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STATEMENT

OF

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BEFORE THE

US HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

ON

DODD–FRANK TURNS 15: LESSONS LEARNED AND THE ROAD AHEAD

JULY 15, 2025

Introduction

The Investment Company Institute (ICI) represents the interests of US registered investment companies (registered funds), business development companies (BDCs), and similar funds organized outside the United States (regulated non-US funds and, collectively, regulated funds). We also represent the interests of the investment advisers that manage regulated funds and other investment products intended for the benefit of individual investors, including collective investment trusts (CITs) that are offered in defined contribution plans.

My name is Tom Quaadman, and I am the Chief of Government Affairs and Public Policy at ICI.

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As major participants in US and global financial markets, acting on behalf of more than 120 million American investors, ICI members support policy measures that promote robust and resilient markets. Millions of American households count on their investments in funds and CITs to help them achieve their most important financial goals, such as saving for college, purchasing a home, or providing for a secure retirement.

A confluence of events led to the 2008 financial crisis. There were many contributory factors to the crisis, including excessive risk taking, a housing market bubble, a weak regulatory framework creating blind spots, a lack of transparency, and poor cross-border coordination. In the immediate wake of the 2008 financial crisis, ICI issued a series of recommendations to address these concerns and had extensive meetings with Congress and the White House to press for action.

While the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank, Act, or Dodd–Frank Act) successfully addressed shortfalls such as transparency in the derivatives markets, it also missed an opportunity to enact reforms that could have increased investor protection and made the markets more efficient.

Since the passage of Dodd–Frank, the US financial system has grown and become more resilient. And we also now can learn from fifteen years of additional experience, including a global pandemic, geopolitical strife, technological advances, and changing macroeconomic conditions—developments that were not contemplated by the drafters of Dodd–Frank.

Therefore, ICI believes that it is an opportune time to reflect on how Dodd–Frank was implemented, and where it was not successful. ICI in this testimony proposes several tailored adjustments to Dodd–Frank that can address several of its shortcomings. We also believe that policymakers and regulators should not fight the last battle of the last war. Accordingly, we also suggest a series of new proposals that will help improve investor opportunity and protection in the future.

Part I: Long-Term Impact of Dodd–Frank

Fifteen years after the enactment of the Dodd–Frank Act, it is important to assess how well the law's implementation has achieved its goals—and where it may have unintentionally introduced inefficiencies or misalignment of risk. While the Act sought to give regulators new powers to assess and address potential financial stability risk, in its implementation agencies have, in practice, imposed unnecessary and costly burdens on regulated funds and their advisers without sufficient acknowledgement and appreciation of the commensurate benefits of such funds to investors and the broader financial system.

In this section, ICI highlights areas where Dodd–Frank implementation strayed from congressional intent and examines how certain agencies' actions have created overlapping oversight structures, led to regulatory uncertainty and instability, and failed to respect the expertise of primary regulators. Each of these cases offers an opportunity for thoughtful recalibration that addresses financial stability risk while promoting efficiency, clarity, and innovation for long-term investors.

Overreach of FSOC

ICI and its members recognize the importance of the United States to have the necessary capabilities to respond to new or emerging risks to financial stability. The most effective means for identifying and addressing these risks is through the experience and expertise of primary financial regulators. Primary regulators have the best view and understanding of markets and participants under their jurisdiction.

That is the approach that Congress had in mind when it established the Financial Stability Oversight Council (Council or FSOC) as a body comprising only the heads of existing regulatory agencies, making it clear they should act in coordination with "front line" regulators to address potential risks to financial stability. In using this approach, Congress expanded and codified the President's Working Group on Financial Markets created by President Ronald Reagan.

Congress also envisioned that this coordination would extend to the Council's authority to designate a nonbank financial company as a systemically important financial institution (SIFI designation).[1]

However, some of the Council's activities have diverged from its intended role. This underscores the need for Congress to refocus FSOC on its original mission as a coordinator among expert regulators. Regarding regulated funds and their investment advisers, there have been several instances in which the Council has posited potential risks to financial stability and then proceeded to assert itself in matters squarely within the expertise and statutory mandate of the Securities and Exchange Commission (SEC), under the pretext of addressing these supposed

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[1] For an analysis of these authorities, see ICI letter to FSOC dated July 27, 2023 at 6-9.

risks. This approach reflects a misunderstanding of the distinction between investment risk and systemic risk and highlights the need to better tailor financial stability oversight to the unique structure of capital markets and their participants. This tailored approach will avoid imposing unnecessary costs or constraints that ultimately fall on investors.

