

MEMO# 25863

February 1, 2012

ICI Draft Letter On FASB Consolidation Proposal - Comments Requested By February 8

[25863]

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 2-12
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 7-12 RE: ICI DRAFT LETTER ON FASB CONSOLIDATION PROPOSAL - COMMENTS REQUESTED BY FEBRUARY 8

As you know, the FASB recently issued proposed amendments to the consolidation model for variable interest entities (VIEs) and limited partnerships under Topic 810. [\[1\]](#) The proposal would require a decision maker (e.g., an asset manager) of a VIE to evaluate three factors to determine whether it is using its power as a principal or as an agent. A decision maker that acts as a principal would be deemed to have a controlling financial interest in the entity and would be required to consolidate it. A decision maker that acts as agent on behalf of another party does not have a controlling financial interest. Comments on the proposal are due to the FASB no later than February 15, 2012. The Institute's draft comment letter on the FASB proposal is attached and briefly summarized below.

The draft comment letter expresses concern that the proposal may cause an investment adviser to a money market fund to consolidate the fund. In particular, the notion that the adviser has an implicit financial responsibility to ensure that the fund operates as designed (i.e., issues and redeems shares at \$1.00) may overcome the fund board's kick-out rights and lead to a conclusion that the adviser is acting as principal. To address this concern, the draft letter recommends: 1) that an adviser's interest in a fund that complies with Rule 2a-7 be exempted from the proposal; 2) that substantive kick-out rights held by a board of directors be determinative that an adviser is acting as agent; and 3) that two additional factors—the scope of the adviser's decision making authority over the entity, and redemption rights held by the entity's investors—be added as additional factors in the principal versus agent analysis.

The draft letter argues that a scope exemption is appropriate given Rule 2a-7's strict risk-limiting features and the absence of any explicit or implicit obligation for the adviser to support the fund. The draft letter argues that kick-out rights, once deemed substantive,

provide evidence that the adviser is acting as agent. The draft letter describes the duties and responsibilities of a 1940 Act fund board and recommends changes to the proposal that would clarify that such a board should be considered substantive. The draft letter recommends two additional factors be added to the three factors currently included in the principal versus agent analysis. These two additional factors should better enable an adviser to a money market fund to conclude that it is acting as agent.

Please provide any comments on the draft letter to me (smith@ici.org), preferably in writing, by Wednesday, February 8.

Gregory M. Smith
Director - Operations/Compliance & Fund Accounting

[Attachment](#)

endnotes

[1] See ICI [Memorandum](#) to Accounting/Treasurers Members No. 29-11, Money Market Funds Advisory Committee No. 63-11 (November 16, 2011) [25642].

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