INVESTMENT COMPANY INSTITUTE®

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

April 30, 2013

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies (RIN 7100-AD-86)

Dear Ms. Johnson:

The Investment Company Institute ("ICI")[1] appreciates the opportunity to comment on the proposal that the Board of Governors of the Federal Reserve System ("Board") has issued to implement Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") with respect to foreign banking organizations and foreign nonbank financial companies designated for supervision by the Board.[2] Those provisions concern enhanced prudential standards (Section 165) and early remediation requirements (Section 166). As discussed below, we wish to reiterate certain comments we made on the Board's similar proposal to implement the same Dodd-Frank Act provisions with respect to U.S. bank holding companies with at least $50 billion in total consolidated assets ("large BHCs") and U.S. nonbank financial companies designated for supervision by the Federal Reserve Board ("SIFIs").[3]

[1] ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $14.7 trillion and serve over 90 million shareholders.

[2] *See* Board of Governors of the Federal Reserve System, *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies,* 77 Fed. Reg. 76628 (Dec. 28, 2012)("FBO Proposal").

[3] *See* Board of Governors of the Federal Reserve System, *Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies,* 77 Fed. Reg. 594 (Jan. 5, 2012)("U.S. Proposal").

Last year, ICI submitted a comment letter ("2012 ICI Letter")[4] on the U.S. Proposal. The 2012 ICI Letter addressed two topics: (1) the application of the U.S. Proposal to SIFIs; and (2) an issue the U.S. Proposal raised that is of concern to U.S. money market funds[5] (and, potentially, other types of funds) sponsored by large BHCs or by SIFIs (if SIFIs are not excluded from the proposal as ICI recommended). The second topic related to the application of single counterparty credit limits, as required by Section 165(e) of the Dodd-Frank Act, to a "covered company"[6] that sponsors or advises registered funds.

In particular, under the U.S. Proposal, a fund or other investment vehicle that is sponsored or advised by a covered company typically would not be considered a subsidiary of the covered company (and therefore not subject to the proposed aggregate net credit exposure limits that would apply to covered companies and their subsidiary companies). The preamble noted, however, that excluding funds from the single-counterparty credit limits may be at odds with the support that some money market funds received from their sponsors during the recent financial crisis to enable those funds to meet investor redemption requests without having to sell assets into then fragile and illiquid markets. The Board requested comment on whether money market funds or other funds or vehicles that a covered company sponsors or advises should be included as part of the covered company for purposes of this rule and whether the U.S. Proposal's definition of "subsidiary" should be expanded to include any investment fund or vehicle advised or sponsored by a covered company or any other entity.

As a threshold matter, the 2012 ICI Letter explained that sponsored or advised registered funds, including money market funds, do not meet any of the standard indicia of a subsidiary. The letter then stated that treating registered funds in this manner will not further the purpose of the single-counterparty credit limits, and will unnecessarily disrupt the operations of the funds while creating potential conflicts of interest between the funds and their covered company adviser. Moreover, the letter explained that such treatment may create the inaccurate perception that support from a fund's adviser or sponsor is likely—a result directly contrary to the Board's objective. For all of these reasons, we strongly disagreed that sponsored or advised funds, including money market funds, should be included as part of a covered company or that the definition of "subsidiary" should be expanded to include any fund advised or sponsored by a covered company or any other entity.

---

[4] *See* Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, dated April 30, 2012, available at http://www.federalreserve.gov/SECRS/2012/May/20120518/R-1438/R-1438_043012_107257_498369715448_1.pdf.

[5] References to money market funds in this letter mean U.S. registered investment companies that comply with Rule 2a-7 under the Investment Company Act.

[6] "Covered company" is defined to include any large BHC or SIFI.

The FBO Proposal raises the same issue with respect to certain U.S. funds that would not be implicated by the U.S. Proposal, such as those that are advised or sponsored by a U.S. registered investment adviser that is a subsidiary of a foreign banking organization. The preamble notes that "by operation of the proposed definition of 'subsidiary,' a U.S. fund or vehicle that is sponsored or advised by a U.S. intermediate holding company or any part of the combined U.S. operations [of a foreign banking organization] would not be considered a subsidiary of the U.S. intermediate holding company or the combined U.S. operations unless it was "controlled" by the U.S. intermediate holding company or any part of the combined U.S. operations."[7] Question 36 states: "Because a foreign banking organization may have strong incentives to provide support in times of stress to certain U.S.-based funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the U.S. intermediate holding company or the combined U.S. operations of the foreign banking organization for purposes of this rule."[8]

For the same reasons discussed in the 2012 ICI Letter, we do not believe that sponsored or advised U.S. funds[9] should be included as part of a foreign banking organization's U.S. intermediate holding company or combined U.S. operations for purposes of applying single counterparty credit limits. The points we made previously apply equally, regardless of whether, for example the entity that sponsors or advises a U.S. registered fund has a foreign parent.

* * * * *

If you have any questions regarding our comments or would like additional information, please feel free to contact me at 202/326-5815, Frances Stadler at 202/326-5822 or Jane Heinrichs at 202/371-5410. Thank you for your consideration of these comments.

Sincerely,
/s/
Karrie McMillan
General Counsel

cc: Mr. Norm Champ
Director, Division of Investment Management
U.S. Securities & Exchange Commission

[7] 77 Fed. Reg. at 76654 (footnote omitted).

[8] *Id.* at 76654-55.

[9] As in the 2012 ICI Letter, while some of our arguments may apply broadly to various types of funds, our comments focus on registered funds.