1) ***SIFI designation.*** In September 2013, the Office of Financial Research (OFR), which provides analysis for FSOC and acts upon FSOC's direction, authored a report outlining improbable risks to US financial stability that funds, their advisers, or asset management activities could pose. The OFR report, coupled with indications in the press that FSOC was evaluating at least two large asset management firms for possible designation, signaled that the Council might apply its SIFI designation authority more broadly than Congress envisioned, raising important questions about the scope and focus of systemic risk tools in capital markets. Given FSOC's unwillingness to consider the expert views of the SEC—the regulator with the most experience and knowledge of the asset management industry—the SEC, on its own initiative, requested public comment on the OFR report, revealing through the public comment process fundamental flaws in the report. Those concerns, including those voiced by members of Congress, were further exacerbated by the lack of transparency in the Council's process for considering nonbank financial companies for possible SIFI designation. Within the next year, FSOC appeared to move away from active consideration of asset managers as potential SIFIs and worked with stakeholders on improvements to its SIFI designation process.[2] Nevertheless, ICI and its members remain concerned that the Council ***may in the future*** fail to leverage the experience and expertise of the primary regulators for asset managers and funds, and proceed with the designation of a registered fund or fund adviser without thoroughly analyzing all relevant factors and alternatives to designation. Such an approach would be inappropriate, contrary to congressional intent, and harmful to potentially millions of fund investors.[3]
2) ***Recommendations relating to open-end funds.*** In July 2014, the Council directed its staff to undertake an analysis of asset management products and activities to assess potential risks to financial stability. ICI viewed this announcement as far preferable to the specter of the inappropriate designation of an individual fund or adviser as a SIFI. A particular area of focus for FSOC was whether financial stability risks could arise from

[2] On February 4, 2015, the Council approved supplemental procedures for reviewing nonbank financial companies for potential designation, available here.

[3] ICI has repeatedly detailed the reasons why SIFI designation of a registered fund or fund adviser would be inappropriate, including that (i) the Federal Reserve Board would become a second supervisor to companies whose business is rooted in the capital markets and who the FRB does not have the expertise to regulate and (ii) it would result in the application of bank regulatory standards that are entirely out of keeping both with the way in which funds and their managers are structured, operated, and currently regulated and with the expectations of investors and the capital markets. For further discussion, see, e.g., congressional testimony in 2014, 2015, and 2019.

liquidity and redemption risk in registered open-end funds (mutual funds). As its inquiry developed, however, it became clear that FSOC's analysis of potential redemption risks closely resembled the earlier OFR report, which had drawn significant concern from stakeholders for its unsupported assumptions—underscoring the need for better coordination and evidence-based analysis. Although the SEC (the primary regulator for funds) was concurrently examining issues relating to liquidity risk in mutual funds and whether such funds should be required to formalize their already considerable risk management efforts, the FSOC continued its work. In fact, the Council issued a public update in April 2016 stating that liquidity and redemption risk in mutual funds did in fact pose financial stability concerns, while offering *no basis* for that statement. FSOC's update also set forth recommendations for the SEC during an active SEC rulemaking on that very topic. FSOC's process lacked the transparency and stakeholder engagement essential for developing sound, broadly supported regulatory recommendations.[4]

3) ***Recommendations relating to money market funds.*** The first and only time that the Council invoked its authority under Section 120 of the Dodd–Frank Act focused on highly regulated money market funds, which have all the protections of the Investment Company Act of 1940 (1940 Act) and adhere to stringent risk-limiting regulatory standards. Section 120 authorizes the Council to recommend additional standards for financial activities or practices if required for financial stability purposes. Congress imposed certain predicates for use of this authority, thus limiting it to specific circumstances and imposing procedural safeguards against arbitrary use. The Council's use of Section 120 authority did not appear to meet the procedural and substantive thresholds that Congress established to ensure accountability and appropriate checks on interagency recommendations.[5] Even more concerning was how the Council intervened during an active SEC rulemaking process, creating uncertainty for stakeholders and complicating the efforts of the primary regulator to carry out its mandate.

