Letter from the Investment Company Institute

November 3, 2026

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Benjamin W. McDonough, Secretary

Re: *Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies (Federal Reserve Docket No. R-1896 and RIN 7100-AH27)*

Ladies and Gentlemen:

The Investment Company Institute[1] appreciates the opportunity to comment on the notice of proposed rulemaking by the Board of Governors of the Federal Reserve System (Board) to amend Regulation O (Proposal).[2]

ICI supports the Board's efforts to modernize Regulation O by reducing the unnecessary burdens of the rule, increasing the outdated dollar thresholds in the rule and indexing those thresholds to reflect economic growth and inflation. ICI also appreciates the Board's recognition that Regulation O's existing presumptions of control can needlessly subject ordinary lending relationships between banks and portfolio companies of investment fund complexes to insider-lending restrictions in a manner that was not designed for those relationships and was never intended by Congress.

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1 The Investment Company Institute (ICI) is the leading voice of the asset management industry serving individual investors. ICI represents mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $47.7 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 135 million investors. Members manage an additional $11.5 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and separately managed accounts (SMAs) for individual investors. ICI associate members include service providers to funds, including financial communications firms, custodians and transfer agents, and CIT trust companies. ICI has offices in Washington DC, Brussels, and London.

2 *See* Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies, 91 Fed. Reg. 49526 (Aug. 4, 2026).

ICI strongly believes, however, that the Proposal's exemption from the presumption of control, which would only permit extensions of credit to portfolio companies of certain index fund complexes, is artificially cramped in several respects. The Proposal, without explanation, is narrower in several respects than existing supervisory relief, which appropriately is available to all fund complexes—index and actively managed alike—that are not investing for the purpose of exercising a controlling influence over the management or policies of a bank. If banks that currently extend credit in reliance on the existing relief are unable to qualify for the exemption under the final rule, they may restrict or curtail lending to fund complex portfolio companies, thereby reducing portfolio companies' access to bank credit and potentially forcing them to seek more costly and less reliable alternative financing. ICI is aware of no basis, and the Board has offered none, for restricting the Regulation O exemption in this manner.

ICI recommends that the Proposal be revised to acknowledge, incorporate, and rely on the longstanding control and passivity framework that the Board and other federal banking agencies already apply to investments by regulated fund complexes in banking organizations. Under that framework, fund complexes that become bank "principal shareholders" do so after entering into passivity commitments with the Board or other applicable federal banking agency. Those passivity commitments affirm that the fund complexes are unable to exert the types of significant influence that Regulation O is designed to address.

Accordingly, and as detailed below, the Board should revise the Proposal so that fund complexes subject to passivity commitments may qualify for the Regulation O exemption without additional restrictions based on investment strategy, fund-level ownership or aggregation, or a separate Regulation Y control analysis. The Board also should permit lending directly to the investing fund complexes on the basis of the passive investment approach that they have committed to maintain.

I. Background and the Historical Regulation O Supervisory Relief

Regulation O is designed to ensure banks do not extend credit to insiders on favorable terms. It does so by limiting a bank's extensions of credit to its executive officers, directors, and "principal shareholders" and to any of their related interests.[3] Regulation O treats as a principal shareholder any person that owns, controls, or has the power to vote more than 10% of any class of voting securities of a bank.[4]

As part of their ordinary investment activities, fund complexes may acquire 10% or more of the voting shares of a bank or its parent. The Board's General Counsel has long recognized that mutual fund complexes are not "in the business of operating or controlling banks, bank holding companies, or other companies;" rather, their "acquisitions [are] made for investment purposes

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3 *See* 12 CFR Part 215.

4 *See* 12 CFR 215.2(m)(1).

with the expectation of resale and not for the purpose of exercising a controlling influence over the management or policies of a bank holding company or bank."[5]

For this reason, the Board and other federal banking agencies have, since at least 2002, allowed fund complexes to acquire 10% or greater voting positions in banking institutions without triggering the notice and other regulatory requirements of the Change in Bank Control Act (CIBC Act) and other laws.[6] Fund complexes – equally including fund complexes that may pursue active management, index investing, or some combination of investment strategies – have entered into passivity agreements or commitments with the federal banking agencies to make such investments and re-affirm their passive investment approach. The agreements or commitments vary according to the investment stakes proposed by the investing fund complexes, but they are consistent in confirming that the investing fund complex will not attempt to influence the loan, credit, or investment decisions of a bank.[7]

