The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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ICI Draft Letter on Proposed Private Fund Systemic Risk Reporting (Form PF); Comments Due April 11

[25073]

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TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 19-11
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 18-11
SEC RULES COMMITTEE No. 29-11 RE: ICI DRAFT LETTER ON PROPOSED PRIVATE FUND SYSTEMIC RISK REPORTING (FORM PF); COMMENTS DUE APRIL 11

ICI has drafted a comment letter to the Securities and Exchange Commission and the Commodity Futures Trading Commission on proposed new rules to implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that require advisers to private funds to report information on a new form (Form PF). [1] The information to be collected on Form PF is intended to assist the Financial Stability Oversight Council in monitoring the potential systemic risks posed by private funds. As explained below, the draft letter expresses our concerns about the broad reach of Form PF's proposed aggregation rules that would capture registered investment companies (RICs).

When providing responses in Form PF with respect to a private fund, the adviser must aggregate the assets of any "parallel managed account" related to the private fund. The draft letter notes that the proposed definition of "parallel managed account" is drafted broadly and would seem to include not only separately managed accounts and unregistered pools of assets, but also RICs that invest side by side with private funds. The Release explains that the proposed aggregation requirement prevents an adviser from structuring its activities to avoid the reporting requirements.The draft letter notes, however, that capturing RIC assets in a form designed to assess the systemic risk of private funds is unnecessary to achieve the stated goals of the Dodd-Frank Act, and may skew the reporting in a way that lessens the effectiveness of the data available to regulators.

The draft letter explains that RICs are subject to a comprehensive regulatory framework under the Investment Company Act of 1940 and other federal securities laws that sets them apart from other types of financial entities and ensures that their activities do not threaten

the U.S. financial system. These laws encompass not only disclosure and anti-fraud requirements but also substantive requirements and prohibitions on funds' structures and day-to-day operations. The draft letter further discusses the Investment Company Act provisions designed to address funds' stability with respect to investment activities, such as those relating to leverage, custody of investment securities, exposure to certain counterparties, diversification, and disclosure.

The draft letter also notes that registered money market funds have all the protections of the Investment Company Act, and are subject to additional regulation pursuant to Rule 2a-7 under that Act. In addition, money market funds are subject to extensive monthly disclosure obligations that go far beyond those that are being proposed for liquidity funds in Section 3 of Form PF.

The draft letter concludes by urging the SEC and CFTC to exclude all RICs from the definition of "parallel managed account" to avoid unnecessary and burdensome regulatory overlap. The draft letter explains that aggregating the assets of private funds with RICs, which are already subject to a comprehensive regulatory and disclosure scheme, would be potentially misleading to regulators who desire a complete picture of potential systemic risk across the private fund industry.

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Attachment

endnotes

[1] See SEC Release No. IA-3145 (January 26, 2011) ("Release"), available on the SEC's website at http://www.sec.gov/rules/proposed/2011/ia-3145.pdf.