   In 2010, the SEC adopted extensive amendments to make money market funds more resilient to adverse market conditions of the sort experienced during the global financial crisis. Shortly thereafter, further reforms to money market funds, including the imposition of bank-like capital buffers, were considered by the SEC. Those reform ideas were wholly at odds with the extensive public record developed in the earlier rulemaking.

[4] See, e.g., ICI letter to FSOC dated July 18, 2016, for a more in-depth discussion of the shortcomings of FSOC's work. The letter included a detailed empirical analysis demonstrating why FSOC's hypotheses about destabilizing redemptions in high-yield bond funds were unsupported by data and actual experience.

[5] ICI Letter to FSOC dated January 24, 2013, available here.

> Additionally, a *bipartisan majority* of SEC Commissioners objected to considering those reform ideas without further study and analysis. It was then that the Council intervened by issuing recommendations for public comment, in effect invoking its Section 120 authority when the very issue of further reforms to money market funds was under active consideration by the primary regulator. In the end, the SEC considered and rejected the Council's recommendations, adopting a second round of reforms in 2014 based on its own proposals.

Accordingly, ICI has expressed concerns about the operation of FSOC. The overreach in the FSOC designation process, the lack of credibility of the OFR money market fund report, and FSOC's subsequent pressure on the SEC to act on flawed data all demonstrate FSOC's tendency to go outside the bounds of Congressional intent, regardless of the impact on market conditions. For these reasons, the ICI supported the 2019 Trump Administration guidance that created accountability and process around the FSOC designation process and shifted the focus to an activities-based approach. The Biden Administration reversal of the 2019 guidance and reinstitution of a designation approach represents a retreat from the rigor and transparency of that guidance, thereby diminishing stakeholder confidence in the consistency and accountability of FSOC's decision making.[6]

For the reasons outlined above, ICI urges the Committee to take a fresh look at how the powers and duties of FSOC could be recalibrated to align with and prioritize its essential role as convener of primary regulators and preclude the Council from inappropriately usurping those primary regulators' role.

ICI urges the Committee to:

- ***Encourage the FSOC to restore the 2019 guidance.*** Industry and other stakeholders require process, certainty, and transparency in the operation of FSOC, including when using its SIFI designation authority.
- ***Pass the FSOC Improvement Act of 2025.*** This legislation would ensure that the Council considers whether activity-based regulation or other means would sufficiently address a potential threat to financial stability before proceeding with a proposed SIFI designation. An earlier iteration of this legislation was approved by the House with strong bipartisan support.
- ***Reframe Section 120.*** FSOC should retain the ability to make recommendations, but final consideration and rulemaking should rest with the relevant expert agency. This would ensure that any standards adopted would be pursuant to the agency's existing statutory authorities. In the case of any financial activity or practice (i) that is widespread such that FSOC believes a coordinated solution across multiple agencies is required or (ii) that

[6] For a more detailed discussion, see ICI letter to FSOC dated July 27, 2023.

requires a fix that goes beyond an agency's existing statutory authority, the Council could identify this gap in regulation and report it to Congress.[7]

Avoiding Regulatory Overlap

The CFTC's 2012 amendments to regulations of commodity pool operators (CPO) are an example of an overly expansive interpretation of its Dodd–Frank mandate, resulting in overlapping regulation for SEC-supervised funds without advancing systemic-risk objectives.[8]

From its initial adoption in 1985, Rule 4.5 provided a uniform exclusion from CFTC regulation as a CPO for certain entities that invest and trade in derivatives when an entity is subject to another regulatory scheme. Among these entities are registered funds, which are comprehensively regulated by the SEC, including with respect to funds' holdings in derivatives. Other CFTC rules (*e.g.*, large-trader reporting) apply to registered fund trading in the commodity markets.

In February 2011, a year after Dodd–Frank became law, then-CFTC Chair Gary Gensler commenced a rulemaking to sharply curtail the Rule 4.5 exclusion *solely* for registered funds. The CFTC stated that it was targeting de facto commodity pools. This rulemaking was not mandated, or even contemplated, by Congress in the Dodd–Frank Act. The CFTC sought to justify the proposal by describing it as being "consistent with the tenor" of that Act[9] and by asserting that Congress gave the agency a "more robust mandate" to "manage systemic risk" in the derivatives markets.[10]

During the public comment period, ICI and other stakeholders warned that the CFTC proposal was overbroad, threatening to sweep in registered fund advisers that did not offer registered funds remotely resembling or competing with traditional commodity pools. Leaders on the House Agriculture and Appropriations Committees likewise voiced objections, including opposition to promulgating the rule without a thorough cost-benefit analysis because "the proposed rule has the potential to create duplicative, unnecessary regulations."[11]

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[7] Consistent with Section 112 of the Dodd–Frank Act.