Since 2019, the federal banking agencies recognized that fund complex investment positions may trigger application of Regulation O to investment fund complexes and their portfolio companies. Because applying Regulation O in such contexts would needlessly disrupt lending relationships and potentially reduce the availability of credit to a broad range of companies, the Board and other federal banking agencies provided supervisory relief permitting banks to lend to portfolio companies of fund complexes without applying Regulation O's insider-lending requirements.[8] In taking this approach, the Board and other federal banking agencies relied on the well-established passivity framework and expressly "presume[d] that a fund complex meets the eligibility criteria" for relief if that complex had entered into a passivity agreement or commitment with one of the agencies.[9]

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5 Board General Counsel Letter to Thomas M. Mistele, Dodge & Cox (Dec. 19, 2007) (hereinafter, Dodge & Cox Letter) (available here); *accord* Board General Counsel Letter to Rebecca H. Laird, Kirkpatrick & Lockhart Preston Gates Ellis LLP (Dec. 20, 2007) (regarding Davis Investments) (available here).

6 *See, e.g.*, Board General Counsel Letter to James P. Ryan, The Capital Group Companies (Aug. 13, 2002) (available here); Dodge & Cox Letter, *supra* note 5.

7 *See, e.g.*, Board General Counsel Letter to Anne E. Robinson, The Vanguard Group, Inc. (Nov. 26, 2019) (available here).

8 Board 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, SR 25-6 (Dec. 19, 2025), available here; Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corp. (FDIC) Statement Regarding the Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Insider Lending Restrictions and Related Reporting Requirements, OCC Bulletin 2025-47 (Dec. 18, 2025), available here.

9 *Id*.

The Proposal would replace the existing supervisory relief but departs from long-established, multi-agency precedent.[10] The Proposal would narrow the existing relief to apply exclusively to portfolio companies of "those fund complexes that hold investments primarily through investment funds with an investment objective of replicating the risk and return characteristics of a third-party index (passive fund complex)."[11] Under the Proposal, fund complexes would need to meet multiple conditions to be considered "qualified":

(1) The fund complex is not (and is not affiliated with) a bank holding company or thrift holding company;[12]

(2) No individual investment fund (which is defined to aggregate funds that share investment objectives and asset composition) in the complex owns or controls more than 10% of any class of voting securities of a depository institution or holding company;

(3) Investment funds in the fund complex that are not index funds do not in the aggregate own or control more than 10% of any class of voting securities of a depository institution or holding company; and

(4) The fund complex does not meet any of the conditions that would give rise to a rebuttable presumption of control under the Board's Regulation Y control rule with respect to a depository institution or holding company.

Further, under the Proposal, fund complexes that are principal shareholders of banks would still be considered insiders subject to Regulation O's restrictions for purposes of lending by the bank to the fund complex.

Thus, the relief would apply only to fund complex portfolio companies and, there too, only a subset of the portfolio companies that today benefit from the existing supervisory relief, even if the fund complexes that have invested in those portfolio companies have committed to be passive bank investors.

II. The Final Rule Should Draw Upon the Long-Standing Fund Passivity Framework

ICI strongly supports replacing the existing supervisory no-action relief with a durable regulatory framework. ICI respectfully submits, however, that there is no reason for the Board

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10 ICI and its members have greatly appreciated the federal banking agencies' supervisory Regulation O relief. The relief has allowed ordinary lending relationships to continue while the agencies considered a permanent solution.

11 91 Fed. Reg. at 49531.

12 We note that the preamble states that a qualified fund complex may not be affiliated with a depository institution or holding company supervised and regulated by the Board, FDIC, or OCC. The proposed definition of "Qualified fund complex," however, appears narrower, and we recommend that the Board clarify the scope in any final regulation. 91 Fed. Reg at 49561.

to adopt more restrictive or burdensome eligibility requirements than the framework under which banks, fund complexes, and their portfolio companies successfully operate today. A fund complex should qualify for Regulation O relief based on whether its relationship with the bank is noncontrolling and whether it refrains from attempting to influence the bank's lending decisions for the benefit of itself or its other portfolio companies, not based on extraneous criteria, such as whether the bank shares are held through index or non-index strategies.

All fund complexes that have (i) provided passivity commitments to the Board in conjunction with receiving a legal opinion from the Board's General Counsel; (ii) provided a rebuttal of control to the OCC; or (iii) entered into passivity commitments with the FDIC--in each case permitting the fund complex to acquire, directly or indirectly, 10% or more of any class of voting securities of a depository institution--should be treated as a "qualified fund complex," as that term is used in the Proposal. All such fund complexes, whether they consist of actively managed or index funds, are portfolio investors that have expressly committed to the applicable federal banking agency not to exercise any controlling influence over bank lending and other policies.

