

COMMENT LETTER

April 19, 2018

ICI Letter to OFAC on Impact of Sanctions Against Russia on Regulated Funds (pdf)

April 19, 2018 John Smith Director, Office of Foreign Assets Control Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Re: Issues and Impact of Recent Sanctions Against Russia on Regulated Funds Dear Mr. Smith: On behalf of the Investment Company Institute (“ICI”),¹ I write to request that the Office of Foreign Assets Control (“OFAC”) issue guidance to address certain questions and concerns raised by our members in connection with the economic sanctions imposed on April 6, 2018 on several Russian oligarchs and their affiliated entities. On April 6, 2018, OFAC imposed sanctions on a number of Russian oligarchs, Russian government officials, officers of Russian state-owned enterprises, and related companies and added these individuals and entities to the List of Specially Designated Nationals and Blocked Persons (“SDN List”).² OFAC also issued two general licenses intended to minimize disruptions to US persons, partners and allies. General License 12 authorizes transactions and activities ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving the twelve

¹ ICI is the leading global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts. Our members serve more than 100 million US shareholders and manage total assets of US\$21.9 trillion in the United States and US\$7.5 trillion in assets in other jurisdictions. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI is strongly committed to compliance with all applicable laws, including US economic sanctions laws and regulations. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² See “Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity” (April 6, 2018), available at <https://home.treasury.gov/news/press-releases/sm0338>. Letter to Mr. John Smith Director, Office of Foreign Assets Control April 19, 2018 Page 2 of 5 oligarch-related SDN companies and their subsidiaries. General License 13 authorizes transactions and activities ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in three publicly-traded SDN companies to a non-US person, or to facilitate the transfer of debt, equity, or other holdings in such companies by a non-US person to another non-US person. The recent sanctions have had a tremendous impact on the holdings and activities of our members that invest in instruments that are now covered by these sanctions. We thank OFAC for the guidance on the new sanctions that it has provided to date to market participants. Although the guidance has been helpful, it has not addressed a number of questions and issues faced by our members. We urge OFAC to issue additional guidance with respect to the following

issues to help our members comply with the new sanctions as soon as practicable: 1. In other contexts (i.e., the Russian Sectoral Sanctions Identification List (“SSI List”) and sanctions applicable to Venezuelan government bonds), OFAC issued FAQs and/or general licenses addressing the applicability of sanctions to derivative transactions related to securities of sanctioned persons. We request that OFAC issue a similar FAQ confirming that US persons are permitted to purchase or sell swaps or other derivatives linked to securities issued by the SDNs, and to engage in transactions incident to such purchase or sale. These transactions should be permitted as they do not involve the transfer or other dealing in any property or interests in property of the sanctioned entities. In the context of Venezuela sanctions, OFAC issued an FAQ (No. 524) expressly stating that buying, selling, or otherwise dealing in a derivative that references a Venezuelan bond is a transaction related to the bond itself, but such derivative transactions were permitted when related to a bond covered by the relevant Venezuelan general license. With respect to derivatives linked to securities of Russian SSI entities, OFAC addressed the issue by issuing a general license authorizing all transactions involving derivative products whose value is linked to an underlying asset that constitutes prohibited debt or equity. a. If OFAC takes the view that transactions in derivatives related to securities of sanctioned persons, or collateral posted by a counterparty relating to such securities, are prohibited, we request that OFAC issue an FAQ confirming that winding down such derivatives is authorized under General License 12 or 13. These activities should be authorized because they would permit US persons to limit their exposure to potential dealings in the future that indirectly involve sanctioned persons. Letter to Mr. John Smith Director, Office of Foreign Assets Control April 19, 2018 Page 3 of 5

