

**MEMO# 25729**

December 20, 2011

## **ICI Letter on FSOC Proposal Regarding "SIFI" Designations**

[25729]

December 20, 2011

TO: BOARD OF GOVERNORS No. 5-11

CLOSED-END INVESTMENT COMPANY MEMBERS No. 86-11

MONEY MARKET FUNDS ADVISORY COMMITTEE No. 68-11

SEC RULES MEMBERS No. 142-11 RE: ICI LETTER ON FSOC PROPOSAL REGARDING "SIFI" DESIGNATIONS

As we previously informed you, the Financial Stability Oversight Council ("FSOC" or "Council") requested public comment on a second notice of proposed rulemaking ("Proposed Rule") and proposed interpretive guidance ("Proposed Guidance" and, together with the Proposed Rule, "Release") regarding the designation of certain nonbank financial companies as so-called systemically important financial institutions ("SIFIs"). [\[1\]](#) ICI has filed the attached comment letter, which is briefly summarized below.

The letter begins by reiterating the salient arguments set forth in ICI's two prior comment letters on the FSOC's use of its SIFI designation authority:

- The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), by design, provides regulators with an array of new tools to address abuses and excessive risk taking by financial market participants, and to detect new buildups of risk in the financial system. The broad scope of those authorities should allow the FSOC to reserve SIFI designation for those circumstances in which other regulatory actions clearly would be inadequate to address or limit the perceived risks to the financial system.
- The Council's need for flexibility to respond, as circumstances dictate, to new or emerging risks to the financial system must be properly balanced against the needs of financial market participants for clarity regarding the FSOC's use of its SIFI designation authority.
- Registered investment companies (which are referred to in the letter as "registered funds") are at the "less risky" end of the spectrum when considering the potential for systemic risk. In addition, a registered fund is a separate legal entity, whose assets are owned pro rata by its shareholders. Accordingly, a registered fund's assets should

not be attributed to the registered investment adviser that manages those assets.

- SIFI designation is an inappropriate regulatory tool for further strengthening the resilience of money market funds to severe market distress.

The letter then provides ICI's views regarding to the Proposed Rule and Proposed Guidance and recommends revisions in two areas. First, the letter notes that many details of the proposed designation process are set forth in the Proposed Guidance rather than in the Proposed Rule, giving rise to some concern that the FSOC could change the guidance without prior notice and the opportunity for public comment. The letter recommends that the Council address these concerns by indicating, in any release finalizing the Proposed Rule, that it would seek comment from market participants and the broader public before making any material changes to the Proposed Guidance (once finalized). Second, the letter recommends several ways that the Council should strengthen the confidentiality provisions in the Proposed Rule.

Finally, the letter comments on statements in the Release regarding the FSOC's intention to conduct further analysis into what threats to financial stability, if any, arise from asset management companies and how any such threats are best addressed. The letter urges the Council to make clear that it will refrain from evaluating asset management companies under the Proposed Rule and Proposed Guidance until (1) its further analysis of asset management companies has been completed and (2) the Council provides the public with some indication of its findings and conclusions. It further states ICI's belief that this analysis will lead the FSOC to conclude, at the very least, that neither investment advisers to registered funds, nor the funds themselves, present the risks that SIFI designation was intended to address.

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Senior Associate Counsel

#### [Attachment](#)

#### **endnotes**

[\[1\]](#) See ICI Memorandum No. [25583](#), dated Oct. 25, 2011 (summarizing the FSOC's proposal).