

MEMO# 25687

December 2, 2011

Draft Letter on Proposal Prohibiting ABS Conflicts of Interest; Comments Requested December 12

[25687]

December 2, 2011

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 52-11
FIXED-INCOME ADVISORY COMMITTEE No. 79-11
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 57-11
SEC RULES COMMITTEE No. 104-11 RE: DRAFT LETTER ON PROPOSAL PROHIBITING ABS
CONFLICTS OF INTEREST; COMMENTS REQUESTED DECEMBER 12

On September 19, 2011, the Securities and Exchange Commission (the "Commission") proposed Rule 127B under the Securities Act of 1933 ("Securities Act") to implement the prohibition under Section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations ("Proposed Rule"). [*](#) Comments on the Proposed Rule are due December 19, 2011.

Our draft comment letter is attached. The letter generally supports the Proposed Rule. It notes, however, that registered investment companies may be affiliates of entities that structure or distribute ABS, and therefore may fall within the Proposed Rule's scope. The letter explains that actions taken by a registered investment company in connection with investing in ABS, through its investment adviser acting in a fiduciary capacity, do not raise the types of conflicts of interest the Proposed Rule was intended to address. The letter requests that the Commission clarify that the Proposed Rule excludes such activities. The comment letter also addresses some examples presented by the Commission in a section of the release on information barriers, and explains that registered investment companies in multi-service financial firms typically are subject to a variety of information barriers, and that investment advisers to those investment companies are subject to a fiduciary duty to invest in the best interests of the fund, which may require taking a view of an ABS or its reference portfolio that is directionally opposed to that taken by another part of the same firm.

The comment letter supports the Commission's proposed exception for liquidity commitments. It recommends, however, that the Commission make clear in the text of the Proposed Rule that commitments to provide liquidity may be provided through means other than just purchases and sales of ABS. The letter also expresses concerns about how the

proposed exception for liquidity commitments would relate to the recent regulations that have been proposed to implement Section 619 of the Dodd-Frank Act, commonly known as the “Volcker Rule.” The Commission provides examples of how the Proposed Rule’s exception for liquidity commitments would apply to liquidity facilities provided by securitization participants in connection with notes issued by asset-backed commercial paper programs. Certain restrictions under the regulations that have been proposed to implement the Volcker Rule, however, could be interpreted to not permit such liquidity arrangements for bank-sponsored or advised programs.

Please provide all comments on the draft letter to me (sarah.bessin@ici.org or 202/326-5835), preferably in writing, by Monday, December 12.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

endnotes

*See ICI [Memorandum](#) No. 25549 (Oct. 10, 2011) available at http://www.ici.org/my_ici/memorandum/memo25549

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