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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: Extension of Revised 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 (Federal Reserve Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) today issued a revised statement to extend 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," which was issued on December 22, 2020, and was set to expire on January 1, 2022. This interagency statement explains that the agencies will continue to 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 continue to 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 continue to 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 no-action position while the Federal Reserve Board, in consultation with the other agencies, considers whether to amend Regulation O to address this issue.
- This statement will cease to be effective on the sooner of January 1, 2023, or the effective date of a final Federal Reserve Board rule having a revision to Regulation O that addresses the treatment of extensions of credit by a bank to fund complex-controlled portfolio companies that are insiders of the bank.

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 firm, 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 Demetria Springs, Special Counsel, or Sarah Turney, Counsel, Chief Counsel's Office, at (202) 649-5490. For persons who are deaf or have hearing loss, use TTY at (202) 649-5597.

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Related Link

- ["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"](#) (PDF)

Topic(s): ■ [LAWS & REGULATIONS](#)