[8] For detailed discussion of this issue, *see, e.g.*, ICI Statement to the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, Committee on Appropriations, US House of Representatives, on CFTC Appropriations for Fiscal Year 2017 (March 14, 2016); Statement of Thomas P. Lemke, GC and EVP, Legg Mason & Co, LLC, on behalf of ICI, before the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises (July 10, 2012) at 23-26.

[9] *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11252, 11253 (Feb. 24, 2012); correction notice published at 77 Fed. Reg. 17328 (March 26, 2012).

[10] *Id.* at 11275.

[11] Letter from Chairman Jack Kingston, Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, Committee on Appropriations, US House of Representatives, and Chairman K. Michael Conaway, Subcommittee on General Farm Commodities and Risk Management, Committee on

The CFTC moved forward, missing an opportunity to better calibrate its approach in a way that respected existing regulatory frameworks. The agency made no effort to determine whether its oversight of the registered fund advisers now required to register as CPOs would complement, conflict with, or merely duplicate the SEC regime. Nor did the CFTC assess its own reporting requirements that already applied to registered fund trading in the derivatives markets.[12]

For the last decade, ICI members have had to expend significant time and resources on complying with the amended Rule 4.5 exclusion or, if they were unable to rely on the exclusion, registering as a CPO and complying with the applicable requirements. The CFTC has never demonstrated how this great expansion of its regulatory activities through amended Rule 4.5 has produced any meaningful benefit to fund shareholders or protections for the markets. Instead, fund shareholders largely bear the costs of this overlapping and unnecessary regulation, which reduces yield for investors and diverts resources from enhancing fund performance or innovation.

ICI urges the Committee to:

- ***Confirm relevant regulatory agency authority.*** ICI believes that corrective action is needed to alleviate the costs and burdens of overlapping regulation for registered funds that do not compete with, or otherwise resemble, traditional commodity pools. For example, Congress could revisit legislation passed by the House in 2015 that would have restored exclusive SEC jurisdiction over advisers to funds that invest in only financial derivatives (*e.g.*, an S&P 500 swap) while continuing concurrent CFTC jurisdiction over advisers to registered funds that resemble or compete with traditional commodity pools (*e.g.*, managed futures funds, funds seeking exposure to the physical commodities markets).

Unintended Effects of the Volcker Rule

Section 619 of the Dodd–Frank Act, colloquially known as the Volcker Rule, restricts insured depository institutions and their affiliates and subsidiaries (collectively, banking entities) from engaging in proprietary trading and from sponsoring or investing in hedge funds and private equity funds. Implementation of this provision by five federal financial agencies (Agencies)

Agriculture, US House of Representatives, to the Honorable Gary Gensler, Chairman, CFTC, dated January 30, 2012.

[12] ICI and the U.S. Chamber of Commerce joined together in a legal challenge asking the U.S. District Court for the District of Columbia to vacate and set aside the CFTC‘s amendments to Rule 4.5. In December 2012, the Court rejected ICI and the Chamber‘s challenge and upheld the CFTC‘s amendments. In response, ICI and the Chamber filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit. In June 2013, the Appeals Court issued its opinion, ruling in favor of the CFTC. The CFTC bifurcated its rulemaking, so the litigation challenging the registration and reporting requirements occurred before the harmonization rulemaking was complete. The Appeals Court decision appeared to reflect its judgment that the costs and benefits of the CFTC’s expanded regulation of investment companies could not be fully assessed until the Agency completed its rulemaking to harmonize its rules with those of the SEC.

proved to be highly complex and inordinately burdensome, not only for banking entities and other market participants, but also for the Agencies. It included the adoption of initial regulations in 2013 that swept far more broadly than Congress intended and introduced tremendous uncertainty into the marketplace. In response, the Agencies issued piecemeal guidance in an attempt to help banking entities and other market participants navigate the ambiguities of those regulations. After determining that those piecemeal efforts were not sufficient, the Agencies revised the implementing regulations in 2019 and 2020 to simplify compliance and mitigate unintended consequences.