Taking such an approach would avoid adding hurdles and limits that are unnecessary in light of the appropriately tailored passivity frameworks that already exist.[13] The approach also would avoid unnecessary difficulties in classification, which will pose challenging compliance and monitoring issues for lending banks, and would avoid needless favoring of one type of portfolio investment strategy over another.

The Proposal's current approach, by contrast, would be particularly problematic for portfolio companies across the American economy that may be restricted from needed credit because, outside of their control, they happen to present an attractive investment opportunity for one type of fund complex versus another.[14] ICI submits that, in the absence of evidence of safety and soundness concerns arising from the existing supervisory approach (and the Board has

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13 ICI does not believe additional conditions, such as limits on director interlocks, should be applied for a fund complex and its portfolio companies to qualify for Regulation O relief. Some fund complexes are subject to passivity commitments that permit the fund complexes to have a single director interlock.

14 The Proposal's index fund distinction could lead to significantly different outcomes. For example, a portfolio company of a fund complex with an aggregate 14% voting position in a bank, more than 10% of which is attributable to funds that would be classified as non-index funds, would be able to borrow from the bank without regard for Regulation O's restrictions under existing Board Statement SR 25-6. Under the Proposal, the same portfolio company would not qualify for such treatment because the proposed aggregate 10% limit for non-index funds would apply (irrespective of no change in the fund complex's overall ownership level or engagement with the lending bank and irrespective of whether the fund complex has entered into a passivity agreement with the relevant federal banking agency).

cited to none),[15] there is no basis for the Proposal's requirements and restrictions in its definition of "qualified fund complex."

III. The Final Rule Should Not Adopt a Cramped Definition of "Qualified Fund Complex"

As noted, in determining how to treat fund complexes and their portfolio companies under Regulation O, the appropriate inquiry is whether the fund complex's relationship with the bank presents a meaningful risk that the fund complex could improperly influence the bank's credit decisions for its own benefit or for the benefit of another portfolio company. Importantly, that inquiry should not turn on the investment methodology used by funds within the complex, nor should it require application of an additional framework where the relevant federal banking agency already has reviewed the fund complex's relationship with banking organizations and imposed conditions specifically designed to ensure its passivity. [16]

A. "Qualified Fund Complexes" Should Not Be Limited to Index Funds

As explained above, ICI strongly believes that the Board does not need to incorporate new limits and restrictions in the definition of "qualified fund complex." The proposed definition creates arbitrary distinctions – ones that will needlessly complicate Regulation O compliance efforts, impose potential restrictions on the availability of credit to portfolio companies and discriminate among fund investment approaches – among investment products that are similarly situated for purposes of Regulation O.

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15 In fact, in adopting its "control" rule, the Board specifically declined to alter pre-existing passivity arrangements, stating that it did not see any need to revisit such arrangements. *See* Control and Divestiture Proceedings, 85 Fed. Reg. 12398, 12420 (March 2, 2020).

16 As explained above, ICI does not support tying eligibility for the regulatory exemption to the Index/Non-Index Distinction. Taking ICI's recommended approach as set forth above would avoid this additional concern with the Proposal – its unnecessarily narrow definition of "index fund."

Should the Board nevertheless determine to retain the term "index fund," it should use the definition set forth in Board Statement SR 25-6: 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." Board Statement SR 25-6 and OCC Bulletin 2025-47, *supra* note 8.

In contrast, the Proposal is considerably more prescriptive. It would require that the index: be a previously specified, third-party, broad-based market index; not be focused on a particular industry or sector; and be tracked using a specified rules-based methodology. These limits have no apparent connection to the policy concerns that Regulation O seeks to address. For example, a rules-based fund tracking a third-party index does not become more likely to influence a bank's lending decisions merely because its index is sector-specific. Again, to the extent that the Board believes it is necessary to include a definition of "index fund" in Regulation O, ICI urges it to use the definition outlined in Board Statement SR 25-6.

If the term is retained, it should not be limited to companies that do "not sponsor, manage, or advise non-index funds that in the aggregate own or control more than 10 percent of any class of voting securities of [a depository institution or its holding company]."[17] ICI believes that this prong of the proposed definition should be eliminated entirely.[18]

B. The Proposed Individual-Fund Limitation and Aggregation of Separate Funds are Unnecessary

The proposed definition of "qualified fund complex" also would exclude any fund complex in which any individual investment fund owns or controls more than 10% of any class of voting securities of a depository institution or its holding company. For this purpose, under the Proposal, "investment funds that share the same or substantially the same investment objective and asset composition are treated as a single investment fund."[19]

As explained above, ICI does not believe this blanket individual-fund limitation is necessary,[20] nor does it believe that treating separate funds as a single investment fund is warranted. The final rule therefore should not include either the individual fund-limitation or the proposed requirement to aggregate separate funds based on substantially similar investment objectives and asset composition.

