The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 24886

January 18, 2011

ICI Comment Letter Regarding FDIC Rulemaking on Orderly Liquidation Process

[24886]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 4-11
FIXED-INCOME ADVISORY COMMITTEE No. 5-11
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 3-11
SEC RULES MEMBERS No. 9-11 RE: ICI COMMENT LETTER REGARDING FDIC RULEMAKING ON ORDERLY LIQUIDATION PROCESS

The Federal Deposit Insurance Corporation has requested public comment to inform a future rulemaking addressing key issues in the implementation of its authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). [1] Title II authorizes the establishment of a new process by which the FDIC, as receiver, would liquidate a "covered financial company" – that is, a nonbank financial company that federal regulators have determined is in default or danger of default and whose failure would have serious adverse effects on U.S. financial stability. ICI's letter is attached and briefly summarized below.

The letter begins by noting that ICI members are major investors in the U.S. bond and money markets and, accordingly, have a strong interest in ensuring that any liquidation of a covered financial company minimizes risk to the financial system, maximizes the value of the liquidated company, and treats creditors fairly in doing so. The letter recommends that the FDIC establish a clearly defined, predictable liquidation process and stresses that such a process is essential to proper market functioning and U.S. financial stability. To do so, the letter calls on the FDIC to adopt—to the greatest extent possible—clear substantive and procedural rules that will govern the liquidation of a covered financial company. It further calls on the FDIC to adopt a provision specifying that, in the absence of a rule specific to Title II, the relevant provisions of the Bankruptcy Code and related judicial interpretations will serve as binding precedent.

Following a discussion of those two recommendations, the letter sets forth ICI's views on the application of Title II to registered investment companies ("funds") as financial companies. In this regard, the letter states ICI's belief that it would never be necessary or

appropriate for federal regulators to designate a fund as a “covered financial company” and liquidate it under Title II. The letter then expresses ICI’s concern that some large funds could be assessed to pay for the costs of liquidating a covered financial company. It explains why ICI believes it would be appropriate for the FDIC, in its rulemaking prescribing the assessment system, to refrain from assessing funds and, by extension, the owners of fund shares.

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Attachment

endnotes

[1] Late last year, the FDIC began its rulemaking under Title II. See ICI Memorandum No. 24725, dated November 19, 2010 (summarizing ICI’s comments on the FDIC’s initial proposal).