The Volcker Rule was not directed at regulated funds, but the 2013 regulations resulted in unnecessary spillover effects for regulated funds and their investment advisers. Most concerningly, the Agencies failed to provide a complete carveout for regulated funds, which are already subject to comprehensive regulation. The lack of an express exclusion left open the possibility that certain funds could be deemed to be "banking entities" and thus subject to the full panoply of trading and investment restrictions in the Volcker Rule. For example, in the case of a newly-launched fund whose investment adviser was affiliated with a bank, the adviser's investment of start-up "seed" capital—a longstanding practice well known to the Agencies—subjects the fund to the Volcker Rule. It is clear that Congress did not intend such a result.

The Agencies ultimately provided some relief, but this guidance was issued only days before the July 2015 compliance date and after months of effort from ICI and other stakeholders. The task of obtaining this relief was particularly burdensome because (i) the problem was apparent, as ICI and other stakeholders had brought this issue to the Agencies' attention three years earlier during the comment process, and (ii) the opaque and complex nature of multi-agency rulemaking created barriers and inefficiencies and made it difficult for industry participants to understand whether progress was being made.

A second spillover effect from the 2013 regulations involved the treatment of "foreign public funds"—non-US funds deemed by the Agencies to be dissimilar from hedge funds and private equity funds and thus outside the scope of the Volcker Rule. A foreign public fund is, in effect, the non-US equivalent of a US mutual fund. The 2013 regulations placed restrictions on US firms and their affiliates that relied on the "foreign public fund" exclusion, thus putting them at a competitive disadvantage to foreign firms offering the same types of funds. These restrictions also were at odds with the Agencies' stated intent to treat regulated non-US funds in a manner similar to US registered funds.

ICI and its members thus welcomed the Agencies' later openness to revisions—dubbed "Volcker 2.0"—to address industry concerns and make the regulations more workable. Through written submissions and in-person meetings, ICI explained the impact of the 2013 regulations on regulated funds and offered concrete examples of the difficulties faced by ICI members.[13] We urged the Agencies not to let fixes for these problems get "lost in the shuffle" of competing demands for Volcker Rule reforms. ICI further noted that many of our members' problems would be solved without a corresponding increase in risk if the Agencies would exclude all regulated funds from the definition of "banking entity"—an approach that we repeatedly recommended since our first comments to the Agencies in 2012.

In its second corrective rulemaking, which was finalized in mid-2020, the Agencies did not follow that approach. Instead, through language in the preamble to the amended rule, the Agencies endorsed and slightly expanded upon earlier guidance regarding regulated fund seeding practices. ICI welcomed the greater clarity and certainty that these statements provided for our members. Nevertheless, the Agencies' decision not to adopt the exclusion for regulated funds urged by ICI and others has continued to result in needless complexity and, in our view, is inconsistent with Section 619's clear focus on unregulated funds and *not* the highly regulated funds sponsored and advised by ICI members.

Moreover, the lack of an express exclusion results in an incomplete solution to the problems that ICI has raised and underscores the fundamental problem with aspects of the Volcker Rule that remain today. For example, the provision of seed capital by a banking entity to a third-party regulated fund that operates as an exchange-traded fund (ETF) was not specifically addressed by the Agencies. This activity, however, clearly should be treated as a permissible activity for Volcker Rule purposes. The banking entity, in its capacity as an "authorized participant" to the ETF, is purchasing and holding fund shares as the fund works to establish regular trading and liquidity on the secondary market. As ICI has explained as far back as 2012, this is market making activity to support an investment product that Congress intended to be outside the scope of the Volcker Rule.

The example of the Volcker Rule further illustrates a broader challenge: when regulatory efforts extend beyond their intended scope or lack coordination, they can create avoidable complexity and costs for investors and market participants alike. At the same time, they dilute the effectiveness of oversight by misallocating limited regulatory resources.

ICI urges the Committee to:

- ***Clarify the Volcker Rule***. Given that some of these fundamental problems remain outstanding, consider revising the statutory provisions to make clear that regulated funds are entirely out of scope of the Volcker Rule's restrictions and to reaffirm the importance of agency expertise.

