The Asset Management Industry
SERVING INDIVIDUAL INVESTORS

INVESTMENT COMPANY INSTITUTE

MEMO# 24866

January 11, 2011

Draft Letter Regarding FDIC Rulemaking on Orderly Liquidation Process; Comments Due to ICI by January 14

[24866]

January 11, 2011

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 2-11
FIXED-INCOME ADVISORY COMMITTEE No. 2-11
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 2-11
SEC RULES COMMITTEE No. 3-11 RE: DRAFT LETTER REGARDING FDIC RULEMAKING ON ORDERLY LIQUIDATION PROCESS; COMMENTS REQUESTED BY JANUARY 14

As we previously informed you, the Federal Deposit Insurance Corporation has requested public comment to inform a future rulemaking addressing key issues in the implementation of its authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). [1] Title II authorizes the establishment of a new process by which the FDIC, as receiver, would liquidate a "covered financial company" – that is, a nonbank financial company that federal regulators have determined is in default or danger of default and whose failure would have serious adverse effects on U.S. financial stability. Our draft letter is attached and briefly summarized below.

Comments are due to the FDIC by Tuesday, January 18. Please provide any comments on the draft letter to Rachel Graham by phone at 202/326-5819 or email at rgraham@ici.org by close of business on Friday, January 14 (and in any event no later than 10 am on Tuesday, January 18).

The draft letter begins by noting that ICI members are major investors in the U.S. bond and money markets and, accordingly, have a strong interest in ensuring that any liquidation of a covered financial company minimizes risk to the financial system, maximizes the value of the liquidated company, and treats creditors fairly in doing so. The letter recommends that the FDIC establish a

clearly defined, predictable liquidation process and stresses that such a process is essential to proper market functioning and U.S. financial stability. To do so, the letter calls on the FDIC to adopt—to the greatest extent possible—clear substantive and procedural rules that will govern the liquidation of a covered financial company. It further calls on the FDIC to

adopt a provision specifying that, in the absence of a rule specific to Title II, the relevant provisions of the Bankruptcy Code and related judicial interpretations will serve as precedent.

Following a discussion of those two recommendations, the letter sets forth ICI's views on the application of Title II to registered investment companies ("funds") as financial companies. In this regard, the letter states ICI's belief that it would never be necessary or appropriate for federal regulators to designate a fund as a "covered financial company" and liquidate it under Title II. The letter then expresses ICI's concern that some large funds could be assessed to pay for the costs of liquidating a covered financial company. It explains why ICI believes it would be appropriate for the FDIC, in its rulemaking prescribing the assessment system, to refrain from assessing funds or, at the very least, to minimize the assessments imposed on funds and, by extension, the owners of fund shares.

Rachel H. Graham
Senior Associate Counsel

Attachment

endnotes

[1] See ICI Memorandum No. 24722, dated November 18, 2010 (summarizing the FDIC's request for comment). In November, ICI filed a letter with the FDIC providing comment on its initial rulemaking under Title II. See ICI Memorandum No. 24725, dated November 19, 2010 (summarizing ICI's comments).
