

**MEMO# 29095**

June 16, 2015

# **US Regulators Issue Guidance Regarding the Status of Foreign Public Funds for Purposes of the Volcker Rule**

[29095]

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TO:

ICI GLOBAL ASIA-PACIFIC CHAPTER No. 11-15  
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 34-15  
ICI GLOBAL STEERING COMMITTEE No. 13-15  
INTERNATIONAL MEMBERS No. 23-15  
INVESTMENT COMPANY DIRECTORS No. 17-15  
SEC RULES MEMBERS No. 41-15

RE:

US REGULATORS ISSUE GUIDANCE REGARDING THE STATUS OF FOREIGN PUBLIC FUNDS FOR PURPOSES OF THE VOLCKER RULE

As we previously informed you, ICI sent a letter to the US Federal Reserve Board (“Federal Reserve”) urging that it and other US regulators (collectively, the “Agencies”) clarify the treatment of US registered investment companies (“RICs”) and similarly regulated non-US funds (collectively, “regulated funds”) under the final regulations (“Final Rule”) implementing the Volcker Rule. The letter requested that (1) the Federal Reserve promptly provide a sufficient (multi-year) seeding period for existing regulated funds and make clear that, going forward, a multi-year seeding period will be equally available for newly-formed regulated funds, and (2) the Agencies issue public guidance to clarify that regulated funds that are “foreign public funds” under the Final Rule will not be treated as banking entities. [\[1\]](#)

On June 12, the Agencies issued guidance in the form of a “Frequently Asked Question” regarding the application of the Final Rule to foreign public funds. [\[2\]](#) The FAQ provides that a foreign public fund (“FPF”) will not be treated as a banking entity in its own right or have its activities attributed to its banking entity sponsor if: (1) the fund satisfies the conditions for the FPF exclusion; [\[3\]](#) (2) the fund and its sponsor comply with applicable

limitations in the relevant foreign jurisdiction; and (3) the sponsor does not own, control or hold with power to vote 25 percent or more of the fund's shares "after the seeding period."

The Agencies have not provided additional guidance or clarification with respect to the allowable seeding period for a regulated fund, nor have they indicated whether such guidance will or will not be issued in the future.

Rachel H. Graham  
Associate General Counsel Frances M. Stadler  
Associate General Counsel  
[Attachment](#)

#### **endnotes**

[1] See [ICI Memorandum 29066](#) (summarizing letter to Janet Yellen, Chair, Federal Reserve Board of Governors from Paul Schott Stevens, President & CEO, ICI, dated June 1, 2015).

[2] The text of the FAQ is attached and also is available at <http://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm#14>.

[3] Section 248.10(c)(1) of the Final Rule. If the sponsor is a U.S. banking entity or is controlled by a U.S. banking entity, the FPF exclusion is available only if the fund's interests are sold "predominantly" to persons other than the sponsor and certain persons connected to the sponsor. The preamble to the Final Rule states that the Agencies "generally expect that a foreign public fund will satisfy this additional condition if 85 percent or more of the fund's interests are sold to persons other than the sponsoring U.S. banking entity and certain persons connected to that banking entity." 79 Fed. Reg. 5678.