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[13] For a detailed discussion, *see, e.g.*, Letter to Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, dated Sept. 21, 2017.

Governance and Accountability of the Financial Stability Board

The need to resolve cross-border issues was an important priority arising from the financial crisis. Consequently, the need for international coordination and promotion of international standards has made the Financial Stability Board (FSB) a valuable forum for US regulatory authorities to meet with other international regulators, central banks, and finance ministries to consider emerging risks to the global financial system.

In the past fifteen years, the FSB has evolved into a powerful influence on US financial regulatory policy. The FSB regularly comments on, and discusses, regulatory developments centered in the United States and seeks to develop recommendations on regulatory approaches and standards regarding issues that have not yet been fully debated within the US regulatory system. Thus, there have been some cases where US regulatory proposals have been driven by pressure generated by FSB discussions.

One of ICI's main concerns with the FSB is that the membership of the powerful FSB Steering Committee consists primarily of central banks and finance ministries with only two seats currently occupied by pure market regulators (the US SEC and the Brazilian SEC). In addition, the United States—despite the size of its financial system relative to other financial systems in the world—is limited to three seats (US Treasury, Federal Reserve Board, and SEC). One effect is that European authorities, collectively, have a much "louder" voice in the FSB than the US authorities. We note that in 2022 and 2023 Chair Gensler sometimes suggested that one reason to complete flawed SEC rulemaking on US money market funds and swing pricing for US mutual funds was because of pressure from the FSB and European central banks.

Given that the FSB makes decisions by a "weight of the room" process (i.e., not unanimity but what a large majority of the body expresses), the composition of who is in the room and number of voices matter. It is logical to question whether the FSB Steering Committee has the right expertise (with its small number of market regulators) and composition (with its uneven geographic balance) to take up issues like the regulation of "non-bank financial intermediation" and OTC derivatives in a manner that appropriately takes into account the policy expertise of relevant US authorities and the importance of the US financial markets.

These issues are of particular importance as the activities of many US non-bank financial firms represent the global market. Consequently, sophisticated legal structures, such as US securities laws, are tailored to meet the needs of investors and the marketplace.

To improve the governance and accountability of the FSB, ICI urges the United States to:

- Expand FSB Steering Committee membership to more market regulators, including the US CFTC. Participation in lower-level FSB committees and working groups is not sufficient.
- Ask the FSB to give more weighted consideration to comments and input from the SEC and CFTC on matters where the SEC or CFTC is the primary regulator, such as issues related to non-bank financial intermediation and OTC derivatives. And the US Treasury Department and Federal Reserve Board should be expected to actively support such comments and input from the SEC and CFTC consistent with the SEC and CFTC's Congressionally-mandated regulatory authority in those areas.
- Direct US authorities to assert more control over the FSB work agenda particularly as it applies to issues where US markets and US market actors are the primary targets of inquiry, again giving more weighted consideration to the authority that is the primary regulator.

Part II: Building on the Legacy of Dodd–Frank to Embrace Modernization

While Dodd–Frank sought to respond to the unique challenges of the 2008 financial crisis, the transformation we have experienced in our capital markets over the past 15 years has shown that our regulatory frameworks must continue to evolve. Now is the time to take a forward-looking approach that better serves long-term investors and keeps pace with financial innovation. Such an approach would learn from the successes as well as failures of Dodd–Frank by lifting unnecessary regulatory barriers and promoting capital formation while at the same time being mindful of risks to investors and the financial markets.

This belief is the foundation of ICI's Modernizing the 1940 Act Project: a comprehensive, member-driven reform agenda that reflects more than three years of input from asset managers, fund directors, legal and compliance experts, and academics. In our March 2025 white paper, *Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection*, ICI outlines 19 practical reforms designed to modernize the regulatory framework under the 1940 Act in ways that strengthen investor protections, eliminate unnecessary costs, and expand access to a broader range of investment opportunities.[14]

These proposals are grounded in our enduring support for effective regulation—and a recognition that the regulatory framework of the past must be refined to meet the needs of today's investors. They embrace technology, promote innovation, and recognize evolving investor preferences to ensure that regulation keeps pace with markets while avoiding prescriptive or overlapping rules that limit access, efficiency, and choice.

