
**Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency**

**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**

Pursuant to section 22(h) of the Federal Reserve Act¹, extensions of credit by banks² to executive officers, directors, and principal shareholders (and related interests of such persons) (collectively “insiders”)³ must comply with certain individual and aggregate lending limits, and large extensions of credit by banks to insiders must be approved in advance by a majority of disinterested directors.⁴

Certain banking firms have raised concerns about the application of Regulation O to companies that sponsor, manage, or advise investment funds and institutional accounts that invest in voting securities of banking organizations (such investment vehicles, collectively “funds,” and, together with the company that sponsors, manages, or advises them, “fund complexes”).⁵ Over the past few years, fund complexes have acquired or have approached acquiring more than 10 percent of a class of voting securities of a wide range of public companies, including banks and non-bank companies. Upon acquiring more than 10 percent of a class of voting securities of a banking organization, a fund complex would be a “principal shareholder” of the bank for purposes of Regulation O (a “principal shareholder fund complex”). Likewise, under Regulation O, any company in which a principal shareholder fund complex owns 10 percent or more of a class of voting securities could in some instances be presumed to be a “related interest” of the fund complex (“fund complex-controlled portfolio company”). In that event, the principal shareholder fund complex and its controlled portfolio companies would

¹ 12 U.S.C. 375b.

² Section 22(h) covers both state and federally chartered insured commercial banks, savings associations, and savings banks. *See* 12 U.S.C. 1828(j)(2); 12 U.S.C. 1468. *See also* 12 CFR part 31 (application of 12 CFR part 215 to national banks and federal savings associations).

³ Unless otherwise defined, terms used in this statement have the same meaning as under section 22(h) of the Federal Reserve Act and the Board’s Regulation O, 12 CFR part 215, which implements the provisions of section 22(h).

⁴ Extensions of credit to insiders also must be made on substantially the same terms as those prevailing at the time for comparable transactions and not involve more than normal risk of repayment or present other unfavorable features.

⁵ Such fund complexes are not, and are not affiliated with, a bank holding company or savings and loan holding company.

be considered insiders of the bank under Regulation O. Accordingly, the bank's lending to the principal shareholder fund complex and its fund-complex controlled portfolio companies would be subject to the strict lending limits and other restrictions and standards of Regulation O.

Banks 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 Federal Reserve, in consultation with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the "federal banking agencies"), is actively considering whether to amend Regulation O to address the treatment of extensions of credit to fund complex-controlled portfolio companies under Regulation O. In the interim, the federal banking agencies believe it is appropriate to articulate supervisory expectations with respect to the application of Regulation O in this specific context in order to provide banks flexibility to lend to certain fund complex-controlled portfolio companies, subject to the following eligibility criteria:

- (1) With regard to the fund complex:
 - a. The fund complex does not directly or indirectly control 15 percent or more of any class of voting securities of the bank;
 - b. The fund complex does not have or seek to have any representative serve as an officer, agent or employee of the bank;
 - c. 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.⁶

- (2) With regard to 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 not involve more than normal risk of repayment or present other unfavorable features.

Therefore, while the federal banking agencies consider whether to amend Regulation O to address these issues, the federal banking agencies would not take action against banks or

⁶ For purposes of this Regulation O relief only, the federal banking agencies will presume that a fund complex that (1) has provided passivity commitments to the Board in connection with a legal opinion issued by the Board's General Counsel, (2) has provided a rebuttal of control to the OCC, or (3) has entered into a passivity agreement with the FDIC, in each case permitting the fund complex to directly or indirectly acquire up to 15 percent of the shares of a bank without making a filing under the Change in Bank Control Act, Bank Holding Company Act, or Home Owners' Loan Act, meets the eligibility criteria with respect to its investment in the bank.

principal shareholder fund complexes with respect to extensions of credit by the banks to fund complex-controlled portfolio companies that otherwise would violate Regulation O, provided the fund complexes and banks satisfy the foregoing criteria.⁷ The relief provided herein covers extensions of credit to fund complex-controlled portfolio companies only, and does not extend to any extension of credit to principal shareholder fund complexes. This no-action relief will apply until January 1, 2021, unless amended, extended, or superseded in writing prior to that time.⁸

⁷ This relief does not cover a fund complex-controlled portfolio company that may be an insider of a bank for a reason other than its status as a related interest of a principal shareholder fund complex, such as by virtue of the portfolio company's status as a principal shareholder of the bank. In addition, this relief does not preclude a person from seeking rebuttal of the presumption of control pursuant to 12 CFR 215.2(c)(4).

⁸ The federal banking agencies will not take action against an insured depository institution (IDI) for failure to report, for purposes of section 363.2 of the FDIC's Regulations (12 CFR 363.2), extensions of credit by IDIs to fund complex-controlled portfolio companies that otherwise would violate Regulation O but are covered by this Regulation O no-action position.