

MEMO# 35572

January 8, 2024

Federal Banking Agencies Extend No-Action Relief Regarding Extensions of Credit to Portfolio Companies Held by Certain "Fund Complexes"

[35572]

January 08, 2024

TO: Bank-Affiliated Member Advisory Committee
SEC Rules Committee SUBJECTS: Bank Regulation

Closed-End Funds

Exchange-Traded Funds (ETFs)

Investment Advisers RE: Federal Banking Agencies Extend No-Action Relief Regarding Extensions of Credit to Portfolio Companies Held by Certain "Fund Complexes"

Last month, the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Commission (FDIC and collectively, Agencies) issued a statement extending previously issued no-action relief under Regulation O.[\[1\]](#) The no-action relief relates to the treatment of extensions of credit by banks to certain portfolio companies in which an asset manager's funds and client accounts collectively own a controlling interest. This memorandum provides a brief overview of the issue and outlines the eligibility criteria for relying on the relief.

Regulation O under the Federal Reserve Act places quantitative limits and qualitative restrictions on extensions of credit by banks to their executive officers, directors, principal shareholders, and related interests of such persons. Regulation O has potential implications for an asset manager whose investment funds and other client accounts own, control or hold with the power to vote more than 10 percent of any class of voting securities of a bank, as well as for companies (both financial and nonfinancial) in which such manager's funds and accounts collectively own a controlling interest.

In December 2019, the Agencies issued a statement concerning the application of Regulation O to (i) a "fund complex"—defined by the Agencies to include an asset manager together with the funds and accounts advised by the manager—that is deemed a principal shareholder of a bank and (ii) portfolio companies controlled by the fund complex.[\[2\]](#) The statement explained that "[b]anks have indicated that the treatment of fund complex-controlled portfolio companies as "related interests" under Regulation O could require the

sudden and disruptive unwinding of substantial pre-existing lending relationships and reduce credit availability to a wide swath of financial and non-financial companies." The statement provided that the Agencies would not take enforcement action under Regulation O against a bank or "principal shareholder fund complex" with respect to the bank's extension of credit to portfolio companies controlled by that fund complex, subject to certain conditions. The Agencies explained that this statement would remain in effect until January 1, 2021, while the FRB, in consultation with the OCC and FDIC, considered whether to amend Regulation O.

In December 2020, the Agencies issued a revised statement explaining that they were continuing to consider whether to amend Regulation O and, accordingly, were extending the temporary relief until January 1, 2022. The revised statement also "articulate[d] supervisory expectations with respect to the application of Regulation O in this specific context" by setting forth eligibility criteria applicable to the fund complex and to the bank. This relief was later extended in December 2021.

In their most recent action, the Agencies again have extended the terms of the revised statement, this time until January 1, 2025. Accordingly, the following eligibility criteria will remain in place:

Criteria for the fund complex

- The fund complex does not directly or indirectly control 15 percent or more of any class of voting securities of the bank. Alternatively, the fund complex does not directly or indirectly control 20 percent or more of any class of voting securities of the bank if it has received applicable agency correspondence referencing at least such a percentage, if: (i) no individual fund in the fund complex owns more than 10 percent of any class of voting securities of the bank. For this purpose, two or more funds that share the same or substantially the same investment objective and asset composition are treated as an individual fund; and (ii) non-index funds in the fund complex do not collectively own more than 10 percent of any class of voting securities of the bank.
- The fund complex does not have or seek to have any representative serve as an officer, agent, or employee of the bank.
- The fund complex does not exercise or attempt to exercise a controlling influence over the management or policies of the bank, including attempting to influence the dividend policies, loan, credit, or investment decisions or policies, pricing of services, personnel decisions, operations activities, or any other similar activities or decisions of the bank.

Criteria for the bank

The bank does not knowingly make an extension of credit to a fund complex-controlled portfolio company, unless the terms of such extension of credit are on substantially the same terms as those prevailing for comparable transactions with unaffiliated third parties and do not involve more than normal risk of repayment or present other unfavorable features.

Rachel H. Graham
Associate General Counsel & Corporate Secretary

Notes

[1] Extension of the Revised Statement Regarding Status of Certain Investment Funds and their Portfolio Investments for Purposes of Regulation O and Reporting Requirements under Part 363 of FDIC Regulations (Dec. 15, 2023), available [here](#).

[2] Treatment of Extensions of Credit to Certain Investment Funds and Their Portfolio Investments Under 12 CFR 215 and 12 CFR 363: Interagency Statement.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.