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[14] Investment Company Institute 2025. *Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection.*

As a complement to these recommended regulatory reforms, ICI supports a common-sense change in tax rules that would greatly benefit retail investors. The *Generating Retirement Ownership Through Long-Term Holding (GROWTH) Act* is a bipartisan bill that would empower long-term savers, enhance the compounding of returns, and remove an obstacle to financial security for millions of middle-income investors.

This Committee has already led on this issue. As discussed in greater detail below, the Committee has, on a bipartisan basis, passed the following bills that improve investor opportunity and protection—the *Increasing Investors Opportunities Act*, the *Retirement Fairness for Charities and Educational Institutions Act*, the *Improving Disclosure for Investors Act*, and the Access to Small Business Investor Capital Act. We urge the House leadership to bring these bills to the floor, pass them, and send them to the Senate for further action.

In addition to proposals listed above, such as the passage of the *FSOC Improvement Act*, the restoration of the 2019 Trump Administration guidance on FSOC, and legislative clarity around the Volcker Rule, we believe that Congress should move forward on the following recommendations.

Allow for Reinvested Capital Gains Tax Deferral

ICI strongly supports the *GROWTH Act*, a bipartisan proposal that would allow retail investors to automatically reinvest capital-gain distributions from mutual funds and other registered funds without triggering immediate taxation. Today, millions of middle-income investors face annual tax liabilities for reinvested gains—even when they do not sell their shares. This creates an artificial drag on compounding, distorts investor behavior, and penalizes long-term savings. The *GROWTH Act* aligns mutual fund tax treatment with other retirement vehicles and private investment structures, encouraging wealth accumulation and reducing unnecessary friction in the system.

Foster ETF Innovation

ETFs are among the most important financial innovations of the modern era. Despite their widespread popularity, regulatory barriers still constrain their development. The SEC should permit fund sponsors to offer both mutual fund and ETF share classes within a single fund structure, promoting operational efficiency and enabling investors to choose the structure that best fits their needs. The current requirement that a mutual fund and an ETF following the exact same investment strategy must be in two separate vehicles undermines the potential for economies of scale to reduce the expenses that investors pay and limits competition. The SEC appears to be making great progress here, and we are hopeful that it will complete this work in short order.

Additionally, the SEC should broaden the scope of permissible asset classes for semi-transparent ETFs. By allowing these vehicles to hold a more diverse array of assets—including fixed income and global equities—while maintaining robust disclosure standards, the Commission can empower more active managers to enter the ETF space without compromising proprietary strategies. This expansion would unlock new options for investors and further bolster ETF innovation.

Expand Retail Investor Access to Private Markets

Expanding access to private markets is one of the most powerful levers Congress and the SEC can use to increase opportunity for everyday investors. Over the past decade, the private markets have grown dramatically—from under $5 trillion in 2013 to nearly $25 trillion today—offering higher potential returns and new avenues for diversification.[15] In particular, private credit activity now plays an enormous role in capital formation, benefiting both established and emerging businesses, as well as institutional investors. These markets, however, remain largely out of reach for retail investors. With the number of publicly traded companies declining significantly since the 1990s, the potential for the vast majority of Americans to participate fully in the wealth-generating engine of the US economy is diminishing, not growing.

ICI has recommended a number of concrete steps that would expand and enhance the ability of funds regulated by the SEC under the 1940 Act to provide ordinary investors with greater access to private market strategies. Closed-end funds are ideal vehicles to serve as the bridge between retail investors and private assets, but currently they are subject to a number of outdated restrictions. For example, mutual funds and ETFs should be granted additional latitude to participate in co-investments alongside affiliated funds. We commend the SEC for taking steps to expand co-investment, but further relief continues to be necessary, including allowing open-end funds to participate in such investments and providing greater flexibility for investments in private equity. Further, the SEC should revisit its "fund of funds" rules governing the ability of regulated funds to invest in other funds, in order to facilitate the ability of target-date and similar funds to offer a sleeve that includes exposure to private markets strategies.

In addition, regulatory reforms must address the vulnerability of listed closed-end funds to predatory activist campaigns. A listed closed-end fund is one of the best products to provide retail investors with access to private market investments. However, campaigns from activists can force short-term decisions upon the fund that undermine long-term retail investors. These campaigns and their associated risks have effectively frozen the IPO market for listed closed-end funds. Congress should act to pass the *Increasing Investor Opportunities Act*, which limits the ability of activists to engage in these campaigns and will encourage capital formation and retail access to private market investment strategies.

