OCC and FDIC Statement Regarding the Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Insider Lending Restrictions and Related Reporting Requirements

The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC" and, together with the OCC, the "agencies") are issuing this statement to clarify supervisory expectations for OCC-supervised institutions' and FDIC-supervised institutions'[1] compliance with insider lending restrictions and related reporting requirements with respect to certain types of related interests. This statement is effective immediately.[2]

This statement will continue to be effective unless amended, superseded, or rescinded in writing. The agencies anticipate that this statement will no longer be necessary upon the adoption of a final rule by the Board of Governors of the Federal Reserve System ("Board") that revises Regulation O to fully address the treatment of extensions of credit by a bank to fund complex-controlled portfolio companies that are insiders of the bank.[3]

The OCC, the FDIC, and the Board 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" on December 27, 2019.[4] Each subsequent December, the OCC, FDIC, and Board issued new one-year extensions. A statement by the agencies with no expiration date, rather than a statement subject to annual extensions, will provide banks with greater certainty regarding the agencies' supervisory expectations.

Under Section 22(h) of the Federal Reserve Act,[5] extensions of credit by member banks[6] to executive officers, directors, and principal shareholders (and related interests of such

[1] Specifically, this statement applies to national banks, federal savings associations, covered savings associations, federal branches and agencies of foreign banking organizations, state nonmember insured banks, and state savings associations and savings banks (collectively, "banks").

[2] This statement supersedes the application of the interagency statement to banks, previously issued on December 27, 2024, which is set to expire on January 1, 2026. *See* OCC Bulletin 2024-37, "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"; FDIC FIL-85-2024, "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".

[3] Regulation O implements sections 22(h) and 22(g) of the Federal Reserve Act (12 U.S.C. §§ 375a and 375b). Under these statutory provisions, the Board has rulemaking authority to make such amendments to Regulation O. *See id.* §§ 375a(8) and 375b(10).

[4] OCC Bulletin 2019-65, "Treatment of Extensions of Credit to Certain Investment Funds and Their Portfolio Investments Under 12 CFR 215 and 12 CFR 363: Interagency Statement" (Rescinded); FDIC FIL-85-2019, "Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Regulation O and Reporting Requirements under Part 363 of FDIC Regulations" (Rescinded); Board SR 19-16, "Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Regulation O and Reporting Requirements under Part 363 of FDIC Regulations" (Rescinded).

[5] 12 U.S.C. § 375b.

[6] Section 22(h) applies to member banks and nonmember insured banks. *See* 12 U.S.C. §§ 1828(j)(2), 1468. *See also* 12 C.F.R. part 31 (applying 12 C.F.R. part 215 to national banks and federal savings associations); 12 C.F.R. 337.3 (applying, with some exceptions, 12 C.F.R. part 215 to FDIC-supervised institutions).

persons) (collectively, "insiders")[7] 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 their boards of directors in a vote in which interested directors may not participate.[8] Sections 22(g) and (h) of the Federal Reserve Act are implemented by the Board's Regulation O.[9]

Investment vehicles, or "funds," and the companies that sponsor, manage, or advise these funds (together, "fund complexes") invest in banks and other companies. Upon acquiring more than 10 percent of a class of voting securities of a member bank, 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 more than 10 percent 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 such a case, the principal shareholder fund complex and its controlled portfolio companies would be considered insiders of the member bank under Regulation O, and extensions of credit by banks to the principal shareholder fund complex and its fund-complex controlled portfolio companies would be subject to the lending limits and other restrictions and standards of Regulation O.

Banks have expressed concerns that the treatment of fund complex-controlled portfolio companies as "related interests" under Regulation O could require the abrupt and disruptive unwinding of pre-existing lending relationships. Until Regulation O is amended to address this concern, this statement provides banks with flexibility to lend to certain fund complex-controlled portfolio companies. Specifically, the agencies will not take action against a bank with respect to extensions of credit by the bank to fund complex-controlled portfolio companies that otherwise would violate Regulation O, provided all of the conditions noted below are satisfied:

1) With regard to the fund complex:
    a. The fund complex does not directly or indirectly control:
        i. 15 percent or more of any class of voting securities of the bank;[10] or
        ii. 20 percent or more of any class of voting securities of the bank if it has received applicable agency correspondence referencing at least

[7] Unless otherwise defined, terms used in this statement have the same meaning as under section 22(h) and Regulation O.

[8] 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. 12 U.S.C. § 375b(2)(A)(i)-(iii); 12 C.F.R. 215.4(a)(1)(i)-(ii). Regulation O also sets forth reporting and disclosure requirements for transactions between banks and their insiders. 12 C.F.R. 215.8-.10.

[9] 12 C.F.R. part 215.

[10] For purposes of this Statement only, the federal banking agencies will presume that a fund complex meets the eligibility criteria with respect to its investment in the bank if the fund complex (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.

such a percentage,[11] if:

1. No individual fund in the fund complex owns more than 10 percent of any class of voting securities of the bank. For this purpose, two or more funds that share the same or substantially the same investment objective and asset composition are treated as an individual fund; and
2. Non-index funds in the fund complex do not collectively own more than 10 percent of any class of voting securities of the bank.[12]

2) The bank does not knowingly make an extension of credit to a borrower the bank knows to be 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 do not involve more than normal risk of repayment or present other unfavorable features.

In addition, the agencies will not take action against a bank for failure to report, for purposes of section 363.2 of the FDIC's regulations (12 C.F.R. 363.2), extensions of credit by banks to fund complex-controlled portfolio companies that otherwise would violate Regulation O but are subject to the no action relief described above.

For the avoidance of doubt, this statement covers extensions of credit to fund complex-controlled portfolio companies only; the no-action position articulated herein does not extend to any extension of credit to principal shareholder fund complexes. This statement also does not cover fund complexes that are, or are affiliated with, a bank holding company or savings and loan holding company. In addition, this statement also 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. This statement does not preclude a person from seeking rebuttal of the presumption of control pursuant to 12 C.F.R.215.2(c)(4).

Banks and principal shareholder fund complexes are reminded that they should ensure they comply with the Change in Bank Control Act,[13] the agencies' implementing regulations, 12 C.F.R. 5.50 and 303.80 – .88, any rebuttals of control related thereto, and other banking law, as applicable.

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[11] Applicable agency correspondence means that a fund complex (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 20 percent or more 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.

[12] For purposes of this Statement only, an index fund is a fund that seeks to track the performance of a third-party reference index by buying and holding all or a representative sample of the securities in the index in approximately the same proportions as their representation in the index. A third-party reference index is an index not controlled by the principal shareholder fund complex.

[13] 12 U.S.C. § 1817(j).