2. General License 13 only authorizes the divestiture or sale of covered securities to non-US persons. In market trades, however, funds as sellers of securities do not have knowledge of the person who is ultimately purchasing the securities. Moreover, US persons are prohibited from purchasing such securities, which provides some reassurance that they would not be purchasers in market trades. As a consequence, we request that OFAC issue an FAQ stating that US sellers will be considered to be in compliance with the terms of General License 13 as long as they are not knowingly selling to a US person. 3. We ask OFAC to issue an FAQ clarifying whether reports under General License 13 or any other provision are required to be filed in cases where trades in sanctioned securities were executed prior to the announcement of sanctions, but settled after sanctions were imposed. No reports should be required because the trades were initiated prior to the imposition of sanctions. 4. US persons who continue to hold securities of sanctioned Russian issuers may receive dividend, interest, or principal payments associated with such holdings. In certain cases, a now-sanctioned entity might have announced a dividend payment prior to the imposition of sanctions that was not paid until after sanctions were imposed. Questions have been raised regarding whether US persons are permitted to even accept such payments or if such activity would constitute a prohibited transaction or dealing with the SDN and, if so, whether the payments can be accepted only during the period of General License 13. We believe that funds should not be required to block such payments because once they are made, the SDN no longer has an interest in such payments. We therefore ask OFAC to issue an FAQ (1) confirming that US persons are permitted to accept dividend, interest, or principal payments related to securities issued by SDNs, regardless of whether such payments are received prior to the expiration of General License 13 or thereafter, and (2) clarifying whether any report is required to be filed with OFAC in connection with the receipt of such payments. Permitting US persons to receive such payments would be in the US foreign policy interest as it requires SDNs to pay out money rather than increasing their holdings. If US persons are not permitted to accept such payments, the SDNs will be able to retain the additional value saved by not having to make the payments. 5. In a repurchase agreement transaction, one party typically receives interest on the collateral provided to

another party for a transaction. We request that OFAC issue an FAQ confirming that the receipt of interest in connection with an underlying security of a sanctioned person would be permitted under General License 13. For example, if Party A transfers an SDN security as collateral to Party B in exchange for cash, when the transaction is completed, Party B would receive cash plus interest in return. We request that OFAC confirm that the transfer of the SDN security and receipt of the cash and interest is permitted, and also clarify whether a report would need to be filed to OFAC in connection with such activity. 6. We understand that Sulzer AG no longer is considered to be a sanctioned entity based on guidance provided by OFAC on April 13, 2018. For US persons that blocked Sulzer shares between April 6 and April 13, we request that OFAC issue an FAQ clarifying whether such persons need to submit a report of blocked property to OFAC within ten business days of the blocked transaction. Given that the shares are now unblocked and OFAC has confirmed the unblocking to the industry at large, such reporting would appear to impose an unnecessary burden on both US persons and OFAC. 7. In addition to the guidance provided in FAQ 574, we request that OFAC either supplement that FAQ or issue a new FAQ addressing whether a non-US person who purchases SDN securities (and/or any non-US persons involved in settling the trades) would be potentially liable under Sec. 226 or Sec. 228 of the Countering America's Adversaries Through Sanctions Act having facilitated a "significant transaction" or "significant financial transaction" for or on behalf of an SDN. In our view, such activities should not be viewed as facilitating a "significant transaction" or "significant financial transaction" for or on behalf of the SDNs as the SDNs have no direct involvement in the secondary market trades at issue. 8. We request that OFAC issue an FAQ clarifying whether US funds that have engaged in securities lending transactions with respect to securities issued by an SDN are authorized to recall such securities without violating US sanctions. The process of recalling the securities should be authorized as an activity incident to the US fund's obligation to block the SDN securities. This authorization would be consistent with US foreign policy goals because US funds will be unable to fulfill their obligations under US sanctions to block the securities if US funds cannot recall the securities and non-US persons are not permitted to return the shares to the US fund lender. 9. General License 12 expressly authorizes activities related to the twelve named companies and "any other entity in which one or more of the above persons own, directly or indirectly, a 50 percent or greater interest." General License 13, however, only authorizes activities related to the three named companies and does not contain any language regarding entities in which such named companies own a 50 percent or greater interest. We ask OFAC to issue an FAQ - or amend General License 13 - to confirm that General License 13 also authorizes activities to divest or transfer holdings in any other entity in which one or more of the listed persons own, directly or indirectly, a 50 percent or greater interest. 10. Finally, we request an FAQ clarifying whether US funds that have lent SDN securities to US or non-US persons are authorized to accept posted collateral and payments related to dividends and interest paid by SDN issuers. Such payments should be authorized as they do not involve additional transactions in the underlying securities and the ability of US persons to accept such payments will minimize the impact of the recent sanctions on US person investors while remaining consistent with US foreign policy interests. The issues described above are those that have been identified by our members as most pressing; additional questions and issues may arise as we continue to discuss the impact of the recent measures with members. We also would like to discuss these requests with OFAC and any other agencies involved in identifying sanctions targets and assessing the impact of US sanctions regarding Russia. We sincerely appreciate your attention to this matter and look forward to hearing from you at your earliest convenience. If you have any questions, please do not

hesitate to contact the undersigned at 202-326-5876 or jennifer.choi@ici.org or Eva Mykolenko, Associate Chief Counsel – Securities Regulation, at 202-326-5837 or emykolenko@ici.org. Respectfully submitted, /s/ Jennifer S. Choi Jennifer S. Choi Chief Counsel, ICI Global

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