**MEMO# 25749**

December 27, 2011

# Regulators Extend Volcker Deadline Until February 13; Your Comments On ICI Draft Letter Due Jan. 11th

[25749]

December 27, 2011

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 56-11
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 52-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 51-11
ETF ADVISORY COMMITTEE No. 71-11
EQUITY MARKETS ADVISORY COMMITTEE No. 68-11
FIXED-INCOME ADVISORY COMMITTEE No. 81-11
INTERNATIONAL COMMITTEE No. 29-11
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 70-11
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 61-11
SEC RULES COMMITTEE No. 109-11
SMALL FUNDS COMMITTEE No. 58-11 RE: REGULATORS EXTEND VOLCKER DEADLINE UNTIL FEBRUARY 13; YOUR COMMENTS ON ICI DRAFT LETTER DUE JAN. 11TH

On December 23, the Securities and Exchange Commission, Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation (the "Agencies") announced a one-month extension of the comment period on their proposal to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule." [1] The new deadline for filing comment letters with the Agencies is February 13, 2012.

Immediately before this action by the Agencies, we sent you ICI's draft comment letter on the proposal and requested your feedback by January 6. In light of the extension, we now request that you provide your comments by Wednesday, January 11, 2012 directly to the person responsible for each section, as indicated in the outline below. The draft letter is attached and briefly summarized below for your convenience. Please note that both the draft letter and summary are identical to those you received last week.

The Agencies' proposal is lengthy and complex, with wide-ranging implications. Please note (with our apologies) that this initial draft is somewhat rough. By necessity, different people have drafted different parts of our letter. We will be continuing to work on and polish the draft—including to achieve consistent style, formatting, terminology, etc.

throughout—but we felt it was important to give members an opportunity as soon as possible to review it and provide feedback, including letting us know if there are any issues we have missed. There are also several places in the letter where we pose questions for, or request specific information from, members.

## Background

The Volcker Rule generally contains two prohibitions. First, it prohibits "banking entities" from engaging in proprietary trading of any security, derivative, and certain other financial instruments for its own account, subject to certain exemptions. Second, it prohibits banking entities from acquiring or retaining an ownership interest in, or sponsoring or having certain relationships with a hedge fund, private equity fund, or "similar fund," subject to certain exemptions. The proposal sets forth detailed rules to implement these two broad prohibitions. The proposal also contains numerous exemptions to the Rule, as well as several appendices related to recordkeeping and reporting requirements, detailed guidance regarding trading undertaken in connection with market making activities (one of the exempted "permitted activities"), and enhanced compliance requirements for banking entities with significant trading or "covered fund" activities. In addition, the proposal defines a number of key terms.

## Summary of Comments

Our comments generally fall into two categories: (1) comments related to the impact of the proposal on registered investment companies as investors; and (2) comments related to the application of the proposal to the organization or operation of registered investment companies.

I. Impact of the Proposed Rule on Markets, Market Participants, and Financial Instruments
    A. Impact of the proprietary trading prohibition on market liquidity [Ari Burstein – aburstein@ici.org]
    B. Issues affecting registered funds that invest in certain foreign securities [Frances Stadler – frances@ici.org]
    C. Impact of the proposed rule on notes issued by asset-backed commercial paper ("ABCP") programs and securities issued pursuant to municipal tender option bond ("TOB") programs [Jane Heinrichs – jheinrichs@ici.org]

II. Application of the Proposed Rule to Registered Funds
    A. The definition of "banking entity" should specifically exclude registered funds [Frances Stadler – frances@ici.org]
    B. The definition of "covered fund" should specifically exclude registered funds [Rachel Graham – rgraham@ici.org]
    C. Impact of the proposed rule on ETFs [this section of the draft letter will be circulated separately]
    D. Potential issue for fund complexes with one or more banking entities – Incubator funds [Frances Stadler – frances@ici.org]

Karrie McMillan
General Counsel

Attachment

**endnotes**

[1] The press release announcing the extension is available on the SEC website at http://www.sec.gov/news/press/2011/2011-278.htm.  For a summary of the Agencies' proposal, see ICI Memorandum No. 25634 (November 10, 2010).  The Dodd-Frank Act requires coordinated rulemaking by the Agencies as well as by the Commodity Futures Trading Commission.  The CFTC has not yet issued its proposal, but is expected to do so in the near future.

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