A fund adviser has a contractual duty to manage each of its funds pursuant to separate investment management agreements and other documents (*e.g.*, fund prospectus) that set forth each fund's investment objectives, strategies, guidelines, and policies. The mere fact that two or more funds may share substantially similar asset compositions does not negate the

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17 Proposed 12 CFR 215.2 (Definitions).

18 The Board appears to justify its approach by asserting that it is the popularity of index funds that has primarily resulted in the unintended application of Regulation O's restrictions to an unintended arena. *See* 91 Fed. Reg. at 49532. This assertion does not form a legitimate basis for its regulatory approach. It also ignores the Board's long-standing precedent, including that for 25 years it has been asked (and has permitted) fund complexes with active management styles to acquire greater than 10% voting positions in banking organizations and that for seven years it has granted Regulation O supervisory relief to all such fund complexes. Active portfolio management should not be equated with an intent to influence or control a portfolio company. Actively managed funds generally acquire portfolio securities for investment exposure and with an expectation of realizing investment returns, not for the purpose of controlling the portfolio company. Active fund management is not an indication of the manager's attempt to influence the policies of the portfolio companies, including the banks that the active managers may invest in, or those banks' lending decisions. There is no basis for the Board to discriminate against certain fund types based on currently-in-favor investment trends.

19 *Id*.

20 By contrast, Board Statement SR 25-6 does not impose this restriction as long as a fund complex does not control 15% or more of any class of voting securities of a bank.

important distinctions between the funds, which may represent entirely different sets of investors.

The Board's proposed aggregation approach ignores these differences and, moreover, creates uncertainty as to when asset compositions or investment objectives are "substantially the same." For example, it is unclear whether funds tracking different small-cap indices would be viewed as having "substantially the same investment objective." These inherently subjective determinations could leave fund complexes and lending banks exposed to after-the-fact supervisory second-guessing. This uncertainty is unwarranted because, as the Proposal reminds us, when a fund complex falls outside of the exception, all of its portfolio companies become "related interests" and subject to the full panoply of Regulation O's requirements.

C. The Regulation Y Control Framework Is Not Appropriately Tailored to Regulation O

The Proposal would require a qualified fund complex not to meet any condition giving rise to a rebuttable presumption of control under Section 225.32 of Regulation Y. ICI respectfully recommends the Board not adopt that requirement.

As long as a fund complex has successfully rebutted the presumption of control, the fund complex should not be subject to an overlapping control analysis. Regulation Y's control framework is detailed, tiered, fact dependent and designed for a different statutory framework and purpose. In adopting that framework, the Board expressly declined to extend it to Regulation O, explaining that Regulation O "arises out of different provisions of law and is intended to address different concerns in specific contexts."[21]

Moreover, applying Regulation Y's framework to Regulation O would make the analysis unnecessarily complicated and would appear unwarranted, given the Board's experience with more targeted passivity conditions. Section 225.32 considers, among other things, management agreements, total equity ownership, director representation, management interlocks, contractual rights, accounting consolidation, and the size and terms of business relationships between companies.[22] Board Statement SR 25-6 does not require fund complexes to undertake a comprehensive Regulation Y "control" analysis. Instead, it requires that the fund complex not exercise or attempt to exercise a controlling influence over the bank, including through attempts to influence specified bank policies and decisions, which is the relevant inquiry.[23]

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21 85 Fed. Reg. at 12401.

22 *See* 12 CFR 225.32.

23 Board Statement SR 25-6, *supra* note 8.

The final rule should not incorporate Regulation Y's control framework. If the Board nevertheless retains a Regulation Y control condition, the final rule should make clear that ordinary investment activities undertaken by regulated funds and their advisers do not, standing alone, demonstrate the type of influence with which Regulation O is concerned. Regulated fund advisers may vote proxies, engage with issuers, communicate views concerning governance and other matters, and buy and sell securities in carrying out their fiduciary responsibilities to funds and their shareholders. These ordinary activities should not cause a fund complex to lose Regulation O relief absent conduct demonstrating control over the bank or an effort to procure preferential credit.[24]

IV. The Final Rule Also Should Permit Lending to Fund Complexes Without Applying Regulation O's Restrictions

As the Board notes in the regulatory preamble to the Proposal, the insider lending restrictions of Regulation O and its underlying statutory provisions were never designed for the current mutual fund investment structure and market dynamics. The conflicts of interest concerns that animate Regulation O simply are not present in the case of a principal shareholder fund complex that has entered into an agreement or commitment to be a passive investor of a depository institution or its holding company.

