

**MEMO# 35969**

January 3, 2025

# **Federal Banking Agencies Extend No-Action Relief Regarding Extensions of Credit to Portfolio Companies Held by Certain "Fund Complexes," Adding One New Condition**

[35969]

December 30, 2024

TO: ICI Members  
Investment Company Directors  
Bank-Affiliated Member Advisory Committee  
SEC Rules Committee SUBJECTS: Bank Regulation  
Closed-End Funds  
Compliance  
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," Adding One New Condition

On December 27, the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Commission (FDIC and collectively, Agencies) issued a statement (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 (including a new condition) for relying on the relief.

## **Overview**

The Statement addresses 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. The Statement explains 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." It provides that the Agencies will 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. The Statement articulates "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.

The Statement will remain in effect until January 1, 2026, while the FRB, in consultation with the OCC and FDIC, considers whether to amend Regulation O.

## **Eligibility 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 director, officer, agent, or employee of the bank. (The prohibition on director interlocks is new. Previous iterations of this no-action relief precluded officer, agent, and employee interlocks.)
- 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.

## **Eligibility 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  
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### **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. 27, 2024).

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