The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
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ICI Comment Letter on Proposed Qualified Financial Contract Recordkeeping Rules That Would Apply to SIFIs and Certain RICs

[28898]

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TO: SECURITIES OPERATIONS ADVISORY COMMITTEE RE: ICI COMMENT LETTER ON PROPOSED QUALIFIED FINANCIAL CONTRACT RECORDKEEPING RULES THAT WOULD APPLY TO SIFIS AND CERTAIN RICS

As previously indicated, the Secretary of the Treasury ("Secretary"), in consultation with the Federal Deposit Insurance Corporation ("FDIC"), has proposed rules to implement the qualified financial contract ("QFC") recordkeeping requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [1] The requirements are intended to assist the FDIC with exercising it rights and fulfilling its obligations under Title II (Orderly Liquidation Authority) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). [2]

The Proposed Rules would apply to any "records entity," defined to include a financial company that is a party to an open QFC, or guarantees, supports, or is linked to an open QFC and meets one of the following criteria: (1) is determined pursuant to Title I of the Dodd-Frank Act to be an entity that could pose a threat to the financial stability of the United States ("SIFI"); (2) is designated under Title VIII of the Dodd-Frank Act as a financial market utility that is, or is likely to become, systemically important; or (3) has total assets equal to or greater than $50 billion. [3] This third prong would capture any registered investment company that has at least $50 billion in total assets. In addition, a records entity would include a party to an open QFC or that guarantees, supports, or is linked to an open QFC of an affiliate [4] and is a member of a corporate group within which at least one affiliate meets one of the three criteria.

A copy of ICI's comment letter on the Proposed Rules, filed on April 7th, is attached. The letter addresses the following points:

- Registered investment companies should be exempt from any final rule because they are extremely unlikely to be resolved through the OLA.

- The proposed $50 billion asset threshold is inconsistent with Section 210 of the Dodd-Frank Act, pursuant to which the Secretary is conducting this rulemaking. [5] Section 210 mandates that the implementing regulations must, as appropriate, differentiate among financial companies by taking into account specific factors including size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system. Accordingly, any final rule should not use an asset threshold as the sole criterion for defining certain "records entities."
- The recordkeeping requirements of the Proposed Rule are overly burdensome, and recordkeeping requirements in any final rule should be no broader than similar requirements under FDIC rules applicable to banks in "troubled condition." [6]
- The Proposed Rule's application to affiliates of a "records entity" should be narrowed.
- Primary financial regulatory agencies or their representatives should have the authority to recommend exemptions to the Secretary (which the Secretary presumptively should grant), as each primary financial regulatory agency has the most complete understanding of entities under its jurisdiction.

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Attachment

endnotes

[1] See ICI Memorandum No. 28687, dated January 26, 2015, for a more detailed summary of the Proposed Rules.

[2] Title II establishes a mechanism for orderly resolution of a financial company whose failure and resolution under applicable federal or state law would have serious adverse effects on U.S. financial stability. Under Title II, the FDIC has receivership authority over financial companies in default or in danger of default for which a determination has been made by the Secretary to seek the FDIC's appointment as receiver.

[3] Total assets would be determined based on the most recent year-end consolidated statements of financial condition filed with a primary financial regulatory agency.

[4] An "affiliate" is defined by reference to the Bank Holding Company Act as any company that controls, is controlled by, or is under common control with another company. Based on the broad definition of "control" in the Proposed Rule, a registered investment company might for purposes of the Proposed Rule be deemed to be an affiliate of its sponsor or investment adviser during the period in which the sponsor or investment adviser holds a level of seed money investment equal to 25 percent or more of the fund.

[5] 12 U.S.C. § 5390(c)(8)(H).

[6] 12 C.F.R. pt. 371.