[15] *See* Remarks by Eric Pan, President and CEO of the Investment Company Institute, at the ICI Leadership Summit (May 1, 2025, Washington, DC).

ICI also supports the *Retirement Fairness for Charities and Educational Institutions Act of 2025*. This bipartisan legislation would grant participants in 403(b) plans—millions of educators, nonprofit workers, and public servants—access to collective investment trusts (CITs), closing an arbitrary gap between the public and private retirement systems. CITs offer professionally managed, lower-cost investment options that would help these workers achieve better retirement outcomes.

Eliminate Unnecessary Regulatory Costs and Burdens

Outdated mandates increase costs for funds and investors alike. One of the most pressing examples is the continued requirement that funds use paper delivery as the default method for shareholder communications. In an age of mobile devices and digital platforms, investors overwhelmingly prefer electronic communication. E-delivery should be the default option, with paper available upon request, to improve efficiency, sustainability, and investor engagement. Congress should pass the *Improving Disclosure for Investors Act of 2025*, which has broad bi-partisan support and would accomplish this goal.

Similarly, funds, like operating companies, periodically conduct proxy campaigns, and the current fund proxy system is inefficient and expensive. A subset of proxy campaigns from 2012 to 2019 cost funds nearly $373 million—most of which was spent simply achieving quorum.[16] We know of three separate fund proxy campaigns in the last 16 years—none particularly controversial—that have exceeded $100 million (one of which would be about $200 million in today's dollars). Reform is needed to modernize the process, potentially by revising the means of achieving quorum imposed by the 1940 Act itself or removing shareholder vote requirements for certain changes when sufficient safeguards exist, such as board approval and advance shareholder notice.

Finally, the SEC should restore registered funds' ability to cross trade fixed-income securities in appropriate circumstances, rather than forcing them to execute these trades through third-party dealers and incurring commissions. As a result of the inaction of the prior SEC Chair, the ability of funds to engage in most types of cross-trades expired in September 2022, to the detriment of fund investors. ICI has conservatively estimated that in 2020 alone, cross trading fixed-income securities saved funds nearly $329 million and advisers' clients generally (i.e., funds and other clients) more than $390 million.[17]

Better Leverage the Expertise and Independence of Fund Directors

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[16] *See* *Analysis of Fund Proxy Campaigns: 2012–2019*, Investment Company Institute (December 2019).

[17] *See* *Rule 17a-7 at the Crossroads: The Right Path Forward*, Investment Company Institute (April 2021).

Today's fund boards are highly professional, experienced, and deeply engaged in oversight. Yet they are still subject to outdated requirements that diminish their effectiveness. For instance, current statutory provisions mandate that routine approvals—such as contract renewals and auditor appointments—occur at in-person meetings. Given modern videoconferencing capabilities, this requirement is costly and unnecessary. Boards should have discretion to determine when in-person meetings are appropriate, enabling more flexible, responsive governance. The SEC should also revisit outdated requirements that require board approval for routine matters and the hyper-technical standards for independence that deter qualified individuals from serving on fund boards.

Conclusion: A Renewed Regulatory Vision to Serve Today's—and Tomorrow's—Investors

ICI supports smart, effective regulation. But regulation must evolve to keep pace with changing markets. With more than 120 million Americans relying on registered funds to save for retirement, college, homeownership, and other goals, it is essential that our regulatory system reflects the tools and technologies investors use today—and anticipates those they'll need tomorrow.

For these reasons, ICI supports tailored changes to the Dodd–Frank regulatory framework that will better leverage the expertise and experience of primary financial regulators like the SEC and ensure that any decisions by FSOC about systemic risk are based on data and not supposition.

But in addition to correcting the errors and overreach of Dodd–Frank and FSOC, Congress and financial regulators like the SEC need to develop a forward-looking agenda to modernize outdated regulations in light of the enormous evolution in the markets—including the fund industry—in the years since the global financial crisis. The *Modernization of the 1940 Act* initiative and other initiatives supported by ICI provide practical, actionable plans for doing just that. We urge Congress and the SEC to take up this agenda and work with industry stakeholders to implement it. Doing so will not only protect investors—it will empower them.

ICI appreciates the opportunity to present this vision and stands ready to work with Congress and regulators to build a more modern, accessible, and resilient regulatory framework for America's investors.