ICI believes that the Board should permit banks to lend to "principal shareholder" fund complexes without subjecting these extensions of credit to the extensive monitoring and recordkeeping systems necessary to comply with Regulation O. As discussed above, fund complexes that become bank "principal shareholders" typically do so only after entering into passivity commitments with the Board or other applicable federal banking regulators, thereby restricting them from exercising the types of significant influence that Regulation O is designed to address. Applying Regulation O's limits, thus, adds burden and costs, both to banks and fund complexes, and restricts credit availability in a manner that does not achieve any benefit.

The restrictions may be particularly significant, given that the revised definition of extension of credit (which follows from the Dodd-Frank Act) would include credit exposure from derivatives and securities financing transactions. Banks and fund complexes enter into such transactions as a matter of course and without regard for (or knowledge of) a fund's investment activities, and restricting banks' ability to enter into such transactions with fund complexes increases

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[24] The Board also has asked which party should maintain records to verify that a fund complex is a qualified fund complex. *See* Question 13, 91 Fed. Reg. at 49532. Adoption of a simpler definition of qualified fund complex that is consistent with the federal bank agencies' supervisory precedent will simplify the recordkeeping requirement. In all events, a fund complex should be permitted to represent its qualification to a bank. There should be no added duty of inquiry on the part of the bank, and fund complexes should not be required to make additional disclosures to banks beyond what they are obligated to provide to the public under federal securities laws. Fund complexes and their advisers are regulated entities that take compliance requirements seriously; there is no need for lending banks to second guess or double-check their representations.

costs to fund investors, and can have broader undesirable capital markets impacts, without benefit to the banks.

In requesting such an approach, ICI recognizes that Section 22(h) of the Federal Reserve Act defines principal shareholder as "any person that directly or indirectly … has the power to vote more than 10 percent of any class of voting securities of a member bank."[25] The Board's General Counsel took the interpretive view that shares of a bank held by different investment funds are treated as shares controlled by the fund complex.[26] The Board's position appears to be based on the view that the funds in a complex can be treated as a single person (which is defined to mean an individual or company) because they share a common investment adviser. However, each fund in the complex is a separate legal entity owned by its shareholders, commonly a widely-dispersed group of distinct investors who may hold fund shares for any number of different reasons, including to save for retirement, pay for college, or meet other financial goals. The benefits of each fund's investments inure solely and exclusively to that fund's shareholders, and an investment adviser makes investment decisions taking into consideration only the distinct investment objectives of the fund and not on a complex-wide basis. Acting as agent, an adviser manages each fund's assets separately, in accordance with the stated investment objectives, strategies, and policies of each fund as spelled out in the fund's investment management agreement with the adviser and other documents (*e.g.*, fund prospectus). The present rulemaking gives the Board an opportunity to reconsider the attribution principles, particularly in situations in which the fund complex has entered into a passivity agreement, and there is no risk of the fund complex or its adviser influencing the bank and its lending activities in the manner in which Regulation O is designed to address.

Even if the Board concludes that a fund complex must continue to be treated as a "principal shareholder" under the statutory definition, every fund complex does not need to be subject to the Regulation O lending limit. Section 22(h) of the Federal Reserve Act authorizes the Board to make exceptions from the definition of "extensions of credit" for transactions that the Board determines pose minimal risk.[27] ICI respectfully requests that the Board exercise that authority with respect to transactions with fund complexes that are subject to passivity commitments with the Board or other federal banking agencies.

ICI respectfully requests that the Board use this rulemaking to reconsider and clarify how the statutory concepts of ownership, control, and power to vote apply where shares are held by separate regulated funds and the adviser's authority over those shares is materially constrained by law, fiduciary duty, fund governance arrangements, and binding passivity commitments.

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25 12 U.S.C. § 375b(9)(F).

26 Board General Counsel Letter to Robert L. Tortoriello (Sept. 29, 2006) (available here).

27 12 U.S.C. § 375b(9)(D)(ii).

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We appreciate the opportunity to comment on this significant proposal. We have focused in this letter on issues that are of the greatest concern to our membership and on which we have significant expertise, and we think it is important for the Board to address these issues in any final rule. We welcome the opportunity to meet with Board staff to discuss our letter and our members' views.

If you have any questions, please contact Paul Cellupica (paul.cellupica@ici.org) or Rachel Graham (rgraham@ici.org) at ICI, or Satish Kini, our outside banking counsel at Debevoise & Plimpton (smkini@debevoise.com).

Sincerely,

Paul G. Cellupica
General Counsel

Rachel H. Graham
Associate General Counsel and Corporate Secretary