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Banking Agencies Issue Interagency Statement Extending Relief from Regulation O for Investment Funds*

In December 2021, the FRB, FDIC, and OCC (“Banking Agencies”) released a statement entitled “Status of Certain Investment Funds and their Portfolio Investments for Purposes of Regulation O and Reporting Requirements Under Part 363 of FDIC Regulations” (“No-Action Statement”). FIL-80 2021. This No-Action Statement superseded an earlier version of the statement (FIL-115-2020), which was issued on December 22, 2020.

The No-Action Statement addressed the fact that several large asset management companies had become principal shareholders of a number of banking institutions triggering the Regulation O presumption of control of a related interest over an increasing number of companies in the asset managers’ portfolios. The companies that sponsor, manage or advise these funds are together with the funds themselves referred to in the No-Action Statement as “fund complexes.” 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 (a “principal shareholder fund complex”).

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 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 fund-complex controlled portfolio companies would be subject to the strict lending limits and other restrictions and standards of Regulation O.

As discussed in more detail in the No-Action Statement, the Banking Agencies decided not to pursue action against banks or principal shareholder fund complexes for extensions of credit to fund complex-controlled portfolio companies that otherwise would violate Regulation O, provided the fund complexes and banks satisfy certain criteria specified in the No-Action Statement.

On December 22, 2022, the Banking Agencies issued a revised version of the No-Action Statement that extended the relief provided by the No-Action Statement through January 1, 2024. Then on December 15, 2023 the Banking Agencies issued another version of the No-Action Statement which extends this relief through January 1, 2025 and supersedes the version issued in

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December 2022 (the “2023 No-Action Statement”). FIL 63 2023. Thus, through January 1, 2025, the Banking Agencies will continue to not take action against banks or principal shareholder fund complexes with respect to extensions of credit to fund complex-controlled portfolio companies that otherwise would violate Regulation O, provided the fund complexes and banks satisfy certain criteria specified in the 2023 No-Action Statement.

Notably, the 2023 No-Action Statement does not insulate a principal shareholder fund complex or bank from actions the Banking Agencies may take with respect to any other violations of law or regulation or from safety and soundness criticisms related to loans made or actions taken pursuant to the 2023 No-Action Statement.

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