

# RESCINDED

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

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Replaced - See OCC 2023-38

### Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) today issued the "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." This interagency statement explains that the agencies will exercise discretion not to take action against banks, or against certain asset managers that become principal shareholders of banks (principal shareholder fund complexes), with respect to certain extensions of credit by banks to portfolio companies of the principal shareholder fund complex (fund complex-controlled portfolio companies) that otherwise would violate Regulation O, 12 CFR 215, provided certain eligibility criteria are satisfied.

### Note for Community Banks

The interagency statement applies to all OCC-supervised institutions, including community banks.

### Highlights

- The agencies will exercise discretion in not bringing action against principal shareholder fund complexes and banks for extensions of credit to fund complex-controlled portfolio companies that would otherwise violate Regulation O, provided the principal shareholder fund complexes and banks satisfy certain criteria that ensure the principal shareholder fund complex does not control the bank.
- The agencies will not take action against banks for failure to report, for purposes of section 363.2 of the FDIC's regulations (12 CFR 363.2), extensions of credit that would otherwise violate Regulation O but are covered by the interagency statement.
- The agencies are providing this temporary relief while the Board, in consultation with the other agencies, considers whether to amend Regulation O to address this issue.
- This temporary relief will apply until January 1, 2021, unless amended, extended, or superseded in writing before that time.

### Background

Regulation O, 12 CFR 215, places quantitative limits and qualitative restrictions on extensions of credit by banks to executive officers, directors, principal shareholders, and related interests of such persons. 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. 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. In that event, the principal shareholder fund complex and its controlled portfolio companies would be considered insiders of the bank under

Regulation O. Accordingly, the bank's lending to the principal shareholder fund complex and its related interests (fund complex-controlled portfolio companies) would be subject to the strict lending limits and other restrictions and standards of Regulation O. As a result, market participants have expressed concern about possible unintended consequences of application of Regulation O to these relationships.

### Further Information

Please contact Jonathan Fink, Assistant Chief Counsel, or Jennifer LaRoche, Special Counsel, Chief Counsel's Office, at (202) 649-5400. For persons who are deaf or hearing impaired, TTY, (202) 649-5597.

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### Related Link

- [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](#) (PDF)

Topic(s): [LAWS & REGULATIONS](#) [OCC REGULATIONS](#)

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