views about how the FSOC should consider certain of the criteria set forth in Section 113 of the Dodd-Frank Act, which governs the FSOC’s designation of individual companies for heightened supervision. Among the Section 113

criteria discussed in ICI's letter are: the size of the nonbank financial company and, in particular, how the FSOC should view "managed assets" in determining a company's size; the extent of the leverage of the company; the interconnectedness of the company; and the degree to which the company is already regulated by one or more primary financial regulatory agencies. The letter discusses the various criteria both generally and by illustrating how they would apply in the context of registered investment companies and their advisers.

As requested by the notice, the letter discusses how the FSOC should view a nonbank financial company's participation in the government programs implemented during the recent financial crisis. It observes that these programs, which assisted broad groups of companies and industries, succeeded in pulling the U.S. and global financial system back from the brink of collapse, not by addressing the root causes of the financial crisis, but by containing its damage and restoring stability to the markets. Given the regulatory changes underway to improve the overall resiliency of the financial system, and the emergency nature of the programs implemented during the crisis, ICI believes that a financial company's participation in one or more of these programs, in and of itself, normally should be accorded little weight in evaluating the risks that the company could pose to the stability of the financial system going forward.

Finally, the letter notes that money market funds have been subject to heightened regulatory attention following the financial crisis. In particular, it mentions the SEC's adoption of comprehensive rules designed to strengthen money market funds, and the recently issued report by the President's Working Group on Financial Markets ("PWG Report"). It states ICI's concurrence that the FSOC should examine possible structural reforms to the way money market funds operate, as outlined in the PWG Report. The SEC, as the regulator of money market funds, was tasked with soliciting public comments on the PWG Report. ICI will file a comment letter with the SEC that includes a detailed discussion of money market funds and the options outlined in the PWG Report.

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[Attachment \(in .pdf format\)](#)

endnotes

*Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 75 Fed. Reg. 61653 (Oct. 6, 2010), available at http://www.treasury.gov/FSOC/docs/2010-25321_P1.pdf.

should not be considered a substitute for, legal advice.